



# RIGHTS OF NATURE & MOTHER EARTH RIGHTS-BASED LAW FOR SYSTEMIC CHANGE





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## **The Challenge is Upon Us: Climate Chaos or Communities of Cooperation?**

*By Editors Shannon Biggs, Osprey Orielle Lake and Tom B.K. Goldtooth*

It is time to stop thinking we must *protect* nature and recognize that as much as every other life form on Earth, we *are* nature.

We cannot separate ourselves from the water we drink, the food we eat or the air we breathe any more than we can care for just a single leaf on a tree. And yet, human law almost everywhere defines “nature” as property to be owned, commodified and destroyed at will for human profit. Most of the destruction of the Earth is sanctioned by law—from blowing the tops of mountains for coal; to fracturing the earth for oil and natural gas; to clear cutting the Amazon and displacing Indigenous communities. In so doing we are defying Natural Law that governs the planet’s life systems. Climate disruption is the direct result of human activities pushing beyond the limits of Natural Law.

Like no other time in human history, we are in a unique position to determine our fate. Recognizing the Earth as a living system of which humans are a part, rather than as human property to be owned and destroyed is a fundamental shift from the climate capitalism embedded in the DNA of trade deals, environmental policies and treaties around the world—including the Paris Agreement. If we are to find a solution to climate change, we must stop treating the Earth as a commodity and putting a price tag on the processes of the natural world.

Current country commitments of the United Nations Paris Agreement add up to a 3+ degree rise in global temperature by 2050, an outcome that will dwarf the ravages of recent global record-breaking hurricanes, fires and droughts. We must do better than the promises of Paris. Climate scientists tell us we need to keep global temperatures to a 1.5 degree rise, something that cannot be accomplished unless we leave 80% of fossil fuel reserves in the ground. The Paris Agreement lacks a plan to accomplish that, and as a non-binding agreement, provides the opportunity for countries like the U.S. to simply walk away.

To avert the worst impacts of the climate crisis and move toward a planet in balance, we must challenge the idea that Earth’s living systems are property and change our legal frameworks to adhere to the natural laws of the Earth. Recognizing Rights of Nature means that human activities and development must not interfere with the ability of ecosystems to absorb their impacts, to regenerate their natural capacities, to thrive and evolve, and requires that those responsible for destruction, including corporate actors and governments be held fully accountable.

This report explores not just the idea of a radical shift toward recognizing rights of ecosystems (and our responsibilities to the Earth) but includes global examples from around the world where these new laws are taking root. In the last year alone, New Zealand and India have recognized rivers as rights-bearing entities that now “own” themselves. They join the fast-growing list of 7 countries and dozens of local communities that are finding the only way forward to protect human communities is to shift our hearts, minds and legal frameworks to align with natural law. We can choose to shift now, while there is still time to escape the worst devastation of climate chaos. Failing that, we must remember Mother Earth does not negotiate.



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## The Stillheart Declaration on the Rights of Nature



Participants at the Stillheart Institute

*In October 2013, on Ohlone Indigenous land, Global Exchange and partners held a 3-day summit at the Stillheart Institute in Woodside, California. Nestled in the California Redwood forest a counsel of 32 global social movement leaders including Indigenous leaders, deep ecologists, grassroots justice advocates, economists, climate experts, localization activists, globalization thinkers, writers and researchers were convened to examine the emerging legal framework known as Rights of Nature, or Rights of Mother Earth. This declaration emerged and is affirmed by the undersigned participants.*

### The Context

As humanity fast-tracks towards the collapse of our planetary systems, we sought to articulate a shared vision toward a new economy based on living in balance with natural systems; where the rights of humans do not extend to the domination of nature. We questioned the viability of a global economy whose jurisprudence places property rights above all; recognizes corporate rights as the most sacred of property rights; subordinates human rights and the collective rights of Indigenous Peoples to corporate rights; and where Nature is not recognized as having any intrinsic rights at all.

We discussed the power and possibility of an emerging body of law—recognizing legal rights for ecosystems to exist, flourish and regenerate their vital cycles—as a necessary part of placing our human laws in alignment with Nature’s laws, and our human actions and economy in an appropriate relationship with the natural order of which we are part. Major points of discussion included the following:

- Living within the carrying capacity of the planet we call home requires that we adhere to the natural laws governing all life and does not extend human authority over them.
- In these respects, we recognize that ancient and living Indigenous cultures that live in connection with land, and have knowledge of its care, have much to teach us about this world.
- Indigenous traditions tell us that all economic activity must be rooted in an understanding and respect of our sacred relationships with Mother Earth, and that our continued wellbeing depends upon it.
- Science and common sense tell us that endless growth and the plundering of a finite planet is an impossibility, and an absurdity.
- We must avoid techno-utopianism, the illusionary idea that technological innovation will provide a “fix” to the inherent limits of a finite Earth. All technology must be subject to full life-cycle analyses, from sources to wastes to interactive stimulations to development.
- The subordination of the web of life to the chains of the markets and growth of the corporate led system erodes the primary means of existence on this planet, which is rooted in the diversity of life itself.

- The current dominant economy fails to sustain and regenerate life because it is built on flawed foundations including:
  - » The endless industrial extraction and pollution of natural systems and functions;
  - » The privatization, commodification and legalized enslavement of nature as human and corporate property, which places a price on nature and creates new derivative markets that increase inequality and expedite the destruction of ecosystems;
  - » A prevailing world-view that places humans above nature, and with dominion over nature (anthropocentrism);
  - » A worldview and economic system that demands expansion, consumption, profit and economic growth above all other values, without recognition of carrying capacities of the planet and its ecosystems.
  - » Legal systems that enoble private property at the expense of community, ecology and equity, and that directly serve the concentration of extreme wealth in few hands.
  - » Militarism and endless war as a primary means of acquisition of governance over peoples and land, and a primary expression of corporate growth models.

Changing the dominant legal and economic paradigms will require more than individual commitments to conservation and “greener” shopping. It will require fundamental changes in law, especially the rules of the global economy. Law is how we use power to make real the dominant values in a society. Over time most societies have cultivated the notion that nature is a “thing” separate and apart from humans, and that understanding has been codified in law. The ownership of ecosystems and other aspects of the natural world is promoted and protected by current law, upholding the control and dominance of humans over nature.

Current law “sees” nature as human owned property. Prevailing law and world-views express and confirm human authority over all of nature and do not provide the natural world with any legal standing in a court of law. From the tar sands of Alberta to mountaintop removal for coal extraction, to fracking and deep ocean oil drilling, to the destruction of vast tropical rainforests, to the massive continuing privatization of whole ecosystems, we have witnessed the horrifying damage that has been done with the full blessing of the law. This cannot be sustained.

We seek a world where all human activity takes place in balance with the Earth’s offerings, and with reciprocity, dignity and respect for nature.

If we are to succeed as a species, we will need to redefine “wealth” away from financial accumulation towards “sufficiency” and wellbeing. This will require a new body of human law to codify and enforce these values. We therefore declare an imperative for the development and adoption of economic frameworks rooted in the inherent legal Rights of Nature.

## **The Change to Come: Rights of Nature**

The terms Rights of Nature or Rights of Mother Earth are interchangeable, though Indigenous preference for the use of Mother Earth better describes our connection and relationship. Rights of Nature or Rights of Mother Earth seek to define equal legal rights for ecosystems to “exist, flourish, and regenerate their natural capacities.” Recognizing these rights places obligations on humans to live within, not above, the natural world, of which we are only one part, and to protect and replenish the ecosystems upon which our mu-



tual wellbeing depends. In essence, it is necessary to transform our human relationship with nature from property-based to a legal rights-bearing entity.

We are pointing to the need for a wholly different framework that recognizes that Earth's living systems are not the enslaved property of humans. Just as it is wrong for men to consider women property or one race to consider another race as property, it is wrong for humans to see nature as property over which we have dominion. All rights, including humans', depend on the health and vitality of Earth's living systems. All other rights are derivative of these rights. This requires an essential paradigm shift from a jurisprudence and legal system designed to secure and consolidate the power of a ruling oligarchy and a ruling species, and to substitute a jurisprudence and legal system designed to serve all of the living Earth community.

In 2008, Ecuador became the first country to recognize Rights of Nature in their constitution. Bolivia has also passed national laws recognizing the inherent rights of ecosystems. Nepal, and India and other countries are also putting forward similar national laws. Dozens of communities across the US and around the world have taken similar action to place the rights of natural communities (including humans) above corporate interests. The natural world is of a higher order of good that we dare not undercut. In that sense, it is sacred.

## **Call to Action**

All must speak out for the needs of nature and our Mother Earth as a whole. It is our responsibility to live within the natural order that is sacred to all life on earth. We must redraw the boundaries of the economy to bring them into line with ecological limits and the common sense science of planetary boundaries. Nature's needs are also our own and must be elevated and protected by legal rights, and maintained through life-sustaining systems of exchange and reciprocity.

We therefore must initiate a process of re-educating societies, dispelling the dominant anthropocentric belief that the earth belongs to humans. This will require fundamentally aligning global, regional, and local economic and legal structures to exist within natural systems. Social movements must create the space for the shift that is necessary to protect against the tide of corporate-led globalization.

The Rights of Nature demand regenerative, mature, and dynamic economic relations in which:

- The interdependence of humans and nature is primary; the laws of nature supersede rights to property; and vital natural cycles of life must be protected for the good of all. Recognize that there is no separation between how we treat nature and how we treat ourselves;
- Nature is seen as the foundation of life itself; it is not seen as an inventory of goods and services for human beings, a dumping ground for pollution and waste, or as capital;
- The rejection of all market-based mechanisms that allow the quantification and commodification of Earth's natural processes, rebranded as 'ecosystem services';
- Indigenous Peoples are empowered by legal and cultural norms as partners or caretakers of the lands and territories in which they live;
- All communities must become true caretakers of the places in which they live, including writing new laws that recognize the rights of local ecosystems to maintain their vital cycles and eliminate harmful projects in their midst;
- Whether one is Indigenous or not, we all must live in a responsible and natural way.

- Systems of Earth law focus on our responsibilities to foster natural ways and necessarily preempt corporate rights, property ownership, and financial speculation;
- Necessary elements of an economic system consistent with the Rights of Nature include:
  - » Immediately reducing production and consumption levels to within the carrying capacities of the planet, and the equitable redistribution of available resources/wealth;
  - » The full restoration of ecosystems, primarily allowing nature to heal itself;
  - » The relocalization of primary production, distribution and use; the abandonment of economic globalization models as inherently wasteful and inequitable;
  - » Full recognition of non-monetized labor;
  - » Governance through ecologically informed, democratic, participatory, engaged and empowered decision-making at all scales;
  - » Elimination of economic systems and strategies that prioritize economic growth, and profit, and private acquisition of resources and wealth, above all other values;
  - » The elimination of substances that are toxic, persistent, and bioaccumulative;
  - » Zero waste systems for production, use, and decomposition known as cradle-to-cradle living;
  - » Recognition of sacred relationships with place;
  - » In all economic decisions and human activities, the wellbeing of Nature is primary.

**As affirmed by the (undersigned) participants, March 3, 2014\*:**

Maude Barlow, Council of Canadians	Cynthia Lazaroff, Biosphere Foundation	Pennie Opal Plant, San Francisco Bay Area Idle No More and Gathering Tribes
Shannon Biggs, Global Exchange	Leila Salazar López, Amazon Watch	Ben Price, National Director of Community Organizing, Community Environmental Legal Defense Fund (CELDF)
Jeff Conant	Joanna Macy	Ruthie Sakheim, Occupy SF Environmental Justice Working Group
Gopal Dayaneni	Jerry Mander, International Forum on Globalization	Linda Sheehan, Earth Law Center
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Osprey Orielle Lake, Women's Earth and Climate Caucus		

\* An up-to-date list of endorsers can be found at [www.globalexchange.org/communityrights/rightsofnature/stillheart](http://www.globalexchange.org/communityrights/rightsofnature/stillheart).



## How Free Trade Agreements Negatively Impact The Rights Of Nature

by Maude Barlow

It is very important to understand how modern free trade agreements impede the ability of people and their governments to maintain environmental laws and regulations to protect the environment and nature.

Modern free trade agreements, unlike those of the past, are less about taking down barriers to the trade in goods and more about challenging what are called “non-tariff barriers” - rules and regulations that protect, among other things, water, forests, soil and air. Free Trade Agreements such as CETA, the Canada-EU Comprehensive Economic and Trade Agree-

ment, TPP, the Trans-Pacific Partnership, and NAFTA, the North American Free Trade Agreement, advance the corporate control of natural resources and reduce public control of the environment.

Corporate-driven free trade and investment deals threaten nature in a number of important ways. Their very existence is based on the growth imperative and that in turn leads to more fossil fuels, more logging, more manufacturing, more mining, more chemical-based industrial farming, more commodity exports, more highways and trucks, more energy pipelines and more shipping.

Transnational corporations want to be able to shift production from their original domestic base to low-wage countries and to make that work, they need to get rid of export controls of domestic resources such as food, energy, forests, minerals and fish so that they can supply those operations.

For instance in NAFTA, Canada gave up control of its energy sector. The “proportionality clause” of NAFTA obligated Canada to maintain a fixed share of energy exports to the U.S. The more Canada exports, the more Canada is obliged to export. This led to a dramatic increase in energy exports to the U.S., accelerating the depletion of the country’s conventional oil. In turn, this led to exponential growth in the Alberta tar sands and facilitated the trade in environmentally dangerous fossil fuels. This NAFTA rule has compromised Canada’s energy security because it has restricted Canada’s legal capacity to regulate the extraction and trade in tar sands oil and therefore convert energy production away from fossil fuels.

Even without being law, proposed agreements are causing governments to modify their regulations in a way that endangers the environment and water. For years, the Canadian government and the Canadian energy industry lobbied hard to stop Europe from downgrading its rating of Canadian tar sands oil under its Fuel Quality Directive, a key piece of EU legislation that distinguishes between various kinds of fuel imports based on their CO2 emissions at source.

In 2014, the EU responded to that pressure and dropped its plan to label tar sands oil dirtier than other oils, which would have made it harder to import. EU officials, speaking on condition of anonymity, told the Canadian Broadcasting Corporation that a desire not to imperil CETA was a factor in this decision. This cleared the way for Canada to export oil directly into Europe.



CETA protests in Berlin, 2015

Friends of the Earth Europe predicted that the decision would allow crude from Alberta's water-intensive tar sands unfettered access to Europe. Sure enough, before the 2015 downturn in oil prices, there was a surge in tar sands exports to Europe through the US. While American law prevents the export of its own crude, it has been re-exporting Canadian crude since 2014. Between 2014 and 2015, these exports to Europe grew 73 per cent. More than two-thirds of Europe's oil refineries have been upgraded to process tar sands crude, arguably the dirtiest energy on earth.

Similarly the US-EU Transatlantic Trade and Investment Partnership (TTIP) has also already caused environmental standards to be lowered, even though it has been put on the back burner by President Trump. In May 2015, the EU shelved plans to regulate 31 pesticides containing endocrine-disrupting chemicals after an aggressive lobby by European and American chemical companies. The American Chamber of Commerce and the U.S. Trade Mission to Europe threatened EU officials with a trade backlash if these chemicals were banned.

The Canadian government is promoting a free trade agreement with China, but China has made it clear that Canada will have to build a pipeline to the West Coast if any agreement is to move forward. Chinese energy companies are increasing their investments in the tar sands and pipeline companies and want access to tidewater for their bitumen. The Kinder Morgan Trans Mountain pipeline, which has received government approval, would carry heavy oil diluted with chemicals such as benzene and toluene over 1,309 pristine waterways and through five national parks.

Perhaps the most dangerous tool of free trade agreements is the provision that gives foreign investors the right to challenge government rules protecting the environment and natural resources. It is called ISDS - Investor State Dispute Settlement - and allows corporations and private investors to gain access to an undemocratic process outside of a country's own courts where highly paid trade lawyers privates the decision making and decide on the complaint in question. This process is closed to a country's own domestic companies.

NAFTA was the first trade agreement among "developed" countries to include ISDS and, as a result, Canada and Mexico are now among the most sued countries in the world. Canada has been sued 39 times, paid out over \$200 million in punitive fines and is facing another \$2.6 billion worth of challenges. Most of these are for environmental standards the foreign investors do not like, such as bans on fracking, pesticide and quarries.

ISDS now exists in over 3,500 bilateral investment agreements between countries and is being used by huge corporations from wealthy countries to intimidate poor countries into giving them unfettered access on their own terms to their resources. Mining companies have used ISDS tribunals to sue over 40 governments more than 100 times. In two-thirds of these cases, reports Sierra Club US, governments have been ordered to pay mining companies or have settled with them, meaning that they either have to pay to maintain higher standards or they agree in lieu of payment to weaken their environmental laws. In the 44 mining cases pending, mining corporations are demanding over \$53 billion from (mostly poor) countries.

The United Nations has said that these corporate-friendly rules have put the regulatory function of many governments and their ability to legislate in the public interest at risk. Simon Terry, executive director for the Sustainability Council of New Zealand, says that the environment is a significant casualty under the TPP. "There is a gross asymmetry in the rights and means accorded organizations that would seek to protect the commons for the public good, and rights and means accorded foreign investors to protect private wealth. Adopting the lens of the foreign investor when making broad governance changes through the TPP has sidelined the opportunity to properly integrate management of the economy with management of other domains – such as the environment."



The Seattle to Brussels Network, made up of many development and human rights groups, research institutes and labor unions, says that today's international investment regime is part of a highly enforceable "architecture of impunity" for transnational corporations and does nothing to protect the rights of people affected by their behavior. "There are no binding obligations for TNCs on human or labour rights as well as environmental protection and affected individuals and communities have no recourse to international justice when TNCs violate their rights. Internationally, the regulation of TNCs is limited to self-regulation in the form of voluntary codes of conduct, and essentially non-enforceable recommendation by the international community.

"As a result, we are faced with an appalling regulatory asymmetry where TNCs receive supreme protection through international 'hard law' via the powerful ISDS enforcement mechanism, while human rights and the environment are only protected through non-enforceable 'soft law.'"

It is past time to end the egregious privilege these trade agreements give to transnational capital. There is a powerful movement growing around the world to reassess the purpose and goals of trade. Yes, people, industry and governments will continue to trade across borders. Yes, a hungry world needs to trade food. Yes, people and nations want to be able to share their bounty with the world.

But what would trade agreements look like if they promoted a more sustainable model of food production, one based on fewer chemicals, better soil protection, mixed farms that allow the land and water to heal, and respect for farmers' rights? What would trade agreements look like if they promoted alternative, more sustainable sources of energy such as wind, solar, thermal, tidal and energy-efficient retrofitting? Jobs in these energy sectors would be more plentiful and safer.

What would trade agreements look like if they had to take into account their water and environmental footprints at home and in other countries? What would they look like if, instead of giving preferential treatment to global corporations, they established binding human rights and environmental obligations on corporations and placed capital controls on runaway financial speculation of the kind that caused the 2008 crash? What would they look like if they took into account the free, prior and informed consent of local indigenous people now enshrined in the UN Universal Declaration on the Rights of Indigenous Peoples?

The world is ready for a movement to ban all forms of ISDS in trade agreements and re-assess their current structures altogether. The growth-at-all-cost imperative is not sustainable and neither are the trade and investment agreements fuelling it. We can find a better way to trade.

There has never been a better time for a debate about the nature of these free trade and investment agreements and their purpose. There has never been a better time to talk about their impact on nature's and human rights. There has never been a better time to reign in the power of transnational capital and transnational corporations and recognize the sacred democratic authority of people, communities and their governments to protect Mother Earth.

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Maude Barlow is the Honorary Chairperson of the Council of Canadians and is on the board of US-based organizations Movement Rights and Food and Water Watch. She serves on the executive of the Global Alliance for the Rights of Nature and is a Councillor with the Hamburg-based World Future Council. She is also the author of dozens of reports, as well as 18 books, including her latest, *Blue Future: Protecting Water For People And The Planet Forever*. Maude is the recipient of fourteen honorary doctorates as well as many awards, including the 2005 Right Livelihood Award (known as the "Alternative Nobel"). She has served as Senior Advisor on Water to the UN, and was a leader in the campaign to have water recognized as a human right by the UN.

## Opening of the Rights of Nature Tribunal

Delivered by Casey Camp Horinek (Ponca – Oklahoma, USA) January 17, 2014 – Quito, Ecuador

My [Ponca] name is Zhuthi. I am from the Ponca Nation of Oklahoma USA. We of that nation understand the relationship between our Great Mothers and ourselves as our sisters from the Amazon spoke of yesterday. We too have the extractive industries practicing horrendous operations in our territory that is creating a situation of environmental genocide. We are averaging one death per week in a community of 600 to 800 people. All of these are from cancers and from unknown autoimmune diseases that create these same things in our bodies that our Mother the Earth is feeling at this moment.



*The Ponca Tribe of Oklahoma will pass rights of nature into tribal law by December 2017.*

We would ask you to overlook me being here in your territory. I thank you for this opportunity to come here and to speak on behalf of our Mother Earth and on behalf of our Indigenous Peoples. I ask for your prayers, those of you from this beautiful area that we are honored to be guests in, that you might give me the words to say and the feelings to express, the relationship that we share with our Mother Earth.

And I would remind you of a very simple thing: If you drank water this morning or liquids, if you ate of the hooded nations or the four legged; if you breath; if your body became warm from the fires of the earth, then you must recognize and understand that there is no separation between humans and Earth and all that are relatives of Earth and the cosmos, because you live in relationship with her as a result of being one with her and there is no separation.

Our prophecies and teachings tell us that life on Mother Earth is in danger and coming to a time of great transformation. As Indigenous Peoples, from the global South and North, we are accepting the responsibility designated by our prophecies to tell the world that we must live in peace with each other and Mother Earth to ensure the harmony within Creation. Indigenous Peoples are people of the land and of the waters; and we are confronting many challenges: challenges such as extreme changes in the climate, extreme weather events, extreme energy development, and the continued push of economic globalization and a continuation of western forms of development.

Fossil fuel development within Indigenous territories, land, water and seas are increasing. It is business as usual. The petroleum and extractive industries with the helping hand of the governments are expanding exploration to find more fossil fuels and furthering its energy addiction and high consumption levels. The survival of the indigenous cultures, languages and our communities continue to be affected by a modern industrialized world that lacks awareness and respect for the sacredness of our Mother the Earth.

Our Mother the Earth is the source of life. Water is her lifeblood. The well-being of the natural environment predicts the physical, the mental, the emotional and the spiritual longevity of our communities. Mother

Earth's health, her nature, and that of our Indigenous Peoples are intertwined, inseparable. As Indigenous Peoples, we are of the Earth and the Earth is of us. Mother Earth is life. This inseparable relationship must be respected through rights-based instruments for the sake of our future generations and for the well-being of the Earth herself, for all people, for all life.

Our Indigenous Peoples believe that our system of governance must reflect our belief in balance and harmony. We believe in the equity of all of Creation, not just ourselves. The animals, the plants, the rocks and all elements have as much right to exist as we do. This doesn't mean that we could not harm another living creature, since we require food from the plants and animals, but that we are to respect the sacrifice made by the animals and the plants and the water herself. These sacrifices were part of the Original Instructions to respect each other, to care for one another, because we are related to one other, as brothers and sisters.

God is compassionate. Mother Earth is compassionate. It is our relationship to be compassionate as well with all of our relations. We believe by observing the Natural Laws of Mother Earth, we would be able to learn the right way of life – the good way of living, to find balance and harmony with what is called Nature. Indigenous Peoples are very lawful people. From the Haudenosaunee Indigenous Peoples of North America, to our Ponca Peoples, to those of the Southern Hemisphere; we recognize our responsibilities and duties to the natural laws of Creation, as defined by our Original Instructions. Our Original Instructions teaches us of the four sacred elements of life: air, light/fire, water and earth and its pollen and seeds in all their forms must be respected, honored and protected for they sustain our lives. Our Natural Law teaches us to respect all Creation, from Mother Earth and Father Sky and to all Life that have their own laws, and who have rights and freedom to exist. We are taught we must treat this sacred bond with love, compassion and respect without exerting dominance, for we do not own our Mother.

The rights and freedoms of the people to the use of the sacred elements of life to the use of the land, nature, sacred sites and other living beings must be accomplished through the proper protocols of respect, thanksgiving and making offerings. These cultural and spiritual practices must be protected and preserved for they are the foundation of our ceremonies, our heritage, and our indigenous ways of life. It is the duty, responsibility and obligation of our Indigenous Peoples to protect and preserve the beauty of the natural world for our future generations.

Historically, the Doctrine of Discovery was used to justify the first wave of colonialism here in the Americas by alleging that Indigenous peoples did not have souls, and that our territories were “terra nullius,” land of nobody. Mother Earth is the source of life which needs to be protected, not a resource to be exploited and commodified as a ‘natural capital.’ We feel the pain of the disharmony when we witness the dishonor of the natural order of Creation and the continued economic colonization and degradation of Mother Earth and all life upon her.

To restore Mother Earth – her nature's balance, the world needs to shift from a philosophy of control and dominion over nature, and its legal system of property rights regimes, to a relationship of understanding and respect for the Natural Laws and love for the beauty of the creative female energy of Mother Earth.



To restore Mother Earth – her nature’s balance, the world needs to shift from a philosophy of control and dominion over nature, and its legal system of property rights regimes, to a relationship of understanding and respect for the Natural Laws and love for the beauty of the creative female energy of Mother Earth. This inseparable relationship between humans and the Earth, inherent to Indigenous peoples, must be learned, must be embraced, and respected by all people, for the sake of our future generations and your future generations and of all humanity.

Mother Earth’s rights are inherent. Any law that denies these fundamental rights are illegitimate and a violation of all the Natural Laws of Creation. We can preserve, protect, and fulfill our sacred duties to live with respect in this wonderful Creation. We have the power and responsibility for change.

A paradigm, that is based on Indigenous thought and philosophy needs to be forwarded which grants equal rights to Nature and which honors the interrelation in all life. This is the greatest challenge facing humanity, whether here it’s here in middle Earth of Ecuador or globally, to recognize its responsibilities, duties and obligations to the rights of Mother Earth. *Mitakuye Owasi.*

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Casey Camp Horinek is an elder and tribal councilwoman of the Ponca Tribe of Oklahoma, as well as an Emmy award winning actress. Casey has been an outspoken activist for her people, for the Rights of Mother Earth, and against the massive oil pipelines, injection wells and fracking in Oklahoma. She is on the board of Movement Rights and working toward recognizing legal rights of nature to ban fracking on her tribal lands. She travels globally to speak on concerns of Indigenous communities throughout the hemisphere.



*“0 Degrees. We’re Still Here” Oceti Sakowin Camp*

## Indigenous Peoples Cosmivision, Conflicts of Conquest and Need For Humanity To Come Back To Mother Earth

By Tom B.K. Goldtooth

The essential value conflicts between Indigenous peoples and western society and in their respective relationships to nature, i.e. water, land, air, animals and all life, lie in the differing Creation stories where relationships in Creation are spelled out. What is known as Indigenous-based *Original Instruction* is the instruction given by the Creator to people at the time of Creation. Even though the expression of spirituality, ceremonies and language is mandated by the environment and ecosystem, it may differ depending on the environment where the peoples live. *Original Instruction* consists of basically two components; one, how people are to treat each other and two, how they are to interact with the rest of Creation – and that Creation is all Life – on Mother Earth and in Father Sky.



Tom B.K. Goldtooth

Although it appears simplistic, these differing stories inform how these societies continue to treat the natural world.

### Conflicts of the Western Societal Mindset

In Western Society, in what has become known as the developed industrialized nations of the north, the basis is in the religious tradition of “Dominion over all things.” This means that the world was created for the use of people and that people are to have final say in how it is used. Over time this has come to be interpreted to mean an objectification of the natural world – of what many Indigenous peoples call Mother Earth. Earth is to be controlled. Nature is to be managed for the comfort of humans. In fact, generally, men of the dominant society express their dominion over women, resulting in the objectification of women and Mother Earth.

In the creation stories of Indigenous peoples, life forms within nature have consciousness and intelligence and are to be treated as such. In direct opposition to the objectification of the natural world, to the indigenous mind, one of the elements of life is water. Water is inexpressibly sacred. Water has spirit and water has life – water is life – water has rights that are recognized by Indigenous peoples.

*“Kinship with all creatures of the earth, sky, and water was a real and active principle. In the animal and bird world there existed a brotherly feeling that kept us safe among them... The animals had rights - the right of man’s protection, the right to live, the right to multiply, the right to freedom, and the right to man’s indebtedness. This concept of life and its relations filled us with the joy and mystery of living; it gave us reverence for all life; it made a place for all things in the scheme of existence with equal importance to all.” Chief Luther Standing Bear (Oglala Lakota) 1868-1939*

## Differences in Cosmology

When the European colonists came to Indigenous lands of the Americas, they brought with them a cosmology so different from ours that we couldn't comprehend them and they couldn't comprehend us. The most destructive value that the European invaders imposed is the quantification and objectification of the natural world, of Mother Earth, by imposing a monetary value on sacred things, and committing genocide against the Indigenous peoples who resisted.

The colonists' assumption was, and for the most part remains, that any open land is there for the taking and all they must do is put up a fence to own it. One of the first things the invaders did was clear cut the forests, without asking for permission from the trees. Next, they killed the wolf nation, again, without regard for the precious life of our four-legged brothers/sisters. These settlers destroyed the dark forests and the wolves as if they were afraid of the wild. The settlers later dumped their garbage into the water, contaminating the very force that holds and nurtures all life. The colonists soon surveyed every section of land in the United States assigning private, corporate and Government and State ownership.

What does this mean for our relationship with life – with nature? The discussion about water, forests and wolves is an example of the differences our people have with the dominant society – the Western mind. We continue to see the objectification and the dehumanization of all of our ways of understanding, as Indigenous peoples.

## Link of Colonization, Objectification of Nature and Racism

The authority asserted by colonization is based on an insane idea of racist superiority that allows for all things indigenous to be fair game for the taking. And take they do. This entrenched ideology of racial superiority, progress and entitlement enables a deliberate and intentional disregard for the outcome of shortsighted and destructive policies. The high intelligence of the Iroquois indigenous-based “Seven Generations” concept, meaning that every decision we make is with the consciousness of how that decision will impact our world and peoples seven generations from now, is completely absent from energy, water, air, climate, environmental, health and social justice and land policies of the current dominant and dominating societies.

Indigenous world view perceives all of Creation as alive and imbued with all the intelligence of the Creator. Although every atom and particle is individuated, we are all part of an integrated whole. This assumes a caring and loving Creation where all parts of Creation care for all other parts. No part is higher. No part has “dominion” over any other part. We were not put here to be “stewards” of anything. Rather we were all created to live in a harmonious, awake, loving and intelligent relationship with all other aspects of creation. This is what *Mitakuye Owasin* “All My Relations” of the Dakota, Nakota and Lakota nations means. It is what *Mino-bimaadiziwin* “The Good Life” means in the Anishinaabe original instruction. It is the power of the “Good Mind” in the cosmology of the Iroquois nations. Within the Rights of the Nature-Mother Earth movement, the similar concepts of *Buen Vivir*, meaning “Good Living” that has roots in the cosmology of

The most destructive value that the European invaders imposed is the quantification and objectification of the natural world, of Mother Earth, by imposing a monetary value on sacred things, and committing genocide against the Indigenous peoples who resisted.



the Quechua indigenous peoples of the Andes of Ecuador. This is the guiding principle of this movement demanding Earth jurisprudence that our Indigenous Environmental Network is a member of.

The Indigenous view is that the Mother Earth is our true mother who gives birth to us and maintains our life through hers. She is the mother of all living things. Water is her life blood which courses through her body and maintains all life. Our first environment is water. We live in water throughout gestation inside our mother who then gives birth through water - *Mni Wiconi*. She then maintains our life through her own body, through the milk and water from her own body. This is not difficult. From this understanding come our reverence for water and all life and our relationship with our Mother, the Earth. It is from this comprehension of the totality of creation that our political positions about water and life are informed and based. It is impossible to act on one part of creation without impacting the rest. Any way of thinking and acting that objectifies, commodifies or puts a monetary value on land, air, water and nature is antithetical to indigenous understanding.

Our first environment is water.  
We live in water throughout  
gestation inside our mother  
who then gives birth through  
water - *Mni Wiconi*



Native Nations Rise March

## Struggle for Indigenous Rights

It is unfortunate that in some countries, the efforts of Indigenous peoples to achieve self-determination, land and water rights and the securing of their customary water rights has created serious disputes between national colonial governments, local colonial jurisdictions, non-Indigenous communities, private sector, industry and Indigenous peoples throughout the world. Indigenous peoples' right to self-determination and sovereignty, application of traditional knowledge, and cultural practices to protect the water are being disregarded, violated and disrespected.

In 2016 and early 2017, the voice of "*Mni Wiconi*" (Water is Life) was heard globally as the Standing Rock Sioux Tribe in the upper prairie lands of the United States sent a call out for support as they begin the fight to stop the new 1,172 mile Dakota Access Pipeline (DAPL). The foundation of their concern was the inevitable spill or leak of this pipeline carrying frac-oil that would cross the Missouri River; disturb ancient burial and sacred areas and violate the Fort Laramie Treaties of 1851 and 1868.

Throughout Indigenous territories worldwide, Indigenous peoples are experiencing increasing scarcity of fresh waters and the lack of access to water sources, including oceans. In these times of scarcity, governments are creating commercial interests in water that lead to inequities in distribution and prevent access to the life-giving nature of water. Within this scarcity, the corporatization and privatization of water of life is increasing. In the case that took place at Standing Rock, the US government eventually gave all rights to DAPL, owned by Energy Transfer Partners (ETP) to complete the pipeline. The pipeline is now flowing blood-oil through the line. By giving access to the pipeline owners and the corporate shareholders call this a corporate "right." In reality, this is a *taking of rights* that belong to the Earth and the people; another form of privatization and commodification of the water of Mother Earth. ETP-DAPL did not recognize the rights of Missouri River to flow free from harm as it drilled under the riverbed. ETP-DAPL did not ask permission of the water and the earth to build this pipeline.

## Life as a Commodity – Continued Conflicts within a Neo-Colonial Framework

Indigenous traditional knowledge developed over the millennia is undermined by an over-reliance on relatively recent and narrowly defined western scientific methods, standards and technologies, laws and an economy that extracts the spirit out of all life. The connective thread between indigenous knowledge and the relationship with all of nature and Mother Earth cannot be separated.

Economic globalization constitutes one of the main obstacles for both the recognition of the rights of Indigenous peoples and the rights of Mother Earth. The protection of elements that Indigenous hold sacred and dear – water, air, land (and fire) are undermined. Globally, transnational corporations and countries are imposing global agendas on the negotiations and agreements of the United Nation system; the World Bank and other financial institutions; and the World Trade Organization and other free trade bodies; which reduce human rights enshrined in national constitutions, international conventions and agreements.

*“The Paris Agreement is a trade agreement, nothing more. It promises to privatize, commodify and sell forested lands as carbon offsets in fraudulent schemes such as REDD+ projects. These offset schemes provide a financial laundering mechanism for developed countries to launder their carbon pollution on the backs of the global south. Case-in-point, the United States’ climate change plan includes 250 million megatons to be absorbed by oceans and forest offset markets. Essentially, those responsible for the climate crisis not only get to buy their way out of compliance but they also get to profit from it as well.” Alberto Saldamando, Human and Indigenous Rights Expert & Attorney*

All of Nature is now being viewed as an economic commodity, further solidifying the colonial term “terra nullius” (land of no one), with no rights. These mechanisms have given way to the “financialization of nature” process, further separating and quantifying Mother Earth’s cycles and functions – such as carbon, water and biodiversity – for turning them into “units” to be sold in financial and speculative markets.

*“Words like ‘Natural Capital Accounting’, ‘Financialization of Nature’, ‘Ecosystem Services’ and ‘Biodiversity Offsets’ are part and parcel of the ‘Green Economy’. They are rapidly becoming part of the stable vocabulary of the nature conservation debate.” Jutta Kill, Economic Valuation of Nature-The Price to Pay for Conservation: A Critical Exploration 2014*

Governments and financial institutions are establishing legal frameworks to set these markets in place. While financial markets have a growing influence over economic policies, the “financialization of nature” goes further than a privatization process giving power to financial markets run by bankers, intermediaries and the private sector of profiteers far removed from nature, from Mother Earth.

The time is now for humanity to pay attention to the signs of Mother Earth and Father Sky asking for the people of the world to evaluate their relationship to the sacredness of Mother Earth. I just returned from a weeklong convergence of Indigenous peoples and allies from throughout the world that developed a

Indigenous traditional knowledge developed over the millennia is undermined by an over-reliance on relatively recent and narrowly defined western scientific methods, standards and technologies, laws and an economy that extracts the spirit out of all life.



Declaration of the Alliance of Guardians of Mother Earth: A Global Voice of the Alliance of the Guardians and Children of Mother Earth to the States and Humanity for the Preservation of Life on the Planet and for Future Generations.

Indigenous peoples reconvened in Brasilia, Brazil, on October 12-16, 2017, invited by Chief Raoni of the Kayapo tribe and other Indigenous leaders of Brazil to solidify proposed recommendations that we developed at the UN climate conference of 2015 in Paris. This October convergence acknowledges *“the voices of Indigenous Peoples when we speak out for humanity to respect and take responsibility to protect the sacredness of water, air, land and the Circle of Life. We recognize a just transition that recognizes the Rights of Nature or Rights of Mother Earth that seek to define equal legal rights for ecosystems to exist, flourish, and regenerate their natural capacities. Recognizing these rights places obligations on humans to live within, not above, the natural world, of which we are only one part, and to protect and replenish the ecosystems upon which our mutual well-being depends. It is necessary to transform our human relationship with nature from property-based to a legal rights-bearing entity.”*

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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 a board member of the Global Alliance for the Rights of Nature. In 2015 he received the Gandhi Peace Award, and is also co-and producer of an award-winning documentary Drumbeat For Mother Earth, which addresses the effects of bio-accumulative chemicals on indigenous communities.



Białowieża Forest in Poland



## Recognizing the Rights of Nature and the Living Forest

By Osprey Orielle Lake

*“The message our Living Forest proposal delivers is aimed at the entire world with the goal of reaching the hearts and minds of human beings everywhere, encouraging us all to reflect on the close relation between Human Rights and the Rights of Nature.” From Kawsak Sacha, The Living Forest: An Indigenous Proposal for Confronting Climate Change, presented by the Amazonian Kichwa People of Sarayaku, Ecuador*



Orellana Province, Ecuador

December 2015 found all eyes on Paris as government representatives from around the world debated and finalized a new international climate change agreement at the United Nations COP21 climate negotiations. The news was abuzz with stories and analysis about the Paris agreement and the commitments (or lack thereof) made by world governments, however it was just outside of the narrow glance of the mainstream media that actions and events for bold transformative change were taking place.

Civil society, non-governmental and community organizations representing hundreds of thousands of people from diverse social movements and international networks gathered during the Paris climate negotiations for major actions on the streets, hundreds of events, assemblies, concerts and educational workshops focused on just, community driven climate solutions.

It is critical to highlight these peoples’ movement initiatives, planned in parallel to COP21 proceedings and that take place at every COP, because they are the ones bringing about the socio-ecologic and systemic transformation that concerned people around the world are calling forth—from decentralized energy systems and food sovereignty to Indigenous rights and gender-responsive climate policies.

Like inconspicuous stones cast into a deep pond, the ripples from these alternative proceedings are reaching outward and broadening into ever widening circles, connecting one to another and spreading world-wide.

So it was that two significant ripples that demonstrate respect for Nature and the natural laws of the Earth -- topics stunningly absent from the UN negotiations -- radiated out into the corridors of COP21 to civil society gatherings and onto the streets of Paris. One ripple was the growing global movement for the Rights of Nature, the other, going hand-in-hand, the potent voice of the Indigenous Kichwa People of Sarayaku, Ecuador and their Living Forest Proposal.

Rights of Nature is a revolutionary and evolutionary concept, at the heart of which lies a key to addressing our horrifically dysfunctional economic system and the legal, social and political frameworks that are destroying people and planet.

The Rights of Nature framework originated from the understanding that after decades of environmental protection laws (which surely have achieved some notable successes), our modern legal systems have failed to prevent the increasingly grave threats of climate change, ecosystem degradation, and the growing displacement of humans and other species.

The majority of the world's legal frameworks are based on treating nature as property, meaning that our life-giving rivers, forests and mountains are seen as objects to be sold and consumed. Our current legal paradigm furthers dangerous ideas around the commodification and financialization of nature, and we can see the disastrous results of this way of thinking.

To avert the worst impacts of the climate crisis and move towards truly sustainable living, we must challenge the idea that Earth's living systems are property and change the very DNA of our legal frameworks to adhere to the natural laws of the Earth.

Recognizing Rights of Nature means that human activities and development must not interfere with the ability of ecosystems to absorb their affects, to regenerate their natural capacities, to thrive and evolve, and requires that those responsible, including corporate actors, be held fully accountable for negative impacts on Earth systems.

The power of the global movement for Rights of Nature has been growing quickly, in part due to the popularity of local and international Rights of Nature tribunals.

Rights of Nature Tribunals give people from all around the world the opportunity to testify publicly on the destruction of the Earth and their communities, while simultaneously creating a new legal framework, providing critical alternatives for environmental protection, and offering a new vision for just social, economic and political structures.

Critically, a Rights of Nature framework also provides a path through which people can re-learn respect for Mother Earth, as Indigenous peoples of the world have been demonstrating for thousands of years. As more and more activists are acknowledging, we are not just protecting nature, we are nature - recognition of profound significance given that it is the belief that we are separate from the Earth that resides at the root of and furthers a destructive relationship to the natural world.

In Paris, the Global Alliance for the Rights of Nature held its third International Rights of Nature Tribunal, covering topics ranging from fracking and mega-dams to GMO's, deforestation and violence against defenders of the land.

Rights of Nature Tribunals cases were founded on the mandate of the Universal Declaration of the Rights of Mother Earth, drafted in 2010 at the World People's Conference on Climate Change and the Rights of

Mother Earth in Bolivia. Outcomes and final judgments were based on scientific, technical, research-based and other expert testimony, the first-hand experiences of witnesses, as well as the world views and wisdom of Indigenous peoples who hold an ancient understanding of humans as part and particle of the living cosmos.

## **Kawsak Sacha: The Living Forest**

*“Let’s leave our old perceptions and ideas, to be reborn and boost a collective transformation! Now is the time to stop these destructive ideas in our ancestral territories and around the world. We as Indigenous peoples have the great opportunity to bring our vision—and a clear proposal—that could call on a transformation for all of humanity.” —Patricia Gualinga, Director of International Relations for the Kichwa community of Sarayaku, Ecuador*

Throughout the two weeks of the COP21 UN climate talks, a delegation of Indigenous Kichwa leaders from Sarayaku, Ecuador worked ceaselessly to present and spread their proposal of Kawsak Sacha, or the “Living Forest,” a comprehensive vision for living in harmony with the natural world based upon the practices with which their ancestors have sustainably inhabited and cared for the health of the Amazon Rainforest for millennia.

Their proposal is a profound challenge to dominant concepts and practices, which view nature as a resource to market, commodify and exploit without limit. In the context of the Paris climate change agreement, this means a challenge to the idea that we can put forests into carbon trading schemes and other market mechanisms as a means of addressing climate change.

The Kawsak Sacha “Living Forests” vision is vital for many reasons, the most fundamental being that maintaining the ecologic balance of the Amazon is essential to Earth’s health and capacity to mitigate climate change. Approximately 20 percent of the carbon dioxide produced from burning fossil fuels is absorbed by tropical forests around the world, and this is just one of many critical ecologic functions. Consequently, protecting the Amazon rainforest, the largest of the world’s tropical forests, must be central to climate change discussions and policies.

Within this context, Indigenous peoples and their rights must be respected and protected because it is their intimate relationship with their forests and their courageous ongoing struggles to defend their territories that has and will continue to bring about the highest protection of these vital rainforests. It is a grave and dangerous tragedy that alongside human rights, Indigenous rights were removed from the operative part of the final Paris agreement.

The worldview expressed in the Kawsak Sacha proposal has much to offer us in guiding a Rights of Nature framework, and it is important to highlight that Ecuador was the first country in the world to include Rights of Nature into their Constitution—in great part due to Indigenous peoples’ advocacy. We can gain a glimpse

The worldview expressed in the Kawsak Sacha proposal has much to offer us in guiding a Rights of Nature framework, and it is important to highlight that Ecuador was the first country in the world to include Rights of Nature into their Constitution—in great part due to Indigenous peoples’ advocacy.



of the wisdom contained in the Kawsak Sacha through excerpts of the words of the Sarayaku people themselves:

*“Kawsak Sacha (The Living Forest) is a proposal for living together with the natural world that grows out of the millennial knowledge of the Indigenous Peoples who inhabit the Amazonian rainforest, and it is one that is also buttressed by recent scientific studies. Whereas the western world treats nature as an undemanding source of raw materials destined exclusively for human use, Kawsak Sacha recognizes that the forest is made up entirely of living selves and the communicative relations they have with each other. These selves, from the smallest plants to the supreme beings who protect the forest, are persons (runa) who inhabit the waterfalls, lagoons, swamps, mountains, and rivers, and who, in turn, compose the Living Forest as a whole.*

*“Kawsak Sacha, understood as sacred territory, is the primordial font of Sumak Kawsay (Buen Vivir, “Good Living”). In essence, the forest is neither simply a landscape for aesthetic appreciation nor a resource for exploitation. It is, rather, the most exalted expression of life itself. It is for this reason that continued coexistence with the Living Forest can lead to Sumak Kawsay. This encourages us to propose that maintaining this lively space, based on a continuous relation with its beings, can provide a global ethical orientation as we search for better ways to face the worldwide ecological crisis in which we live today. In this manner Sumak Kawsay can become a planetary reality.*

*“Proposal: Declaration of Kawsak Sacha (the Living Forest)*

*“1. Our Concrete Proposal consists in attaining national and international recognition for Kawsak Sacha (the Living Forest), as a new legal category of protected area that would be considered Sacred Territory and Biological and Cultural Patrimony of the Kichwa People in Ecuador.*

*“2. The Living Forest proposes a way of achieving Sumak Kawsay by means of the application and execution of Life Plans that are sustained by the three foundational pillars of the Sumak Kawsay Plan: Fertile Land (Sumak Allpa); Living in Community (Runaguna Kawsay); and Forest Wisdom (Sacha Runa Yachay).*

*“3. Understood as Territory, the Living Forest, thanks to forty years of communal effort, is now demarcated by a border of flowering and fruiting trees visible from the air. We call this vital cordon a Frontier of Life or Trail of Flowers (Jatun Kawsak Sisa Ñampi). By means of the flower’s ephemeral beauty, the Frontier of Life conveys the fragility of life and the fertility of the Living Forest that it both surrounds and protects. At the same time it creates the possibility of beginning to dialogue with the beings that make up the Living Forest. In this way the Frontier of Life creates a permanent forum for communication among beings. This can help the entire world recuperate the original understanding of Mother Earth as a shared home.”*

Given the gravity and speed of climate change, it would behoove us to immediately welcome truly transformative work such as Rights of Nature and the Kawsak Sacha proposal. May these ripples in the pond turn into waves of change, or we will have overwhelming waves from sea level rise that will not be the transformation we are seeking.

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Osprey Orielle Lake is the Founder and Executive Director of the Women’s Earth and Climate Action Network (WECAN) International and serves on the Executive Committee for the Global Alliance for the Rights of Nature. She is the author of the award-winning book, *Uprisings for the Earth: Reconnecting Culture with Nature*.

## Rivers, Rights And Revolution: Learning From The Māori

By Shannon Biggs. A version of this article first appeared in *Earth Island Journal*, April 17, 2017

Winding its way through dense forest laced with hidden waterfalls, the Whanganui River is the largest navigable river in *Aotearoa*, the Māori word for New Zealand. With the passage of the *Te Awa Tupua* (Whanganui River Claims Settlement) Bill on March 15, 2017 the river became the first water system in the world to be recognized as a rights-bearing entity, holding legal “personhood” status. One implication of the Agreement is that the Whanganui River is no longer property of the Crown government, the river now owns itself.



Maori Haka

Five days after the *Te Awa Tupua* Bill, the High Court of Uttarakhand at Naintal, in northern India, issued a ruling declaring that both the Ganga and Yumana rivers are also “legal persons/living persons.” But what does it mean for a river, or an ecosystem to hold rights? The answer may vary from place to place.

Current law in the US and nearly everywhere else “sees” nature as property, something to be owned and dominated. Separating humans from the rest of life on Earth paves the way for the wholesale destruction of ecosystems, legalizing and culturally normalizing mountaintop removal, fracking, the damming of rivers, GMOs and other activities.

The growing global movement for Rights of Nature—or the Rights of Mother Earth as some cultures prefer, seeks to define legal rights for ecosystems “to exist, flourish and regenerate their natural capacities.” These laws challenge the status of nature as mere property and while not stopping development, recognizing legal rights of nature stops the kind of development that interferes with the existence and vitality of ecosystems. It provides a legal framework for an ethical and spiritual relationship to the Earth. In the last decade, four countries and dozens of US communities have passed laws recognizing “legal standing” for ecosystems.

For the Māori of *Aotearoa*, like many Indigenous cultures worldwide, there is no separation between humans and everything else. When the Europeans first arrived, there was no word for property in the Māori language. Their relationship with the Earth was one of care and responsibility. “Māori cosmology understands we are part of the universe,” said Gerrard Albert, lead negotiator for the Whanganui River *iwi* (tribe), “the mountains and rivers are our ancestors. Our cultural identity as a people is inseparable from the river—it is more than water and sand, it is a living spiritual being.”

Indeed, the Whanganui *iwi* are known as the River People, who often say, “*Ko au te awa. Ko te awa ko au*” translated as “I am the river. The river is me.” Their struggle to protect the river began 150 years ago, when the New Zealand Crown government first began to break treaty promises, violate cultural practices, dam, pollute and otherwise degrade the river. “Beginning in the 1870s our *iwi* began to petition the Crown government over our concerns for the river,” Sheena Maru, Whanganui River Trust *iwi* project manager said. “Determining who owned the bed of the river became the longest running court case in Crown history. In the end, what we were fighting for was *Te Awa Tupua*, the living spiritual indivisible whole of the river that includes the *iwi*, all people and life from the mountain to the sea.”

In *Aotearoa*, the Whanganui River is not the first ecosystem to be recognized in this way. In 2014 the Tūhoe *iwi* negotiated with the Crown Government to pass the *Te Urewera* Act, which effectively recognized the “personhood” for *Te Urewera*, formerly a national park in the heart of Tūhoe traditional territory.

Like the Whanganui iwi, what the Tūhoe wanted was to be truly reconnected with the land that is the very source of their cultural identity. Tamati Kruger, chief negotiator of the Tūhoe's ground-breaking *Te Urewera* settlement said, "When negotiations began, the Crown had no intention of giving away title to the park. They thought it would be enough to offer us some money and a few seats on the park board." Knowing the Crown would not cede ownership to the Tūhoe, Tamati's team suggested that nobody retain ownership of the park land—rather, the land would own itself. These changes also shift more than just governance of the (former) national park, it is also seen as a step toward sovereignty for the Tuhoe people whose identity is inseparable from the land.

150 years of broken promises: After British colonizing forces arrived ostensibly to trade, Maori populations dwindled by 50% from European diseases and poisonings, torched crops and livestock, starvation and skirmishes with British forces.

By 1840 most Chiefs signed an agreement for co-existence—the Treaty of Waitangi. There were two versions—one in English and one in Maori—which said two very different things. Under the English version, the Maori would become subjects of the Crown, with promises made to respect Maori practices. New Zealand would now be part of the British Empire. But property was not a concept the Maori understood. The Maori version welcomed the visitors to share the land of Aoteroa as long as they did not interfere with Maori customs, traditional and sacred practices. The Crown would violate both versions of the Treaty. It would take until now to begin the healing.

Along with the Whanganui River Settlement, these two truly revolutionary agreements between the Māori and the Crown government recognize mountains, national parks and watersheds can be better protected by prioritizing human responsibilities to the whole, rather than regulations that seek to dismantle and segregate fisheries from the riverbeds, or create artificial jurisdictions such as municipal boundaries to prioritize business interests. In both cases, future decisions about projects and development in the areas will be made by a council of two appointees—one Crown and one Māori. "Those appointed to act on [the Whanganui River's] behalf will have legal obligation to uphold and protect the river's values and health and wellbeing," Gerard Albert told the media at a press conference following the passage of the *Te Awa Tupia* Bill.

These settlements also include a formal apology from the New Zealand Crown government for historic crimes against the iwi and the ecosystems, and a large redress funds to facilitate new management of the *Te Urewera* mountain range and the Whanganui River. Along the 180 miles of the Whanganui from the mountain to the sea, the next phase of the project includes educating and bringing pakeha (European New Zealander) residents into the Maori world view in a way that allows everyone to be connected to it spiritually and holistically and to learn new ways to care for the ecosystem and maybe how to conduct business.

From his office overlooking the port city of Wellington, Paul Beverley, a partner at the law firm of Buddle Findlay and a member of the core Crown negotiation team for both the *Te Urewera* and *Te Awa Tupua* bills explained that the Crown was eager not only to pass the agreements, but take the next steps for implementation. "The Crown is committed to working alongside Whanganui iwi to ensure the success of this settlement for *Te Awa Tupua* and for all—not just the Maori.

Knowing the Crown would not cede ownership to the Tūhoe, Tamati's team suggested that nobody retain ownership of the park land—rather, the land would own itself.



Asked whether the pakeha populations, local government or the Crown were nervous about the implications of ceding property claims, Beverley said, “What has been put in place is a very forward looking framework. I think we’re going to see a springboard for this type of thing. People are already taking next steps voluntarily.” The Maori and the Crown see this as good for business, and ultimately good for the economy. “This legislation recognizes the deep spiritual connection between the Whanganui iwi and its ancestral river and creates a strong platform for the future of the Whanganui River,” said Beverley.

Recognizing the rights of the Whanganui River means that no matter who the actor, corporation or individual, the law now sees a harm to the river the same way as it would a harm to the tribe or a person. As Movement Rights legal director, Cabot Davis added, “It’s not about being anti-business, the thing that is beautiful about it is just how differently decisions will now be made. Conflicts among people who want to ‘use’ the water or land will now have to take everyone else’s needs into account— first and foremost are the needs of the (river) system. Commerce and nature can coexist in a healthy way.”

Both New Zealand settlements include funds for community education and cultural revitalization that benefit both the pakeha and iwi populations. “The Settlement is for the entire community, this is still an idea to be grasped,” explained Hayden Turoa, *Te Mana o Te Awa* program manager for the Whanganui River Trust Board, “Anybody can apply for funds [through the Settlement]. It is about breaking down barriers and bringing the rest of the community into this spiritual understanding.”

Half a world away, and despite high levels of water pollution flowing freely from homes and industry—water in India is considered sacred. Nowhere more so than the Ganges river, or the Ganga, which provides about 40% of India’s water, though the entire watershed is breaking down under the intense strains of use and abuse.

The widespread *Save Ganga* movement follows the Gandhian model for peaceful change. A powerful component of that broad coalition is the National Ganga Rights Movement, led by the Pujya Swami Chidanand Saraswatiji, who opined, “We breathe the same air that our ancestors did, drink the same water and are connected to one another by the web of life.” Four years ago, they began working with US-based the Community Environmental Legal Defense Fund (CELDF), toward passage of a national Ganges Rights Act, currently under consideration by the Modi administration.

Though the grassroots movement has been gaining steam, the March ruling recognizing personhood status for the Ganga and Yumana rivers by the high court was unexpected. In a February 2016 opinion, the Uttarakhnad court wrote, “All the rivers have the basic right to maintain their purity and to maintain free and natural flow.” As Mari Margil, head of CELDF’s International Center for the Rights of Nature explained, “Whether the court includes these rights within the scope of its recent ‘personhood’ declaration is not clear, or whether courts will expand on the rights recognized remains to be seen.” She added, “The High Court’s ruling declaring legal personhood for the Ganges is a critical step forward. As the court said, national legislation which would recognize fundamental rights of the Ganges and the people of India to a healthy, thriving river ecosystem is ultimately necessary.”

Treating ecosystems as property has brought humanity to the brink of climate and ecological collapse at break-neck speed. By contrast, rights-based laws recognize planetary limits and seek to transform human laws to conform with Natural Law. Beyond law, this movement seeks a culture shift away from the mindset that modern the Earth is merely a resource available for reckless human use, toward the understanding that the Earth is a living entity governing all life upon it, with inherent rights that can be protected.

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## Court Decisions Advance Legal Rights of Nature Globally

By Mari Margil

Just over a decade ago, the world's *first* rights of nature law was enacted – in Tamaqua Borough, Pennsylvania, in the United States. In the years since, the movement for the rights of nature has grown by leaps and bounds. Today, not only communities, but countries, have enacted laws and rendered judicial decisions which codify that nature possesses legal rights.

Successful people's movements build over decades and generations. In these very early, formative stages of the rights of nature movement, we see many parallels with other movements. Much like past movements, the rights of nature movement is aimed at recognizing legally enforceable rights for something that much of humankind has long treated as property, owned and controlled by people.

Even as we depend on the natural world to provide us with food, water, air – without which we won't survive – humankind has systematically destroyed the fabric of life, pushing ecosystems and species toward collapse.

Yet because our laws authorize the exploitation of nature, its destruction occurs under the cover of governmental legitimacy, making us believe that such practices are acceptable. This cultural acceptance is essential to maintaining the ongoing destruction. Past movements to secure rights of indigenous peoples, women, and slaves – who had their own destruction authorized by law – similarly had to confront not only the law, but the existing culture, as well.

In 2008, Ecuador became the first country in the world to enshrine the rights of nature – or *Pacha Mama* – in its national constitution. At the time, the head of Ecuador's constitutional drafting process, Alberto Acosta, explained nature's legal status this way, "Nature is a slave."

As coral reefs die off, as species extinction escalates, as the oceans acidify, as climate change accelerates, the need for a fundamental change in the relationship between humankind and nature today is clear. With that, there is a growing understanding that affecting this change requires recognizing legal rights of nature.

### Court's Recognize Rights of Rivers

In recent months, there have been several court decisions declaring that rivers and other ecosystems possess rights. This is a significant shift in law, indicating a growing understanding that to protect nature, we must change how the law treats nature. As courts in Colombia and India determined, this means transforming nature from being considered *right-less* under the law, to being *rights-bearing*.

The court decisions are made even more remarkable when we consider that in neither Colombia nor India are rights of nature laws in place. Thus, the courts were not interpreting existing laws in those countries. Rather, they looked beyond their national borders to see how law is evolving elsewhere to protect nature. As Colombia's Constitutional Court explained, this was necessary "to take a step forward in jurisprudence."

In November 2016, Colombia's highest court ruled that the Rio Atrato, and its watershed and tributaries, possesses rights to "protection, conservation, maintenance and restoration."

In issuing its decision, the Court explained that throughout history law has had to evolve, and that today an evolution is needed to protect nature. The Court wrote, "Now is the time to start taking the first steps towards effectively protecting the planet and its resources before it is too late."

Further, the Court wrote of “the profound relationship of unity and interdependence between the environment and the human species,” and adding that there is a need to understand the “new socio-political reality with the aim of achieving a respectful transformation with the natural world and its environment, just as has happened before with civil and political rights... economic, social and cultural rights...and environmental rights...”

Indigenous peoples who live in the Rio Atrato basin and Colombia’s central government, as ordered by the Court, are now working together to implement the decision and the river’s rights, in order to restore the river.

Thousands of miles away, in March 2017, the highest court in the State of Uttarakhand in northern India took a similar step, ruling that the Ganga and Yamuna Rivers possess certain rights. As with the Atrato in Colombia, the Ganga and Yamuna are heavily polluted and degraded ecosystems. The India court explained that it was necessary to secure the rights of these rivers “in order to preserve and conserve them.”

The judicial decisions in Colombia and India come amid a growing global movement for the rights of nature. Since 2006, dozens of communities in the United States have enacted the world’s first laws recognizing such rights. In 2008, Ecuador became the first country to secure the rights of nature in its constitution. Bolivia now has a rights of Mother Earth law in place.

In the United States and Ecuador, legal cases to defend and enforce the rights of nature have been litigated. In September 2017, a case was filed in the United States, which builds on the ongoing lawmaking there, as well as the cases in Colombia and India. The lawsuit, *Colorado River Ecosystem v. State of Colorado*, is the first-of-its-kind in the United States. It seeks a judicial declaration that the river is capable of possessing rights, including “rights to exist, flourish, regenerate, be restored, and naturally evolve.”

The Community Environmental Legal Defense Fund (CELDF), which has been a pioneer in the rights of nature movement, working on the first laws in the United States as well as on the Ecuador Constitution, is a legal advisor in the Colorado River case. CELDF’s International Center for the Rights of Nature is also working in Australia, Nepal, India, and other countries – in partnership with tribal nations, indigenous peoples, communities, civil society, as well as governments – to develop and advance rights of nature legal frameworks.

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Mari Margil is the Associate Director of the Community Environmental Legal Defense Fund (CELDF), [www.celdf.org](http://www.celdf.org), where she leads the organization’s *International Center for the Rights of Nature*. CELDF has assisted the first communities in the United States to secure the rights of nature in law, and is representing the first ecosystems to defend those rights. Margil assisted Ecuador’s Constituent Assembly to draft rights of nature constitutional provisions. She is now working in Nepal, India, Australia, and other countries to advance rights of nature frameworks. Margil received her Master’s degree in Public Policy and Urban Planning from the John F. Kennedy School of Government at Harvard University. She is a co-author of several books, including *The Public Health or the Bottom Line* and *Exploring Wild Law: The Philosophy of Earth Jurisprudence*.



# TIPNIS: The Saga for the Rights of Nature and Indigenous People

By Pablo Solón

The story of TIPNIS is a story of dignity, struggle, glory, betrayal, heroism, repression, victory and renewed betrayal against the rights of Mother Earth and of Indigenous people.

## The home

TIPNIS is at the same time protected area and Indigenous territory in Bolivia. The name TIPNIS stands for Indigenous Territory and National Park Isiboro Secure. Isiboro and Secure are the names of two rivers that limit this land that had originally an extension of 1.225.347 hectares. If TIPNIS would be a country it would be bigger than Puerto Rico, Lebanon or Kosovo.

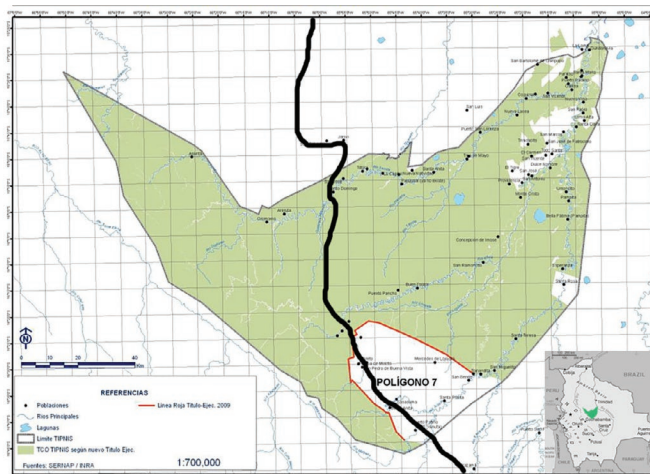
The national park of Isiboro Secure was declared in 1965 and the recognition of the Indigenous territory happened in 1990 after the “First March for Indigenous territory and dignity”. Three hundred Indigenous people of the lowlands of Bolivia started this “first march” and walked 640 km for 34 days from the jungle to the high mountains until they arrived at the city of La Paz.

Nineteen years after the victory of the “first march”, the government of Evo Morales gave the Indigenous people of TIPNIS the collective title of their territory but for only 1.091.656 hectares. By the year 2009, several settlements of peasants that are mainly coca producers had entered the national park and Indigenous territory, occupying what is called the “Polygon 7”.

TIPNIS is the territory of Yuracares, Tchimanes and Moxeños Trinitarios that are Indigenous nations recognized in the Constitution of the Plurinational State of Bolivia of 2009.

TIPNIS is also home of 858 registered species of vertebrate animals. Among them are 470 species of birds, 108 mammals, 39 reptiles, 53 amphibians and 188 species of fishes.<sup>1</sup> When it comes to insects, there are 178 species registered. At the level of plants there are around 2.500 species. Several of these species of animals, insects and plants are endemic and in danger.

In TIPNIS, we can find different types of forests and ecosystems. The altitude of the territory goes from 180 to 3.000 meters above sea level (m.a.s.l.), with an average of 350 m.a.s.l.. TIPNIS is the region where there is more rain in Bolivia, with a rainfall that exceeds 3.000 mm per year. TIPNIS is one of the most important oxygen lungs and water pumps of the country because of its forests. The famous French naturalist Alcides D’Orbigny (1802-1857) explored the region and said it is “the most beautiful jungle in the world”.



TIPNIS national park. Bolivian Agency for Protected Areas SERNAP (Proposed road added)

1 Fernández, E. y Altamirano, S., 2004

## The legal shield

According to article 385 of the constitution of the Plurinational State of Bolivia of 2009 “protected areas constitute a common good, and they form part of the natural and cultural patrimony of the country” and wherever there is an overlapping of “protected areas and Indigenous territories, the shared management shall be undertaken, subject to the norms and procedures of the Indigenous nations and peoples, and respecting the goal for which these areas were created”.

In Bolivia nature and therefore protected areas and all the biodiversity and ecosystems have rights according to Law Nº 71 of the Rights of Mother Earth adopted in 2010. This law says that “the dynamic and complex communities of plants, animals, microorganisms, other beings and their environment” have legal standing and several rights including the right to live, to the integrity of their systems, to a healthy environment, to diversity of life, and to preserve its capacity to regenerate. Law Nº 71 establishes the obligation of the State to “develop public policies and systematic actions to prevent, early warning, protect, precaution to avoid that human activities lead to the extinction of populations of beings and the alteration of the cycles and processes that guarantee their life”.

## The assassin road

The story of a road to connect the cities of Cochabamba and Trinidad is very old in Bolivia. The project of a road from the population of Villa Tunari in Cochabamba to San Ignacio de Moxos on the way to Trinidad appears in several decrees and laws adopted by neoliberal governments until 2003. But the project began to have real shape when in 2008 the government of Evo Morales granted a contract of 415 million dollars to the Brazilian construction company OAS. One year later, in 2009 president Ignacio Lula da Silva from Brazil signed a protocol to finance 80% of this cost.

The government of Evo Morales divided the road into three tranches. The first from Villa Tunari to Isinuta (47 km), the second from Isinuta to Monte Grande (177 km) and the third from Monte Grande to San Ignacio de Moxos (82 km). The second tranche is the one that cuts TIPNIS in two.

Before granting any contract to build the road the national government didn't do an integral environmental impact assessment (EIA) of the three tranches of the road. There is only an EIA of the first and third tranches done in 2010. Until now there is no EIA of the second tranche.

## Resistance, repression and victory



Bolivia: Indigenous peoples mobilize against highway through the rainforest

On August 15th, 2011, around one thousand Indigenous people of the lowlands of Bolivia started in the city of Trinidad the “Eight March of Indigenous people” in defense of TIPNIS. The march was dismissed by the government from the beginning. When it arrived the 25th of September to the locality of Chaparina five hundred policemen intervened violently and dissolved the march detaining hundreds of people.

The public in Bolivia was shocked by the images of police repression and president Evo Morales had to declare that he or none of his ministers gave the

instruction to intervene in the march. After six years of investigations, the attorney's office has not clarified who gave the order for this repression, but a special report of the Ombudsman dated November 2011<sup>2</sup> points to high authorities of the government.

The Indigenous people managed to reorganize the "Eight March" and after 65 days arrived at La Paz in the middle of a great welcome of solidarity. Evo Morales had no choice but to sign on October 24th the law Nº 180 that declares the intangibility of TIPNIS and establishes that the road Villa Tunari - San Ignacio de Moxos will not pass through TIPNIS. It was the moment of glory.

## **The counter offensive**

A few months later, in February 2012, the government struck back and approved Law Nº 222 that establishes a process of "consultation" to the communities of TIPNIS to see if the "intangibility" should be maintained and the road Villa Tunari-San Ignacio de Moxos be built.

In April 2012, the "Ninth March" of Indigenous people started rejecting Law Nº 222 and defending Law Nº180 that only six months ago was adopted. The Indigenous people arrived in La Paz and for ten days they asked for an interview with president Morales that never happened. With great pain and sorrow they returned to TIPNIS.

In the second semester of 2012, the government began the process of "consultation" inside TIPNIS. After some months, the government announced that the majority of Indigenous communities don't want the "intangibility" of their territory and are not against the road. Two shadow reports of the Catholic Church and the Human Rights Assembly of Bolivia with the participation of the International Federation of Human Rights<sup>3</sup> question the validity of that "consultation". They say that according to international standards there was not a proper prior informed process of consultation and that several violations happened like the manipulation of the term "intangibility" by government that said that TIPNIS communities would not have access to health, education and tourist projects if that concept was not erased from the law.

The government waited for several years to implement the results of that manipulated process of consultation. When many of the leaders of TIPNIS had changed, in August 2017 the government approved in the blink of an eye, Law Nº 929 that eliminates the intangibility of TIPNIS and opens the door for the construction of the second tranche of the road. When signing this law, president Morales said that those that are against are enemies of the development of Indigenous people that live in TIPNIS.

## **Ecocide and ethnocide**

The road will not bring development to the indigenous people of TIPNIS because most the 69 communities that are inside this Indigenous territory will be more than 50 km away from the road. A Strategic Environmental Evaluation of the TIPNIS done in 2011 by the National State Office of Protected Areas (SERNAP) warns against these kinds of projects saying that they will impact on Indigenous peoples lives, undermine their culture and force them to adopt patterns of production and consumption that are based on a different logic.<sup>4</sup>

The road will benefit mainly the new settlers and coca producers that have already invaded the national park. Already 60% of the area of "Polygon 7" has been deforested to plant coca.<sup>5</sup> According to the report of

2 [http://www.defensoria.gob.bo/archivos/Informe\\_Defensorial\\_Intervencion\\_Marcha\\_Indigena\\_DP.pdf](http://www.defensoria.gob.bo/archivos/Informe_Defensorial_Intervencion_Marcha_Indigena_DP.pdf)

3 <https://www.fidh.org/IMG/pdf/bolivia609esp2013.pdf>

4 [http://www.cambioclimatico.org.bo/derechosmt/092011/280911\\_1.pdf](http://www.cambioclimatico.org.bo/derechosmt/092011/280911_1.pdf)

5 <http://fobomade.org.bo/2017/09/02/tipnis-deforestacion-poligono-7/>



the United Nations Office on Drugs and Crime (UNODC) between 2015 and 2016 there has been an increase of coca plantations of 43 % in “Polygon 7”.<sup>6</sup>

A study from the Program of Strategic Research in Bolivia (PIEB) of 2011 shows that if the road is built through the heart of TIPNIS, 64,5% of the forest will be lost in 18 years.<sup>7</sup> This means to clear 610.848 hectares of jungle that is the habitat of hundreds of animals, insects and plants and territory of Yuracares, Tchimanes and Moxeños Trinitarios

The impact will not be only in the territory of TIPNIS but also in neighboring areas including big cities like Cochabamba that already suffer from droughts. Less trees means less humidity in the air and less rain. To build a road through the heart of TIPNIS is an ecocide and an ethnocide.

## **The return of TIPNIS**

A new process of resistance has begun. The situation is more difficult than in 2011. The leaders of many Indigenous communities are being coopted by the government or went into politics joining right wing parties. A new young generation of Indigenous leaders taking up the struggle is emerging in TIPNIS. In the cities, hundreds of environmental activists are mobilizing. In urban areas, there is an increasing consciousness that rain and forests are linked because last year there was a big drought in important cities.

In the front of the road, the contract with the construction company OAS was broken because it was overpriced. The Brazilian National Bank for Economic and Social Development (BNDSE) cancelled the grant to build the road. Tranches one and three of the road are being built by national companies with public funds and several delays. Tranche two that will cut TIPNIS has not started and the government just declared that they don't have the money to finance this sector of the road. The danger is that some bridges are being built illegally in the area and that the process of illegal settlements can spread inside the National Park.

TIPNIS in Bolivia is a word that now has a spirit of its own. TIPNIS means that the rights of nature and Indigenous people that have full legal recognition in the country should be implemented in practice. TIPNIS means that what you say is what you should do. The cry of TIPNIS was delivered in the Vice-presidency hall by a young woman activist the day that Evo Morales was being awarded by the Latin American Council of Social Science (CLACSO). TIPNIS is here and needs your support.

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Pablo Solón Romero served as Ambassador of the Plurinational State of Bolivia to the United Nations from February 2009 to July 2011. He is the son of the famous Bolivian muralist Walter Solón Romero Gonzáles. He served as the Executive Director of Focus on the Global South, an activist think tank based in Bangkok from 2012 to 2015. Pablo is a social activist, an analyst and a researcher on the issues of climate change, water, the rights of Mother Earth, trade agreements and integration processes.

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6 <https://fundacionsolon.org/2017/08/11/el-tipnis-y-la-coca-segun-unodc/>

7 [http://www.pieb.com.bo/sipieb\\_somos.php](http://www.pieb.com.bo/sipieb_somos.php)

## Climate change litigation before the International Rights of Nature Tribunal

By Cormac Cullinan

Environmental and social justice organizations and lawyers are instituting legal proceedings before national courts throughout the world asking for a variety of orders intended to compel public bodies to take action to address climate change or to restrict activities that contribute to it. Many of these cases are a tribute both to the determination of civil society to compel governments and polluters to take more effective action to address climate change, and to the ingenuity of their lawyers in finding novel ways of using legal systems to tackle problems which they were not designed to cope with. Climate change litigation of this kind is important and timely because it holds out the possibility of using existing legal mechanisms to drive relatively rapid changes in behaviour and governance. However it is not enough – we also need to develop legal systems and institutions that are designed to address environmental issues like climate change where both the main causes and effects are global in nature.



The International Tribunal for the Rights of Nature (“the Tribunal”) presents an opportunity to supplement these forms of climate change litigation with an entirely different approach to using law to address climate change. The Earth jurisprudence that informs the Tribunal’s approach reflects an understanding that contemporary legal systems are complicit in climate change, not only because they have proved ineffectual in preventing it worsening, but also because they treat almost all of the most climate-harmful activities as “lawful” and then protect those activities from being restricted or stopped.<sup>1</sup>

This means that in order to respond effectively to climate change we will have to be fundamentally transform the legal systems that enable and legitimise the activities that are destabilising the global climate. In other words, although some significant short-term gains may be achievable by working within current legal frameworks of industrialised, extractive societies, this is at best a partial strategy that must be supplemented by a strategy to transform those frameworks. For this reason the Tribunal seeks to challenge existing conceptions of law and adjudication and through practice, to develop new jurisprudence, legal principles, legal institutions and practices that are appropriate to address the critical challenges of the 21<sup>st</sup> Century.

1 This is reflected in the preamble to the Peoples’ Convention that formally established the Tribunal which states: “We, the peoples and nations of Earth: ... conscious that the economic, political, legal and social systems established by the industrial and consumerist cultures that dominate the world today are putting life as we know it at risk through phenomena such as climate change, ocean acidification, desertification, the destruction, degradation and pollution of ecological communities and the mass extinction of species; recognising that international and national legal systems and institutions have proved to be inadequate to protect Earth and the rights of all beings, including human beings and future generations; ...”

## International Tribunal for the Rights of Nature

The Tribunal was established by the members of the Global Alliance for the Rights of Nature (“GARN”) and held its first hearings in January 2014 in Quito in Ecuador. Subsequently hearings have been held in Lima (2014) and Paris (2015), and in November 2017 the next hearing will take place in Bonn. Hearings of regional chambers of the Tribunal have also been held in Ecuador, the USA and Australia.<sup>2</sup>

The Tribunal was formally constituted on 4 December 2015 in Paris where representatives of a wide range of organisations, communities and indigenous peoples signed a *People’s Convention for the Establishment of the International Rights of Nature Tribunal* and the Tribunal adopted a constitution (i.e. the Tribunal’s Statutes).

As recognised in the preamble the Peoples’ Convention, the establishment of the Tribunal was in part a response to the call for the establishment of an International Climate and Environmental Justice Tribunal made by the 2010 *World Peoples’ Conference on Climate Change and the Rights of Mother Earth*.<sup>3</sup> The Tribunal is empowered to investigate, hear and decide cases involving alleged violations of the Universal Declaration of the Rights of Mother Earth (UDRME) which was also adopted by the same Peoples’ Conference.

## Worldview and purpose of the Tribunal

In order to understand the purposes for which the Tribunal was established, it is necessary to understand the worldview that informed its establishment. This world view (which is shared by indigenous people in many parts of the world) understands human beings as being an integral and inseparable part of a living Earth community and sees climate change and other forms of environmental degradation as products of the misguided attempts of industrialised societies to control, manage and exploit that community instead of seeking to contribute to its health. From this perspective, in order to address climate change successfully, it is necessary to abandon this erroneous world view and to establish political, economic and legal systems that give effect to the rights and duties in the UDRME.

The Tribunal has been established to transform legal systems and norms throughout the world by providing an example of how they could be reconfigured to guide humans to co-exist harmoniously within the living community we call “Earth”.<sup>4</sup> It seeks to promote transformative change through innovation, example and education, and by contributing to changing global norms so that many activities that are currently lawful, become socially unacceptable in the same way that global norms shifted after World War II in response to the Universal Declaration of Human Rights.<sup>5</sup>

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2 For more information see [www.therightsofnature.org](http://www.therightsofnature.org).

3 The *World People’s Conference on Climate Change and the Rights of Mother Earth* was convened in Tiquipaya Cochabamba Bolivia in April 2010. The Indigenous People’s Declaration adopted on 21 April, 2010 called for the establishment of a climate justice tribunal with the full and effective participation of indigenous peoples, and their principles of justice and this was echoed in the Peoples’ Agreement adopted by the whole Conference on 22 April 2010. *The Peoples Agreement* stated that: “Considering the lack of political will on the part of developed countries to effectively comply with commitments and obligations assumed under the United Nations Framework Convention on Climate Change and the Kyoto Protocol, and given the lack of a legal international organism to guard against and sanction climate and environmental crimes that violate the Rights of Mother Earth and humanity, we demand the creation of an International Climate and Environmental Justice Tribunal that has the legal capacity to prevent, judge and penalize States, industries and people that by commission or omission contaminate and provoke climate change.” <https://pwccc.wordpress.com/2010/04/24/peoples-agreement/>

4 The Peoples’ Convention defines the purposes for which the Tribunal was established as follows: “Article 2 Purpose of Tribunal The Tribunal is established: (a) to investigate, hear and decide cases involving alleged violations of the Earth Rights Declaration; (b) to further develop Earth jurisprudence by writing and disseminating judgements that interpret the Earth Rights Declaration and apply the rights and obligations in it to the specific facts of the cases which it hears; (c) to promote both universal acceptance among the peoples of the world that they have a duty to respect the intrinsic rights of all natural beings, and universal observance of the rights and duties contained in the Earth Rights Declaration; and (d) to demonstrate how the application of the rights and duties in the Earth Rights Declaration promote the harmonious co-existence of humans and other beings in a manner that enhances the integrity, health and functioning of the whole Earth community.”

5 For example, article 1(2) of the Tribunal’s Statutes states that: “The Tribunal is established to promote universal respect for and observance of the rights and duties established by the Universal Declaration of the Rights of Mother Earth, and thereby promote the harmonious co-existence of humans and other beings.”



## What makes the Tribunal different

Unlike virtually all national<sup>6</sup> and international courts, the Tribunal:

- does not confine itself to regulating relationships among human and juristic persons and instead aims to promote the harmonious co-existence of humans and other beings;<sup>7</sup>
- applies a different body of law, which includes the Universal Declaration of the Rights of Mother Earth (UDRME) and the laws of Nature<sup>8</sup>;
- seeks to apply both human laws and the laws of Nature in an integral manner which allows it to take into account the insights of science and ancient wisdom traditions in interpreting and developing legal rules;<sup>9</sup>
- derives its legitimacy from the support of people from around the world<sup>10</sup> rather than from the constitution or legislation of a sovereign state or a treaty between states;
- considers cases from the global and eco-centric perspective of the Earth as a whole<sup>11</sup> rather than exclusively from the perspective of human beings or juristic persons created by human beings (e.g. a state, corporation or other public or private grouping of people);
- seeks to balance competing rights in a manner that best serves the maintains the integrity, balance and health of the whole Earth community rather than applying legal rules to determine which party is “right”;<sup>12</sup>

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6 The courts of the Plurinational State of Ecuador are an exception because the Constitution of Ecuador recognises that Nature has legally enforceable rights.

7 Article 1(2) of the Statutes of Tribunal states that: “The Tribunal is established to promote universal respect for and observance of the rights and duties established by the Universal Declaration of the Rights of Mother Earth, and thereby promote the harmonious co-existence of humans and other beings.”

8 Article 27(1)(c) of the Statutes of the Tribunal attempts to define this term as follows: “laws of Nature” means the knowledge acquired by human societies about how Mother Earth functions that enable human beings to predict with an acceptable degree of accuracy the likely impact of human behaviour on the well-being of other beings and on the integrity, health and functioning of Mother Earth as whole, and includes knowledge acquired as a consequence of scientific discoveries and knowledge from long established wisdom traditions;”

9 The Statutes of the Tribunal state in article 3 that: “(3) In interpreting and applying the Universal Declaration of the Rights of Mother Earth the Tribunal:

(a) must have regard to the laws of Nature (as defined in article Article 27(1)(c));

(b) must have regard to, but is not bound by, previous decisions of the Tribunal that are relevant to the matter before the Tribunal;

(c) may have regard to:

(i) international human rights law (including the Universal Declaration of Human Rights and the United Nations Declaration on the Rights of Indigenous Peoples);

(ii) generally accepted principles of law reflected in judicial decisions or the teachings of respected jurists;

(iii) international law including treaties and customary international law;

(iv) traditional knowledge and customary relevant to the place or places in question.

(4) In determining the content and likely implications of natural laws the Tribunal may have regard to the opinion of scientists, persons with long standing experience of, or traditional wisdom in relation to, a particular ecological community or other experts.”

10 The establishment of the Tribunal was formalised by means of the *People’s Convention for the Establishment of the International Rights of Nature Tribunal* which was signed by representatives of a wide range of organisations, communities and indigenous peoples in Paris and entered into force on 4 December 2015. Article 1(1) of the Tribunal’s Statutes state that: “The International Tribunal of Mother Earth Rights is an autonomous judicial institution constituted by these Statutes pursuant to the entry into force of the People’s Convention for the Establishment of the International Tribunal of Mother Earth Rights.”

11 The preamble to the UDRME states that: “we are all part of Mother Earth, an indivisible, living community of interrelated and interdependent beings with a common destiny;” Article 4(1) states that: “The term “being” includes ecosystems, natural communities, species and all other natural entities which exist as part of Mother Earth.” This is echoed in the preamble to the Convention which states that : “We, the peoples and nations of Earth: ...understanding that we are all part of Earth, an indivisible, living community of interrelated and interdependent beings with a common destiny;”

12 The Universal Declaration of the Rights of Mother Earth states in article 1(7) that: “The rights of each being are limited by the rights of other beings and any conflict between their rights must be resolved in a way that maintains the integrity, balance and health of Mother Earth.”

- applies a restorative justice approach rather than a punitive approach, which means that its judgments focus on directing those responsible for the violations of the rights of Nature to take appropriate action to ensure that the health and integrity of any ecological community harmed by those violations is, as far as possible, restored and that future harm is prevented;<sup>13</sup> and
- aims explicitly to be a tool for transforming legal systems by changing global norms so that many activities that are currently lawful become socially unacceptable, and by demonstrating “how the application of the rights and duties in the Earth Rights Declaration promote the harmonious co-existence of humans and other beings in a manner that enhances the integrity, health and functioning of the whole Earth community.”<sup>14</sup>

## Law applied by the Tribunal

One of the reasons why climate change litigation before national or international courts is so difficult is because they are part of legal systems which were developed to facilitate and legitimise the activities that drive climate change and most other forms of environmental degradation. For example most contemporary legal systems are designed to facilitate the extraction and combustion of the huge volumes of fossil fuels which are used to fuel contemporary industrialised societies. The laws empower government institutions to grant licences to extract fossil fuels (sometimes even from under land that they do not own) and to emit large volumes of pollutants (including greenhouse gasses which exacerbate climate change) thereby rendering those activities legal.

The fact that the Tribunal is an autonomous, peoples’ institution that is not constrained by national legal systems, gives it the freedom to hear many important cases which it would be impossible to have adjudicated upon in most national courts or international courts such as the International Criminal Court (ICC) or the International Court of Justice (ICJ).

## Litigating before the Tribunal

Cases brought to the Tribunal are usually subjected to an initial evaluation to determine whether or not there is credible evidence that a significant violation of the UDRME has occurred in order to determine whether or not the Tribunal should hear the case at a later date. Cases are presented to the Tribunal by an “Earth Defender” who plays a role similar to that of a prosecutor by leading the evidence and presenting the legal arguments as to why the UDRME has been violated. However most of the evidence placed before the Tribunal is in the form of testimonies by experts and by affected parties who have witnessed the consequences of the alleged violations.

One of the reasons why climate change litigation before national or international courts is so difficult is because they are part of legal systems which were developed to facilitate and legitimise the activities that drive climate change and most other forms of environmental degradation.

13 The UDRME states that “Mother Earth and all beings of which she is composed have the following inherent rights: ... (j)the right to full and prompt restoration for the violation of the rights recognized in this Declaration caused by human activities; (article 2(1)(j)). A call for restorative justice also appears in the 2010 Peoples’ Agreement adopted by in Cochabamba Bolivia which stated: “The focus must not be only on financial compensation, but also on restorative justice, understood as the restitution of integrity to our Mother Earth and all its beings.”

14 Tribunal Convention, article 2 (d).

Evidence is typically gathered by organizations or communities who wish to bring world-wide attention to activities which are harming the community of life. The Tribunal Secretariat will request them to identify the particular articles of the UDRME or human rights that are alleged to have been violated (or whose violation is imminent), the witnesses that will present the testimony to the Tribunal, and if possible, to propose restorative measures should the Tribunal find in their favour.

The limited funding available to the Tribunal to date has meant that the time allocated to each case has of necessity been very limited and the Tribunal has not been able to exercise its investigative powers. However as support for the Tribunal grows it is anticipated that these hearings will be expanded and that more hearings of regional Tribunals will take place.

## Great Barrier Reef Decision

The decision of the Tribunal in the case of *Great Barrier Reef versus Australian Federal and State Governments and others* provides an instructive example of how the Tribunal has addressed cases involving climate change in the past. The evidence presented to the Tribunal showed that a variety of deliberate human activities are directly and indirectly violating the rights of the Great Barrier Reef community, including existing and proposed coal exports across the Reef, which threatened the survival of the Reef by increasing global warming, ocean warming and acidification

The Tribunal found that granting authorisations for the export of coal via the waters of the Great Barrier Reef, funding or facilitating such exports, or investing in coal mining companies that will be involved in those exports, constitute unlawful violations of the rights of Mother Earth and must cease immediately. The Tribunal observed that:

*“58. These violations are not necessary to maintain the integrity, balance and health of Mother Earth, and are consequently unjustifiable, illegitimate and unlawful.”*

### Measures to restore the Reef

In order to begin the process of restoring the integrity and health of the Great Barrier Reef community the Tribunal ordered the Australian Federal Government and the Government of Queensland to prohibit the expansion of the coal ports adjacent to the Great Barrier Reef and enforce a rapid reduction in the mining and combustion of coal within, and the export of coal from, the areas under their jurisdiction; and to ensure that human beings that have benefitted from the activities that have harmed the Great Barrier Reef contribute (financially and otherwise) to measures to restore it to integral health.

The Tribunal also ordered that any person who directly or indirectly funds, invests in, participates in, authorises or facilitates the process of mining and exporting coal via the Great Barrier Reef to cease doing so immediately and begin to take, or contribute to the taking of, effective measures to restore the integrity and health of the Great Barrier Reef.

In its judgement the Tribunal stated:

*“55. Given the fact that concentrations of greenhouses gasses in the atmosphere are already dangerously high and continued acidification of the oceans can only be prevented by rapidly reducing concentrations of CO<sup>2</sup> in the atmosphere, these measures are urgent and must be commenced immediately. A failure to act with urgency, particularly with knowledge of the consequences of delay and the real likelihood that delay itself may render any response ineffective, is itself a culpable violation of the Declaration and of the rights of all beings. Whether or not nation states have agreed to an international treaty that imposes binding obligations to reduce emissions of greenhouse gasses does not affect the existence of the duty to take effective preventive and restorative measures urgently, nor diminish the culpability of those who fail to act.”*



## Enforcement

Since international law does not recognise the Tribunal as an international legal entity with the jurisdiction and powers to compel compliance with its judgements, the fact that the Australian Federal Government, the Government of Queensland, the mining companies and their funders have neither acknowledged nor complied with the Tribunal's decision is unsurprising. Some may argue that this means the Tribunal is ineffectual and irrelevant.

However that perspective overlooks the fact that judgements such as this provide an example of what kind of judgement is possible and thereby expose the inadequacies of existing legal systems in the face of challenges like climate change. The Tribunal demonstrates that if international and national judicial bodies decided cases involving the critical challenges of the 21<sup>st</sup> Century in the same way as the Tribunal does, then law could make a far more significant contribution to addressing climate change that it does now.



Scientists study the deterioration of the Great Barrier Reef

It is also relevant to note that the Tribunal judgement in the Great Barrier Reef case ended with the following statement:

*“63. The Tribunal calls upon all people of good conscience who recognise the value of their membership of the magnificent community of life that we call Earth or Mother Earth to take appropriate action to ensure the implementation of this judgment and to defend the rights of the Great Barrier Reef.”*

This is the sting in the tail. If civil society organizations take up the challenge of taking appropriate action to ensure that the Tribunal's judgement are implemented (such as campaigns to encourage divestment from coal mining) then they may prove to be far more effective than conventional enforcement mechanisms, particularly at the international level where enforcement is weak.

## Conclusions

The Tribunal challenges existing conceptions of law and legal institutions and provides a proto-type of what they may become. It demonstrates that it is quite possible to create new institutions which are designed to privilege the common interest of the whole Earth (in this case to avert catastrophic climate change) over the short-term interests of specific groups of human beings, and to arrive at carefully considered conclusions that provide clear direction on how to respond to these challenges.

The Tribunal is pioneering ways of integrating law, science and ancient wisdom traditions to craft practical forms of restorative justice that define a path towards ecologically sustainable human societies based on re-establishing respectful inter-relationships with the other members of the Earth community with whom we co-evolved.

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Cormac Cullinan is a member of the Executive Committee of the Global Alliance for the Rights of Nature, a director of the Wild Law Institute and a judge on the International Rights of Nature Tribunal. His groundbreaking book, *Wild Law* developed Earth jurisprudence ( in response to Thomas Berry's call for a new jurisprudence) and helped inspire the global movement for the rights of Nature.



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

**Movement Rights** works to advance the rights of communities, Indigenous peoples and ecosystems over corporate interests through grassroots organizing, movement building and writing new law. Download report and/or contact us: [movementrights.org/resources.html](http://movementrights.org/resources.html) | [movement@movementrights.org](mailto:movement@movementrights.org) | Tel: +1 (415) 841-2998

**Indigenous Environmental Network** works for the rights of Indigenous peoples and for economic and environmental rights. Download the report and/or contact us: [www.ienearth.org](http://www.ienearth.org) | [ien@igc.org](mailto:ien@igc.org) | Tel: +1 (218) 751-4967

**WECAN** is a climate justice-based initiative established to unite women worldwide as powerful stakeholders in sustainability solutions, policy advocacy, and worldwide movement building for social and ecologic justice. Download the report and/or contact us: [www.wecaninternational.org](http://www.wecaninternational.org) | [osprey@wecaninternational.org](mailto:osprey@wecaninternational.org) | Tel: +1 (415) 722.2104

**Global Alliance for the Rights of Nature** is a global network of organizations and individuals committed to the universal adoption and implementation of legal systems that recognize, respect and enforce "Rights of Nature". [www.therightsofnature.org](http://www.therightsofnature.org)

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