

Rights of Nature—Why Do We Need It?

Mumta Ito

Our planet Earth in its present mode of fluorescence is being devastated. This devastation is being fostered and protected by legal, political and economic establishments that exalt the human community while offering no protection to the non-human modes of being. There is an urgent need for a system of governance which recognizes that the well-being of the integral world community is primary, and that human well-being is derivative—an Earth Jurisprudence. Thomas Berry

IN THE LAST 40 YEARS ALONE—the time from which the first environmental laws were enacted, we have extinguished 50% of the populations of all species on earth, climate change is upon us, and the world’s ecosystems are collapsing. One of the key reasons this is happening is because our laws—designed around an economic paradigm that is coupled with the destruction of nature—legitimizes it.

In my career as a lawyer, I have advised multinationals, investment banks, and governments as well as grassroots communities and NGOs working to protect the environment. One thing I learned was that our current structure of law is inadequate to face the challenges of our time. At best, it can slow the rate of destruction, but it cannot prevent or reverse it. This is why I set up Rights of Nature Europe—to bring in new innovative structures of law that can do just that.

Outdated paradigms

Our modern legal system operates within the following outdated paradigms:

- mechanistic (i.e., viewing the world as made up of separate unconnected objects interacting in a predictable way);
- anthropocentric (i.e., viewing the world as existing solely for the use of human beings—this is where ideas about “natural resources” and “natural capital” derive basing nature’s value on its utility to humanity rather than on its intrinsic value); and
- adversarial (competitive/retributive model where one party wins at the expense of another)

None of these paradigms reflects the full scientific reality of how natural systems operate. This gives rise to the illusion of a “power-over” relationship with nature which has led to our current predicament.

Law facilitates economics

There was a time when law facilitated human values—today law facilitates economics. The problem is that it is facilitating an economic paradigm of perpetual growth that is coupled with the destruction of nature.

Our economic paradigm is based on one key concept: the



The author (left), Vandana Shiva (Navdanya), Doris Ragetli (Rights of Mother Earth), Alexandra Postelnicu (Pachamama Romania) at the Rights of Nature Conference in Ecuador

utility value of nature, or valuing nature as a resource for human consumption—the source of ideas like “natural resources” and “natural capital.” However, nature is infinitely valuable—because it is the source of life. Our health and wellbeing are integral with the health and wellbeing of the Earth. We cannot have a viable human economy that destroys the Earth economy because one derives from the other. The logical conclusion is societal collapse.

The European Union has committed to strive toward an absolute decoupling of economic growth from environmental destruction. To achieve this, we need innovative laws that recognize the intrinsic value of nature—if we’re changing the game, we also need to change the rules that govern the game.

Utility value translates in law as nature being an “object” under the law—either property or fair game unless special rules apply. However, this approach, which in the past has been applied to slaves, indigenous people, women, and children who were also deemed by law to be “objects,” has several practical drawbacks that make it almost possible for people and governments to protect nature using current law.

The problem with our current structure of law

The law doesn’t recognize a relationship between us and the rest of nature. Law governs relationships—but only between “subjects” of the law—there are no obligations or legal duty of care toward nature. As a result, anybody has the right to destroy nature that doesn’t belong to anyone. And property owners have the right to destroy ecosystems on their property, unless the law specifically says otherwise. This vacuum in the law leaves nature outside the system, fundamentally unprotected. We are left with the impossible task of reactively legislating to carve out

protections, rather than proactively creating the legal frameworks needed to create true sustainability.

As a result, we end up with piecemeal protection and a reductionist approach. This ignores the uncertainty and unpredictability involved in dealing with interconnected living systems. A good example of this is our endangered species protection system that relies on listing which species are under threat, which takes years of scientific research. However, scientists say we are losing literally dozens of species each day—in the time it takes to update the lists, it's already too late. Also, in a radically interconnected world, who is to say which species is a VIP, and what effect the loss of a seemingly insignificant species would have on the ecosystem as a whole?

Another consequence is that environmental issues are dealt with almost exclusively by the planning and administrative courts. The only conversation that can happen in court is whether the correct planning procedure was followed, and the outcome is simply a referral back to the planners. There is a presumption in favor of economic benefits, but environmental impact has been quantified and proven (even though scientists agree that it is impossible to do so because of the complexity and unpredictability of interconnected living systems), favoring a precautionary approach.

The only avenue left in law is if a disaster happens and people litigate—the courts will compensate people for proven monetary loss—but there is no obligation to restore the damage to nature, because there is no relationship in law between us and the rest of nature.

Our governments and banks recognize that regulation has failed.

There are also problems with enforcement, piercing of the corporate veil, the lack of flexibility in sanctions, and the fact that a model of law that is adversarial and retributive does little to uncover the root cause of the problem and co-create solutions. Finally, it leads to a cultural attitude of separation from nature which is at the root of our environmental crisis.

Our current system of law is missing an overarching framework that puts our existence on this planet into its proper context—the Earth system being primary because our existence on this planet depends on its healthy functioning—and our human systems (like the economy) being secondary to that as they are derivative. This means that there is no legal requirement for governments to formulate policies that prioritize the health of ecosystems and integrate this requirement across all levels and sectors of society. Accordingly, environmental decisions are made exclusively at the micro-level under individual planning cases, with no regard to the cumulative effect of such decisions

in eroding ecosystems and Earth system resilience as a whole. Scientists say this is dangerous because ecosystems can suddenly shift state when certain stress levels are reached, and there is no guarantee that the new state will support human life.

Financialization of Nature

Our governments and banks recognize that regulation has failed. However, their solution is to leave the future of our ecosystems—and therefore the lives of our future generations—in the hands of market forces.

Realizing that the value of nature has been left out of economic equations, the components and functions of nature, including biodiversity, are priced according to their utility value and assigned an economic value that forms the basis for the creation of financial instruments that can be traded on the primary and secondary capital markets. The instruments are acquired by corporations to offset their overuse, degradation, or pollution of the environment, and they can further profit from trading them. Pollution permits, natural capital bonds, biodiversity banks, and offsetting already exist. Essential prerequisites for financialization are pricing nature, characterizing nature's functions as 'ecosystem services,' and redefining nature as 'natural capital.'

This approach has several drawbacks that could seriously accelerate the rate of destruction:

- Ecosystems are living systems—each one is unique and interconnected. It is not possible to destroy one and mitigate by restoring another somewhere else without destabilizing the whole;
- Offsetting speeds up the planning process—so long as mitigation credits can be bought, environmental impact assessments are not required. This gives citizens even less of a say in environmental matters and less grounds to protect nature.
- Segregation and pricing of the interconnected components of an ecosystem is an artificial construct. It does not reflect the reality of how ecosystems operate, their cumulative function, or their true value in the web of life.
- The system favors the status quo by legitimizing environmental destruction. Instead of encouraging corporations to change their ways, it allows the same actors to make additional profits through financial speculation.
- Decision rights over how to live in a territory and manage the ecology there are increasingly transferred from the local sphere to multinationals and financial institutions. Communities are often violently displaced.
- It leads to profit-driven speculation. If a company stands to profit from the price of clean air going up, then it will invest in activities that ensure that clean air is more scarce and in high demand in the future. In the case of biodiversity, investors can profit from speculation on the extinction of species, as if it were a game.
- All markets are susceptible to crashes—in the case of nature-based financial products, crashes could have disastrous consequences for the underlying 'conservation' project when the land is repossessed.

- Conservation policy is decided by what is more profitable rather than by what is best for the ecology as a whole.
- Carbon credits and Reducing Emissions from Deforestation and Forest Degradation (REDD) have been ineffective in halting climate change or deforestation.

Through the years—with nature being property under the law—there have been different forms of the commoditization and privatization of biodiversity—such as the policies that privatize biodiversity itself and other tools like intellectual property mechanisms that lay claim to genetic or biochemical elements. Today, we are witnessing a new wave of privatization through the application of financial mechanisms. In this context, large corporations are pushing for reforms in international and national policies to enable their control of biodiversity.

This new wave of privatization of nature cannot be controlled under the existing structure of law. We need fundamental and systemic transformation—and that's where rights of nature comes in—as a powerful counterbalance to corporate excess.

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Recognizing the rights changes the game

Rights of nature shifts the paradigm by reversing the structure of law that treats nature as an object separate from us—which is at the root of the problem—by recognizing Nature as a rights-bearing subject of the law equal to humans and corporations. This is the game-changing step that brings nature into our governance system as a stakeholder in its own right and transitions us into a whole-systems framework of law. Instead of reactively legislating to carve out protections, we start with the premise that all of life is protected, and we carve out the level of human activity that is acceptable to maintain the dynamic balance.

On a practical level, it brings about the following changes in the way our legal system operates:

- It provides an overarching context for our existence as part of the Earth as a whole, enshrining interdependence in law, with a legal requirement for this context to be embedded in all levels of society. It recognizes that the economy is a subsystem of human society, which is a subsystem of the Earth.
- It empowers people to pro-actively reject governmental actions that permit unwanted and damaging development to occur, by enabling us to assert the rights of those ecosystems that would otherwise be destroyed.
- It goes to the heart of our economic system by valuing

nature intrinsically. Property rights are no longer absolute—they are qualified by the rights of the ecosystems and species living there.

- It creates a relationship in law with the rest of nature: a legal prerequisite for a duty of care. This enables obligations toward nature, including the obligation to restore.
- Rights are a legal tool for addressing power imbalances (e.g., slaves, indigenous peoples, women, children). Currently, the imbalance is between the corporations, financial institutions, and everyone else. It is the only effective counterbalance in the face of policies that concentrate corporate power, such as TTIP and financializing nature.
- It creates a fundamental basis for the human right to life because without nature we cannot exist.

Paving the way to a different approach to law

Rights of Nature is a holistic framework of law underpinned by the principles of Earth Jurisprudence, the purpose of which is to return to a mutually enhancing presence on Earth through embedding these principles in all aspects of our lives and society. Earth Jurisprudence can be distilled into the following key principles:

- **Wholeness**—the earth is a living being, a single Earth Community webbed together through interdependent relationships. All life is sacred with inherent value, and the earth has her thresholds and limits. The well-being of each member of the Earth Community is dependent on the well-being of the earth as a whole.
- **Lawfulness**—the earth is part of the universe, which is ordered and operates according to its own laws, which govern all life, including human beings. We need to discover nature's laws and comply with them for our own well-being and for the well-being of the whole.
- **Duty of Care**—Earth Jurisprudence is a living law, a way of life, guided by moral responsibilities. We have a duty of care to all present and future members of the Earth Community to contribute to its integrity and well-being. If we create imbalance, then we cause disorder in the earth's dynamic equilibrium, which we have a duty to restore.
- **Rights of Nature**—the earth and all of the Earth Community have three inherent rights: the right to be, the right to habitat, and the right to fulfill their roles in the ever-renewing processes of life.
- **Mutual Enhancement**—relationships within the Earth Community are reciprocal—a cycle of giving and receiving. Our role is to participate and contribute to the health and resilience of the Earth Community. That which does not enhance the whole will ultimately not enhance us either.
- **Resilience**—all healthy living systems have the ability to grow, evolve, and adapt to change and disturbance, without losing inner coherence. By complying with the laws that maintain life's health and vitality, we strengthen Earth Community resilience as well as our own. To learn from nature and understand its laws, we must become eco-literate and engage other ways of knowing: feeling, sensing, and intuition.

Practicing this approach to law requires that we prioritize the interests of the whole and of future generations, over short-term self-interest.

How feasible is it?

Given that our current legal and economic models have been ineffective in halting the widespread destruction of the biosphere, more and more countries are looking at rights for nature as a sensible way forward. It is the new emerging paradigm in environmental law, and here are some of the examples:

- **National level:** Ecuador (constitutional recognition of the rights of nature and holistic concept of “wellbeing”); Bolivia (Law and Ombudsman for Mother Earth);

- **Court decisions:** New Zealand, Costa Rica, Ecuador, India, Argentina

- **Local/municipal level:** over 36 US municipalities including Santa Monica and Pittsburgh, the state of New Mexico; Mexico City, and a municipality in Spain. In the US, these laws recognize the rights of communities and ecosystems, and subordinate corporate interests where they work against the common good.

- **Customary law:** legal recognition of indigenous governance and sacred sites—mainly in Africa—protects the living and promotes community ecological governance.

- **UN level:** The UN has a Harmony with Nature Department to promote rights of nature. In 2010, Bolivia presented a Universal Declaration for the Rights of Mother Earth. Since then, various UN resolutions have moved in this direction. Actual documents and legal precedents can be found at: <http://www.harmonywithnatureun.org/rightsofnature.html>

Although society has talked about sustainability for decades, there is no current legal framework for this.

How can we make this happen?

Historically, a rights-based approach has never come from those in power. It has to be claimed by the people. In Europe, we have participatory democracy where citizens can propose laws. One million statements of support across seven member states will enable us to put the collective rights of nature on the legislative agenda of the EU. We are bringing a European Citizens Initiative to do this.

Our team has produced a Draft law: a Directive to show how a framework for rights of nature and ecological governance

could work at the EU level across different legal regimes. We focus on collective rights which include ecosystems, species, and the atmospheric climate—also pioneering a new paradigm for climate protection.

Although society has talked about sustainability for decades, there is no current legal framework for this. In our rights of nature framework, we include the human right to a healthy environment, the rights of future generations, Ombudsman for nature, alternative court system, rewilding, ecological governance, and more. When the EU adopts a Directive, it has to be transposed into law in all member states. To download a copy of our Draft Directive, visit www.rightsofnature.eu.

In Europe, participatory democracy also exists at the local and national levels in several European countries; therefore, we are also working to support people to start initiatives. If you would like to find out more about our work, support us, or get involved, please contact us at: info@rightsofnature.eu.

Conclusion

The EU set out a vision in its environmental policy of a circular economy that brings peace and prosperity for all. To achieve this, we will also need a new paradigm of law that operates in harmony with Nature.

Certain natural universal laws govern all of life. When our laws are aligned with these natural laws, we create peace, prosperity, and harmony for all. When our laws are not aligned with these universal laws, we create a spiral of destruction as we are seeing in the world today. All societies that have ignored this truth have perished. WE have a choice. Δ

Mumta Ito is one of the world's leading experts on rights of nature. She is the founder of Rights of Nature Europe and the International Centre for Wholistic Law, and a Director of the Association for the European Citizens Initiative. Previously in her career as a lawyer, she advised investment banks, multinationals, and governments, as well as NGOs and grass-roots organizations. She also set up an NGO in the Caribbean to create a peoples' movement to save an island of global ecological importance.

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