National and International Environmental Law and Justice

The Unresolved Issues

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Under the current systems of law that still exist in almost every country of the world, nature (ecosystems) continues to be considered as property, a treatment which confers upon the owner the right to utilize, harm or destroy individuals, groups of individuals or components of natural systems within his property. However, the concept of the '*rights of nature*,' recognizes that ecosystems and natural communities are not merely property that can be owned and disposed of, but entities with independent rights to exist and flourish, not only for their own benefits but for that of humanity as a whole as well. Laws recognizing the rights of nature would thus change the status of natural communities and ecosystems to being recognized as rights-bearing entities with rights that can be enforced by law. Before there could be any discussion of Ecojustice, whether nature has any rights that need to be acceptable or accepted has to be established, and even our understanding or lack of it, of what nature actually is has to be resolved.

Discussions on the allocation or acceptance of rights have been going on ever since the Magna Carta of the UK was signed in 1215. While decisions about human rights still remain shaky in many instances and in many countries, the responsibility of dealing with further rights appears to have raised both objections and fear.

The concept of nature's rights in law is not new. Christopher Stone famously wrote about it in his groundbreaking essay of the early 1970s, '*Should Trees Have Standing*?' listing four elements as necessary to effectively recognize the rights of nature in law:

- Rights must be subject to redress by a public body;
- The entity must have standing to institute legal actions on its own behalf, or a guardian can stand in for the entity as needed;
- Redress must be calculated for the entity's own damages; and
- Relief must run to the benefit of the injured entity.

Under what he calls the *'legal operational*' aspect of extending rights to the environment, Stone (1972; 2010) notes three factors that must exist for the environment to count jurally:

1. Standing,
2. Recognition of injury, and
3. Ability to act as beneficiaries.

Stone continues that:

> Until the entity in question is recognized as having rights, we cannot see it as anything but a thing for the use of '*us,*' those who are holding rights at the time.

Stone's ideas received widespread popular attention after being judicially noticed by a US Supreme Court Justice when adjucating in the case of Sierra Club v Morton in 1972. Justice William O. Douglas (1972) cited Stone in support of what has been regarded as his '*dissenting opinion,*' stating that:

> Contemporary public opinion for protecting nature's ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their own preservation.

Justice Douglas (1972) further elaborated in his summing up that:

> The river, for example, is the living symbol of all the life it sustains or nourishes-fish, aquatic insects, water ouzels, otter, fish, deer, elk, bear, and all other animals, including man, who are dependent on it or who enjoy it for its sight, its sound, or its life. The river as plaintiff speaks for the ecological unit of life that is part of it.

Justice Douglas did no less than accept nature as a complete and complex system, with sub-systems interacting with each other, man being just one of these subsystems, and such a complete system should also have rights. How much weight would Justice Douglas's adjudication carry in the laws of precedence is yet to be assessed.

Following the concept developed by Stone (1972), and innumerable discussions as to whether nature should or should not have rights, and in discussing the morality of freedom, Raz (1986) argues that a person or other entities can have a right '*if and only if they are capable of having rights*,' and some aspect of their interest or well-being is '*a sufficient reason for holding some other person(s) to be under a duty.*' Raz (1986) further argues that the interest theory itself does not resolve '*whether nature is capable of having rights, suggesting that entities that have value for their own sake, rather than for the value they provide others, can have rights*.' It appears Raz, in a purely homocentric mindset, omitted to consider the fact that nature does provide ecosystem goods, services and enjoyment to others within natural communities, including humans. The question that should be asked more often would be what services or goods do humans provide to ecosystems?

Before even considering endowing nature/ecosystems with rights, difficulties appear to be about a proper definition of nature, at least in legal terms. According to Pascual et al. (2017) the eternal fundamental problem remains in effectively defining nature prior to attempts at discussing a case for the rights of nature, and the appropriateness and importance of legal instruments to ensure justice for ecosystems and nature's rights, and tools for compliance. Perhaps the most complete definition of Nature is from the Lexico Dictionary:

> The phenomena of the physical world collectively, including plants, animals, the landscape, and other features and products of the earth, as opposed to humans or human creations.

But in its completeness the definition is still not complete since nature is a complete and complicated system that humanity has failed to unravel to this day. However, the main point is that nature is not of humans or of human creation. Remembering that humans also belong to the animal kingdom, then logically the human species should also be part of nature and natural systems, and '*of nature's creation*.' But the superiority of humans over the biodiverse components of the natural world and natural systems remains ingrained in the human mindset to this day.

Those who dispute that ecosystems/nature should have rights always support their arguments on the superiority of humans. Feinberg (1980) considered that an entity could possess rights if the possibility of either harm or benefit could be demonstrated and the entity was conscious of such treatment. In support of his arguments Feinberg concludes that:

> Without awareness, expectation of belief, desire, aim and purpose, a being can have no interest; without interests, he cannot be benefited; without the capacity to be benefited, he can have no rights.

Obviously, the views of both Feinberg (1980) and Raz (1986) are flawed in the sense that adopting a patronizing attitude to natural systems, and supporting the theory of superiority of humans over natural systems should rather be considered as purely patronizing. In that sense, the discussion of Jensen (2004) along the same lines concludes that:

> Extending rights to nature would be simply patronising, rather patriarchal and imperialistic.

In their analysis and discussions, Van De Veer and Pierce (1986) emphasize on the perception of human superiority by declaring that:

> Persons are rational, autonomous beings, capable of formulating and pursuing different conceptions of good; persons have ends of their own but things or objects do not and persons may never be treated as means to an end, however worthy that end.

Van De Veer and Pierce (1986) further argue that persons have rights because of their unconditional worth as rational beings, whereas the worth of things is relative to the ends of persons. However, the authors do accept human duties towards what they refer to as '*inanimate objects,*' even accepting Kant's 1997 observations that:

> A propensity to exploit or destroy nonhuman and inanimate nature might violate a person's duty to himself.

However, Lucy and Mitchell (1996) suggest that the nature of private rights should be limited to secure the interests of biodiversity, and propose reformulating the concept of property on the basis of stewardship rather than absolute ownership. The authors recommend that there should first be a need to really understand the interest of biodiversity, which can only be achieved by fully understanding ecological systems, which humans have not achieved yet. The views of Lucy and Mitchell (1996) were further elaborated upon and expanded by Cullinan (2011), suggesting that any complete reassessment of the present position of humans would result in a far-reaching challenge to the conventional way of thinking about the human relationship with nature, especially those posed by the new concepts of Wild Law or Earth Jurisprudence, which Reid (2013) points out would call for laws to allow '*freedom for all members of the Earth Community to play a role in the continuing co-evolution of the planet*;' in other words, endowing nature with the same rights as humans.

Analyzing the direction that some scholars have been taking in discussing environmental rights, Jensen (2004) believes that:

> To extend or bestow or recognize rights to nature would be, in effect, to domesticate all of nature; to subsume it into the human political apparatus.

The analysis of Jensen fails to realize that nature has already been domesticated and engulfed in the human political systems and worst of all commodified by the human apparatus. Plumwood (2002) raises a further objection to extending rights to nature, in the sense that '*legal rights are excessively individualistic.'* And earlier Raz (1986) argued along the same lines in that there could be a right if and only when some interest, such as an aspect of well being or one of moral interest '*of some entity capable of being a right holder is sufficient to*

ground a duty to care for and promote the interest in a significant way.' However, much later the discussions of Washington at al. (2017; 2018) explain how those opposing environmental rights still cling to the rather old and archaic belief that nature should only serve the purposes and needs of humans, arguing that, for them, '*the consequence from recognizing the rights of nature would place limits on human property rights*.'

The discussions of Burdon (2010) follow a different route and explain that practice of environmental law seeks to protect the environment by '*regulating*' human interactions, but only in exceptional circumstances are communities provided the legal right to say no to an activity or stop an existing project. Unless a human or representative body can demonstrate direct harm as a result of the activity, they cannot meet the requirement of standing to challenge the action. And earlier, Rolston (1993) argued that since the concept of rights that has worked so well to protect humans and human dignity is seen as representing cultural progress, there should be no reason for the same rights model to prove troublesome when used to protect the biological world.

In his discussion, Burdon (2010) raises the alarm and concerns that conflicts between nature and human activities happen on a massive and systematic scale, especially when people and corporations have rights and nature does not, with the result that nature frequently loses, as evidenced by the continuing deterioration of the environment. Stone (2010) also argues that while laws shifted to recognize racial and gender equality, it did not appear laws were ready to seriously consider an extension of rights to nature. Anticipating such resistance, Stone (2010) further noted that:

> Throughout legal history, each successive extension of rights to some new entity has been, thereto, a bit unthinkable … each time there is a movement to confer rights onto some new '*entity*', the proposal is bound to sound odd or frightening or laughable.

Whether such reactions are because of human fear in having to share rights, or fear of having to respect other living entities, or fear of losing out in the exploitation of nature need to be ascertained, and further discussed.

Although Burdon (2010) claims that nature cannot possibly recognize the rights of others, discussing the broader concept of nature's rights and protection in a changing world, Khandelwal (2020) adds a new dimension to the debate, stating:

> With environment protection laws throughout the world displaying their own set of limitations, in the light of climate change, the concept of Environmental Personhood becomes all the more crucial and enterprising.

Korsgaard (2013) expresses a rather different view in that lack of flexibility in definitions of legal personhood may have been the cause of negative views, and believes in divorcing '*the capacities-focused definition of legal personhood from the species-based definition of humanity,'* as reflected in all conservation regimes, and which, unfortunately have failed to guarantee protection to nature as a system, rather than a collection of species.

The discussions of Korsgaard (2013) reveals how several authors have called for a more flexible and inclusive theory for defining legal personhood that includes animals and nature, with some proposing that the concept of legal personhood moves from a binary system, that is holding or not legal personhood, to a system proposed by Dyschkant (2015) in which somebody or something can hold legal personhood to a certain degree.

In Korsgaard's words:

> For various different kinds of reasons, it seems inappropriate to categorize a fetus, a non-human animal, the environment, or an object of great beauty, as a person, but neither does it seem right to say of such things that they are to be valued only as means.

Discussing '*The Rule of Ecological Law*,' Carver (2013) notes that human enterprise has already transgressed global ecological limits. Carver recommends that the legal regime should support a radical re-focusing of the economy on reduction of its throughput of material and energy, remembering the statement of the 2010 Global Biodiversity Outlook 3:

> The target agreed by the world's Governments in 2002, '*to achieve by 2010 a significant reduction of the current rate of biodiversity loss at the global, regional and national level as a contribution to poverty alleviation and to the benefit of all life on Earth*', has not been met. There are multiple indications of continuing decline in biodiversity.

In support of the views of Carver (2013), and several others, a joint statement from over 475 scientists in 38 countries of the Millennium Alliance for Humanity and Biosphere (2013) warned that:

> Without concrete, immediate actions, it is extremely likely that Earth's life-support systems will be irretrievably damaged by 2050.

Rather than attempting to infuse The Rights of Nature into a legal framework of protection, and Ecojustice into human and social rights, other considerations should also be visited. Capra and Luisi (2014) state that in order to '*develop an economy that strengthen nature's inherent ability to sustain life….the economy must adapt to ecological limits and principles*.' The authors further call for a new science centered around ecological economics and the inclusion of '*the systems view of life, because it is grounded in systems thinking.*' Similarly, Lovelock (1998) argues that '*ecological economics recognizes that economy, nature, and culture are integrated parts within a 'living' organism*.' Constanza (2010) explains that ecological economics is a trans-disciplinary field bridging across not only ecology and economics but also psychology, anthropology, archaeology, and history, and defines the goals of ecological economics as:

> Its goal is to develop a deeper scientific understanding of the complex linkages between humans and the rest of nature, and to use that understanding to develop policies that will lead to a world which is ecologically sustainable, has a fair distribution of resources (both between groups and generations of humans and between humans and other species), and efficiently allocate scarce resources including '*natural*' and '*social*' capital.

In a nutshell, the central concept of ecological economics is sustainability, and this could be approached both qualitatively and empirically. The difficulty arises in an inability to achieve a profound understanding of nature and ecosystems, which should include systems and systems thinking, Deep ecology, Ecosystems philosophy, Ecological archaeology, Ecological ethics/Bioethics, Ecological philosophy, Ecological morality, Ecological economics, Ecosystem services, Ecological/planetary boundaries, and Ecological psychology should al be part of discussions and decision making, claims Constanza (2010).

On the other hand, and as opposed to the one-track arguments of those opposing nature's rights, Reid and Nsoh (2014) adopt a middle of the way approach by stating that '*there are existing tools, increasingly being used, for the conservation of biodiversity*.' In other words, the whole array of conservation covenants, including the contested programmes of biodiversity offsets and payment for ecosystem services, all having, however, hardly helped in stopping the continued destruction of natural systems. The arguments of Reid and Nsoh

(2014), and the discussions of Santos-Martín et al. (2019) are reminders that these are the same human attempts that have failed in producing positive results, and the proposed instruments have actually been strategies to own and control natural systems. However, while steps are being taken to introduce laws based on such approaches, a second and contrary response has been to reject such developments as a '*privatization*' or '*commodification*' of nature, which should instead be considered and accepted as being part of our shared common heritage, propose Santos-Martín et al. (2019).

Again, the authors warn that such attempts require consideration of the basic position of ownership of wild flora and fauna, the extent of the property rights of landowners and others with interests in the land, and of how far the state is justified in restricting, and even taking over these rights for conservation (or exploitation) purposes.

In a Report of the Earth Law Centre, '*Fighting for Our Shared Future: Protecting Both Human Rights and Nature's Rights*' Sheehan and Wilson (2015) conclude their analysis and discussion stating that:

> The well-being of humans and nature are inextricably linked. Across the globe, we injure both people and ecosystems by treating the natural world as property to fuel incessant economic growth. These injuries have risen to the level of simultaneous violations, or '*co-violations*,' of human rights and nature's rights.

Sheehan and Wilson (2015) further discuss how Nature's rights and human rights are intertwined and co-dependent, and thus the necessity to recognize in law and implement the fundamental rights of nature, including a necessity for the UN General Assembly to adopt *inter alia* the Universal Declaration of the Rights of Mother Earth (UDRME-2010), through:

- Supporting swift enforcement of International Rights of Nature Tribunal judgments;
- Creating '*International Rights of Nature*' courts to hear cases involving nature's rights violations;
- Incorporating rights of nature principles into existing human rights instruments and bodies;
- Committing to a robust, binding, enforceable international climate change agreement that aims to eliminate climate-related human and environmental rights violations;
- Adopting global and national moratoriums on particular sources of co-violations;
- Creating an international mechanism to monitor and enforce standards that co-promote human rights and nature's rights;
- Adopting and implementing an international treaty to prevent and enforce against corporate environmental rights violations; and
- Providing emergency protection to at-risk environmental defenders.

And this is where the reflections and statement of Daly (1996) best fits:

> Under the rule of ecological law, individual humans and artificial entities like corporations would be considered inter-relational beings in a shared ecological context, and not as free agents whose quest to maximize abstract monetary wealth that can be converted into consumptive and waste-producing activities is given priority. The notion of relationship within a shared commonwealth of life provides the basis for fairness and distribution.

However, Boyd (2017), supporting the old school of thoughts, believes that whether nature should have moral rights is likely to remain debatable. Boyd (2017) and Pascual et al. (2017) raise a fundamental question as how to effectively operationalize rights of nature, when even defining nature is still a problem. The discussions of both Boyd (2017) and Mace et al. (2018)

explain how scientific evidence indicates that the global environmental crisis is accelerating and that environmental laws have not been able to reverse the trend, and that at the most, existing laws regulate rather than stop the destruction of the natural world. Another central issue will be how conflicts between rights of nature and corporate or human rights and interests will be adjudicated. This weighing will determine whether rights of nature will be effective.

Contesting some of the arguments opposing considerations for allowing nature to have rights, Stone (2010) points out that the rights of nature have already been recognized in municipal ordinances in some countries, the Constitution of several countries, and in a proposed United Nations Declaration. As such, nature clearly can have legal rights, as has been shown in jurisdictions that have recognized, granted, or enacted them. Since the natural environment cannot speak for itself, Stone proposes that guardians could speak for and defend it. Kramer (2010) proposes the interest theory to protect nature's rights and its vital interests, even in the absence of cognitive awareness and sentience. Kramer further argues that nature can thus have rights according to the interest theory since it has interests that need protection.

The concept of advocacy for nature is not new and numerous organizations around the world have vouched to stand up for the rights of nature, and the justifications and strategies of such advocacy have been discussed by Rose et al. (2018). In 2012, and on the basis of discussions on the rights of nature around the world, the IUCN moved towards the incorporation of the Rights of Nature as the organizational focal point in IUCN's decision making policies (IUCN, 2012). However, the opposition being always present, Cupp (2009) believes the concept of right is essentially human, for '*it is rooted in the human moral world and has force and applicability only within that world*.

Discussing the erroneous belief that humans should have rights over nature, and the concept of the '*property*' rights, Sheehan and Wilson (2015) concede that rights assigned to ecosystems, appear to have come up with an appropriate prescription at a time when most are still struggling with an appropriate definition of the rights of nature as opposed to human rights over nature. Numerous definitions as to what the rights of nature could or should be have been proposed and discussed, but one of the latest perceptions, from the Global Alliance for the Rights of Nature (GARN-2014) is the most fitting:

> When we talk about the '*rights of nature*,' it means recognizing that ecosystems and natural communities are not merely property that can be owned, but are entities that have an independent right to exist and flourish. Laws recognizing the rights of nature thus change the status of natural communities and ecosystems to being recognized as rights-bearing entities with rights that can be enforced by people, governments, and communities.

There have been numerous discussions about the subject, and those of Feinberg (1980), Nussbaum (2006), Stone (1972; 2010), Mace et al.(2018) and Miller (2019) all add up to valid information and arguments. These opposing scenarios set the scene for a further discussion about whether nature has rights, and whether Ecojustice should now be part of judicial instruments, nationally and internationally.

For decades the protection of nature has been left in the hands of conservation organizations. These have been and keep growing up in numbers, ranging from national to international NGOs, and to such a giant organization as the UN and its satellite organisations. Invariably, all such organizations have been concerned with environmental/biodiversity protection, adopting mostly a top down strategy, recommending prescriptions appropriate to the

situations being handled. And over the years the whole world has been flooded with hundreds of agreements, recommendations, prescriptions and environmental agreements (MEAs), the bulk of which being soft laws with no instruments for strict enforcement.

Over time, and likely from experience too, conservation organizations have seen the necessity to embody social and political issues and sustainability within their strategies, but left the rights of nature out. A post mortem of conservation activities today reveals that the destruction of biodiversity/ecosystems and natural systems in general has been increasing at an alarming rate, thus questioning the *raison d'être* of such a large number of conservation organizations, and the funds they dilapidate without showing positive results.

Picking up from such concepts and philosophy, and eternal debates leading nowhere, in September 2008 Ecuador decides to opt out of the endless arguments and gymnastics of scholars, politicians and business concerns, and became the first country in the world to recognize such rights for nature in its constitution, ensuring the right for nature to exist, persist, evolve, and regenerate, at the same time empowering any person or organization to defend, protect, and enforce those rights.

Bolivia followed in 2010, implementing a set of laws that also recognize certain rights for nature, as embodied in the '*Pacha Mama*", the Rights of Mother Earth, recognizing :

> Mother Earth as...the dynamic living system formed by the indivisible community of all life systems and living beings whom are interrelated, interdependent, and complementary, which share a common destiny.

In April 2010, Bolivia hosted the Peoples Conference on Climate Change and the Rights of Mother Earth, at which time the Universal Declaration of the Rights of Mother Earth, modelled on the Universal Declaration of Human Rights, was drafted, approved by the Conference, and forwarded to the United Nations for consideration by the UN General Assembly. The Universal Declaration of the Rights of Nature was presented during a session of the General Assembly on April 20, 2011. That was a bold movement in history to change the established human-centred mindset and recognise the rights of ecosystems and start procedures for inserting Ecojustice within judicial frameworks around the world, and universally.

Within less than a decade several other countries in the world have moved into the '*respect and protect*' philosophy. In 2017, New Zealand made news by granting the Whanganui River the legal rights of a human being. In 2017, Colombia's Constitutional Court approved legal rights for the Atrato River, and the following year, the Supreme Court of Colombia also acknowledged the legal rights of the Amazon's ecosystems, claiming that the Colombian Amazon was entitled to '*protection, conservation, maintenance, and restoration*.' The same year saw yet another river legally declared a living entity: the Yarra River in Victoria, Australia. Still in the same year, the high court of Uttarakhand, India, ruled that the Ganges and Yumana rivers deserved legal rights and protections. In 2018, the Uttarakhand High Court declared the animal kingdom (including avian and aquatic creatures) to be legal entities with the rights, duties and liabilities of a living person. In 2019 the Supreme Court proclaimed all of the rivers in Bangladesh to be alive and entitled to legal rights. In 2021, The Magpie River in northern Quebec, Canada, was bestowed legal rights.

Dozens of communities across the United States have codified rights-of-nature laws over the past decade. Tamaqua Borough, Pennsylvania, became the first in 2006; in 2010, about 250

west Pittsburgh residents unanimously voted in favor of a law that enforced the environment's right to be free from fracking pollution. In 2018, the White Earth Band of Ojibwe from northwestern Minnesota argued for the rights of *manoomin*, or wild rice, which included the rights to clean water, regeneration, and protection from contamination and pollution.

Following the decisions of Bolivia and Ecuador to boldly declare that nature should be at par with humans in terms of rights, the debate on ecosystem/nature's rights has been going on with many arguing that nature have intrinsic rights too, and others that humans are the only species that can claim for rights. But all through the debates it appears those who believe in the rights of nature have more substance to back their call, as opposed to the few who still believe in the supremacy of humans over all other living entities. The centre point of such discussions, agreeing or disagreeing, appear to rest on whether humanity should continue being solely anthropocentric, and continue to poison and destroy the planet, or change course and move towards an ecocentric/biocentric mindset to regulate activities and save whatever of nature is left, and more importantly safe life on earth.

The acceptance of nature as a complete and complex system has continuously been disrupted by the notion that nature is there to be used for what it can offer. Prompted by Bolivia's call for the declaration of the '*Rights of Mother Earth*,' some 10 years down the road John Knox of the United Nations (2019) brings out the new element of environmental constitutionalism into play and points out that a further significant trend in environmental constitutionalism in some regions is the recognition of nature as a bearer of judicially cognizable rights, with profound implications, and '*such implications have been pointed out in Ecuador's Pacha Mama*.' Knox (2019) accepts that the idea that nature has rights represents a paradigmatic shift in thinking about the world, and the relationship of human beings to the world. Humanity's dependency on nature and natural systems calls for a different human mindset that looks at nature as a living entity that provides.

May and Daly (2018), Kotze (2014; 2018a,b.) and May (2020) discuss in details the concept of Global Environmental Constitutionalism, a recent phenomenon within the field of constitutional law, international law, human rights, and environmental law. It explores the constitutional incorporation, implementation, and jurisprudence of environmental rights, duties, procedures, policies and other provisions to promote environmental protection.

As a follow up to the arguments of John Knox, Muñoz et al. (2020) explicitly discuss how nature, the provider, allows us to live a life of comfort, and why our provider should be respected and protected, much in line with the philosophy of the Pacha Mama.

> When we speak about conserving nature, we are really talking about taking care of our future, because nature provides essential resources for our survival and enjoyment.

However, '*conserving*' and '*taking care of nature*' still reflect the elements of ownership that so many would like to see removed, and replaced by a sense of dependency. Since it has been demonstrated so far that humanity cannot protect nature from humans, then the obvious route to take would be to allow nature to protect itself. However, in spite of a few countries deciding to allow nature rights, the debate as to whether nature should be endowed with rights goes on.

The concept of distributive justice in relation to nature/ecosystems rights of legal protection has been extensively discussed by Sievers-Glotzbach (2013). According to Schlosberg

(2001), the idea of distributive justice, can also be applied to nature, since ecological justice demands an '*extension of recognition*' to nature, requiring that nature be seen as the '*other*' that merits justice. Baxter (2005) similarly argues that nonhuman species have a moral right to distributive justice, which entails: '*recognizing their claim to a fair share of the environmental resources which all life-forms need to survive and to flourish*.'

Taking their discussion even further, Sheehan and Wilson (2015) recognize that efforts at the national level by individual states becomes of necessity to lay the foundation for the international community to adopt an appropriate formula if they were to immediately take steps to:

- Recognize in law and enforce the fundamental rights of nature.
- Protect and enforce the rights of indigenous peoples.
- Protect and enforce the rights of other defenders of land and environment, and human rights more generally.
- Provide transparent access to environmental information and justice, consistent with the rule of law

The discussions of Sheehan and Wilson (2015) take us into the realms of co-violation (short for business and corporate violations), stating that:

> Our overarching legal and economic systems accelerate co-violations by treating nature and workers as '*resources*' to fuel short-term profit maximization for the few. Nature is particularly mistreated in light of its characterization as merely "property" to be bought, sold, and ultimately degraded for profit.

The authors find that the misperception of '*nature as property*' is in fact in-built in modern environmental laws that themselves implicitly accepting this claim of '*nature as property*.' Thus such laws legalize nature's destruction by dictating how much of the environment '*we can degrade, thus validating the continuing onslaught*.' Instead, Sheehan and Wilson (2015) propose laws grounded in the inherent rights of the natural world '*to exist, thrive, and evolve*,' and consequently call upon the UN General Assembly to adopt the Universal Declaration of the Rights of Mother Earth.

Joining the debate and lining up with those opposing the concept of nature's legal rights, Chapron et al (2019) argue that:

> The assertion that the '*introduction of legal rights for nature could protect natural systems from destruction*' is symptomatic of the speculative hype upon which the rights of nature movement is built and runs counter the evidence that existing environmental laws can be effective when well implemented.

In essence, what Chaperon et al. fail to mention is that '*existing environmental laws*' are mostly human-centered soft laws, and may be effective for single species or specific situations, but far too limited to be effective for natural systems, as argued by Santos-Martín (2019), and which resonates the earlier conclusion of Tallis and Lubchenco .(2014) and the statement of Chan et al. (2016):

> A cornerstone of environmental policy is the debate over protecting nature for humans' sake (instrumental values) or for nature's sake (intrinsic values). We propose that focusing only on instrumental or intrinsic values may fail to resonate with views on personal and collective well-being, or '*what is right*,' with regard to nature and the environment.

In their discussions, Chan et al. (2016) realize the shortcomings of only concentrating on two values, and argue it is time to engage seriously with a third class of values, one with diverse roots and current expressions: relational values, as reflected in their statement:

> Environmental policy and management should always consider the kinds of relationships people already have with nature, and how these might be engaged to lessen the negative effects of human lifestyles on ecosystems and enhance positive ones. To be more than mere marketing, environmental management must reflect on and possibly rethink conservation in the context of local narratives and struggles over a good life.

Taking the discussion even further, in a paper titled '*Rights of Nature: Rivers That Can Stand in Court*,' Cano Pecharroman (2018) proposes:

> Introducing an earth-centered paradigm in our legal systems and providing nature with the right to stand in court is only the first step towards the actual integration and enforcement of the rights of nature.

However, Cano Pecharroman (2018) accepts that there are still roadblocks, dilemmas, and unresolved questions in such a process, declaring however that:

> Recognizing that nature has legal rights and accepting these rights as part of our legal systems require not only the introduction of new laws observing these rights, but also a shift in paradigm for them to be fit in a contemporaneous legal puzzle.

Cano Pecharroman continues:

> Beyond the philosophical grounds for the rights of nature to stand in court, it is important to clarify what it means to hold these rights in legal terms. When venturing into such a debate, it is important to clarify the distinction between the legal institution of '*personhood*' and the implications of holding '*locus standi*.'

Rather than considering nature as a separate entity for which rights are being claimed as a purely academic exercise, examining today's complexity of human activities interfering with the proper functioning of ecosystems have become apparent. Gordon (2017; 2019) has been most fervent in arguing a case for the theory of personhood. To put minds at ease, Gordon states that such a theory needs not '*be seen only as a foil for corporate power*' even if a corporation as a non-human entity now enjoys the status of personhood, and appear to unjustly wield too much power over nature.

In his discussion about the endowment of personhood to the Colorado River in the USA, Miller (2019) argues that:

> Environmental personhood would recognize natural entities as legal persons, endowing them with corresponding rights and duties under the law. Standing for nature would allow such entities to litigate their grievances on their own behalf in court. If courts were to recognize these doctrines, advocates would gain a significant tool to protect natural entities from ecological catastrophe

It also needs to be remembered that corporations primarily rely on the relentless exploitation of the natural world for profit, with all the associated negative and deleterious effects and results for which they are not accountable, a situation that has also been discussed earlier by Sheehan and Wilson (2015). Basing his arguments on jurisdictions that have developed versions of legal regimes granting rights directly to nature in and for itself, Gordon (2019) states:

> The ways in which the acknowledgement of the rights of nature has played out in the jurisdictions in which it is present also evidence this statement. Law and its social context are of course mutually constitutive; it is possible today to imagine that new views on

> environmental precariousness and new legal conceptions of the standing of nature might combine to make the doctrine of environmental personhood a robustly protective one.

However, Barcan (2019), involved in the campaign for granting personhood to the Great Barrier Reef, has a word of caution in the sense that discussions of the legal personhood mechanism need to consider the dangers of unknowingly replicating dominant power relations. That is in the sense of individuals or groups showing up with the pretense of guarding nature's rights, but with the objective of appropriating nature.

With regard to opposing views, Gordon (2019) argues that environmental personhood, apart from not being considered as against the interests of corporate activities, and since the granting of corporate personhood remains a salient example of how a non-human entity as a bearer of rights has been understood and accepted, lessons from the same doctrine would pave the way for the development of environmental personhood, concluding that:

> As evidenced by the history of corporate personhood, there is no entirely unqualified right that applies to all persons across all circumstances; the actual way a '*right*' plays out is always dependent upon social, historical, and political context.

Such a statement from Gordon (2019) also reflects on the ways in which the acknowledgement of the rights of nature has played out in the jurisdictions in which it is already present. Law and its social context are of course mutually constitutive; it is possible today to imagine that new views on environmental precariousness and new legal conceptions of the standing of nature might combine to make the doctrine of environmental personhood a robustly protective one, following the example of Ecuador (South America), the first constitution to give nature itself rights. In a chapter dedicated exclusively to Rights of Nature, the Constitution of Ecuador explains that:

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

Whereas the constitutional and legal rights of nature have been engaging the legal, social and environmental discussions over the years, other strategies have also been around to at least protect nature and the natural world from human unjust interferences and harm. If the first step aiming at legally protecting nature and ecosystems becomes a reality, then the task of endowing nature with rights may be easier. However there are still some more often misguided or misunderstood associated issues that need to be resolved. These associated or contentious aspects include Conservation, Sustainability, Activism and Degrowth, all needing consideration in the quest for nature to have legal rights.

The Convention on Biological Diversity (CBD-1992), ratified by 196 nations, is the international legal instrument for the conservation of biological diversity, the sustainable use of its components and the '*fair and equitable sharing of the benefits arising out of the utilization of genetic resources*,' A New Vision for Biodiversity Conservation Strategic Plan for the Convention on Biological Diversity, (CBD-2011-2020), the Tenth Meeting of the Conference of the Parties to the Convention on Biological Diversity (CBD COP10), 18-29 October, 2010, Nagoya, Japan (Aichi Declaration) states that:

> To take effective and immediate action to halt the loss of biodiversity, so that by 2020 all the necessary policies and actions are in place and are being implemented to ensure the continued provision of ecosystem services, prevent irreversible environmental change, and avoid dangerous consequences for humankind and other life on earth.

No need to mention that 2020 has come and gone with little change effected through the promises of Aichi (2010). What is becoming also popular is the development of a new perspective in environmental policy debating whether protecting nature should be for humans' sake (instrumental values) or for nature's sake (intrinsic values). However, Tallis and Lubchenco (2014) argue that such a narrow perception of the environment in dictating conservation policies is incomplete and propose that focusing only on instrumental or intrinsic values may fail to resonate with views on personal and collective well-being, or '*what is right*,' with regard to nature and the environment, in other words a policy for inclusive conservation.

Discussing the complexity of biodiversity conservation efforts and strategies, Büscher and Wolmer (2007) comment on how there has been interest in the politics and mechanisms by which biodiversity conservation functions. Both authors discuss how considerable authority and decision-making power are ceded to a range of relatively unaccountable supra-national entities such as bilateral and multilateral donors and international conservation NGOs, endlessly competing for funding and the establishment of exclusive territories, and multinational companies and sub-national entities which, according to Chapin (2004) often by-pass *'legitimate'* state authority structures. The CMI.CHR. Mitchelsen Institute (2020) elaborates on how Conservation has become big business, stating that:

> Hardly anything makes people dig deeper in their pockets than photos of cute animals or pristine forests. With this financing a range of organizations work tirelessly to preserve forests and save animals on the verge of extinction. Many countries have implemented massive state-led conservation efforts. And yet scientists and UN experts present strong evidence we are in the midst of a biodiversity crisis and that current approaches to saving biodiversity are not bold enough.

Gamborg et al. (2012) argues that what conservation actually intends to protect may be too vague in that different human values and perceptions give rise to conflicts or dilemmas. There may be a conflict between sustaining certain human livelihoods and preserving a particular species, or there may be a dilemma between the protection of wild nature and animal welfare. The question, then, is how to address such dilemmas and disagreements explains Gamborg and co-workers.

Claims that the conservation target should shift toward ecosystem-level biodiversity became increasingly insistent in the 1990s, and emphasis of conservation objectives on the diversity of ecosystem processes as a key component of biodiversity has been proposed by Franklin (1993). In turn, the focus on ecosystems and their processes may lead to the notion that natural resources and biodiversity should be managed primarily at the ecosystem level. The concept of '*ecosystem management,'* discussed by Simberloff (1998) appears to have finally made a headway in conservation strategies within a few organizations and countries, and the target of conservation has shifted to ecosystem processes in what Callicott et al. (1999) qualifies as '*functionalism.*'

The reflections of Martin et al. (2016) on the concern of conservation scientists on biodiversity loss probably points to the traditional belief that science should only '*focus on protecting wild plants and animals and conserving viable portions of species and habitat,s emphasizing conserving natural resources needed by humanity.*' Martin et al. (2016 further observe that:

> The combination of denial, uncritical faith in technology, and the anesthetic effect of modern comfort may result in a psychological weakening preventing a decisive shift from the current

> '*age of plunder*' toward an '*age of respect*' that accepts a world governed by biophysical limits.

The present '*age of plunder*' is a reflection on humanity's excessive needs, which is translated into the wanton destruction of the natural world by businesses for profit, too happy to provide for consumers' needs, and even encourage and impose some more needs. The '*age of respect*' remains contested, the privilege of a few, and a far away common dream.

The concept of sustainable development emanates from the Bruntland Report (1987), which is anchored on the philosophy that '*human societies must live and meet their needs without compromising the ability of future generations to meet their own needs*.' The concept travelled a long way in time through Elkington's The Triple Bottom Line and Sustainable Development, [1994], The ESG, (2006), the United Nations Sustainable Development Goals (1992; 2002; 2012), the Millennium Ecosystem Assessment and Sustainable Development (2001), through to the IPCC reports, and many private and business organizations including the World Business Council for Sustainable Development (WBCSD).

Chapron et al. (2019) discuss how conservation has often been placed at the intersection of three rings representing the economy, society, and the environment. The inference is that such a nested model that emphasizes that there can be no economy without society, and that all human societies critically depend on their natural environment. The perception of Chapron et al. (2019) actually places the economy inside society and the environment as embracing society and economy, in other word leading the way into the concept of sustainable development. The concept has been discussed earlier by Folke et al. (2002), and further expounded upon by Giddings et al (2002) who believe the economy is too often given priority in policies, and the environment viewed as apart from humans in the concept of sustainable development, stating that:

> Sustainable development is a contested concept, with theories shaped by people's and organizations' different worldviews, which in turn influence how issues are formulated and actions proposed. It is usually presented as the intersection between environment, society and economy, which are conceived of as separate although connected entities.

The question that crops up all the time is whether sustainability has succeeded. Pratarelli (2016) discusses how the belief that the myth technology is capable of solving any of the world's problems, and the illusions about how engineered solutions and economic corrections will save humanity and the ecosystem, declaring that:

> Human activity already exceeds Earth's long-term carrying-capacity, yet many governments and ordinary citizens alike are focused on fostering a new round of material growth. Few academics pay more than lip service to the causal drivers behind such unsustainable behavior.

Picking up from previous discussions, a recent study by Chalfoun (2020) concludes that:

> The main factors that lead to the inability to achieve environmental sustainability include the conflict between the roles of environmental policies and the objectives focused on economic development, the failure of communicating objectives to the key stakeholders, and a lack of incentives to adopt environmental policies.

With that philosophy as background, Chalfoun (2020) argues that the concept of sustainable development is a contested concept, with theories shaped by people's and organizations' different worldviews, which in turn influence how issues are formulated and actions proposed. It is usually presented as the intersection between environment, society and economy, which are conceived of as separate although connected entities. Both Pratarelli

(2016) and Chalfoun (2020) elaborate on how these three are not unified entities, but rather fractured and multilayered, and can only be considered at different spatial levels. The fact the economy is often given priority in policies and the environment viewed as apart from humans have been too often mentioned in parallel discussions.

Activism, or collective action is not new in human history, and environmental activism, with the common agenda of protecting and preserving the natural environment has been around since the industrial revolution. The aim is to raise public awareness about a particular environmental issue by focusing on the worst examples of it. Some are international with well organized structures and branches in several countries, while going down the scale others may be national or local NGOs. Protest action such as demonstrations, blockades, pickets, protest marches and meetings are the traditional method of such organizations to get their message across to policy makers (governments), or other organizations and the wider public. It is used as a strategy for involving people in a meaningful involvement in challenging unjust laws or actions; a way of demonstrating to others the depth of commitment felt by a group about an issue; a means to obtain publicity, raise awareness and apply pressure on politicians challenging unjust laws or actions, or bad decisions

The discussions of Schlosberg and Coles (2016).point to recent developments in environmental activism, in particular movements focused on reconfiguring material flows. The desire for sustainability has spawned an interest in changing the material relationship between humans, other beings, and the non-human realm. These groups are themselves responding to, and tying together concerns about and resistance to the disconnect and capture of the political process, the dominant and encompassing circulations of power, and the alienation and resultant destruction of the non-human realm, claims the authors. Such views probably borrow from Foucault's (2009) conceptions of governmentality and biopolitics, which articulate modes of power around the circulation of materials, information, and individuals; and a new ethos around vibrant and sustainable materialism with an explicit recognition of human immersion in non-human natural systems.

For most environmental groups non-violent civil disobedience is preferred. But sometimes frustration over continued environmental destruction and biodiversity losses and the feeling of powerlessness has led to growing tensions, resulting in disruptions, and even damage to property, as exemplified in the demonstrations of the Extinction Rebellion Groups. While some may find such actions unacceptable, others find it necessary as a means of last resort. In his discussion, Manes (1992) does not condemn such environmental actions that may also be destructive to some extent, stating that:

> If our selves belong to a larger self that encompasses the whole biological community in which we dwell, then an attack on the trees, the wolves, the rivers, is an attack upon all of us. Defense of place becomes a form of self-defense, which in most ethical and legal systems would be ample grounds for spiking a tree or ruining a tire.

Some such organizations have been accused of following the route to power and funds through compromise and negotiations that may cause tensions as they are accused of selling out ideologies. However, the willingness to make deals and accept trade-offs, and to tone down on the confrontation may on the other hand allow entry into the decision-making process. Discussing strategies for environmental movements, Beder (1991) points out that the growing of tensions within and between environmental groups all over the world is tied to the extent to which they should align themselves with governments and private firms, mainly regarding disputes over corporate sponsorship and the involvement of environmental groups

in government's environmental working groups. In a discussion about *'Environmental movement power brokers*,' Doyle (1990) argues:

> The professional elite speaks the language, utilises the same arguments and is beginning to think in the same way as the governors of our society. No more arguments about wilderness; no more talk of scientific diversity; instead the game is mainstream politics: deals, bargaining, pragmatism and money.

In recent times, both governments and businesses have found environmental activitists too troublesome, and in some countries repressive laws, imprisonment and even bodily harm have been resorted to as tactics to discourage activism. Bir (2020), discussing environmental activism in some S. American countries, reckons that '*Land and environmental defenders play a vital role in protecting these climate-critical forests and ecosystems*,' but powerful corporations, sometimes in connivance with local authorities and institutions, result in too many environmental activists being murdered. Bir points out that a total of 212 land and environmental activists were killed last year alone (1919) around the world, turning activism into a life threatening activity. Defending the rights of nature can lead to fatalities, as much as defending human rights have and still lead to fatalities too. The two rights thus appear to be intertwined.

In a critical discussion about the impact of environmental activism, Rootes and Nulman (2015), although agreeing with successes in many instances, finds that the power of politics and corporate interests are slowly turning successes into failures, stating that:

> The striking thing about environmental movements is that despite their many successes, and justified celebration of their increasing influence in many policy arenas, the assault on the global environment proceeds at an unprecedented pace. Although various national and corporate interests are powerfully arrayed against them, it is likely that, through their continued advocacy and deployment of scientific evidence, environmental movements will make significant impacts upon global environmental policies and their implementation.

Some of the first ideas regarding strategies for preserving the environment and curtailing the excessive exploitation of natural resources emerged at the end of the Second World War. However, it was in the early 1970s that the concept of degrowth took off, with the publication of '*The Entropy Law and the Economic Process*', by Nicholas Georgescu-Roegen (1971), a concept that was quickly followed by the work of the Club of Rome with the '*Limits to Growth Report*' in 1972 (Meadows et al.,1972).

Degrowth is often described as aiming at opening up the democratic discussion of selective downscaling of man-made capital and of the institutions needed for such a '*prosperous way down'* (Odum and Odum, 2008). According to Muraca (2013):

> Important lesson taken from early political ecologists is that degrowth is about a (collective and individual) democratic movement of establishing limits within which human well-being and creativity can flourish.

Dale et al. (2015) reckons that there is a contradiction between sustainability and economic growth, since sustainable development simply morphed into being a reincarnation of the concept of a '*green economy,*' an attempt to discredit the concept of degrowth. Degrowth is a shadow concept that's does not come up often at discussions taking place in the economic sphere. However, Dale and co-workers contends it still shows up in many discussions, especially those related to sustainable development. In fact, when it comes to ecology and sustainable development, the idea that the current economic model based on growth is the root of the environmental problems the world is facing is becoming widespread.

The degrowth movement, as argued by Muraca and Doring (2018), recognizes that the proposed changes would require a fundamental social transformation, thus highlighting that degrowth should be regarded as an opportunity to '*repoliticise*' society. Even though the academic and activist degrowth community has expanded over the last few years, evidenced by a growing number of degrowth conferences, initiatives and academic publications, Muraca and Doring (2018) sadly recognize that the degrowth perception has remained marginalised within the political mainstream and wider public debates and has not yet sparked a '*repoliticisation*' of the broader public. In an analysis of the arguments of supporters of degrowth, Büchsa and Kochb (2019) conclude that degrowth scholars and activists have convincingly argued that degrowth in developed nations will need to be part of a global effort to *'tackle climate change, and to preserve the conditions for future generations'* basic needs satisfaction.

The discussions of Daly and Farley (2004) and Heinzerling, and Ackerman (2007) stress that the rule of ecological law, operating as a legal complement to ecological or degrowth economics, would provide a basis for establishing ecological legal regimes. Similarly, Carver (2013) recognizes that the sustainable degrowth movement would provide context for the emergence of the rule of ecological law. However, in a discussion about the concept of degrowth, Muraca (2013) proposes that the importance of defining ecological limits in which the economic activity should be embedded is not sufficient. His argument, supported by that of Brand and Wissen (2012) is that it should be acknowledged that the ecological crisis directly stems from the '*imperial mode of living*' of the global North, which is '*rooted in prevailing political, economic, and cultural everyday structures.*' Taking this into account, economic growth is not only environmentally unsustainable, but also unjust, connected with concepts of reparation of ecological debt.

In his study, '*The Rule of Ecological Law*,' Carver (2013) observes that, human enterprise having already transgresses ecological limits, '*the legal regime should support a radical re-focusing of the economy on reduction of its throughput of material and energy*.' In other words, Carver proposes that degrowth should be a further consideration in ecological legal instruments. Sustainable degrowth involves a downscaling of production and consumption that increases human well-being and enhances ecological conditions and equity on the planet. Degrowth has been a subject of discussions since the mid 70s (Gorz, 1977; Georgescu-Roegen, 1979), followed by the 1972 Club of Rome Report,'*The limits to growth*,'and taken further by the movement '*Degrowth for Ecological Sustainability and Social Equity*', with International Conferences in Paris (2008), Barcelona (2010), Venice (2012), Montreal (2012), Leipzig (2014), Budapest (2016), and Mexico (2018). It is interesting to note the Declaration of the Paris 2008 Conference:

> We therefore call for a paradigm shift from the general and unlimited pursuit of economic growth to a concept of '*right-sizing*' the global and national economies.

The second International Degrowth Conference for Ecological Sustainability and Social Equity, Barcelona 2010, ended up with an even more significant declaration:

> An international elite and a '*global middle class*' are causing havoc to the environment through conspicuous consumption and the excessive appropriation of human and natural resources. Their consumption patterns lead to further environmental and social damage when imitated by the rest of society in a vicious circle of status-seeking through the accumulation of material possessions. While irresponsible financial institutions, multi-national corporations and governments are rightly at the forefront of public criticism, this crisis has deeper structural causes.

It would be apt to conclude that:

> Never in the history of humanity has so much harm been caused, and continued to be caused to the living environment, the life supporting systems of the planet for need, greed and profit by so few.

The debate on the economic and ecological issues associated with degrowth continues, and further information can be found in the discussions and contributions of Martinez-Alier et al. (2010), Kallis (2011), Büch-Hansen (2018), Kallis et al. (2018), Büchs and Koch (2019), Feola (2019). But what has been missing all through the numerous discussions over the years has been serious thinking about acting to ensure nature's rights and the urgency for environmental/ecological laws, and the institution of an International Environmental Crimininal Court (IECC) to protect nature's rights, as proposed by Venkatasamy and White (2017).

Over the years discussions have been numerous and varied regarding the best formula to ascertain ecosystems/nature's rights as not being in treaties, directives, or other forms of soft laws, but within judicial systems internationally, rather than disseminated nationally in some sovereign states around the world, since the ongoing destruction of global ecosystems and earth systems has grown into international proportions and concerns. One of the propositions put forward has been to recognize Ecocide as an international environmental crime.

Ecocide as a crime was first introduced by biology professor Arthur W. Galston in the 1970s during the Vietnam War, when he was actively protesting the US military using Agent Orange to destroy the foliage cover and crops of enemy troops (discussed by Brady, 2014). Indeed, environmental destruction often occurs during human conflict, a modern example being the 1991 Gulf War, when Iraqi forces sett alight oil fields as they withdrew from Kuwait, and the effects of the Russian invasion of Ukraine (2022) have yet to be assessed.

The late British Barrister Polly Higgins, together with her co-workers has undoubtedly been the most active in defending the rights of nature, and reconciling Social Justice with Ecojustice. Promoting the '*Rights of Nature*', '*Wild Law*' and campaigning for an '*Ecocide Law*' has been Higgins lifelong project. Higgins (2010a; 2010b) declares that the world needs a '*Planetary Declaration on the Rights of Nature*,' which should lead to the development of a viable ecocentric democracy, or '*Ecodemocracy*', as discussed by Eckersley (2004); Baxter (2005) and Schlosberg (2007). Eco-democracy has been defined by Gray and Curry (2016) as:

> Groups and communities using decision-making systems that respect the principles of human democracy while explicitly extending valuation to include the intrinsic value of non-human nature, with the ultimate goal of evaluating human wants equally to those of other species and the living systems that makes up the Ecosphere

In 2010, Polly Higgins proposed that the UN Law Commission should define ecocide as:

> The extensive damage to, of or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the inhabitants of that territory has been or will be severely diminished.

Higgins (2012a; 2012b) further introduced a proposal that would amend the Rome Statute to include '*ecocide*' as a fifth crime to the UN Law Commission. If the crime of ecocide were to be added to the Rome Statute, ecocide cases could be heard by the International Criminal Court (ICC).

Adjudicating conflicts between rights of nature and human activities will be controversial, but no more so than conflicts between human rights to free expression and nondiscrimination. Conflicts between nature and human activities happen on a massive and systematic scale. When people and corporations have rights and nature does not, nature frequently loses, as evidenced by the continuing deterioration of the environment, and innumerable instances where the natural system or earth systems in general is losing to both corporate activities and the excessive needs of consumers (people). Corporate crime has been yet another topic of intensive discussions.

Discussing the perspective of the relationship between States and Corporate crime, Kramer (2012) observes that the social and environmental harms caused by climate change have been variously described as an ecological catastrophe, an existential threat and an apocalyptic event, but not as an environmental crime, and concludes that:

> Any consideration of environmental crime and its victims should include an analysis of anthropocentric global warming and associated climate change. Outside of a nuclear war, there is no other form of environmental crime that can produce a wider range of victims.

Higgins (2012a) discusses how international environmental law lacks frameworks to deal with mass environmental damage and destruction, referring to a 2018 UN Report recognizing that the current environmental law regime are, according to Tam (2020), '*fragmented, piecemeal, unclear and reactive*.' With no single overarching legal framework or institution and largely voluntary and non-binding obligations, international environmental law cannot be used to prosecute ecocide. Although at least two environmental treaties, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal require states to create domestic criminal laws on specific subjects; they are '*episodic and limited in scope*,' according to Higgins, only applying within state boundaries, and do not extend to the international sphere more generally.

The International Criminal Court has jurisdiction to bring cases against individuals, or '*natural persons*.' It does not have jurisdiction to bring cases against States or '*fictional persons*,' such as corporations, which have nevertheless been endowed with personhood. This could present an obstacle, because States are sometimes directly involved in actions of ecocide (like land-grabs or colonization); however, individual heads of state could be charged in the ICC, as they have been for other '*core crimes*.' And corporations commit the majority of the typically cited acts of peacetime ecocide. However, corporations cannot be charged by the ICC. Although a draft provision was introduced to charge '*legal persons*' before the ICC, that provision was defeated.

Higgins et al. (2013) argue that nature has an existential right to exist, in compatibility with the spirit of Earth Jurisprudence, defined by Cullinan (2014) as:

> A philosophy of law and human governance that is based on the idea that humans are only one part of a wider community of beings, and that the welfare of each member of that community is dependent on the welfare of the Earth as a whole.

Much of this activism is centered in the UK and Europe. In 2014, the group '*End Ecocide n Earth*' presented 170,000 signatures to Parliament in support of a European Union law against ecocide.

In 2016, after lengthy discussions, the ICC Office of the Prosecutor in its '*Policy paper on case selection and prioritisation*' declared that it would prioritise the prosecution of the four

Rome Statute crimes committed by means of '*illegal exploitation of natural resources*,'; '*land grabbing*,' and the '*destruction of the environment*.' While the policy paper was significant as it entrenched a '*green*' approach to interpreting the Rome Statute, the Office of the Prosecutor ultimately could not extend the ICC's jurisdiction without a formal amendment to the Rome Statute, which has not yet been forthcoming. A disappoint for supporters of the ecocide movement, and numerous organizations concerned about continuing environmental destruction, best expressed by the statement of Wijdekop (2016) of The Great Transition Initiative (Tellus-Cambridge, 2015) in that:

> Law is a tool for justice; international criminal law, like all law, is not static, but must reflect our growing understanding of the harm that we face. To remain complicit in ecocide on the basis that it does not fit an old model of law suggests that it is time to update our legal frameworks.

And the time has come, especially that today the consensus is that major corporations of the world are mostly responsible for environmental destruction around the world.

However, the Ecocide movement has been gathering growing state support from the rest of the world, as depicted in the following events:

- November 2019: Pope Francis has also stated that he believes ecocide should be added to the list of international crimes.
- December 2019: The small island states of Vanuatu and the Maldives called for serious consideration of ecocide crime at the International Criminal Court's assembly.
- Early 2020: The Swedish workers movement urged Sweden to lead on proposing ecocide crime.
- June 2020: President Macron of France promised to champion the recognition of ecocide on the international stage.
- November 2020: The newly formed Belgian government pledged to '*take diplomatic action to halt ecocide crime*', and two motions on ecocide have recently been submitted to the Swedish parliament.
- December 2020: An official statement made to the ICC's Assembly of States Parties by Deputy Prime Minister & Foreign Minister Sophie Wilmès made Belgium the first European nation to raise criminalising ecocide at the International Criminal Court.
- December 2020: Spain's Foreign Affairs Parliamentary Committee passes a resolution calling on the government to study the possibility of criminalising ecocide at national and international levels.

International lawyers Philippe Sands QC and Dior Fall Sow are co-chairing an expert drafting panel on the legal definition of '*ecocide*' as a potential international crime that could sit alongside War Crimes, Genocide and Crimes Against Humanity. Launched with preparatory work in November 2020, and set to draft the definition over the early months of 2021, the panel has been convened by the Stop Ecocide Foundation at the request of interested parliamentarians from governing parties in Sweden. The invasion of Ukraine by Russia in 2022 should also fit into the agenda of the panel.

However, analyzing the calls of Higgins and supporters, Green (2019) proposes that rather than amending the Rome Statute to add ecocide, a new Ecocide Convention could be negotiated. As part of this Convention, an International Environmental Court could be convened to hear cases involving transnational environmental crime. An International Environmental Court could be composed of experienced environmental experts capable of evaluating ecological harm and remedies.

In an attempt to move away from the ICC, The International Tribunal for the Rights of Nature was created by the Global Alliance for the Rights of Nature (GARN) in January 2014. The Tribunal has been created as a permanent tribunal and it will hear cases from around the world on an ongoing basis. The Tribunal aims to create a forum for people from all around the world to give a voice to protest the destruction of the Earth, destruction that is often sanctioned by Governments and Corporations, and to make recommendations about Earth's protection and restoration, and has as primary objective:.

> To make the Rights of Nature an inextricable part of our legal system and society demonstrating how courts and judges should treat environmental cases through the Right of Nature Tribunals.

The Global Alliance for the Rights of Nature positioned itself as 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 and to making Rights of Nature an idea whose time has come. GARN explains its decision to move discussions into action by stating:

> Rights of Nature is a new approach to environmental law, which views nature not as a series of resources that human beings can use, but as a living subject with its own interests and rights.

The primary premise of the Alliance is that in order to ensure an environmentally sustainable future, humans must reorient themselves from an exploitative and ultimately self-destructive relationship with nature, to one that honours the deep interrelation of all life and contributes to living in harmony with the natural environment. An essential step in achieving this is to create a system of jurisprudence that sees and treats nature as a fundamental, rights bearing entity and not as mere property to be exploited at will.

The Tribunal's other objective is to create a framework for the legal recognition of the Rights of Nature within the EU legal order as a prerequisite for a different and improved relationship between human beings and the rest of nature, with a clear objective:

> The Tribunal aims to create a forum for people from all around the world to speak on behalf of nature, to protest the destruction of the Earth, destruction that is often sanctioned by governments and corporations, and to make recommendations about Earth's protection and restoration.

The Tribunal is clear in stating that the main culprits in the destruction of Earth Systems are either governments, or corporation, or both working together, which is actually the reality of today's environmental problems. Although GARN keeps referring to the EU, its global implications are too obvious.

This necessary step will involve the legal recognition of the Rights of Nature at all levels and a shift from a purely anthropocentric worldview to a more ecocentric one that sees humanity as one species within a radically interconnected web of life, where the wellbeing of each part is dependent on the wellbeing of the Earth System as a whole.

The three elements of the Tribunal's ecological mandate are:

1. The introduction of the substantive rights of nature;
2. The identification of new rules and methods of interpretation and application of the Law; and
3. The introduction of the obligation to take into consideration the Rights of Nature in all EU policies, and not only in the decisions of the courts.

Furthermore the Tribunal provides a framework for educating civil society and governments on the fundamental tenets of Rights of Nature and serves as an instrument for legal experts to examine constructs needed to more fully integrate Rights of Nature. The Tribunal aims at providing a systemic alternative to environmental protection, acknowledging that ecosystems have the right to exist, persist, maintain and regenerate their vital cycles, with legal standing in a court of law. The Tribunal has a strong focus on enabling Indigenous Peoples to share their unique concerns and solutions about land, water, air and culture with the global community.

The Tribunal further aims to formulate judgments and recommendations for the Earth's protection and restoration based on the Universal Declaration of the Rights of Mother Earth and existing nature's rights laws. The IUCN World Conservation Congress in Hawaii (2016). incorporated the Universal Declaration of the Rights of Nature as the organizational focal point in IUCN's decision making, as a sign that indeed the time has come for recognition of nature's rights.

Milam (2014), an executive of GARN further states:

> We encourage the UN General Assembly to continue and expand the dialogue around Rights of Nature not only in the context of '*Harmony with Nature*' but in the broader context of creating the '*Future We Want*' through advocating economic systems and structures that are truly aligned supporting a balanced, healthy Earth Community.

Setting up courts in different countries, nine prominent cases have been presented to a distinguished international, multicultural panel of judges so far. Among the cases were the Chevron-Texaco pollution case (Ecuador); BP Deep Horizon oil spill (USA); Yasuní-ITT oil project (Ecuador); the endangerment of the Great Barrier Reef by coal mines (Australia); hydraulic fracturing (USA) and the impacts of Climate Change (global). The Tribunal will hear and try five critical aquatic ecosystem cases brought by frontline, impacted communities, and experts from across Europe. One of the aquatic cases in the series is focusing on Lake Vättern (Sweden).

Taking nature's rights a step further, and stressing on the urgent necessity to embed environmental protection into the judiciary and international law, the role and responsibility of the Earth System Governance ought explore the broader spectrum of Earth System Law as an obvious and practical alternative to propositions so far, claims Kim and Mackey (2014) and Kotzé and Kim (2019). The concept and its intricacies have been critically analysed and discussed by Kotzé and Kim (2019), observing that:

> While the focus of earth system governance is explicitly on the human-social aspects of Earth system changes, law has played a conspicuously peripheral part in the earth system governance scientific agenda.

Kotzé and Kim (2019) admit that the concept of Earth System Law has not yet been fully developed through discussions so far, but over the years, scholars have expressed a need to progress from environmental and ecological law to the even more embracing notion of law's regulatory object, as expressed in the philosophy of Earth Systems. In earlier discussions Kotzé (2014; 2018a, b.) associates the failure of environmental laws to ensure any meaningful degree of sustainability with respect to humanity's continuing dependence on and interaction with ecological processes to separating humans and '*nature*'. The non-human world ('*nature*'), Kotzé proposes '*has been relegated to a mere regulatory object to satisfy the needs of environmental law's main referent, namely its human subjects*.'

And to quote Hamilton (2014) in this respect:

> Environmental law squarely rests on the assumption that the grand and the everyday events of human life take place against a backdrop of a blind and purposeless nature.

Earlier, Young and Steffen (2009) argued that earth law should be conceived and founded on the recognition that the Earth is a human-dominated, deeply intertwined, social-ecological system. The Anthropocene has moved the planet into a novel geological epoch characterized by a human earth-centered domination of the planetary system, considering neither humanity nor nature as a central reference point, and the entire community of life as the central fulcrum around which it revolves claims Young and Steffen (2009).
Adding to the discussion and propositions of Young and Steffen (2009), Mares (2010) concludes his discussion about the same issues by declaring that:

> To be sure, environmental law, especially in its liberal Western orientation, has been singularly successful in separating humans and '*nature*'. The non-human world ('*nature*'), has been relegated to a mere regulatory object, there to satisfy the needs of environmental law's main referent, namely its human subject.

In his discussion about whether conservation should have another hype, with reference to the proposal of Stone (1972) to grant legal personhood to nature, Bétaille (2020) concurs that the proposition may have had a rationale given the limited extent of environmental law at that time. But Bétaille finds it difficult to understand what rights of nature could achieve today, considering what '*environmental law cannot achieve under equal contexts of corruption, political pressure by interest groups and rule of law.*' Bétaille believes that existing environmental laws are perceived as anthropocentric, and that they '*focus on the intrinsic value of nature with many species without any known interest for humans being legally protected*.' The author continues that while rights of nature may contribute to the ongoing philosophical debate about whether conservation is for humans or for nature's own sake, '*their legal added value to address the conservation crisis may in practice be insignificant.*'

However, Bétaille's point of reference must have been limited to earlier developments in France alone, and existing human-centred environmental laws, ignoring the efforts of the European Economic and Social Committee (2019), working towards an EU Charter of the Fundamental Rights of Nature, and stating:

> Never before has it been clearer that if we are to survive and have future generations that thrive that we need a new way forward - not based on separation and greed - but instead on a regenerative cycle founded on mutual respect and an understanding of our connectedness and interdependence with all of life.

Asking the question: '*After 25 years of trying, why aren't we environmentally sustainable yet?*', and discussing the reasons, Michael Howes Associate Professor in Environmental Studies, Griffith University (2017) concludes:

> The economic failures stem from the basic problem that environmentally damaging activities are financially rewarded.

However, the conclusion of Howes (2017) should not be an indication that the quest to curtail exploitative development for profit, and find the best formula to endow nature with rights should be diluted. There are still lessons to be learned. Discussing, his thesis '*What if nature became a legal person*', de Toledo (2020) of the World Economic Forum summarizes his concept of a proper understanding between humans and nature in the following terms.

> Humans have long treated nature as little more than an exploitable resource - and we are now living with the consequences. Granting legal personhood to things like forests, rivers and

> species could give them the best chance of survival and renewal. To achieve this, we must first learn to listen to - and understand - the language of nature itself.

Contrary to the influence and effects of endless academic discussions about whether nature should or should not have rights, growing global consciousness of environmentalism in tandem with increasing threats to social and environmental sustainability, and climate change, have contributed to the '*greening*' of constitutions in several countries. The frequent high-profile global summits on environmental matters, including Stockholm (1972), Rio (WCED-1992), Kyoto (1997), Rio again (2012), and Paris (2015), among dozens of others, seem to have influenced drafters of domestic constitutions, who have included sustainable development, climate change, biodiversity, protection of waters, and other environmental matters within their constitutional texts.

What have been academic discussions and arguments to this day have not brought the world any nearer to recognising the Rights of Nature, and reconnecting humanity to ecosystems through legal instruments. As Washington et al. (2018) rightly puts it:

> Justice for nature remains a confused term. In recent decades justice has predominantly been limited to humanity, with a strong focus on social justice, and its spin-off - environmental justice for people.

The difficulties have been mainly because of anthropocentric and human-centered mindsets, and unwillingness to flexibility towards more ecocentric/biocentric philosophies. The stagnation of discussions to that end remains due to the inability to understand the true relationship between humans and nature, and earlier Rowe (1994) tries to alleviate fears in a statement:

> Ecocentrism is not an argument that all organisms have equivalent value. It is not an anti-human argument nor a put-down of those seeking social justice. It does not deny that myriad important homocentric problems exist. But it stands aside from these smaller, short-term issues in order to consider Ecological Reality. Reflecting on the ecological status of all organisms, it comprehends the Ecosphere as a Being that transcends in importance any one single species, even the self-named sapient one.

To summarise the discussions about the Rights of Nature, the reasoning behind the debate about Ecological Law is best summarised by Percival (2007):

> Environmental laws typically enshrine in the legal system the reductionist, piecemeal approach of environmental economics, rarely fully adopting a systems perspective. As a result, the envelope of contemporary environmental law is deficient as a means to enclose and regulate the human enterprise within systems-based ecological constraints. Just as ecological economics emerged to address limitations of environmental economics, the rule of ecological law is needed to transcend limitations of contemporary environmental law

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