

THE HUMAN RIGHT TO THE ENVIRONMENT: AN ECOCENTRIC PROPOSAL



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GLOBAL CLIMATE EMERGENCY AND PLANETARY BOUNDARIES

- On November 2019, the journal Bio-Science published an article endorsed by further 11.000 scientists from 153 nations in which:

*We declare clearly and unequivocally that planet
Earth is facing climate emergency*

- The Secretary-General of the United Nations has urged countries to declare climate emergency until carbon neutrality is reached.
- Oxford Dictionary chose Climate Emergency as the word of 2019 and defines the term as:

*A situation in which urgent action is required to reduce or halt
climate change and avoid potentially irreversible environmental
damage resulting from it*

- Planetary boundaries distinguish between a safe operating space and entering a danger zone with higher chances of crossing tipping points .

**Welcome Humanity to the Anthropocene, the Quadruple Squeeze on
planet Earth, and the Great Acceleration of the human enterprise.**

XXI CENTURY AND THE FAILURE OF ANTHOPOCENTRIC LAW

- Failure of the Western Liberal concept of the rule of Law, focusing only on the well being of Humans, based on the erroneous beliefs that Humans are separate from the rest of the interconnected web of life.
- Nature should be understood as a community to which we belong rather than a mere commodity for us to exploit.
- Efforts to protect Nature are undermined by prioritizing economic growth, trade and corporate profits over environmental protection and addressing weaknesses in the rule of Law (e.g., corruption and weak institutions), poverty, armed conflict, limited civic space, the criminalization of Human Rights defenders and the failure to recognize the rights of indigenous peoples and local communities.
- States have created hundreds of treaties and declarations pledging to protect Nature and have not responded with appropriate urgency to the increasingly dire warnings issued by the world's leading scientists.
- The current climate emergency and environmental degradation reveal the inadequacy and failure of the international legal framework to ensure the full enjoyment of human rights and fundamental freedoms.

PROTECTION OF THE ENVIRONMENT AS *A SINE QUA NON* FOR HUMAN RIGHTS

Judge Christopher Weeramantry



- All human rights ultimately depend on a healthy biosphere. Without healthy, functioning ecosystems, which depend on healthy biodiversity, there would be no clean air to breathe, safe water to drink or nutritious food to eat.
- International Law progressively considers the environment as an essential element to guarantee the enjoyment of human rights.
- The Human Rights Council adopted its first resolution on human rights and the environment in 2011.
- John Knox, Former UN Special Rapporteur on human rights and the environment:

An unusual aspect of the development of human rights norms relating to the environment is that they have not relied primarily on the explicit recognition of a human right to a safe, clean, healthy and sustainable environment—or, more simply, a human right to a healthy environment. Although this right has been recognized, in various forms, in regional agreements and in most national constitutions, it has not been adopted in a human rights agreement of global application, and only one regional agreement, the African Charter on Human and Peoples' Rights, provides for its interpretation in decisions by a review body (UN Doc. A/HRC/37/59, para. 11).

REVAMPING HUMAN RIGHTS TO CONFRONT THE GLOBAL NATURE EMERGENCY

- The first human rights instruments did not include a right to a healthy environment.
- From the second half of the last century and progressively, the concept of human rights has been expanded to accommodate a broad spectrum of interests and a comprehensive combination of beneficiaries.
- 155 countries recognise the right to a clean, safe, healthy and sustainable environment in various forms.
- The achievement of the advancements in this direction would have not been possible without the transformation of the legal order which did not acknowledge these rights.
- Environmental law and human rights law have co-evolved for the past decades. Question remains whether human rights are the appropriate tool to address or respond to environmental rights and degradation?
- Global Commons intended for the universal use of all living species and its governance based on trusteeship.

THE SCOPE OF A NEW HUMAN RIGHT TO THE ENVIRONMENT

Damage to the biosphere is having a major impact on a wide range of human rights and could have catastrophic impacts in the future. Among the human rights being threatened and violated are the rights to a safe, clean, healthy and sustainable environment, life, health, food, water and sanitation, of the child, an adequate standard of living, development and culture.

SUBSTANTIVE RIGHTS

Non-Discrimination **Health**
Life Women's Rights Children's Rights
Sovereignty over Natural Resources
Water **Sanitation**
*Enjoyment of the Benefits of Scientific Progress
and its Applications* **Self-Determination**
Indigenous Rights **Dignity** **Food**
Housing

PROCEDURAL RIGHTS

Access to Information
Public Participation **Access to Justice**
Free, Prior, & Informed Consent
Mandatory Environmental Impact Assessments
Effective Legal Remedies
Freedom of Peaceful **Free Expression**
Assembly **Freedom of Association**

Source: Environmental Rule of Law: First Global Report

AN ECOCENTRIC HUMAN RIGHT: A SYSTEMIC ALTERNATIVE

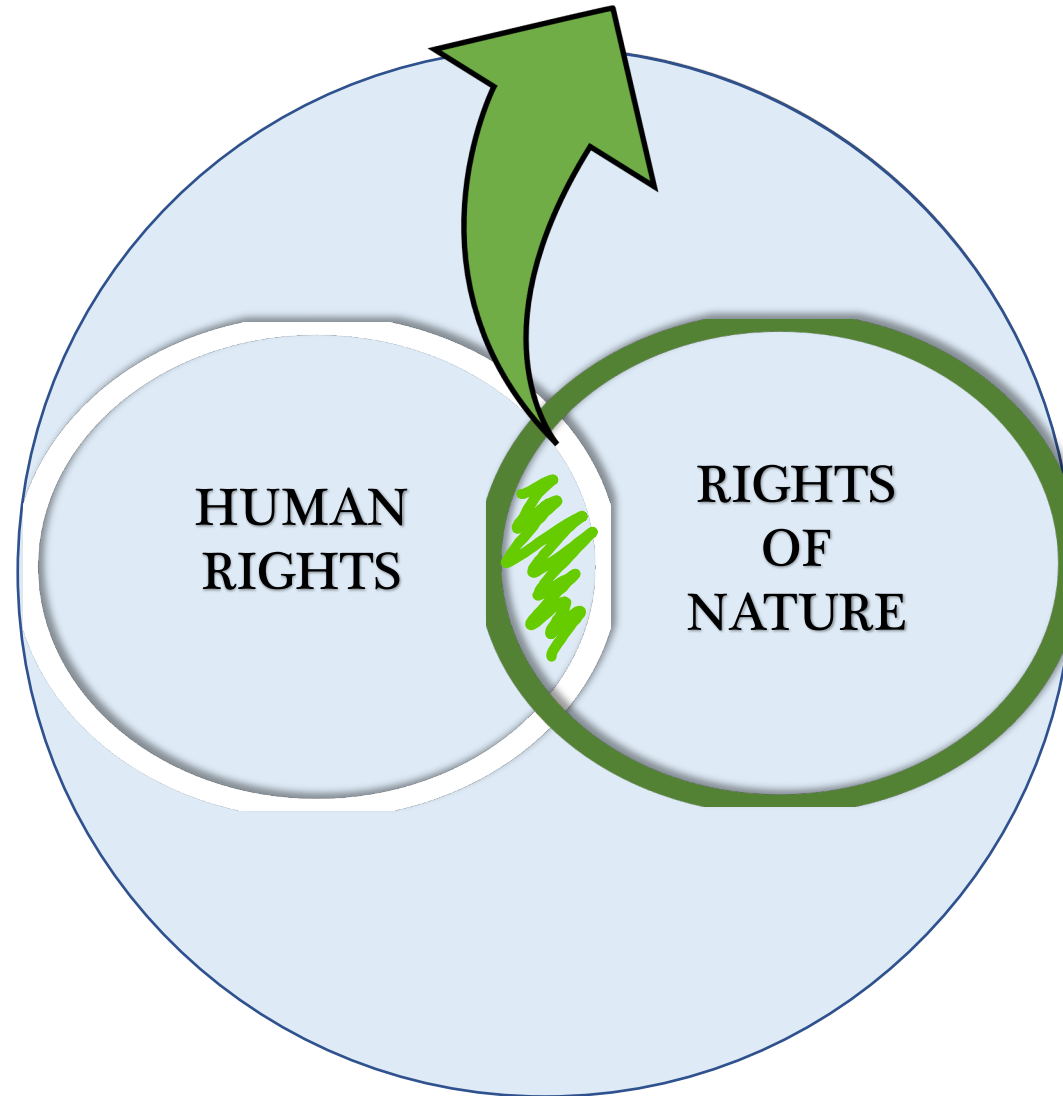
- The human right to the environment may constitute one of the most confusing legal and political proposals that the international community has to cope with.
- Law must adapt to ecological and scientific reality in order to address the main challenges of today. Such recognition is crucial in making legal systems proactive in tackling our emergency challenges.
- Radical change in the entire legal system, by guaranteeing Nature's primacy over economic and political interest.
- An ecocentric movement is an anti-colonial movement seeking to safeguard and restore the integrity of ecosystems and ecological processes. It seeks to secure at least half of the Earth in a self-willed state and to bring into existence human societies that are compatible with ecologically healthy populations of all species natives to a place.
- Most important contribution of this proposal may be to help frame difficult choices and trade-offs.

“But the truth is that the most systemic threat to humankind remains climate change”
(António Guterres, UN Secretary General, March 29th 2018).

AN ECOCENTRIC HUMAN RIGHT TO THE ENVIRONMENT



PLANETARY BOUNDARIES



ECOCENTRIC HUMAN RIGHT TO THE ENVIRONMENT SYLLABUS

Planetary Boundaries – Wilderness - Conserve, Protect, Restore - Ecological Integrity - Rights Of Nature - Rights Of Indigenous People - Universal – Transversal – Progressive – Solidarity – Precautionary – Polluter Pays – Common But Differentiated Responsibilities – Intergenerational and Interspecies Equity – Ecological Sustainable Development – Biodiversity Conservation – Ecological Impact Assessment – Ecological Justice – Harmony- Vulnerability – Hope – Systemic Sustainability- Equity – Human Rights Defenders – No Harm – International Cooperation – *In Dubio Pro Natura* - Due Dilligence – “Protect, Respect, Remedy” Framework – *Buen Vivir* – Prevent Future Pandemics – One Health Approach – Nature-Based Climate Solutions – Local Communities – Environmental Constitutionalism – Ecofeminism – Ecoconstitutional State – Rule of Law for Nature – Environmental Democracy – Non Regression – Ecological Impact Tracing – *actio popularis* – Intrinsic Value of Biodiversity- Independent Administrative Authorities – Earth Jurisprudence – Wild Law – Holism – Generation Restoration - Ecodependence – Dignity – Environmental Ethics – Global South – Less Poverty – Lower Rates of Deforestation – Better Protection of the Biodiversity and Ecosystem Functions – Accountability – Capitalist crackdown – Resilience – Environmental Education – Green Courts – Environmental Rights – Degrowth – Survival – Ecodependence – Green Future – Rights Based Approach – Information – Public Participation – Access to Justice and Effective Remedies -

LEGAL PERSPECTIVES AND SOURCES FOR AN ECOCENTRIC HUMAN RIGHT

1972	Stockholm Declaration	2015	Declaration on Human Rights And Climate Change (GNHRE)
1982	World Charter for Nature	2016	Oslo Manifesto for Ecological Law and Governance
1987	Brundtland Report on Legal Principles for Environmental Protection and Sustainable Development		IUCN World Declaration on the Environmental Rule of Law
1991	UNECE Draft Charter on Environmental Rights and Obligations	2017	Draft Global Pact for the Environment
1992	Rio Declaration on Environment and Development		UNESCO Declaration of Ethical Principles in Relation to Climate Change
1994	Special Rapporteur “Draft Principles of Human Rights and the Environment”, known as the Ksentini Declaration		Projet de Pacte international relatif au droit des êtres humains l'homme à l'environnement de Centre international de droit comparé de l'environnement
1998	Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)	2018	Declaration of the International Symposium on the Rights Of Nature
2000	Earth Charter		UN Special Rapporteur on Human Rights and the Environment - Framework Principles on Human Rights and the Environment
2006	Manuel sur les droits de l'homme et de l'environnement du Conseil de l'Europe		UN Report of the Secretary General : Gaps in international environmental law and environment-related instruments: towards a global pact for the environment
2007	UN Declaration on the Rights of Indigenous Peoples		Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement)
2009	Conservation Initiative on Human Rights		
2010	Universal Declaration of Rights of Mother Earth		
2012	<i>The Future We Want</i> , outcome document from the Rio+20 Conference		

- Environmental Constitutionalism
- Reports from the UN Special Rapporteur on human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment
- SG Reports on Harmony with Nature

DEFINITION OF AN ECOCENTRIC HUMAN RIGHT TO THE ENVIRONMENT

The right of all human beings, non-human animals, plants and ecosystems to a natural environment where they can thrive and prosper, bringing an ecological sustainable development to the present and future generations by guaranteeing international protection and restoration of the integrity of the Earth's ecosystems.

UNGA DECLARATION OF A HUMAN RIGHT TO THE ENVIRONMENT



- UN Special Rapporteur on Human Rights and the Environment:

Along with 1,000 civil society organizations, I'm urging the United Nations Human Rights Council and the General Assembly to pass resolutions recognizing the right to a healthy environment. Although not legally binding, this would be a powerful catalyst for change, and could later be strengthened by including the right to a healthy environment in the Universal Declaration of Human Rights – which would be the first addition to the declaration since its creation in 1948 (David Boyd, 2020).

- The Special Rapporteur recommends that the Human Rights Council consider supporting the recognition of the right in a global instrument. A model could be the rights to water and sanitation, which, like the right to a healthy environment, are not explicitly recognized in United Nations human rights treaties but are clearly necessary to the full enjoyment of human rights.

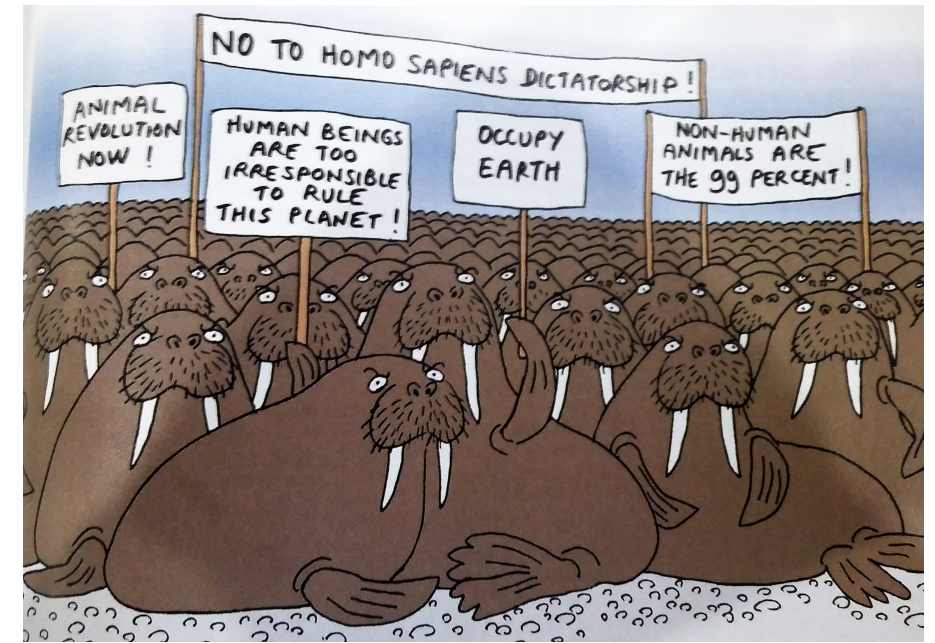
UNGA DECLARATION OF A HUMAN RIGHT TO THE ENVIRONMENT

1. Building up an econcentric *momentum*.
2. From *lex lata* to *lex ferenda*: discovering new perspectives in law making.
3. Added value of a UNGA Declaration.
4. Featuring an Ecocentric Human Right to the Environment within the UN.
5. Structure of the Declaration.
6. Definitions, principles, rights and duties.
7. Moving forward and open questions of the Declaration.

If interested, please write to sola.oriol@gmail.com for the full Declaration in Spanish.

CONCLUSIONS

- Systemic crises need systemic alternatives.
- Trend is not Destiny: It is not too late! But time is running out!
- Humanity must re-evaluate its fundamental relationship with Nature or endure devastating human rights violations.
- We are entering a new era in which environmental considerations are situated on the peak of the different elements defining human needs and available instruments to meet these needs.
- The key to this future evolution lies in both acknowledging the ecological roots of all proposals of human freedom and expanding the current framework of human rights to include those of non-human beings, ecosystems or future generations, thanks to the preservation of the integrity of the Earth's ecosystems.



**Is an Ecocentric Human Right to the Environment just a new label?
Or Is there a glass ceiling for an Environmental State?**

In Wilderness is the Preservation of the World

Henry David Thoreau

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THANK



AN ECOSYSTEM

YOU!!!

A HUMAN RIGHT TO THE ENVIRONMENT:

AN ECOCENTRIC PROPOSAL

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