

FROM GREEN RIGHTS TO RIGHTS OF NATURE: FOSTERING SYNERGIES

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Can the approach based on environment-related Human Rights be reconciled with the approach based on the Rights of Nature ? In this article, Phillipe Cullet studies the synergies between these methods and how they actually reinforce one another. In examining how these approaches are in reality complementary, the author highlights the necessity of framing a new category of rights that would bring them together : eco-human rights.



1/ (Human) Environmental Rights and Beyond

The progressive recognition of procedural and substantive environmental rights has contributed significantly to the potential of environmental law to usher changes that make a difference to people's lives. At the same time, the link between environmental protection and human rights has been sometimes controversial. This delayed until 2022 the recognition of the human right to environment by the UN General Assembly ([UNGA Resolution 76/300](#)) and a binding recognition is not yet on the agenda, despite the fact that most countries of the world, as well as some regional human rights regimes already recognise the right. During the decades of slow progress towards the recognition of a substantive right, procedural environmental rights witnessed more progress with the adoption of two regional conventions, the 1998 [Aarhus](#) and the 2018 [Escazú](#) conventions.

These various developments remain limited either in terms of binding recognition or in terms of geographical scope. More broadly, the rights language in the environmental field is fundamentally constrained by the anthropocentricity of human rights. This has led to calls for rebalancing environmental discourses towards ecocentric framings. At the UN level, this is known as Harmony with Nature, kickstarted in 2009 ([UNGA Resolution 64/196](#)). In broader debates, it is generally the term rights of nature, which is used to refer to ecocentric perspectives on environmental protection.

The entry point into debates over rights of nature is often an opposition between anthropocentric and ecocentric perspectives. The ecocentric focus is indeed central, for instance, in terms of finding ways to give nature its own voice. This explains some of the opposition that rights of nature have

faced until relatively recently, linked, for instance, to the fact that giving nature legal personality challenges the entrenched perspective that nature can be a subject of property. ^[1]

2/ Synergies between anthropocentric and ecocentric perspectives

There is no inherent contradiction between environment-related human rights and rights of nature, in the way in which they have been realised in different parts of the world. In fact, they reinforce each other.

The first general link between an anthropo- and eco-centric perspective is that the overall goals of rights of nature and (human) environmental rights are largely similar. In fact, one way to look at rights of nature is to see them as an attempt to frame a new discourse to achieve the goals that anthropocentric environmental law has set for itself over the past five decades, but failed to realise. More specifically, rights of nature propose to move away from the framing of integration between environment and development that has been at the roots of sustainable development since the 1992 Rio Declaration ([principle 2](#)) towards a clear prioritisation for nature. In other words, rights of nature are not conceived as distinct from the concerns of society. Rather, they seek to give a new orientation to the way nature, society and economy are balanced by giving the former a clear policy priority. This is the case in terms of international and national discourses. Thus, at the UN level, harmony with nature was structured from the outset around the need to place 'special emphasis on the social and environmental pillars of sustainable development' ([A/65/314](#) , para 4). There is consequently no perceived opposition between sustainable development and harmony with nature but rather an understanding that a rebalancing away from the priority given to economic growth is overdue.

In terms of rights discourses, rights of nature provide an apt counterpart to human rights in highlighting the central position that must be given to nature. At the same time, they contribute to highlighting specific elements that are particularly relevant for a conversation around the environment. The first is the collective dimensions of nature protection. This is reflected in some of the national-level regimes already in place, which reflect in particular indigenous peoples' management of specific elements of nature, such as rivers in [Colombia](#) or [New Zealand](#) . This is true more generally for environmental concerns in the context of the global climate crisis, such as temporary or permanent migration due to climate harms, which cannot be reduced to individual concerns, where whole communities are concerned.

Rights of nature also bring to the fore the need for environmental policies to be much more grounded and more responsive to local understandings of nature, local protection and management arrangements, livelihoods and local (customary) rights. This is equivalent to calling for bottom-up processes and for the recognition that society matters at least as much as economy in finding solutions to environmental crises. This is well reflected in indigenous peoples' environmental governance at the local level, but is much broader in scope. The adoption of a [law protecting the Mar Menor](#) in Spain was, for instance, associated with a wide-ranging [campaign](#) at the local level.

The right to environment and rights of nature thus operate in a fashion that makes them more complementary than opposed. The relationship between rights and the environment is enriched by this new perspective. On the one hand, the human right to environment offers a framing that gives the environment the imprimatur of being primordial for human societies. This is indeed the case since, apart from the right to environment, the realisation of a series of rights is dependent on nature, such as the rights to water, food and health. On the other hand, rights of nature use a language that is reminiscent of this prioritisation given to human rights in societies where they operate, but that does so in terms of emphasising the dependence of society on nature by giving priority to the latter.

At present, rights of nature and the human right to environment are generally seen as distinct. Yet, in a context where they tend towards similar aims, it is critical to consider ways to highlight synergies between the two. This is not an entirely new idea since linking ecocentric and anthropocentric perspectives has already been attempted in terms of developing biocultural rights, focusing in particular on community stewardship of the environment. ^[2]

3/ Operationalising Connections through Eco-Human Rights

At this juncture, the framing of a third generation of environmental rights is necessary in the face of the rapidly worsening global climate crisis and the environmental polycrisis that affects most parts of the Earth. Such rights bringing together environmental rights and rights of nature may be framed as eco-human rights. ^[3] Such eco-human rights contribute to:

Put the environment and society ahead of concerns, such as economic growth;

Introduce a collective dimension to the rights discourse, in consonance with the fact that nature is often a commons on which many people depend, rather than an individual concern;

Provide the scope for a multi-scalar framing of rights that goes beyond the traditional relationship between individuals and one state. This can be illustrated, for instance, with the case of water scarcity concerns, which may be local in terms of access to surrounding water sources influenced, for instance, by deforestation in the area while being linked as well to global anthropogenic climate change.

Broaden the understanding of the duty holder, to include states, as well as private sector actors, in recognition of the important and increasing impacts of corporations on the environment;

Foster a sense of collective responsibility and help in finding ways to operationalise such responsibility at the international level. This is a debate that brings together questions of extraterritorial obligations of states in the context of human rights, ^[4] and questions of collective responsibility for the climate crisis. ^[5]

The recognition of eco-human rights would go a long way in giving environmental protection the renewed priority that it desperately needs, in particular in a context of pressure felt in different parts of the world to weaken existing environmental standards. ^[6] The climate crisis demands effective action at the global level. It is just as crucial to ensure that this is done in relation to the rights and concerns of nature protection at the local level, itself framed around the needs of society. These rights could in turn favourably impact domestic legislation and litigation towards outcomes that integrate more effectively environmental concerns and rights concerns that are often still seen as distinct.

The recognition of eco-human rights first requires progress on the recognition of rights of nature at the international level. Until recently, progress in this regard has been slow, but the tide may be turning. In the context of the IUCN, a 2012 resolution mandating the Director General start considering rights of nature 'as a fundamental and absolute key element' ([WCC-2012-Res-100](#), para 1) laid largely dormant for a decade. A process has now been initiated through a joint IUCN/World Commission on Environmental Law (WCEL) [task force on rights of nature](#) set up in 2022 seeking to take this mandate forward. At the UN level, UNEP and UNDP are for the first time in 2023 engaging with rights of nature and seeking to adopt a joint guidance document. These international initiatives respond to the fast development of rights of nature frameworks at the national level in various regions of the world and confirm the need for much further engagement with the evolving ideas embedded in rights of nature frameworks.

References

^[1] eg Susana Borràs, 'New Transitions from Human Rights to the Environment to the Rights of Nature', 5/1 *Transnational Environmental Law* 113-43 (2016).

^[2] eg Kabir Sanjay Bavikatte & Tom Bennett, 'Community Stewardship: The Foundation of Biocultural Rights', 6/1 *Journal of Human Rights and the Environment* 7-29 (2015).

^[3] eg Philippe Cullet, 'Confronting Inequality Beyond Sustainable Development – The Case for Eco-human Rights and Differentiation', 31/1 *Review of European, Comparative & International Environmental Law* 7-15 (2022)

^[4] eg Ralph Wilde, 'Human Rights Beyond Borders at the World Court: The Significance of the International Court

of Justice's Jurisprudence on the Extraterritorial Application of International Human Rights Law Treaties', 12/4 *Chinese Journal of International Law* 639-77 (2013).

[5] eg Sãde Hormio, 'Collective Responsibility for Climate Change' , 14 *WIREs Climate Change* e830 (2023).

[6] eg Mariana M. Vale et al., 'The COVID-19 Pandemic as an Opportunity to Weaken Environmental Protection in Brazil', 255 *Biological Conservation* 108994 (2021).