OCTOBER 2024
No 328

Author
Jérémie Gilbert

Coordination
Farid Lamara (AFD)
Sarah Hayes (AFD)

Research papers

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Debates, tensions and complementarities

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The nexus between “Human rights” and the “rights of nature”. Debates, tensions and complementarities

Author
Jérémie Gilbert,
University of Roehampton (London)
Professor of Human Rights
Centre for Equality, Justice and Social Change

Coordination
Farid Lamara (AFD)
Sarah Hayes (AFD)

Abstract
In recent decades, initiatives to recognize the rights of nature have multiplied, giving rise to a global movement. Yet there are many possible synergies between this movement and human rights. They are part of the same philosophical, ethical and moral thinking of recognizing rights based on the inherent and intrinsic values of living entities - both human and non-human. In this context, this research looks at the links between the triptych: conventional human rights, the right to a healthy environment and the rights of nature, with the aim of offering an analysis of the interdependence between these families of rights and the way in which development actors can grasp these issues within an ecocentric logic.

The aim of this reflection is not merely theoretical. Indeed, human rights jurisprudence is increasingly integrating the rights of nature as part of the right to a healthy environment. The right to a healthy environment thus emphasizes the link between the well-being of human beings and the rest of the natural world - underlining the intrinsic reciprocity between all these elements.

The complementarity of human rights and the rights of nature is also reflected in the efforts of indigenous peoples and environmental activists to link cultural rights with a relational approach to nature. The latter fosters the emergence of a legal approach that sees the natural world as an interconnected system, made up of numerous forms of life in dynamic relationship with one another, encompassing the biosphere as a whole - both human and non-human. The more relational approach to nature represents an important element in the emerging jurisprudence of international and regional courts concerning the rights of indigenous peoples. It underlines the importance of moving away from human/nature dichotomies to think differently about the relationship between humans and non-humans, and to revise the relationship with the living, taking into account the approaches of indigenous peoples.

As such, the ambition of this research is to analyze how these connections between different families of rights can contribute to a new model of development that is truly sustainable, for all – humans and non-humans. Nevertheless, this study also analyzes potential conflicts between human rights and the rights of nature, given that environmental protection measures can restrict the scope of individual freedom of action and are likely to limit the enjoyment of human rights. As examined in this report, the principle of proportionality - which is often at the heart of human rights decisions - could become a vehicle for managing such conflicts. This principle places human interests and the interests of nature on an equal footing - rather than imposing any hierarchy between these

sometimes divergent interests.

Finally, this research explores how such complementarity between human rights and the rights of nature can lead to a new, less anthropocentric approach to the right to development, as well as to international criminal law. Drawing in particular on the important jurisprudence of many Latin American countries that have already integrated the rights of nature at the same level as human rights in their domestic systems, the research shows how an approach that recognizes and respects both human rights and the rights of nature is essential to building a just, sustainable and balanced society that values and preserves the dignity and interdependence of all forms of life, and breaks with a conception that is predominantly dominated by an anthropocentric and economic approach to nature.

Keywords
Human Rights, Rights of nature

Acknowledgements
The co-editors wish to thanks Sophie Salomon for her careful review and enrichment, as well as Serge Rabier for his methodological support.

Classification JEL
D63, D74, F64, I03, K33, K38.

Original Version
French

Accepted
October 2024

Résumé
Au cours des dernières décennies, les initiatives pour reconnaître des droits à la nature se sont multipliées, donnant naissance à un mouvement global. Or, il existe de multiples pistes de synergies entre ce mouvement et les droits humains. Ils s'inscrivent dans une même pensée philosophique, éthique et morale de reconnaissance de droits fondés sur les valeurs inhérentes et intrinsèques des entités vivantes – aussi bien humaine que non-humaines. Dans ce contexte, cette recherche se penche sur les liens du triptyque : droits humains conventionnels, droit à un environnement sain et droits de la nature avec pour objectif d'offrir une analyse de l'interdépendance entre ces familles de droits et la façon dont les acteurs du développement peuvent se saisir de ces enjeux dans une logique écocentrique.

L'objectif de cette réflexion n'est pas que théorique, au contraire. En effet, la jurisprudence des droits humains intègre de plus en plus les droits de la nature comme faisant partie du droit à un environnent sain. Le droit à un environnement sain met ainsi l'accent sur le lien entre le bien-être des êtres humains et le reste du monde naturel – soulignant la réciprocité intrinsèque entre tous ces éléments. La complémentarité des droits

humains et des droits de la nature se traduit également par les efforts déployés par les défenseurs des droits et de l'environnement issus des peuples autochtones, pour lier les droits culturels à une approche relationnelle de la nature. Cette dernière favorise l'émergence d'une approche juridique considérant le monde naturel comme un système interconnecté, composé de nombreuses formes de vie en relation dynamique les unes avec les autres englobant la biosphère dans son ensemble – humaine et non-humaine. L'approche plus relationnelle à la nature représente un élément important de la jurisprudence émergente des tribunaux internationaux et régionaux concernant les droits des peuples autochtones. Elle souligne l'importance de sortir des dichotomies humains/nature pour penser différemment la relation des humains aux non-humains et réviser la relation au vivant en tenant compte des approches des peuples autochtones.

À ce titre, l'ambition de cette recherche est d'analyser comment ces liens entre les familles de droits peuvent contribuer à un nouveau modèle de développement véritablement durable, pour l'ensemble du vivant. Néanmoins, cette étude analyse aussi les potentiels conflits entre les droits humains et les droits de la nature sachant que les mesures de protection de l'environnement peuvent restreindre le champ de la liberté d'action individuelle et sont susceptibles de limiter la jouissance des droits humains. Le principe de proportionnalité – qui est souvent au cœur des décisions relatives aux droits humains – pourrait devenir un véhicule pour gérer de tels conflits. Ce principe met sur un pied d'égalité les intérêts humains et les intérêts de la nature – plutôt que d'imposer une quelconque hiérarchie entre ces intérêts parfois divergents.

Enfin, cette recherche explore comment une telle complémentarité entre les droits humains et les droits de la nature peut conduire à une nouvelle approche moins anthropocentrique du droit au développement, ainsi que du droit international pénal. En se basant notamment sur l'importante jurisprudence de nombreux pays d'Amérique Latine qui ont déjà intégré les droits de la nature au même niveau que les droits humains dans leur système interne, la recherche montre comment une approche reconnaissant et respectant à la fois les droits humains et les droits de la nature est essentiel pour construire une société juste, durable et équilibrée qui valorise et préserve la dignité et l'interdépendance de toutes les formes de vie, et rompre avec une conception majoritairement dominée par une approche anthropocentrique et économique envers la nature.

Mots-clés
Droits humains, Droits de la nature

Remerciements
Les coordinateurs souhaitent remercier Sophie Salomon pour sa relecture attentive et ses enrichissements.

Classification JEL
D63, D74, F64, I03, K33, K38.

Version originale
Français

Accepté
Octobre 2024

Introduction

Context

Our planet and, indeed, humanity are facing multiple, interdependent ecological crises. These range from climate change to biodiversity loss and extreme pollution. Despite the ever-growing number of policies, directives, laws and international treaties adopted to protect the environment, the planet's health continues to deteriorate. In this context of the failure of environmental governance, a proposal for a new legal approach has been developed, namely to declare the rights of nature. The rights of nature are emerging as part of a movement that rejects a human-centred approach based on anthropocentric hypotheses of the separation of humans and the rest of the natural world; in this approach, nature is primarily considered an object. In contrast, the rights of nature movement considers the natural world as an interconnected system, made up of many forms of life in dynamic relationships with one another, a system that encompasses the biosphere as a whole – both human and non-human.

Initiatives that embrace the rights of nature are progressing at a great pace at different levels. These include constitutional recognition in Ecuador (2008); legislative reforms in Bolivia (2011) and Uganda (2019); court rulings asserting the rights of specific ecosystems such as rivers in Colombia (2016) and Bangladesh (2019); and recognition of the legal personality of natural entities such as forests and mountains in New Zealand (2014, 2017) and Canada (2021).[1] Over the past decade alone, more than 100 initiatives have declared the rights of nature (Putzer *et al.*, 2023).[2] Although, as a whole, these initiatives represent a great diversity of approaches – for example, declaring the fundamental rights of nature at a constitutional level, or recognising the legal personality of certain ecosystems – they all share a central idea, namely that nature, and/or specific ecosystems, possess *inherent* legal rights – in the same way as human beings.

Indeed, human rights are based on the recognition of values that are inherent and intrinsic to human beings. As the preamble of the Universal Declaration of Human Rights declares: "(…) recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world". Thus human rights are based on the ethical and moral conviction of the inherent and intrinsic value of the rights holder. They

[1] See the Eco Jurisprudence Monitor, which maps over 430 different initiatives in 42 jurisdictions, available at https://ecojurisprudence.org/dashboard/

[2] See also the Report of the Secretary-General of the United Nations, Harmony with Nature, UN Doc. A/75/266 (2020).

convey the crucial idea that every human being has inalienable rights that are inherent to them solely by the fact of their human condition. The rights of nature are based on the philosophy that every natural creature has an inherent right due to the very fact of their existence (Nash, 1989). From this point of view, the rights of nature are often associated with human rights, to the extent that the rights of nature are sometimes described as the "human rights of nature" (Macpherson, 2020). As such, there is thus a profound link between human rights and the rights of nature that underlines the existence of inherent, fundamental rights for all living entities (human and non-human).

However, this link may appear paradoxical, since human rights, which concern the fundamental freedoms, security, dignity and well-being of human beings, are essentially human-centred and therefore anthropocentric. In this context, environmental degradation becomes a matter of justice only when it has a direct impact on our human rights, whereas the rights of nature propose a new ecocentric approach based on nature's inherent rights outside any relationship with humans.[3] Thus, it may seem paradoxical that a movement founded on creating a distance from an anthropocentric approach to law should be associated with human rights, which are anthropocentric by nature. The link between human rights and the rights of nature also raises broader philosophical and ethical questions, notably about the capacity for natural (and therefore non-human) entities to exercise their inherent rights, as well as to define whether nature has duties and obligations that arise from such rights. This association could also lead to imbalances, insofar as certain human rights, such as the right to property or/and the right to development, could enter into conflict with the rights of nature.

Research approach and objectives

The objective of this report is to offer a reflection on the connections between conventional human rights (as recognised by international treaties) and the rights of nature. The objective of this reflection is not theoretical, to the contrary; in a context where the rights of nature are expanding rapidly, it is important to understand how they connect to human rights. In practical terms, many Indigenous peoples are turning to advocacy that highlights the intrinsic links between human rights and the rights of nature. Furthermore, human rights jurisprudence is increasingly incorporating the rights of nature as part of the right to a healthy environment. The right to a healthy

[3] Ecocentrism is the point of view that all forms of life, including organisms and ecological collectives such as species and ecosystems, possess intrinsic value.

environment emphasises the link between the well-being of human beings and the rest of the natural world – thus stressing the intrinsic reciprocity between the well-being of the natural world and humans. Moreover, the rights of nature can contribute to the effective achievement of many human rights such as the rights to food, water, housing and dignity, among others, in ways that take into account individual perspectives, as well as those of future generations. The objective of this study is to explore these connections between human rights and the rights of nature, and in particular to put forward avenues for reflection on a new approach to development based on human rights that integrates and draws inspiration from the rights of nature.

To do so, the study is divided into six parts. The first part provides an overview of the emergence of the rights of nature to analyse how different initiatives have developed to proclaim the inherent rights of nature. Following this review, the second part takes a closer look at the relationship between human rights and the rights of nature, with the aim of providing a detailed analysis of the evolution of human rights doctrine and jurisprudence towards a less anthropocentric approach that integrates the ideals of the rights of nature. The third part focuses on the relationship between the rights of Indigenous peoples, as acknowledged by the international human rights system, and the rights of nature. The aim is to highlight how the relationship between human rights, the rights of Indigenous peoples and the rights of nature opens the door to a decolonisation of the law by integrating the worldviews, traditions, practices and visions of Indigenous peoples. The fourth part explores the connections between the right to development and the contribution of the rights of nature to an ecocentric approach to sustainable development. The fifth part examines the conflicts and antagonisms that can arise between the rights of nature and human rights, with the particular aim of analysing how such conflicts can be envisaged in order to avoid a hierarchy of rights. To broaden the reflection, the sixth and final part of the study explores the criminal aspect of the rights of nature, taking into account developments relating to the crime of ecocide. With such overview, the overall ambition of this research is to deeply reflect on the connections between human rights and the rights of nature, and to analyse how this can contribute to a new model of development that is genuinely sustainable for all living things.

1. Overview: the emergence of the rights of nature and recognition of the inherent rights of natural entities

To date, 24 countries have introduced local or national laws that recognise nature as a legal entity with fundamental rights.[4] In addition to this, there are nearly 400 registered initiatives in over 40 countries, as well as a growing number of organisations and communities, working on legal strategies and advocacy to implement the rights of nature.[5] The objective of this research is not to offer a systematic review of these initiatives, but rather to analyse the driving forces behind them from a legal point of view, and in particular their relationship to human rights as recognised by international treaties.[6] To this end, this research offers a brief overview in order to highlight an important common dynamic of the initiatives – and notably how these initiatives put forward the inherent and intrinsic rights of nature in language that is very close to the ideals proclaimed by international human rights treaties.

The emergence of the rights of nature was initially theoretical, driven by the work of several researchers and activists. In contemporary law, the origin of the concept of the rights of nature is often associated with a paper published by Christopher Stone in 1972 – Should Trees Have Standing? (Stone, 1972). Some of the issues explored by Stone – such as whether a tree should have standing to defend its rights to existence and life before a court of law – have served as the basis for a much broader reflection on the rights of nature.[7] For example, Roderick Nash published *The Rights of Nature* (1989), showing how, throughout history, those who have been denied rights have fought to have their rights recognised, and extended this reflection to nature (Nash, 1989). This

[4] See Eco Jurisprudence Monitor, as mentioned above

[5] A quantitative study conducted in 2022 by Putzer *et al.* mapped over 400 legal initiatives in 39 countries. See A. Putzer *et al.*, "Putting the Rights of Nature on the Map: A Quantitative Analysis of Rights of Nature Initiatives Across the World" (2022) 18(1) Journal of Maps, pp. 89-96.

[6] A recent publication by AFD presents a comprehensive study and rich, detailed analyses of these initiatives: https://www.afd.fr/en/ressources/rights-nature

[7] This article had an impact in the Sierra Club v Morton case regarding the construction of a ski resort in the Sierra Nevada mountains of California. Although the majority of the court dismissed the case, Justice William O. Douglas wrote a famous dissenting opinion in which he lent weight to Stone's idea, proposing that natural entities should be considered legal persons and thus be able to defend themselves in litigation.

led to a school of thought that put forward the rights of nature as a pragmatic legal form, stressing that nature, deprived of rights, should be granted specific rights in order to promote ethical, environmental and sustainable governance objectives (Cullinan, 2002). In Western thought, the concept of recognising the rights of nature has also been advanced in the philosophical and legal theories of Earth Jurisprudence that emphasises the importance of adopting a new, non-anthropocentric relationship with nature (Berry, 1999; Burdon, 2011). This is a significant paradigm shift that demonstrates the importance of no longer considering nature as an object to be protected for the well-being of humans, but rather as a subject of law in its own right. The rights of nature are often presented as a legal revolution that could contribute significantly to environmental protection or, at the very least, be a major paradigm shift that would lead to a reform of the legal, economic and governance systems overseeing the management of natural resources (Boyd, 2017).

Until recently, the idea of recognising rights to nature was essentially theoretical. However, since Ecuador enshrined these rights in its Constitution in 2008, many jurisdictions have introduced a form of recognition of the rights of nature. The Ecuadorian Constitution sets out 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."[8] The Constitution also establishes that any person, community or people has the capacity to represent nature. Since its adoption, numerous cases have raised or applied the relevant constitutional provisions to rivers (Vilcabamba river case), sharks (Galapagos shark fin case), native forests (Secoya palm plantation case), mangrove ecosystems (Cayapas Shrimper case), water (the Esmeraldas illegal mining case), soil (the Macuma-Taisha road case), a bird species (the Andean condor case) and the migration routes of marine iguanas and other species (the Santa Cruz road case), among other entities. Thus, since the declaration of the rights of nature in the Constitution, several legal decisions have highlighted the inherent and intrinsic rights

[8] 2008 Constitution of the Republic of Ecuador, Art. 71.

of numerous ecosystems, creating a rich, diverse jurisprudence on the rights of nature (Tănăsescu *et al*., 2024).

Bolivia is another state that has incorporated the recognition of the rights of nature into its legislation, in particular with the adoption of a law on the "rights of Mother Earth" in 2010.[9] The law defines "Mother Earth" as a dynamic living system made up of the indivisible community of all life systems and living beings that are interrelated, interdependent and complementary and share a common destiny. The law stipulates that Mother Earth has the right to life, and rights to a diversity of life, water, clean air, equilibrium, restoration and a life free from pollution. The law also refers to the relationship between this extension of rights and its potential in the fight against climate change.[10] More recently, Uganda has also explicitly incorporated the rights of nature into its legislation, with the adoption of a new law on the environment in 2019. This law recognises the rights of nature, including the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and evolutionary processes.

Another approach focuses on the recognition of the legal personality of specific ecosystems such as rivers, mountains, forests and other entities, rather than nature as a whole. In this way, New Zealand has passed a law granting the status of legal entity to the Whanganui River, described as "an indivisible and living whole [...] from the mountains to the sea, incorporating all its physical and metaphysical elements". Similarly, the Te Urewera Forest was recognised as a legal entity, with all the rights, powers, duties and responsibilities of a legal person. In 2022, the Spanish Senate passed a law conferring legal personality to the Mar Menor lagoon and its basin.

Recognition of the rights of nature or the legal personality of certain natural entities is also sometimes achieved through court rulings. This has been the case in Colombia, where the courts have issued several decisions that proclaim the rights of nature. In

[9] This has been achieved through legislation; a first law concerned the rights of Mother Earth, followed by a framework law on Mother Earth and holistic development to promote a good way of living, adopted in 2010 and 2012 respectively.

[10] The adoption of this law was directly related to the Peoples' World Conference on Climate Change and the Rights of Mother Earth, an event held in Tiquipaya, Bolivia, in 2010, in response to the failure of the Copenhagen Climate Change Conference in 2009.

response to a petition for the protection of constitutional rights filed by Indigenous and Afro-descendant groups, the Constitutional Court recognised the legal personality of the Atrato river, its catchment area and tributaries, as well as its rights to protection, conservation, maintenance and restoration. In a similar move, the Supreme Court of Justice recognised the rights of the Colombian Amazon in response to a case brought by 25 young people regarding deforestation, climate change and the future generations. The judicial route has also led to the rights of nature being confirmed in Bangladesh through a Supreme Court ruling in 2019 that recognised the legal personality of the Turag River. This status was extended to all rivers in Bangladesh in response to public interest litigation that challenged earth-filling, encroachment and construction along river banks.

The rights of nature have also been declared at a local level, with many municipalities issuing declarations of recognition. For example, in Mexico, the rights of nature were approved by the Congress of the State of Guerrero in 2014 (Article 2 of the Political Constitution of the Free and Sovereign State of Guerrero) as well as in the Constitution of Mexico City in 2017 (Article 18). Similar initiatives exist at local levels in Costa Rica, Brazil, Panama, the United States, Australia and the United Kingdom. These local initiatives are multiplying, demonstrating that this innovative approach is being readily accepted at local levels (Putzer *et al.*, 2022).

We must also consider the role and importance of numerous civil society initiatives in this brief overview; these adopt diverse, sometimes creative, approaches to campaigning for the rights of nature. These include, among others, community mobilisation, artistic interventions, citizen science, the tools of direct democracy such as citizens' assemblies, and transnational initiatives and declarations.[11] In this context, the first Peoples' World Conference on Climate Change was held in Cochabamba, Bolivia, where the Universal Declaration of the Rights of Mother Earth was adopted. There have also been developments in international law, in particular the declaration of International Mother Earth Day on 22 April by the United Nations General Assembly.

[11] See the Universal Declaration of the Rights of Mother Earth; calls for a United Nations Earth Assembly or a United Nations Declaration of the Rights of Nature.

In so doing, the States Parties recognised that the Earth and its ecosystems are our common home, and expressed their conviction that it is necessary to promote harmony with nature in order to achieve a fair balance between the economic, social and environmental needs of present and future generations. Since then, the UN Harmony with Nature programme has facilitated ongoing international exchanges focused on the rights of nature, in particular by annual dialogues as well as perspectives and analyses from practitioners working in fields such as law, economics, education, holistic sciences, humanities, philosophy, ethics, the arts, media and design, as well as theology and spirituality.

The rights of nature are also recognised by international law, with, for example, their recent inclusion in the Kunming-Montreal Global Biodiversity Framework in 2022.[12] This aims to enhance "the role of collective actions, including by Indigenous peoples and local communities, Mother Earth centric actions and non-market-based approaches including community based natural resource management and civil society cooperation and solidarity aimed at the conservation of biodiversity". The text puts forward an "ecocentric and rights-based approach enabling the implementation of actions towards harmonic and complementary relationships between peoples and nature, promoting the continuity of all living beings and their communities and ensuring the non-commodification of the environmental functions of Mother Earth."

In conclusion, there are thus a great many initiatives on the rights of nature, to the point where we can now speak of a genuine rights of nature movement (Kauffman and Martin, 2021). Nevertheless, this is a very heterogeneous movement that includes a wide variety of approaches, ranging from the declaration of the rights of nature at constitutional and legislative levels, to initiatives for specific entities such as rivers. While these initiatives are very diverse and influenced by very different historical, cultural and socio-economic contexts, they all aim to secure a new, non-anthropocentric approach to environmental governance. In this respect, it is interesting to note that in legal terms, as well as in philosophical and ethical terms,

[12] Kunming-Montreal Global Biodiversity Framework, 18 Dec. 2022, CBD/COP/15/L.25 – see section C, paragraph 9, as well as targets 16 and 19 which call for reinforced "Mother Earth centric actions".

these initiatives are based on the recognition of the intrinsic and inherent rights of nature, in a language that closely approximates that of human rights.

Indeed, the declaration of the inherent rights of natural entities lies at the heart of many legal texts that assert the rights of nature. The rights of nature are based on the principle that nature, in all its forms of life, has the right to exist, persist, maintain and regenerate its vital cycles. This is reflected in the Ecuadorian Constitution which sets out 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."[13] In a similar way, the law passed by the New Zealand parliament on the legal personality of the *Te Urewera* Forest emphasises that its objective is "to establish and preserve in perpetuity a legal identity and protected status for *Te Urewera* for its intrinsic value and distinctive cultural and natural values [...]."[14] These are just illustrations. In general, the affirmation of the inherent and intrinsic value of nature is at the heart of the rights of nature movement and the various laws and related legal disputes reflect this approach. From this point of view, there is a strong link between the moral, ethical and philosophical foundations of human rights, centred on the inherent and intrinsic value of human life, and the rights of nature movement, which emphasises the inherent and intrinsic value of natural entities. In this respect, it can be said that the rights of nature place humans and natural entities on an equal footing as all have inherent and intrinsic fundamental rights.

[13] National Assembly of Ecuador, 2008 Constitution of the Republic of Ecuador, (Official Journal, 20 October 2008), article 71.

[14] Department of Conservation, Te Urewera Act, Art.4, see Tūhoe-Crown Settlement Act 2014; Te Urewera report of the Waitangi Tribunal, October 2014 Māori Law Review.

2. Human rights and the rights of nature: towards a mutual reinforcement

Human rights are increasingly concerned with, and impacted by, protecting the environment. This has given rise to the phenomenon of 'greening' human rights, emphasising that environmental protection is a prerequisite for the implementation of human rights. As a report by the UN High Commissioner for Human Rights stresses: "(...) the need to protect and promote a healthy environment is indispensable not only for the sake of human rights, but also to protect the common heritage of mankind."[15] This greening of human rights was asserted by the adoption of a resolution by the United Nations General Assembly in 2022 that recognises the right to a clean, healthy and sustainable environment. This resolution emphasises that environmental damage can affect all human rights, insofar as the enjoyment of these rights depends on a healthy environment. This greening of human rights gives rise to many synergies with the rights of nature, underlining the capacity of these two branches of rights to act in a complementary way (Borràs, 2016) (Marguénaud and Vial, 2021).

Although there is no universally accepted definition of the right to a healthy environment, it is generally accepted that this right includes substantive elements such as clean air; a safe and stable climate; access to safe drinking water and adequate sanitation; healthy and sustainably produced food; non-toxic environments in which to live, work, study and relax; as well as a healthy biodiversity and ecosystems.[16] There is therefore a direct link between the realisation of the right to a healthy environment and the protection of nature. This link was pointed out by an advisory opinion issued by the Inter-American Court of Human Rights (IACtHR) on the environment and human rights. The Court stated in this advisory opinion:

> "The Court considers it important to stress that, as an autonomous right, the right to a healthy environment, unlike other rights, protects the components of the

[15] Human Rights Council, Report of the United Nations High Commissioner for Human Rights, UN Doc. A/HRC/19/34 (16 December 2011), para. 24

[16] See What is the Right to a Healthy Environment? Information Note – UNEP – 2023: https://www.unep.org/resources/publication/what-right-healthy-environment-information-note#:~:text=It%20aims%20to%20improve%20understanding,the%20United%20Nations%20General%20Assembly.

environment, such as forests, rivers and seas, as legal interests in themselves, even in the absence of the certainty or evidence of a risk to individuals. This means that it protects nature and the environment, not only because of the benefits they provide to humanity or the effects that their degradation may have on other human rights, such as health, life or personal integrity, but because of their importance to the other living organisms with which we share the planet that also merit protection in their own right."[17]

This statement by the IACtHR departs considerably from an anthropocentric reading of human rights by stressing the close links between human beings and "other living organisms". As emphasised by the Court, the protection of the right to a healthy environment implies recognition of the fact that natural entities "also deserve protection in their own right." Thus, although not explicitly mentioning the rights of nature, this advisory opinion very clearly asserts the implicit links between the right to a healthy environment and the rights of natural entities, such as forests, rivers and seas. Significantly, the Court adopts an ecological interpretation of the right to a healthy environment, recognising the need to protect natural entities directly even if there is no specific breach of human rights. This interpretation by the IACtHR is all the more significant given that the UN General Assembly has declared the right to a clean, healthy and sustainable environment to be a fundamental right worldwide.[18] The interpretation may thus have an impact beyond the American continent.

This interpretation was later confirmed in a case considered by the Inter-American Court concerning Indigenous communities that were members of the *Lhaka Honhat* association in Argentina.[19] The case concerned illegal logging, cattle ranching and fencing the lands of the concerned Indigenous communities; these activities had led to a degradation of the forests and very negative impacts on biodiversity, which in turn had negative consequences for the traditional methods of access to food and water practised by the Indigenous communities. In its decision, the Court found that illegal

[18] Inter-American Court of Human Rights, Advisory Opinion OC-23/17 of 15 November 2017, para. 62

[18] General Assembly, "The human right to a clean, healthy and sustainable environment", Resolution A/76/L.75, (26 July 2022)

[19] Indigenous Communities of the Lhaka Honhat (Our Land) Association v Argentina, Inter-Am. Ct. H.R. (6 Feb 2020)

logging had compromised the communities' way of life in breach of their human rights as defined in the American Convention on Human Rights. Moreover, based on its previous advisory opinion, the Court recalled that natural entities also have rights beyond their utility to human beings, confirming a non-anthropocentric interpretation of the right to a healthy environment.

Although the IACtHR is a forerunner in this respect, this decision is part of a broader framework of the gradual recognition of the fundamental links between the realisation of human rights and the rights of nature. Indeed, such a non-anthropocentric interpretation of the right to a healthy environment is also at the heart of the legal decisions of the Constitutional Courts of Ecuador and Colombia mentioned above. For example, in the case of the Atrato River, the Court explicitly adopted an ecocentric approach when interpreting the right to a healthy environment, stressing that "the land does not belong to man and, on the contrary, assumes that man is part of the earth."[20] The Court has thus developed an approach to the rights of nature anchored in the right to a healthy environment, considering that the explicit recognition of the rights of nature and of various natural entities (such as rivers) as having a legal personality is the most effective way of guaranteeing a healthy environment.

Adopting a similar approach, the Supreme Court of Colombia, in a ruling concerning the impact of deforestation in the Colombian Amazon on climate change, asserted that "the fundamental rights to life, health, subsistence, freedom and human dignity are substantially linked to and determined by the environment and the ecosystem." In this ruling, the Court recognised the Colombian Amazon as a "subject of law" in the same way that the Constitutional Court described the Atrato River. The Supreme Court declared that the Colombian Amazon therefore had the right to protection, conservation, maintenance and restoration. The Court ordered the government to draw up and implement action plans to counter deforestation in the Amazon. There have been similar developments in Ecuador, where the right to a healthy environment has also been interpreted as being intimately linked to the recognition of the rights of

[20] Judgment T-622 of 2016 of the Constitutional Court of Colombia

nature.[21] In general terms, these rulings underline the fact that the rights of nature and the right to a healthy environment are intrinsically linked and mutually reinforcing.

As human rights and the protection of the environment are interdependent, a clean, healthy and sustainable environment is necessary for the full enjoyment of a wide range of human rights, such as the rights to life, health, food, water and sanitation, as well as to development, among other things. In legal terms, another correlation between the rights of nature and human rights concerns the achievement of the "right of everyone to an adequate standard of living", which is guaranteed by the International Covenant on Economic, Social and Cultural Rights (Article 11). This right implies an obligation to establish the conditions to guarantee a dignified life and personal integrity.[22] This includes the right to food, which requires that every person has access to adequate, healthy, safe food. As analysed in this author's first study on the links between human rights and the ecological transition (Gilbert, 2024), the realisation of the right to food also implies that food is produced safely for human consumption, and thus that the use of pesticides and other hazardous chemicals is potentially an infringement of the right to healthy food.[23] Such an interpretation of the right to food is associated with good-quality, unpolluted soil; this fosters an approach to agricultural production that is less harmful to nature.

A recent report by the UN Special Rapporteur on the environment highlighted that industrial agriculture contaminates the air, water, soil and food chain with toxic substances – pesticides, herbicides, synthetic fertilisers and drugs.[24] This constitutes a breach of the right to healthy food. Although it is not directly a right of nature to not be polluted, this does indirectly mean that agricultural production must respect nature, or at least not pollute it. Indeed, this approach of emphasising a right to healthy food that protects the soil by reducing the use of pesticides and chemical fertilisers, has

[21] See the Constitutional Court of Ecuador – Ruling No. 1149-19-JP/21 (Los Cedros), November 2021.
[22] UN. Doc. E/C.12/1999/5
[23] De Schutter – the former United Nations Special Rapporteur on the right to food – suggests that a human rights-based approach to food production implies the adoption of non-harmful agricultural practices, such as agroecology. See: Report by the Special Rapporteur on the right to food, Olivier De Schutter, A/HRC/16/49 (20 December 2010); also Olivier De Schutter, "Agroecology, a Tool for the Realization of the Right to Food" in: Lichtfouse, E. (eds) Agroecology and Strategies for Climate Change. Sustainable Agriculture Reviews (2012).
[24] UN Doc. A/76/179

indirect consequences for the right of nature to be protected, at least as far as natural entities exploited for agricultural production are concerned. Thus, an indirect form of the rights of nature is developing under the aegis of the right to food, in this way inviting a transformation of the governance of the food system. This could lead to greater synergies between human rights concerns and the rights of nature to be free from all pollution caused by humans. Consequently, the rights of nature can contribute to the realisation of the right to healthy food.

Similarly, the right to water represents another connection between human rights and the rights of nature. The right to water means the right to access safe, unpolluted water for personal and domestic use. The requirement for unpolluted water as part of the right to water creates a link with the recognition of the rights of rivers and other freshwater ecosystems not to be polluted. This approach has been taken up by the Constitutional Court of Ecuador which stressed the relationship between the right to water and the rights of nature in its ruling on the Los Cedros forest. In its analysis, the Court asserted that the rights of nature contribute to living conditions, in particular access to water.[25] This decision thus establishes a direct correlation between the right to water and the protection of the rights of nature, emphasising that this implies a right for rivers not to be polluted as well as the protection of all species living in the river. This approach underlines the synergy between the two rights: the right to water and the rights of nature – opening the way for potential appeals to the courts based on this synergy. For example, it can be conceived that the expanding jurisprudence on the right to water can be added to some of the arguments in favour of the recognition of the inherent rights of water "providers" such as rivers, streams and underground springs.

There are also correlations between the right to health and the rights of nature. As the Committee on Economic, Social and Cultural Rights emphasises: "the right to health embraces a wide range of socio-economic factors that promote conditions in which

[25] See the Constitutional Court of Ecuador – Ruling No. 1149-19-JP/21 (Los Cedros), November 2021, para. 170 and subsequent.

people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment."[26] This approach is based on a broad conception of the right to health, which includes a healthy environment. While this is not a direct link to the rights of nature, it is an indirect one, since the right to health presupposes the existence of a healthy environment and thus implicitly the right of nature to be healthy and unpolluted.

In more general terms, the realisation of the right to an adequate standard of living necessitates access to natural resources that are essential to life, which presupposes that these natural resources are "healthy". What the most recent interpretations of the various rights concerned, such as the right to food, the right to water, or the right to health, demonstrate is that the expression "healthy environment" can be interpreted to mean that it is "healthy" for all forms of life, not just for humans. This approach emphasises that human well-being depends on the well-being of the ecosystems that facilitate the conditions of life. At present, this correlation is still very limited in practice, with very little jurisprudence advancing such a synergy between these two families of rights. Nevertheless, this correlation and complementarity between the right to a healthy environment and the rights of nature is increasingly visible at local levels. For example, Article 13 of the Constitution of Mexico City, which guarantees a "liveable city", is based on the right to a healthy environment. The text states that the achievement of the human right to a healthy environment requires "(...) the protection of the environment and the preservation and restoration of the ecological balance, with the aim of satisfying environmental needs for the development of present and future generations." (See Ugalde, 2019 and Zamorano Villarreal, 2020). Similar initiatives have also emerged in Brazil, where several municipalities have also declared close links between respect for the right to a healthy environment and the rights of nature (Petters Melo, 2020).[27] For example, the municipality of Bonito in the state of

[26] General comment No. 14 (2000) – The right to the highest attainable standard of health (Article 12 of the International Covenant on Economic, Social and Cultural Rights) – E/C.12/2000/4 - 11 August 2000 – para. 4.
[27] The rights of nature have been recognised by the municipalities of Bonito, Paudalho, Florianópolis and Serro, and proposals have been drawn up by the States of Pará, Minas Gerais and Santa Catarina.

Pernambuco recognised the rights of nature in an amendment of its urban planning programme. The municipality affirms the right of nature to exist, thrive and evolve, and underlines the importance of this right "so that all members of the natural community, both human and non-human, in the municipality of Bonito shall have the right to an ecologically healthy and balanced environment, and to the maintenance of the ecosystem processes necessary for the quality of life."[28] Ultimately, numerous initiatives concerning the rights of nature reiterate the mutually reinforcing relationship between the realisation of the right to a healthy environment and respect for the rights of nature. These advances in the interpretation of the right to a healthy environment and the right to an adequate standard of living underline not only the interdependence of human rights and the rights of nature, but also the fact that an approach that does not directly protect the natural world and limits itself to the individual right of humans to a healthy environment is unlikely to provide protection in the future (Papaux, 2016). In this way, the right to a healthy environment must be understood collectively for all forms of life, which means that the environment should be healthy in the ecological sense of the term, without favouring one species over others.

In this respect, it should also be noted that the legal developments linking human rights and the rights of nature are part of the broader framework of the development of a global jurisprudence on biocultural rights (Girard, 2019). Biocultural rights arise from the junction between the fields of environmental law, cultural law and human rights (Sajeva, 2015). As Bavikatte notes: "The term 'biocultural rights' denotes a community's long established right, in accordance with its customary laws, to steward its lands, waters and resources" (Bavikatte, 2014). These rights are increasingly recognised in international law as well as at national level, underlining the close links between human rights and the rights of nature. For example, at regional level, the African Commission on Human and Peoples' Rights adopted resolution ACHPR/Res.372 in 2017 calling on all States Parties to recognise sacred natural sites and territories, their customary governance systems and the rights of the custodian communities. At

[28] Bonito, Bonito City Council, State of Pernambuco, Organic Law, chap. IV, art. 236.

national level, ruling T-622/16 by the Constitutional Court of Colombia recognised the biocultural rights that link human rights and the rights of nature.[29] This ruling is particularly revolutionary because of the links established between human rights and the rights of nature, notably by means of the recognition of the biocultural rights of the Afro-Colombian, Indigenous and peasant communities living in the river basin (Revet, 2022; Lemaire, 2023). The emergence of these biocultural rights underlines not only the interdependence between rights concerning the protection of biodiversity and human rights, but also the importance of a non-anthropocentric approach to the rights of natural entities. This ecocentric interpretation recognises that humans exist in a broader ecological world that integrates and requires respect for the rights of nature. This is an approach that often corresponds with the principles advanced by many Indigenous peoples.

[29] See https://www.corteconstitucional.gov.co/relatoria/2016/t-622-16.htm (in Spanish).

3. The rights of Indigenous peoples and the rights of nature

Numerous initiatives on the rights of nature draw on, and are inspired by, the traditions and worldviews of many Indigenous peoples linking the human world and the non-human natural world (O'Donnell *et al.*, 2020). This is often reflected in beliefs and rules that are passed down through a myriad of cultural practices, generally evidenced by oral narratives, rituals, songs, dances, paintings and other forms of cultural expression (Berkes, 2008). For example, in North America, the Lakota and Dakota nations use the term *Mitakuye Owasin*, meaning "we are all related", to refer to their harmonious relationship with nature. In Australia, the cultural protocols of many Aboriginal communities emphasise that nature must be protected for the present and future generations, this obligation is often expressed by the principle of "taking care of the land" (Toussaint *et al.*, 2001; Watson, 2018). The Māori use the term *kaitiaki* (or *kaitiakitanga*) to describe their intergenerational guardianship responsibilities towards their ancestral territories (Te Aho, 2019). In Central and South America, many Indigenous cultures refer to "Mother Earth", emphasising deep family links to nature (Villavicencio Calzadilla, 2018). These are just illustrations; many Indigenous cultures express similar approaches to nature and the consequent obligations of respect. Despite the huge diversity of Indigenous cultures, a common feature is the view that humans are part of their wider environment, and that nature itself should be considered as an entity. This is a different approach to the dominant Western anthropocentric outlook. Many Indigenous researchers have emphasised that, in the practices, concepts and cultural values, humans and nature are interconnected, in stark contrast to the dominant nature-culture divide in Western societies (Borrows, 2010; Arabena, 2015; McGregor *et al.*, 2020).

Although not necessarily presented as rights, in many Indigenous cultures, ecological knowledge and cultural practices are deeply rooted in spiritual rituals that recognise and celebrate the inherent value of nature. In this way, the idea of recognising nature as an entity with rights that must be respected resonates with the cultures of many Indigenous peoples (Espinosa, 2019; Graham, 2019). In such contexts where the

ecological knowledge, perspectives and interests of Indigenous peoples have been largely repressed and colonised, the recognition of rights to nature offers a legal platform to support the realisation and respect of Indigenous peoples' rights. Consequently, the rights of nature movement is often linked to the struggles and rights of Indigenous peoples (Taylan, 2018). The rights of nature are therefore also a pragmatic attempt to build bridges between Western legal systems, the rights of Indigenous peoples and their customs, traditions, philosophies and cultures (Morin, 2013; Tănăsescu, 2020). Although there is great heterogeneity among Indigenous peoples, many Indigenous defenders, representatives and communities have emphasised that a central element for the recognition and protection of their human rights is the acknowledgement of their deeply cultural, spiritual and ancestral relationships with nature (Tănăsescu, 2020). Consequently, in recent decades, Indigenous peoples have managed to push back the limits of Western law in order to integrate cultural, spiritual and collective approaches to nature, often by resorting to international human rights law (Bellier, 2018).

It is however important to emphasise that this relationship between the rights of nature and Indigenous cultures must not be based on a utopian ideal. In fact there is a danger of adopting an idealistic and essentialist approach to the relationships that Indigenous peoples have with nature, describing Indigenous peoples as having a more virtuous, peaceful and "simplistic" ecological relationship with nature. This is an approach that recalls the concept of "noble savages" which had very damaging and colonial consequences for many Indigenous communities (Ellingson, 2001; Rowland, 2004; Nadasdy, 2005). Such an idealisation of the "ecologically noble savage" rests on socially constructed fantasies; these have also led to forms of "repressive authenticity" that assume that Indigenous peoples must act to preserve the planet (Bell, 2001; Fennell, 2008). In other words, these critiques call for the avoidance of references to idealist and essentialist criteria that are then imposed on other Indigenous peoples in different geocultural and sociohistorical contexts (Chandler *et al.*, 2019). In this setting, the rights of Indigenous peoples as recognised by international law offer a strong platform to counter the essentialisation of Indigenous approaches to nature.

Indigenous rights are affirmed rather than turning to idealisations and essentialisations of the cultural approaches of Indigenous peoples to nature (Gilbert, 2022).

International law on Indigenous peoples has developed enormously on the basis of this close relationship between the rights of Indigenous peoples and nature, founded on respect for the diversity of the cultural rights of Indigenous peoples. This has given rise to a rich jurisprudence. The Inter-American Court of Human Rights has underlined on numerous occasions that the close relationship of Indigenous peoples with their ancestral territories "must be acknowledged and understood as the fundamental basis for their culture, spiritual life, wholeness, economic survival, and preservation and transmission to future generations."[30] As the Court noted:

> The culture of the members of the Indigenous communities directly relates to a specific way of being, seeing, and acting in the world, developed on the basis of their close relationship with their traditional territories and the resources therein, not only because they are their main means of subsistence, but also because they are part of their worldview, their religiosity, and therefore, of their cultural identity.[31]

In a case concerning the Sarayaku communities in Ecuador, the judges noted that "according to the Sarayaku people's view of the world, their land is associated with a set of meanings: the jungle is alive and the elements of nature have spirits (*Supay*) which are interconnected and whose presence makes places sacred."[32] On this basis, the Court then emphasised the obligation to respect the "cultural integrity" of Indigenous peoples, recognising the inextricable character of cultural rights and the rights of nature.[33] Likewise, in a case concerning the Moiwana community in Suriname, it was stated that "for culture to preserve its identity and integrity, [Indigenous peoples]

[30] Yakye Axa Indigenous Community v Paraguay, judgement of 17 June 2005 (Series C, No. 125) para. 131; see also: Case of the Mayagna (Sumo) Awas Tingni Community, para. 149.
[31] Yakye Axa Indigenous Community v Paraguay, judgement of 17 June 2005 (Series C, No. 125) para. 135
[32] Kichwa Indigenous People of Sarayaku v Ecuador, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 245, para.57 (27 June 2012). para 57.
[33] Case of the Yakye Axa Indigenous Community v. Paraguay (Merits, Reparations and Costs) Judgment of 17 June 2005. Series C No. 125, paras. 147 and 203; Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano v Panama, Ser. C No. 284, para. 143

… must maintain a fluid and multidimensional relationship with their ancestral lands."[34] The Court underlined that the close relationship between Indigenous peoples and the natural world must be recognised and incorporated as the fundamental basis of their culture, spiritual life, integrity, economic survival and preservation of their culture. In the case concerning the Kaliña and Lokono communities in Suriname, the Court specifically recognised the cultural and spiritual relationship of Indigenous peoples with their natural environment, emphasising the communities' connection with animals, plants, fish, stones, streams and rivers. The Court recognised that this relationship is based "on a profound respect for the environment, which includes both living beings and inanimate objects."[35] These different cases are merely illustrations of the very rich jurisprudence of the IACtHR, which has on many occasions underlined the fundamental principles of the cultural, spiritual and ancestral links between Indigenous peoples and their natural environment. This implies a link between the protection of the fundamental rights of Indigenous peoples and respect for the customs, ancestral laws and traditions that recognise non-human entities as stakeholders in their culture.

This approach is not limited to the IACtHR. The majority of international human rights monitoring institutions have also stressed that the human rights of Indigenous peoples include a "multidimensional relationship with their ancestral lands."[36] This recognises that the rights of Indigenous peoples are intrinsically linked to the recognition of cultural relationships with ancestral land and territories. This also includes a spiritual element, with the African Court on Human and Peoples' Rights (ACHPR) highlighting, for example, that "in Indigenous societies in particular, the freedom to worship and engage in religious ceremonies depends on access to land and the natural environment."[37] In a case concerning the Ogiek community in Kenya, the Court recognised that spiritual links with the land and natural entities should be considered

[34] Moiwana Village Case, at paras. 101, 102-03.
[35] Kaliña and Lokono Peoples v Suriname, Judgment (Merits, Reparations and Costs) 25 November 2015, paras. 33, 35 and 36.
[36] Case of the Moiwana Community v Suriname, Judgment of 15 June 2005 (Preliminary Objections, Merits, Reparations and Costs), at paras 101, 102–3.
[37] African Commission on Human and Peoples' Rights v Republic of Kenya (26 May 2017), para 165.

as constitutive elements of the right to freedom of religion, and that the cultural and spiritual relationships of Indigenous peoples with nature were linked not only to spiritual ceremonies, but also to activities such as hunting, fishing, herding and gathering plants, medicines and food, which represent a key element of their cultural rights. This is based on recognition that the relationship with nature is an essential element of the fundamental rights of Indigenous peoples.[38] For example, the biodiversity loss which many Indigenous peoples face is forcing them to modify their customs and practices as medicinal plants and medicines become harder to access. These factors threaten the health, well-being, food and water security and cultural practices of forest populations, with consequent negative repercussions on their human rights. It is in this way that the rights of Indigenous peoples and the rights of nature come together.

The worldviews of Indigenous peoples and their relationships with nature are now recognised as an important element of human rights, including the rights to self-determination, culture and spirituality. International human rights monitoring bodies have emphasised that the right to participate in cultural life includes the cultural values of Indigenous peoples associated with their ancestral lands. This approach recognises cultural and spiritual relationships with nature and opens up a space for acknowledging Indigenous peoples' worldviews and ways of relating to nature. An important element of this legal recognition involves challenging the dominant discourse on property rights with regards to nature, in this way integrating concepts of relationships with, rather than ownership of, nature. Indeed, Indigenous peoples' claims to land and natural resources represent a comprehensive challenge to the more traditional Western individualistic approach to property rights. As the Inter-American Court of Human Rights declared in the landmark Awas Tigni case:

> "Among indigenous peoples there is a communitarian tradition regarding a communal form of collective property of the land, in the sense that ownership of the land is not centred on an individual but rather on the group and its community. [...]

[38] See Jérémie Gilbert, "The rights of nature, Indigenous peoples and international human rights law: from dichotomies to synergies", Journal of Human Rights and the Environment 13.2 (2022): 399-415.

> For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations."[39]

Following this case, the Court issued several rulings that reinforced this collective, cultural and spiritual approach to land ownership.[40] This approach is not confined to the Inter-American system of human rights, it is also found in the African system. In its 2017 ruling concerning the Ogiek community in Kenya, the African Court on Human and Peoples' Rights acknowledged that property rights for indigenous peoples "do not necessarily imply the right to property in the classical sense of the term, including the right to dispose of it."[41] These cases are only provided for illustration, as there is a well-developed body of international case law in respect of the rights of Indigenous peoples to their ancestral territories (Gilbert, 2016). Several recommendations, decisions and comments by UN institutions also affirm such an approach, highlighting the fact that Indigenous peoples' right to ownership of land and natural resources is based on a different approach to ownership that includes the customs and cultural practices. This approach challenges the more traditional (and Western) concept of ownership that tends to dominate the governance of natural resources. Rather than considering land and natural resources as elements that can be valued in accordance with market conditions, traded, bought and sold, land is perceived and approached as a collective asset that must be passed on from one generation to the next. Thus, through the development of this human rights-based jurisprudence over recent decades, Indigenous peoples have challenged the individualistic approach to property rights by opening up new perspectives on the meaning of the ownership of land and natural resources. This approach could resonate with the rights of nature, which also challenge the idea of individual property rights over nature (Burdon, 2019).

[39] *Case of the Mayagna (Sumo) Awas Tingni Community v Nicaragua*, Judgment of 31 August 2001 (Merits, Reparations and Costs), para 149.
[40] For example see *Yakye Axa Indigenous Community v Paraguay*, *Sawhoyamaxa Indigenous Community v Paraguay*; *Saramaka People v Suriname; Kichwa Indigenous People of Sarayaku v Ecuador*.
[41] African Commission on Human and Peoples' Rights v Republic of Kenya (26 May 2017), para 127.

An important aspect of indigenous peoples' rights as defined by human rights is based on the recognition of cultural and spiritual relationships with nature as sources of rights; this supports the emergence of a link between the rights of nature and international human rights law. These legal advances underline that while the declaration of the rights of nature asserts that nature has inherent rights that are independent of human interests, the legal recognition of the rights of nature also entails acknowledging the relationship between humans and nature as a source of rights. Through this recognition of cultural relationships with nature, the law also guarantees that natural entities are not dealt with solely as goods and resources for human use, but rather for their intrinsic value. This interaction between the rights of Indigenous peoples and the rights of nature also underlines the importance of moving away from human/nature dichotomies to think differently about the relationship of humans to non-humans, and to revise the relationship with the living, inspired by the approaches of Indigenous peoples (Cano Pecharroman, O'Donnell, 2024).

4. The right to development, sustainable development and the rights of nature

Another angle that emerges from this encounter between human rights and the rights of nature concerns the right to development, and in particular the challenges that the recognition of the rights of nature brings to the concept of sustainable development. The 1992 United Nations Conference on Environment and Development promoted the concept of sustainable development; this has since been affirmed in countless international instruments and constitutes one of the mantras of the international approach to development. In short, sustainable development is development that meets the needs of the present without compromising the capacity of future generations to meet their own needs. In theory, this approach could support the idea that nature should have rights and be protected. However, by prioritising human development, this principle perpetuates the idea that nature is there for us humans, to be used for "our development". As the 1992 Rio Declaration clearly sets out: "Human beings are at the centre of concerns for sustainable development" (Principle No. 1).[42] Most international legal regimes have adopted a broadly similar approach on environmental protection: nature and its various ecosystems must be protected to ensure a sustainable future, and this sustainable future is often measured and understood in an anthropocentric way (Adelman, 2018). As many critical analyses have emphasised, although sustainable development proposes a route that aims to ensure economic development and ecological well-being, nature is still seen primarily as a resource to be exploited for the benefit of human development – even if in a "sustainable" way (Thiel & Hallgren, 2018; Kauffman & Martin, 2017). Humans remain the central subject.

If we pursue the argument a little further, we are witnessing, in the name of sustainable development, an increased commodification of nature as "natural capital" often measured for the "ecosystem services" it provides for humanity. The logic of sustainable development undoubtedly intensifies (rather than diminishes) the

[42] United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3-14 June 1992

underlying concept of nature as a resource. In this way, the recognition of the rights of nature runs counter to many economic theories of development based on the "optimal" use of the planet's "resources", with nature being considered a resource to be exploited. Although it imposes certain limits on the type and degree of the exploitation of resources, the concept of sustainable development reinforces the idea that nature exists for the sole or principal purpose of being used by humans. This is a purely utilitarian approach, in which nature is not seen as a stakeholder that also has rights. It is precisely within this framework that the rights of nature movement proposes a reinterpretation of the right to development, suggesting much more ecocentric approaches to development.

In practice, such an encounter between the rights of nature and the right to development has taken material form in the decisions issued by the Constitutional Court of Ecuador. Indeed, as the emerging jurisprudence of Ecuadorian courts demonstrates, the recognition and declaration of the rights of nature entails consequences for the approach to sustainable development. As outlined previously in the first part of this research, numerous decisions by the Constitutional Court of Ecuador have clarified the specific rights of various natural entities, from rivers and forest ecosystems to biodiversity habitats and individual animals. Through these decisions, the Constitutional Court has ruled that it is no longer justified to sacrifice the rights of nature for the benefit of economic development. In 2021, the Constitutional Court concluded that mining in the protected Los Cedros forest breached the constitutional rights of nature. The Court ruled that the constitutional rights of nature were violated by the award of permits for mining operations that would harm the forest's biodiversity, including critically endangered species and fragile ecosystems. In concrete terms, this led the Court to cancel mining concessions and issue orders for payments to be made to restore ecosystem functions. The issue of sustainable development lay at the heart of the Court's decision. Should mining operations be authorised, which would represent considerable resources for the country's development, or the rights of nature be favoured? In response to this question, the Court emphasised that the two objectives must be balanced in such a way as to allow

nature's vital cycles to continue to function. Instead of placing economic development in opposition to the rights of nature, the Court's decision puts forward the idea of ecologically sustainable development. In other words, there is recognition of the need to avoid considering development from a purely anthropocentric perspective, instead underlining the ecocentric aspect of development. To this end, the Court's decision underlines the Constitution's commitment to a new approach to development that is anchored in the indigenous Andean concept of *sumak kawsay*; this considers humans to be integrated into natural systems and dependent on other natural entities through reciprocal relationships. As the Constitutional Court has shown, this approach is not merely theoretical and has consequences for activities that exploit nature, such as mining operations. Nevertheless, the rights of nature do not necessarily mean rejecting the needs of our societies with regard to the extraction of certain resources that are considered essential. Extractive economic activities such as mining and shrimp fishing can continue in Ecuador, but they cannot be conducted in such a way that threatens the capacity of ecosystems to maintain their natural cycles or endangers the survival of species. Rather than imposing procedural requirements such as the granting of permits, the Court requires a measurement of the harm caused to ecosystem functioning, linked to the rights of nature, to determine whether development activities are ecologically sustainable (and therefore legal). In so doing, Ecuadorian courts illustrate how an ecologically sustainable approach to development can be implemented (Kauffman and Martin, 2023).

What the jurisprudence emerging in Ecuador underlines is that the rights of nature presuppose a holistic, systemic and integrated approach to sustainable development. In this respect, the rights of nature coincide with development theories that are more in harmony with nature, such as *buen vivir* in Latin America, ecological *swaraj* (or radical ecological democracy) in India, and degrowth theories, which reject the concept of nature as a simple collection of resources to be exploited for the purposes of the exponential growth of consumption, but which, to the contrary, invite us to redefine nature as a living system in which many types of communities – human and non-human – are interconnected through a mutual dependency and reciprocal

relationships (Barrière *et al.*, 2019). It is therefore also relevant to point out that the intersection between the rights of nature and human rights invites an alternative approach to development – namely a non-traditional, non-anthropocentric approach to sustainable development, which emphasises the need to achieve an equitable balance between economic development and ecosystem protection, rather than systematically favouring economic development to the detriment of nature. In this respect, one of the contributions of the rights of nature is to redefine the contours of the right to development by including a non-anthropocentric component to its achievement. As Kauffmann, who has written extensively on the subject, stresses, in practice the rights of nature do not mean that humans cannot continue to benefit from ecosystems, but they do mean that humans have an obligation to restore ecosystem health, and that it is illegal to pollute or extract a quantity of resources such that the ecosystem cannot function or regenerate (Kauffman, 2023). It is therefore important to emphasise that the rights of nature are not contradictory or "anti-development". Instead, an approach based on the rights of nature coincides with the principles of a circular economy rather than the dominant economic systems based on the infinite exponential growth of consumption and production. Nevertheless, it would be too idealistic to imagine that there is no conflict between an approach to development based on the rights of nature and development projects dependent on a more extractive logic in respect of nature. It is precisely these potential conflicts between human interests and the rights of nature that the next section of this research examines.

5. Conflicts and the hierarchy of rights: human rights against the rights of nature?

The interests of humans and those of nature are not always aligned, and the possibility of a conflict of rights between human rights and the rights of nature is entirely conceivable. Relations between human rights and the rights of nature are not always harmonious. For example, in Bangladesh, following the Supreme Court's 2019 ruling to recognise the rights of rivers, some local human rights organisations expressed their fears that the ruling could lead to the expropriation and forced eviction of fishing and farming communities who live in illegally constructed huts along the river banks and who depend on the river for their livelihoods (Sohidul Islam, 2020).[43] This is just one example, because in theory there may be many conflicts between human rights and the rights of nature. For example, human interests could conflict with the rights of a forest, especially if the forest is considered part of the property rights of an individual, community or collective. We could also easily imagine conflicts between the rights of nature and the right to development, the right to food or even the right to water. Nevertheless, in many respects, these potential conflicts between the rights of nature and human rights are not new; there have already been very many analyses of conflicts between environmental concerns and human rights.

Environmental protection measures can, indeed, restrict the scope of individual freedom of action and are likely to limit the enjoyment of human rights guaranteed by law (Shelton, 2012). This can lead to normative conflicts between legislation intended to protect nature, on the one hand, and human rights, on the other. This includes, for example, conflicts between animal welfare concerns and the cultural or religious freedoms of certain communities, and conflicts between policies to preserve landscapes and land ownership (Petersmann, 2022). As such, although there have not yet been any legal cases where the rights of nature and human rights have been in direct opposition, there is already a substantial jurisprudence concerning conflicts between human rights and environmental interests.

[43] Bangladesh Supreme Court, High Court Division, 3 2 2019, Writ Petition No. 13898/2016.

For example, in a case considered by the European Court of Human Rights (ECHR), the applicants, an Irish fishing company, claimed that their property rights had been infringed by a ban imposed by the Irish government to restrict the collection of immature mussels. The prohibition had been imposed in order to protect the ecosystem in question, but the applicants argued that such a ban, which entailed a significant loss of income, had been imposed in breach of their property rights. Ultimately, the Court rejected the applicants' argument, stressing that the company had not suffered an excessive burden, since the government had ensured a fair balance between the general interests of society and the protection of individual rights. Although this case does not concern the rights of nature as such, it illustrates the fact that property rights can be affected by rules adopted to protect nature.

This case also highlights another significant element of human rights jurisprudence when confronted by ecological imperatives. As this ECHR decision emphasises, the application of the principle of proportionality is an essential element in resolving conflicts of interest such as these. There is nothing unusual about rights being in conflict with each other. To the contrary, the entire human rights system (with a few exceptions concerning absolute rights such as the prohibition of torture, slavery and genocide) is based on proportionality. The resolution of conflicts between human rights and competing economic and social interests is often at the very heart of human rights cases. In these cases, the principle of proportionality is often used to resolve contradictions between opposing values. From this point of view, the potential conflicts that may arise between the rights of nature and human rights are not so unusual. There would certainly be conflicts of rights if the rights of nature were ever to benefit from the same level of protection as human rights, but these conflicts do not in themselves represent a dead end, as there is much to learn and explore from the jurisprudence that has emerged over recent decades on the balance between human rights and opposing interests.

An important element of this jurisprudence is that proportionality is based on a non-hierarchical approach to rights. This element is important to emphasise, as the question of the hierarchy of rights is often raised with regard to the possibility of a clash

between human rights and the rights of nature, with the danger of the domination of either human rights, or on the contrary, the rights of nature. The spectre of a hierarchy of rights is often raised, with the risk of human rights being placed at the highest level of the hierarchy and nature being considered subsidiary because it is necessary for human survival. Without denying that there is a genuine danger here, since the law is by nature anthropocentric, it should be stressed that these balances between competing interests are not new to human rights jurisprudence; this has already dealt with extremely complex ethical balances.[44]

Such potential conflicts between the rights of nature and human rights have been envisaged in practice in the Bolivian law on the rights of Mother Earth, which sets out that "the exercise of individual rights is limited by the exercise of collective rights in the living systems of Mother Earth. Any conflict of rights must be resolved in ways that do not irreversibly affect the functionality of living systems" (Article 6). However, this approach is also limited by another law (Law 300), which reaffirms the obligation to respect the rights of Indigenous peoples, farmers and Afro-Bolivian communities, as well as "the civil, political, social, economic and cultural rights of the Bolivian people to live well through integral development" (article 9, paragraph 3). The law thus envisages the possibility of conflicts of rights and establishes certain principles to address them – in particular the concept of not "irreversibly affecting the functionality of living systems".

In general terms, it is simplistic to think that such potential conflicts between human rights and rights of nature means that nature will always trump human interests. Ultimately, rights are not declared as absolute, but rather are proclaimed to ensure the equality of arms in the event of litigation. This is not to deny that the conflict of rights is a genuine concern, but the fact is that rights and interests always clash. This is the

[44] See, for example, cases concerning bioethics, security or euthanasia, in the following analyses: Ben Golder and George Williams, "Balancing national security and human rights: assessing the legal response of common law nations to the threat of terrorism", (2006) 8.1 Journal of Comparative Policy Analysis 43-62; Ann Quennerstedt, "Balancing the Rights of the Child and the Rights of Parents in the Convention on the Rights of the Child", (2009) 8.2 Journal of Human Rights 162-176; Viktoras Justickis, "Balancing personal data protection with other human rights and public interest: between theory and practice", (2020) 13.1 Baltic Journal of Law & Politics 140-162; Camilleri, Francesca, "Compulsory vaccinations for children: Balancing the competing human rights at stake", (2019) 37.3 Netherlands Quarterly of Human Rights 245-267.

nature of the legal system, which uses the concept of proportionality to try to bring about a sense of justice. In practice, this would afford nature a greater say. Its interests and rights would be integrated into the balance, which has not generally been the case to date. As Marine Yzquierdo, a Paris barrister committed to defending the rights of nature, emphasises: “In a court case, opposing human and non-human interests can be balanced. This does not mean that the rights of nature will win every time, but it will afford an equilibrium to the balance of power.”[45]

[45] Quoted in Elisabeth Crépin-Leblond, "Les droits de la nature, un militantisme écologique pas comme les autres" [The rights of nature, ecological activism like no other], Carenews INFO - Published on 23 February 2024

6. The crime of ecocide and the rights of nature

As a final reflection on the links between human rights and the rights of nature, it is also helpful to consider legal developments concerning the crime of ecocide. While the rights of nature movement has not generally extended to criminal law, campaigns to criminalise environmental destruction have run parallel to, and intersected with, campaigns for the rights of nature (Thiel and Cabanes, 2024). A recent addition to these long-running campaigns has been a proposal for a definition of ecocide, drafted by a group of experts in environmental law and international criminal law (Sands *et al.*, 2021). This group expressed the hope that the definition could form the basis of a new international crime, capable of being prosecuted before the International Criminal Court (ICC). The proposed definition of the crime focuses on ecology and would prohibit "unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts". This means that damage or harm to the natural environment itself is sufficient cause upon which to base the crime, without the need to add harm to human beings. While the current ICC definition sets out that only natural persons and certain organisations and institutions can be victims, the criminalisation of ecocide offers the possibility of extending the notion of a victim to non-humans and the environment. When it comes to reparations for damage caused to nature, international law is at best weak and at worst irrelevant. This is due to the general weakness of the international regime on the liability of States for illegal acts, the complexity of establishing a causal link between harmful activities and damage to nature, and the fact that reparations include satisfaction, restoration and compensation – approaches that are not very relevant to damage to nature. More generally, reparations for environmental damage are often anthropocentric, focusing on the impact on human well-being.

Attempts to introduce the crime of ecocide to the ICC Statute started some years ago and are still under discussion. However, at national level, the Belgian federal parliament adopted a new criminal code on 23 February 2024 that includes the crime of ecocide among international crimes, together with war crimes, crimes against

humanity, genocide and the crime of aggression. The new Belgian Criminal Code extends liability for environmental crimes to both individuals and legal entities, with penalties of up to 20 years' imprisonment and substantial fines. The adoption of a directive by the European Union (EU) in November 2023 must also be mentioned. This significantly expands the scope of environmental offences that can be criminally prosecuted under EU law. In particular, the directive introduces a provision concerning serious environmental offences, namely those that result in the irreversible or long-lasting destruction of important ecosystems, habitats in protected sites or the quality of air, soil or water. The directive adds a number of new environmental offences, in particular on key matters such as timber trafficking, the import and use of mercury and fluorinated greenhouse gases, the illegal depletion of water resources and the prohibited recycling of polluted ship components.

In general, we are witnessing the development of approaches to protecting nature that act through criminal law. Although these initiatives do not, in the strictest sense, affirm the rights of nature, they add the element of criminal sanctions to the development of a law that is less anthropocentric. Unlike initiatives concerning the recognition of the rights of nature, criminal sanctions intervene later, when natural entities have already been destroyed or seriously damaged. In this regard, the rights of nature seek to intervene earlier, before natural entities are seriously damaged. Nevertheless, criminal law can also help protect the rights of natural entities as a result of its deterrent effect. A parallel can be drawn between the adoption of the Convention on the Prevention and Punishment of the Crime of Genocide in 1948, often regarded as one of the first international treaties to protect human rights, and the adoption of the crime of ecocide, which represents the criminal and penal component of the rights of nature.

Conclusion

Initiatives to promote the rights of nature have increased in recent decades, giving rise to a global rights of nature movement. This movement is inspired by and based on numerous rights that have been declared and recognised by international human rights treaties. As this study has analysed, the correlations between conventional human rights and the rights of nature are growing rapidly and are based on complementary synergies. There are many synergies and complementarities; these are part of the same philosophical, ethical and moral thinking on the recognition of rights based on the inherent and intrinsic values of living entities – both human and non-human. This recognition of the complementary relationship between human rights and the rights of nature takes many forms: from the recognition that certain human rights such as the right to food, water and health depend on a certain level of "healthy nature", to the recognition of the correlations between the right to a healthy environment and the rights of nature, as well as the efforts of environmental and Indigenous rights defenders to link cultural rights to a relational approach to nature. The development of jurisprudence that links cultural rights, the right to a healthy environment and the rights of nature is fostering the emergence of a rights-based approach that supports a less anthropocentric approach to human rights. As Elisabeth Lambert emphasises: "This 'ecological human rights' approach builds on the previous human rights approach by adding a new component to protect the natural environment in its own right; it is therefore stressed that the human rights approach is considered a promising means of meeting the ecological challenge that we are facing."[46]

At a time when we find ourselves at the crossroads of a series of possible futures and facing the urgent need to act in light of a triple global ecological crisis, the rights of nature are very promising for enacting a transformative evolution of our systems of environmental governance. With the acceleration and multiplication of ecological crises, human rights are taking on an increasingly ecological dimension. As such, the rights of nature offer an important complement to this evolution, underlining our fundamental and equal relationship with other species on the planet. In this respect, as an FAO report on

[46] Elisabeth Lambert, The Environment and Human Rights – Introductory Report to the High-Level Conference, Environmental Protection and Human Rights, Strasbourg, 27 February 2020 – prepared at the request of the Steering Committee for Human Rights (CDDH) – pages 4-5.

the global state of the world's forests concludes, there is an urgent need to promote a new relationship with nature.47 In a predominantly anthropocentric system, the complementarity and synergies between human rights and the rights of nature can serve as a catalyst to assist our societies in evolving towards a more ecocentric approach. The traditional approach to human rights is based on an erroneous conception of humans as disparate individuals, abstract from any social or ecological framing. In this context, it is time to move on from a vision of "environmental human rights" to "ecological human rights" (Taylor, 1998). Recognition of the links between the right to a healthy environment and the rights of nature moves us towards a legal notion of humans existing in an ecological world. In conclusion, recognising and respecting both human rights and the rights of nature is essential to building a just, sustainable and balanced society that values and preserves the dignity and interdependence of all forms of life, and breaks with a conception that is largely dominated by an anthropocentric and economic approach to nature.

[47] UN FAO. 2020. The State of the World's Forests: Forests, Biodiversity and People. Rome: Food and Agriculture Organization.

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Legal deposit 1st quarter 2025
ISSN 2492 - 2846

Graphic design MeMo, Juliegilles, D. Cazeils
Layout PUB
Printed by the AFD reprography service

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