



*SUPPLEMENTARY REPORT:*

# RIGHTS OF NATURE IN THE POST-2020 GLOBAL BIODIVERSITY FRAMEWORK

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## Introduction:

On July 12, 2021, the UN Convention on Biological Diversity (CBD) Secretariat released the first official draft of the post-2020 global biodiversity framework ('the Framework') with a view to realizing the 2050 vision of a world living in harmony with Nature. In doing so, this draft removed the enabling condition to “[c]onsider and recognize, where appropriate, the rights of nature” previously included in the zero draft. The recognition of the Rights of Nature would pave the way to transforming society's relationship with the environment, allowing the natural world to exist and flourish.<sup>1</sup> The draft would have been the first international framework to recognize Nature's rights. Consequently, this removal hinders the framework's capacity to regress the rampant loss of biodiversity.

Though this is a setback, we acknowledge the strides that have been made within the first draft to transform our human approach in such a way that respects the interdependence of humanity and Nature, including recognizing that the benefits biodiversity provides is fundamental to both human well-being and a healthy planet; recognizing the need to transform economic, social and financial models; and ensuring equitable participation and the respect for Indigenous rights.

This report drafted by Earth Law Center expands upon our coalition's 2021 recommendation and previous report in collaboration with Rights of Mother Earth, Rights of Nature Sweden, and Earth Advocacy Youth, *Living in Harmony with Nature: Why the Convention on Biological Diversity Post-2020 Global Biodiversity Framework Must Include the Rights of Nature*.<sup>2</sup> This report offers our recommendation for the explicit re-incorporation of the Rights of Nature within the first-draft, with an ongoing list of signatories currently at 123 organizations and individuals, and a substantive analysis on why its inclusion is necessary in advancing the vision of the post-2020 framework.

## Summary of Report:

- Our recommendation includes additions to the theory of change and enabling conditions, the addition of an implementation target that will clarify the first draft inclusion of “rights-based approaches,” as well as some additional line-edit recommendations to align the framework with Earth-centered governance. To fully achieve the 2050 vision of a world living in harmony with Nature, the post-2020 global biodiversity framework must create a clear pathway and understanding of how to employ a “rights-based approach.”
- Our report highlights failures of contemporary international environmental law, including the present fragmented, human-centered and reactive approach to biodiversity loss.

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<sup>1</sup> Towards the Adoption of a Rights-Based Approach - Incorporating the Rights of Nature in the Post 2020 Global Biodiversity Framework of the CBD [https://2d350104-a104-42f3-9376-3197e7089409.filesusr.com/ugd/23bc2d\\_71f3fe57211547a5b4f4c831034320ab.pdf](https://2d350104-a104-42f3-9376-3197e7089409.filesusr.com/ugd/23bc2d_71f3fe57211547a5b4f4c831034320ab.pdf)

<sup>2</sup> Ibid.

→ Our report explains that Rights of Nature aligns with the vision of the Framework to transform society's relationship with the natural world, and would lead to more effective protection of the natural environment and biodiversity at large. In particular the recognition and implementation of Rights of Nature would:

- transform the current approach of international environmental law through a unifying Earth-based framework and aligning the CBD with other international frameworks;
- enhance the restoration of biodiversity while also resulting in greater protection and fulfilment of human rights; and
- require us to reimagine 'sustainable development' to that of ecological sustainability, thereby guiding development, economics, governance, and laws towards humankind living in harmony with Nature.

## Why is Recognizing the Rights of Nature Necessary?

A human-centered framework dominates western societal, economic, legal and governance systems. Values of dominion, ownership, independence, and separation with priorities of infinite growth govern these systems, giving rise to growing crises such as climate change and biodiversity loss. These systems are fragmented and value Nature as a resource and property for human utility. They partition non-humans as "Nature" and therefore separate the whole of the web of life, its interactions and dependency, into two. The foundation and paradigm guiding these values and systems can be characterized as that of subconscious disconnect.

Despite the proliferation of international treaties and soft law instruments, to date, international environmental law has not effectively protected Nature and has been unable to prevent widespread loss of biodiversity. The IPBES Global Assessment Report on Biodiversity and Ecosystem Service warns that "One million species already face extinction, many within decades," that are "declining faster than at any time in human history."<sup>3</sup> This is a result of the fragmented, reactive and human-centered nature of the current regulatory approach that "separates natural resources (like forests and rangelands) from their surrounding environment (like air, water and land)."<sup>4</sup> This is because "international environmental law lacks an overarching, legally binding umbrella text to clarify and define principles, obligations and rights to respect environmental law and the global environment."<sup>5</sup> This approach has resulted in significant "gaps" in the global implementation and success of environmental objectives. There

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<sup>3</sup> IPBES (2019): Global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services. E. S. Brondizio, J. Settele, S. Diaz, and H. T. Ngo (editors). IPBES secretariat, Bonn, Germany. 1148 pages. <https://doi.org/10.5281/zenodo.3831673>, pgs. 18 & 16.

<sup>4</sup> Laitos, Jan, and Lauren Joseph Wolongeviccz. "Why Environmental Laws Fail." *William & Mary Environmental Law and Policy Review* 39, no. 1 (2014): 1–51, pg. 17.

<sup>5</sup> Zelle, Anthony R., Grant Wilson, Rachelle Adam, and Herman F. Greene. *Earth Law: Emerging Ecocentric Law: a Guide for Practitioners*. New York, NY: Wolters Kluwer, 2021, pg. 429

is almost a “treaty congestion,” creating “the potential for duplication of efforts, lack of coordination, and even conflict between different legal regimes.”<sup>6</sup>

The rationale behind present, dominant environmental regulation is to protect Nature not for its own intrinsic value, but to maintain what Nature can provide to us; for humanity to continue to enjoy and use Nature as objects, places and resources. The Convention on Biological Diversity, for example, defines ‘biological resources’ as “genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential value for humanity.” It does not recognize the intrinsic value of Nature, nor recognise organisms and populations as living entities or beings, but instead defines them as resources and components, therefore objectifying life and viewing biodiversity merely as a means to enable further human use and enjoyment.<sup>7</sup> This is based on the flawed conception that humans are separate and superior to Nature and has resulted in a ‘growth without limits’ paradigm.<sup>8</sup> A 2016 United Nations report further found that “intensified competition for natural resources in recent decades has led to multiple social and environmental conflicts all over the world . . . In a globalized world, the quest for economic growth has resulted in a neo-colonial environment that exacerbates conflicts between communities and business actors.”<sup>9</sup>

Modern environmental law continues to legalise environmental abuse, conferring discretion on public authorities to decide how to balance environmental protection with economic growth and other social objectives that are dependent on Nature’s wellbeing.<sup>10</sup> It fails to recognise that the “economy is a subsystem of human society which is a subsystem of the Earth,”<sup>11</sup> meaning that the health of Nature as a whole should have precedence over economic or other social considerations. This fragmentation and human-centered perspective has also resulted in a reactive rather than proactive approach. Actions and regulations to protect species from going extinct only take effect once they are threatened or endangered, rather than seeking to maintain population health and prevent decline in the first place. In the specific context of biodiversity, for example, “the endangered species listing system has not worked: in the time it takes to do the scientific studies required to list a species, it is already too late.”<sup>12</sup> A consequence of this approach is that environmental law (largely) slows the rate of degeneration of biodiversity, it can never stop or reverse it, as would be necessary to achieve the goal of living in harmony with Nature by 2050.<sup>13</sup>

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<sup>6</sup> Montini, M. (2013). Revising International Environmental Law Through the Paradigm of Ecological Sustainability. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.2726637>, pg. 2.

<sup>7</sup> Kotzé, L. & French D. (2018), The Anthropocentric Ontology of International Environmental Law and the Sustainable Development Goals: Towards an Ecocentric Rules of Law in the Anthropocene, *7 Global Journal of Comparative Law* 5, pg. 22.

<sup>8</sup> Ibid; Laitos, Jan, and Lauren Joseph Wolongevicz. “Why Environmental Laws Fail.” *William & Mary Environmental Law and Policy Review* 39, no. 1 (2014): 1–51, pg. 9-11.

<sup>9</sup> United Nations, “Report of the Special Rapporteur on the Situation of Human Rights Defenders,” A/71/281, p. 13 (3 Aug. 2016), at: [http://www.un.org/ga/search/view\\_doc.asp?symbol=a/71/281](http://www.un.org/ga/search/view_doc.asp?symbol=a/71/281).

<sup>10</sup> Carducci, Michele, Silvia Bagni, Vincenzo Lorubbio, Elisabetta Muzaro, Massimiliano Montini, Alessandra Barreca, Costanza Di Francesco Maesa , Mumta Ito, Lindsey Spinks, and Paul Powlesland. Rep. *Towards an EU Charter of the Fundamental Rights of Nature*, 2013, pg. 25.

<sup>11</sup> Ibid, pg. 50.

<sup>12</sup> Ibid, pg. 107.

<sup>13</sup> Ibid, pg. 5.

Rights of Nature, on the other hand, is a framework to transform the current paradigm and worldview to that of interconnected and interdependent relationships and reciprocal responsibilities, so that we can effectively address the root causes of our environmental crisis. Rights of Nature, simply put, is the legal recognition of Nature as a legal entity with inherent rights. Just as humans have inherent and fundamental rights for existing, so too do the ecosystems and species with whom we co-evolved. However, Rights of Nature is more than granting subjective rights to Nature. Consistent with the framework's plan of action, Rights of Nature has the potential to initiate transformative change by grounding legal and policy standards, principles of law, and management objectives and targets in a framework that reorients the very systems that have legalized and created the crises we are trying to address. Rather than protecting biodiversity and determining targets for human benefit, we must seek to respect and protect relations between *all* members of the Earth community. Rights of Nature manifests in the acceptance that human existence is dependent on Nature's existence and wellbeing, thus "providing an overarching context for our existence as part of the Earth as a whole."<sup>14</sup>

The reinterpretation of traditional norms and principles of law based on a rights-based and holistic approach will help States to elevate standards of protections for biodiversity. For example, countries are evolving the precautionary principle to the proactive, whole-Earth approach, 'in dubio pro natura' ("when in doubt, err in favor of Nature.")<sup>15</sup> This is a needed step up from "when in doubt err on the side of caution," where the lack of certainty still leads to a decision made for the benefit of human interests that harm biodiversity.

## The Rights of Nature in Practice

Explicit recognition of Rights of Nature and targets to ensure implementation of a 'rights-based approach,' will assist in ensuring we meet the goals and targets of the Framework, including to protect 30 percent of land and sea areas globally (e.g. Target 3). For example, a recent United Nations report found that up to 40 percent of marine protected areas (MPAs) are paper parks and a study in *Nature* found that of the 433 MPAs sampled with management plans, approximately 50 percent were not being implemented due to barriers including lack of governmental will, lack of clear objectives (including a primary aim of conservation), lack of consistent framework, data and funding, and the existence of commercial opposition.<sup>16</sup> It is important that protected areas are created and implemented in such a way to ensure they protect biodiversity.

To guarantee effective protection requires us to change our worldview and values surrounding objectives for protected areas. Rights of Nature does just that, by placing the protection and restoration of biodiversity as the primary goal of protected areas. Recognition of

<sup>14</sup> Ibid, pg. 50.

<sup>15</sup> Mason, Ian. "One in All: Principles and Characteristics of Earth Jurisprudence." Essay. In *Exploring Wild Law: the Philosophy of Earth Jurisprudence*, edited by Peter Burdon. Adelaide, Australia: Wakefield Press, 2011, pg. 38.

<sup>16</sup> Bender, Michelle. "An Earth Law Framework for Marine Protected Areas." IUCN, 2017.

<https://portals.iucn.org/library/sites/library/files/resrecrepattach/ELC%20MPA%20Framework%20Sept%204%20%282%29.pdf>.

Rights of Nature and implementation of an Earth-centered approach in the Framework will also help ensure that traditional knowledge, cultural and spiritual values, innovations and practices of Indigenous peoples and local communities guides decision making for effective management of biodiversity and the respect of Indigenous rights (Target 20 and 21). This is illustrated by the following two case studies:

### **Case Study No. 1: The Galapagos Marine Reserve (Ecuador)**

The Galapagos Marine Reserve is managed under the Special Law of Galapagos, in force since 2015,<sup>17</sup> stating that the policies, plans, regulations and public and private actions in the province of Galapagos and its protected areas will be governed by the following principles: precaution, respect for the Rights of Nature (to exist, to be maintained, to the regeneration of its vital cycles, structure, functions and evolutionary processes and its restoration), citizen participation, limitation of activities; objective liability and right of preferential access to permanent residents of the province of Galapagos. Therefore, the Special Law proposes regulations that will maintain ecosystems under “minimal human interference,”<sup>18</sup> where minimal is defined and determined by sustainable and controlled development that continues to support the capacity of ecosystems, local participation, and a recognition of the interactions between inhabited areas and protected ecosystems.<sup>19</sup>

Also, the Galapagos Plan 2015-2020 states that citizens and Nature in the Galapagos are guaranteed the constitutional right of living-well. This means that governance must create an equilibrium among society, the economy and Nature.<sup>20</sup> As a result, the management plan creates and enforces high standards to protect the biodiversity of the marine ecosystem and the livelihoods of the local communities. For example, industrial fishing, and harming sharks, in the archipelago is entirely prohibited.<sup>21</sup> This standard manifested itself in 2017 when 300 tons of sharks were found aboard a ship inside the limits of the Marine Reserve. Twenty crewmembers were prosecuted as a result of Article 247 of Ecuador’s Criminal Code. The Court recognized that the legally protected entity of this case is Nature, and that she be represented by the Galapagos National Park Institution, declaring: “the Galapagos province has a larger volume of marine organisms than other places worldwide, as scientists would say high biomass, and this is the contribution to their environment, the country, and humanity.” This example demonstrates how marine protected area regulations can be implemented and enforced under the Rights of Nature framework to protect biodiversity.

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<sup>17</sup> Ecuador, Special Law for the Province of Galapagos, year III, No. 520 (June 11, 2015), available at: [http://www.galapagos.gob.ec/wp-content/uploads/downloads/2017/01/Ley\\_organica\\_de\\_regimen\\_especial\\_de\\_la\\_provincia\\_de\\_galapagos\\_ro\\_2do\\_s\\_11\\_06\\_2015.pdf](http://www.galapagos.gob.ec/wp-content/uploads/downloads/2017/01/Ley_organica_de_regimen_especial_de_la_provincia_de_galapagos_ro_2do_s_11_06_2015.pdf) (Special Law).

<sup>18</sup> Ibid, art. 2.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid, art. 3.

<sup>21</sup> Ibid, art. 58.

## Case Study No. 2: The Hauraki Gulf Marine Park Spatial Plan (New Zealand)

Another example can be seen in New Zealand and the Hauraki Gulf Marine Park Spatial Plan, or “Sea Change Plan” (the Plan). The Plan has four fundamental pillars for governance: replenishing the food basket, ridge to reef/mountains to sea, prosperous communities and guardianship. Though the Plan does not codify legal rights for the Park, there is recognition of the Rights of Nature framework stating “Gulf communities need to adjust their relationships with the lands and waters around them. Rather than thinking of the environment and its bounty as an entitlement, considering it as a being in its own right will help us to rethink our reciprocal responsibilities and work toward a better balance.”<sup>22</sup>

Additionally, the Plan recognizes that the Māori people are the spiritual guardians or protectors (kaitiaki) of the lands, territories, and waters that they have ancestrally possessed, having a personal and collective responsibility to maintain them. In this case, the guardian function is located ancestrally in the Mana Whenua as a whole [the term used to refer to local iwi (Mori tribes) and hapu (sub-tribes)]. This highlights the importance of including local Indigenous peoples in management, who offer valuable input on “long-term scientific knowledge based on observation and experience.”<sup>23</sup>

Customary environmental law, Kaitiakitanga, guides management of the Park and it is defined as “an ethic and practice of protection and conservation of the natural environment and the resources (...).”<sup>24</sup> The main objective of Kaitiakitanga is to maintain a “natural and appropriate balance” between the needs of the people, Mother Earth and the Sea. In practice, this includes setting temporary restrictions on fishing within certain areas, using the lunar calendar to guide planting and harvesting, banning recreational fishing and birding, harvesting only what is needed,<sup>25</sup> Iwi feedback and consent on regulations and permits within the Continental Shelf,<sup>26</sup> and allocating permits for seafood harvest for cultural purposes.<sup>27</sup> The Plan goes further and extends the establishment of the role of guardianship to the community in general, calling upon guardianship to be “practiced by all.”<sup>28</sup> As a result, the local Iwi communities have legal discretion over issuing permits for extraction and human activity and every person is given opportunities to participate in guardianship activities, including becoming involved in decision making, monitoring programs and restoration protection.

<sup>22</sup> Sea Change Hauraki Gulf Marine Park Spatial Plan (April 2017) <https://www.seachange.org.nz/assets/Sea-Change/5086-SCTTP-Marine-Spatial-Plan-WR.pdf>, pg. 31.

<sup>23</sup> Environmental Defense Society Incorporated, Turning the Tide – Integrated Marine Planning in New Zealand (2018), pg. 28, available at: [http://www.eds.org.nz/assets/Publications/Turning%20the%20Tide\\_FINAL.pdf](http://www.eds.org.nz/assets/Publications/Turning%20the%20Tide_FINAL.pdf) (EDS).

<sup>24</sup> Sea Change Hauraki Gulf Marine Park Spatial Plan (April 2017) <https://www.seachange.org.nz/assets/Sea-Change/5086-SCTTP-Marine-Spatial-Plan-WR.pdf>, pg. 26.

<sup>25</sup> Te Ahukaramū Charles Royal, Kaitiakitanga – guardianship and conservation, The encyclopedia of New Zealand, available at: <https://teara.govt.nz/en/kaitiakitanga-guardianship-and-conservation/print>.

<sup>26</sup> New Zealand, Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act (2012), available at: <https://teara.govt.nz/en/kaitiakitanga-guardianship-and-conservation/print>.

<sup>27</sup> New Zealand, Resource Management Act (1991), available at <http://www.legislation.govt.nz/act/public/1991/0069/232.0/DLM230265.html>.

<sup>28</sup> Sea Change Hauraki Gulf Marine Park Spatial Plan (April 2017) <https://www.seachange.org.nz/assets/Sea-Change/5086-SCTTP-Marine-Spatial-Plan-WR.pdf>, pg. 161.

## Implementation of the Rights of Nature

The post-2020 global biodiversity framework has the unique opportunity to build on the momentum of the Rights of Nature movement and make the transformational change needed at the international level to ensure biodiversity is restored and protected for all life on the planet. Including “Target 22” per our recommendation and defining “rights-based approaches, including rights of Nature” to both the theory of change (para. 7) and the enabling conditions (para. 17) provides an alternative to the ‘business as usual’ and human-centered treaty frameworks that lack effectiveness, fuel degradation and fail to achieve systemic change. It is imperative that we transition to language, legal and governance structures that represent the interconnectedness of ecological processes and see humans as embedded within Nature. The CBD could lead the way in this paradigm shift. The CBD can explicitly re-incorporate to the Rights of Nature ‘umbrella’ framework, whereby global conservation efforts would align together given that Earth-centered principles are fundamental and universally applied: The following examples provide a picture of what recognizing the Rights of Nature in the CBD, would embody:

- a) Firstly, the recognition of Rights of Nature creates a unifying framework across all sectors, allowing us to take a more proactive approach in averting the loss of biodiversity and actively supporting the regeneration of the natural environment. This approach would manifest in principles of wholeness, interconnection, responsibility and reciprocity, addressing existing power imbalances.
  - b) Secondly, one such principle among many global examples of the Rights of Nature, is the representation of Nature, providing Nature with a voice and including her as a stakeholder in decision-making.
  - c) Thirdly, the recognition of Rights of Nature acknowledges and strongly endorses the interconnection between Nature’s and humanity’s wellbeing. By putting Nature’s health first, the Rights of Nature paradigm will collectively protect the human rights of those most vulnerable and most susceptible to climate change and the loss of biodiversity.
  - d) Fourthly, the recognition of Rights of Nature causes us to redefine what is sustainable. Given the uneven protection of Nature, the global community has a moral obligation to rebalance our relationship with the Earth. This redefinition to ‘ecological sustainability’ will contribute to achieving the objectives of the post-2020 biodiversity framework and the Sustainable Development Goals.
- a) Alignment of the CBD with Other Conservation Agendas Under an Earth-Centered Framework**

The CBD has effectively collaborated on a global scale with UN organizations, other biodiversity treaties and relevant international organizations to promote the mainstreaming of the

biodiversity agenda.<sup>29</sup> However, these efforts are not yet at the scale and speed necessary to reduce or halt extreme biodiversity loss.<sup>30</sup> In fact, the findings of the fifth Global Biodiversity Outlook report of September 2020 alert our failure thus far to deter the rampant loss of species and destruction of ecosystems. The results of the report indicated that not one of the 2010 Aichi Biodiversity targets were fulfilled. Consequently, the report advocates for humanity to recognize the value of biodiversity and utilize an integrated approach “to promote healthy ecosystems and healthy people.”<sup>31</sup> The recognition and implementation of the Rights of Nature would respect and protect the intrinsic value of biodiversity and provide for an integrated approach to governance by combining “scientific methods with social values”<sup>32</sup> to address the sociopolitical and ecological dimensions of biodiversity loss. In practice, the Rights of Nature framework embodies an integrated approach to conservation by also incorporating an interdisciplinary and intersectional methodology, including a broad representation of stakeholders, adapting to continuing research and changing circumstances, and embracing the social learning required in dialogues of differing worldviews, leading to consistency amongst all country commitments and activities to reach conservation targets.<sup>33</sup>

The international community has already recognized on multiple occasions the necessity of holistic and Earth-centered governance:

- The United Nations Harmony with Nature Programme began in 2009 and was promoted by 10+ UN General Assembly resolutions (e.g. A/RES/75/220) calling for the promotion of harmony with the Earth and to support efforts being made towards implementation. Additionally, the United Nations resolution “The Future We Want” ([A/RES/66/288](#)), recognizes “that some countries recognize the rights of nature in the context of the promotion of sustainable development,” with the firm belief that, “in order to achieve a just balance among the economic, social and environmental needs of present and future generations, it is necessary to promote harmony with nature.”<sup>34</sup>
- The IUCN passed Resolution 100: “Incorporation of the Rights of Nature as the organizational focal point in IUCN’s decision making” in 2021. Within this resolution, the IUCN called for the initiation of a process that would include the Rights of Nature in IUCN as fundamental and key elements of plans, programs and projects, as well as in IUCN policy on rights, that would “contribute to a new philosophy of human well-

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<sup>29</sup> Kimbrough, L. (2020, September 17). We are failing to save the planet's species, finds UN report. Mongabay Environmental News. <https://news.mongabay.com/2020/09/we-are-failing-to-save-the-planets-species-finds-un-report/>.

<sup>30</sup> Dias, B. F. S. (2020, July 31). The Slow but Steady Progress in the Implementation of the Biodiversity Agenda. IUCN. <https://www.iucn.org/news/world-commission-environmental-law/202007/slow-steady-progress-implementation-biodiversity-agenda>.

<sup>31</sup> Secretariat of the Convention on Biological Diversity (2020) Global Biodiversity Outlook 5. Montreal, pg. 21.

<sup>32</sup> Johnson, Martha C., Michel Poulin, and Mark Graham. “Towards an Integrated Approach to the Conservation and Sustainable Use of Biodiversity: Lessons Learned from the Rideau River Biodiversity Project.” *Human Ecology Forum* 10, no. 1 (2003): 40–55.

<sup>33</sup> Ibid.

<sup>34</sup> United Nations General Assembly. “Resolution Adopted by the General Assembly on 27 July 2012: 66/288. The Future We Want.” United Nations, July 27, 2012.

[https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_66\\_288.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_66_288.pdf), pg. 8.

being.”<sup>35</sup> At the 2016 Congress in Hawaii, IUCN Members included nature’s rights in the 2017-2020 Programme of work priorities, which “aims to secure the rights of nature.”<sup>36</sup>

- In 2016, at the World Congress on Environmental Law in Rio de Janeiro, Brazil, the “IUCN World Declaration on the Environmental Rule of Law” was adopted. The Declaration outlines 13 principles to serve as the foundation for developing and implementing solutions for ecologically sustainable development, thus coming full circle with “The Future We Want” UN Resolution. Indeed, Principle 2 of the Declaration expressly adopts the Earth-centered holistic approach by recognizing each living being’s right to nature as well as Nature’s rights “to exist, thrive, and evolve.”<sup>37</sup>

Several countries have also embraced Rights of Nature at the domestic level, either constitutionally, through legislation, or through the courts; for example, Ecuador, Mexico, India, Colombia, Brazil, and the United States (at various levels of local, regional, and national government). In fact, over thirty-five countries have passed laws or policies related to Rights of Nature, (see the United Nations Harmony with Nature).<sup>38</sup> For example, Colombia’s Constitutional Court in 2016 declared the river Atrato to possess “legal personality,” providing it with the right to restoration and ordering the government to be the guardian of the river, together with the local communities.<sup>39</sup> A couple of years later, in 2018, the Colombian Supreme Court also recognised the Amazon region as subject to rights, ordering institutions and communities to work on a plan of action to reduce deforestation.<sup>40</sup> Similarly, in India, in 2018, a High Court conferred legal personality on, and thus protection of, the entire animal reign.<sup>41</sup>

These examples illuminate the rapid development of the international community’s recognition of the human duty to care for and respect Nature as a living entity subject to rights. Clearly defining and clarifying the implementation of “rights-based approaches” to include the Rights of Nature would help the CBD align with these and other global policy and conservation

<sup>35</sup> IUCN. “Incorporación De Los Derechos De La Naturaleza Como Eje Articulador De Las Decisiones De La UICN.” IUCN.org, 2012.

[https://portals.iucn.org/library/sites/library/files/resrecfiles/WCC\\_2012\\_RES\\_100\\_EN.pdf](https://portals.iucn.org/library/sites/library/files/resrecfiles/WCC_2012_RES_100_EN.pdf).

<sup>36</sup> IUCN, World Conservation Congress. “IUCN Programme 2017-2020 : Approved by the IUCN World Conservation Congress, September 2016.” *World Conservation Congress, 6th, Hawaii, US, 1-10 September 2016*, 2016. <https://doi.org/IUCN-WCC-6th-001>.

<sup>37</sup> IUCN & World Commission on Environmental Law. “IUCN World Declaration on the Environmental Rule of Law The IUCN World Congress on Environmental Law, Having Met in Rio De Janeiro (Brazil) from 26 to 29 April 2016.” IUCN.org. IUCN 1st World Congress on Environmental Law, April 2016. [https://www.iucn.org/sites/dev/files/content/documents/english\\_world\\_declaration\\_on\\_the\\_environmental\\_rule\\_of\\_law\\_final.pdf](https://www.iucn.org/sites/dev/files/content/documents/english_world_declaration_on_the_environmental_rule_of_law_final.pdf).

<sup>38</sup> *Rights of Nature Law and Policy*. Harmony with Nature United Nations. (n.d.). <http://www.harmonynatureun.org/rightsOfNaturePolicies/>.

<sup>39</sup> Principio de precaución ambiental y su aplicación para proteger el derecho a la salud de las personas - Caso de comunidades étnicas que habitan la cuenca del río Atrato y manifiestan afectaciones a la salud como consecuencia de las actividades mineras ilegales, November 10, 2016 (Sentencia T-622-16). <https://www.corteconstitucional.gov.co/relatoria/2016/t-622-16.htm>.

<sup>40</sup> República de Colombia Corte Suprema de Justicia. “Radiación n. 11001-22-03-000-2018-00319-01,” April 5, 2018 (Sentencia 4360-2018). <https://cortesuprema.gov.co/corte/wp-content/uploads/2018/04/STC4360-2018-2018-00319-011.pdf>.

<sup>41</sup> Narayan Dutt Bhatt Versus Union of India & others (IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL Writ Petition 2014).

initiatives under an overarching ‘umbrella’ framework to help address fragmentation in achieving biodiversity targets as well as the “piecemeal, incremental and reactive nature of international environmental law-making.”<sup>42</sup> Instead of having a fragmented approach, the CBD would work with other global frameworks to proactively protect and restore biodiversity, such as through enforcing protected areas on the high seas, reducing harmful subsidies, and mitigation efforts of climate change. Therefore, re-incorporating explicit recognition of the Rights of Nature framework would reorient the CBD around a foundational paradigm of relationships and interconnectedness, thus enhancing the “understanding of the complex web of relationships within Nature and between humans and other forms of Nature,”<sup>43</sup> enabling more effective and efficient protection and restoration of biodiversity.

### **Case Study No. 3: Illegal emplacement of a shrimp farm in a mangrove protected area**

A case involving mangroves in Ecuador between 2012 and 2015, highlights how Rights of Nature at the Constitutional level creates a new norm of conduct: consistent standards and principles of law to which all sectors of government and decision-makers must adhere. The illegal development of a shrimp farm in a mangrove forest of the Cayapas Mataje Ecological Reserve territory, a protected area in the province of Esmeraldas, Ecuador was first decided by the local court on the basis of property-rights, ruling in favor of the shrimp farmer.

The Constitutional Court ruled that the case be comprehensively reexamined to include a Rights of Nature perspective: "this Constitutional Court has been emphatic in highlighting the importance of rights to nature, which results in the obligation of the State and its officials to encourage and promote respect for all the elements that are part of an ecosystem, as well as for Nature's rights to be respected in her entirety. These aspects have obviously not been observed ... in a case whose central issue is the installation of a shrimp farm within the Cayapas-Mataje ecological reserve, a place possessing a system of mangroves with a wide variety of species of fauna and flora."

Therefore, not only judges, but the government and its representatives are to analyze whether or not a process or activity may violate the Rights of Nature. The Constitutional Court found that judges of the Esmeraldas Provincial Court of Justice did not do this evaluation for the shrimp farm and its impact on the mangrove system. This case study illustrates that as a unifying ‘umbrella’ framework, the presence of Rights of nature requires the state and all institutions to align under Earth-centered standards and principles, and consider if actions would violate the Rights of Nature or harm biodiversity, taking action when necessary. Similarly, this is a practical way in which Rights of Nature may be implemented by States as signatories to the CBD.

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<sup>42</sup> United Nations, “Gaps in international environmental law and environmental-related instruments: towards a global pact for the environment: report of the Secretary-General”, A/73/419 (30 November 2018), pg. 43.

### b) Representation of Nature

As an umbrella framework, the Rights of Nature ensures legal and governance systems reorient around fundamental Earth-centered principles and standards. The representation of Nature is one such standard. Though there are more global instances of what recognizing the Rights of Nature within the CBD would entail, we provide two examples of the principle of representation: (1) recognizing Nature as an independent stakeholder in decision-making and creating a guardianship system, and (2) enabling representation through the standing of any person or community. The enabling conditions of the post-2020 framework already envisage “a participatory and inclusive whole-of-society approach” (para. 15). While the condition goes further by specifically encompassing various actors, it is the undefined subject of “and other stakeholders” that leaves the door open to recognize Nature herself as a *relevant stakeholder* in decision-making. The evolution of the representation principle in this way brings “Nature into our legal, political, social and economic decision-making as a “stakeholder” in [her] own right [and] whose rights must be respected and integrated into all our actions.”<sup>44</sup>

Such an implementation standard can be found in the example of Aotearoa/New Zealand, where the Māori negotiated the Te Awa Tupua Act of 2017 (also known as the Whanganui River Claims Settlement). The law is oriented entirely around the Maori spiritual understanding that “I am the River and the River is me.” A guardianship body composed of Maori and Crown representatives, or Te Pou Tupua, are responsible for representing the River’s interests in decisions and disputes, and for speaking on behalf of the River in matters relating to the River’s health. Despite the array of individuals whose interests may clash, they are required to have “particular regard” for the ecosystem’s intrinsic values and personhood. This standard would also provide Nature with the right to standing in varying legal and judicial arenas. For example, established in Ecuador’s constitution, any person can speak on behalf of Nature, and a specially appointed *ombudsman* investigates violations of Nature’s rights. This has led to empowering a broad range of actors to speak for Nature; over thirty cases have been brought by the government and civil society on behalf of Nature’s rights.

Ensuring the representation of Nature’s interests and needs as a stakeholder in the CBD is one way to ensure biodiversity is restored and protected. In fact, biodiversity conservation will be stronger and more efficient than present human-centered approaches. Recognizing the intrinsic needs of biodiversity and ecosystems outside of human benefit will strengthen the rationale and methodology of conservation, ultimately protecting more species, especially those species that are often excluded from conservation efforts.

#### **Case Study No. 4: The ?Esdilagh First Nation**

The ?Esdilagh First Nation, one of the six comprising the Tsilhqot’in Nation, enacted the Sturgeon River Law in 2020 (also known as the Fraser River) stating that “[p]eople, animals, fish, plants, the nen (“lands”), and the tu (“waters”) have rights in the decisions about their

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<sup>44</sup> Carducci, Michele, Silvia Bagni, Vincenzo Lorubbio, Elisabetta Muzaro, Massimiliano Montini, Alessandra Barreca, Costanza Di Francesco Maesa , Mumta Ito, Lindsey Spinks, and Paul Powlesland. Rep. *Towards an EU Charter of the Fundamental Rights of Nature*, 2013, pg. 60.

care and use that must be considered and respected.”<sup>45</sup> Additionally, the Law asserts the rights and responsibilities of the ?Esdilagh of the T̄silhqot’in Nation as caretakers of the tu, noting their identity is tied to the nen and tu, and tu is sacred and not a resource. It further calls for proactive planning and management to ensure the health of the tu is maintained, the consideration of the needs of the fish, plants and other relations before taking from or using tu, and allows for the ?Esdilagh Government to suspend or cancel an authorization where necessary to protect fish, habitat and water flow.

In August 2020, the Tsilhqot’in Nation of British Columbia closed all salmon fishing within their territory west of Williams Lake (including the Fraser River run) due to “extreme conservation concern.” They are also advocating for Canada’s Minister of Fisheries and Oceans to issue an emergency order to close all sockeye fisheries on the Fraser River, noting the need to protect runs for future generations. The Sturgeon River Law provides an example of multiple facets of Rights of Nature: the recognition of the relationship between people and Nature, defining rights for both people and Nature, creation of Earth-centered standards and principles, and the representation of Nature in decision-making. This local example highlights how representation of Nature’s needs can help restore and protect biodiversity.

### c) Human Rights

Given the interdependence of humanity and Nature, re-incorporating explicit recognition of the Rights of Nature framework will also collectively protect human rights. Humankind and human rights stem from and are a part of Nature and Nature’s rights, which are the most fundamental rights (i.e. we cannot realize human rights without recognizing where they originate from). Therefore, it is imperative that the “rights-based approach” clauses are defined more broadly than human rights within the Framework to ensure effective implementation. This rationale is supported in the Framework’s recognition that “biodiversity...is fundamental to human well-being and a healthy planet,” and in other sections that argue for conservation for the “planet and people.” By extending the sphere of rights outward to encompass all of Earth’s beings, with which we co-evolved, we are logically and morally continuing the work we began by recognizing the intrinsic rights of all humans.

It is globally recognized that instances of injustice meet at intersections of race, gender, class, religion, but also Nature. This is apparent in countless cases of "co-violations" of rights, defined as a situation in which governments, industries, or others violate both the Rights of Nature and human rights, including Indigenous rights, with the same action.<sup>46</sup> The dualism of Nature and society is challenged by the instances where both humanity and Nature are harmed with the same action. Anthropocentrism views humans as superior over, or the owner of Nature. In contrast, an ecocentric ethic values the environment independently, even in contrast to the benefits or values held by humans, viewing humanity as part of the Earth community. However,

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<sup>45</sup> Esdilagh First Nation Chief and Council. “?ELHDAQOX DECHEN TS’EDILHTAN.” UN Harmony with Nature, May 2020. <http://files.harmonywithnatureun.org/uploads/upload995.pdf>.

<sup>46</sup> Wilson, Grant, Michelle Bender, and Linda Sheehan. “2016 Update: Fighting for Our Shared Future: Protecting Both Human Rights and Nature’s Rights,” December 2016, pg. 32.

the rationale often leans towards protecting human environmental rights, and while this is paramount, these efforts cannot effectively protect all of Nature. Concurrently we must not minimize the obligation to protect Nature's rights for her own sake: what we do to the environment, we do to ourselves. The human right to a healthy environment, though undoubtedly important, is still human-centric and therefore, experiences all of the previously mentioned "gaps" of present conservation. Ecosystems and species are protected in hierarchical patterns in practice for human benefit.

Given that co-violations of rights occur, protecting the rights of all life must be addressed collectively. Our present legal, governance and economic systems exploit Nature and vulnerable communities as "resources" for profit maximization for the few, leading to increasingly violating human rights and the Rights of Nature. Globally, marginalized communities experience disproportionate impacts of climate change, breathe more polluted air and drink more polluted water while countless environmental defenders have been injured or murdered. The findings of Earth Law Center's co-violations report, *Fighting for Our Shared Future: Protecting Human Rights and Nature's Rights*, show:

- "With regard to violations of Nature's rights, pollution and biodiversity loss appear most often; biodiversity loss occurred in over half of the co-violations cases examined accounting for 47% of the cases in North America; pollution occurred in 68.5% of cases;
- Violations of the rights of Indigenous peoples and environmental destruction are often strongly associated; despite Indigenous people accounting for only 5% of the global population, 35% of co-violations cases analyzed included rights violations of Indigenous peoples;
- Co-violations occur globally, but they have been arising more often in the Global South; the U.N. similarly found that environmental defenders in Latin America specifically, seem to be "most at risk"<sup>47</sup>; and
- Governments often side with private industry over people and natural systems whose rights may be violated; in more than half of the 100 co-violations cases examined, the state appears to be a perpetrator of rights violations, either alone or with an industry.

Therefore, the implementation of Rights of Nature norms will collectively protect humanity by contributing to the protection of ecosystems that support all life. Additionally, consistent with the Framework's recognition of the relationship of biodiversity conservation contributing to the 2030 Agenda for Sustainable Development, arguably, all of the Sustainable Development Goals inherently include the interconnection of humanity and Nature. For the global community to experience for example, Zero Hunger, Clean Water and Sanitation, Reduced Inequalities, Good Health and Well-Being, and so on, there must be harmonious living with Nature, and Nature must be healthy and thriving. To achieve the environmental-centered goals, such as Climate Action, Life Below Water, Life on Land, and so on, humanity must have a relationship with Nature grounded in reciprocity and balance. The success of the Framework is also dependent on reducing inequalities (I. Enabling Condition, 17.). Additionally, rights-based

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<sup>47</sup> U.N. Doc. A/HRC/19/55, *supra* note 55, p. 20.

approaches can be better addressed and more effective to ensure equity if biocultural diversity is considered, for example. However, there is little mention of biocultural rights in the draft.

### **Case Study No. 5: Biocultural Rights in Colombia**

The Atrato River of Colombia's Choco region is a biodiversity hotspot threatened by mining and industrial activity. In 2016, Columbia's Constitutional Court declared the Atrato River basin a legal person, granting rights to "protection, conservation, maintenance and restoration." The ruling of Judge Jorge Ivan Palacio to recognize the Rights of Nature was grounded on the concept of "biocultural rights" namely that "[t]he rights that ethnic communities have to administer and exercise autonomous guardianship over their territories — according to their own laws and customs — and the natural resources that make up their habitat, where their culture, their traditions and their way of life are developed based on the special relationship they have with the environment and biodiversity."<sup>48</sup> This ruling also provided authority to the Choco's Indigenous peoples to represent their collective will. More recently, in 2020, forest rangers submitted a report to the Justice Department (Comisión de la Verdad) supporting Rights of Nature to restore degraded ecosystems and ensure justice for harmed environmental defenders.<sup>49</sup>

Further, Goal (B) of the Framework, namely that "nature's contributions to people are valued, maintained or enhanced through conservation and sustainable use supporting the global development agenda for the benefit of all," recognizes human interdependence with Nature. The "benefit of all" must be interpreted and understood as the entire Earth community. To safeguard human rights, such as the rights to life, food, and water, Nature must be restored for its own benefit. Methods of development, economics and governance must be grounded in protecting the shared future of Nature, of which human rights are a part of, in mutual understanding of the integral ecological processes and systems of our planet.<sup>50</sup> In practice, living in harmony with Nature views the well-being of all life on Earth as interdependent and promotes the balance of all elements of the biosphere. Instead of complying to human inclination, all activity adapts to the respect of planetary and ecological boundaries.

#### **d) Redefining Sustainability**

Implementing the Rights of Nature contains the normative effect causing us to redefine sustainability. In fact, the theory of change of the Framework "recognizes that urgent policy action globally, regionally and nationally is required to transform economic, social and financial models." The present model and language of sustainable development is vague and human-

<sup>48</sup> Tierra Digna v. Presidency of Colombia, Judgment T-622/16 (The Atrato River Case), Constitutional Court of Colombia (2016) (translated by and available at Dignity Rights Project).

<sup>49</sup> *Los Derechos De La Naturaleza, El Territorio y El Colectivo De Guardaparques*. YouTube. YouTube, 2020. <https://www.youtube.com/watch?v=SaNd0ox2hbU>.

<sup>50</sup> Kauffman, Craig M., and Pamela L. Martin. "Can Rights of Nature Make Development More Sustainable? Why Some Ecuadorian Lawsuits Succeed and Others Fail." *World Development* 92 (2017): 130–42. <https://doi.org/10.1016/j.worlddev.2016.11.017>.

centric, which cannot regress our present environmental crisis. Future interpretation of sustainability must view social, cultural, environmental, and economic issues working together in balance. A redefinition could take the form of ‘ecological sustainability,’ defined as: “*the maintenance of life support systems and the achievement of a ‘natural’ extinction rate.*”<sup>51</sup> Given that the well-being of all life is interconnected, interdependent and has intrinsic value, any and all human activity must be grounded within and in respect of Earth’s planetary boundaries, in recognition and protection of the inherent Rights of Nature, and based on a whole-Earth system and long-term perspective.

An evolution to ecological sustainability is essential to achieve the objectives of the Convention on Biological Diversity, including the 2030 Mission “to take urgent action across society to conserve … and to put biodiversity on a path to recovery … for the *benefit of the planet and people*” (emphasis added) and the 2050 Vision in which “biodiversity is valued, conserved…sustaining a healthy planet....” The principle of ecological sustainability “both reflects a fundamental morality (respect for ecological integrity), and requires action (to protect and restore). Therefore, it may be inferred that it can have a legal effect.”<sup>52</sup>

Though human-centered framing of sustainable development has been globally modelled for years (e.g. principle 1 of the Rio Declaration states “human beings are at the center of concerns for sustainable development”), there are differing worldviews of “what is sustainable,” namely among many Indigenous cultures and knowledge. For example, the Andean Indigenous ontology of Sumak Kawsay in Quechua, Buen Vivir in Spanish meaning ‘good living,’ signifies how the imperative to live in harmony with Nature grounds human activity. The very term Buen Vivir originated from those who have been “marginalized or subordinated throughout history in the name of development” and do not perceive a linear worldview of time, so there “can be no ‘development’ insofar as there is no preliminary situation of underdevelopment.”<sup>53</sup> Principle 22 of the Rio Declaration on Environment and Development states: “[I]ndigenous people and their communities … have a vital role in environmental management and development because of their knowledge and traditional practices,” and “Target 21” of the framework ensures “equitable and effective participation in decision-making related to biodiversity by [I]ndigenous peoples and local communities, and respect their rights over lands, territories and resources....” Buen Vivir, among countless centuries-old Indigenous ontologies, challenge present sustainable development, promote a balanced and harmonious relationship to Earth and may guide the CBD in reframing the language and implementation of the post-2020 framework.

Through the implementation of Rights of Nature, human activity does not cease, but is managed to higher standards with consideration of ecosystem health for their own natural processes. As humanity is viewed as part of the Earth community, human activity would be grounded in the consideration of complex interactions and natural processes of ecosystems and striving to restore and maintain thriving habitats. For example, rather than utilizing metrics, such

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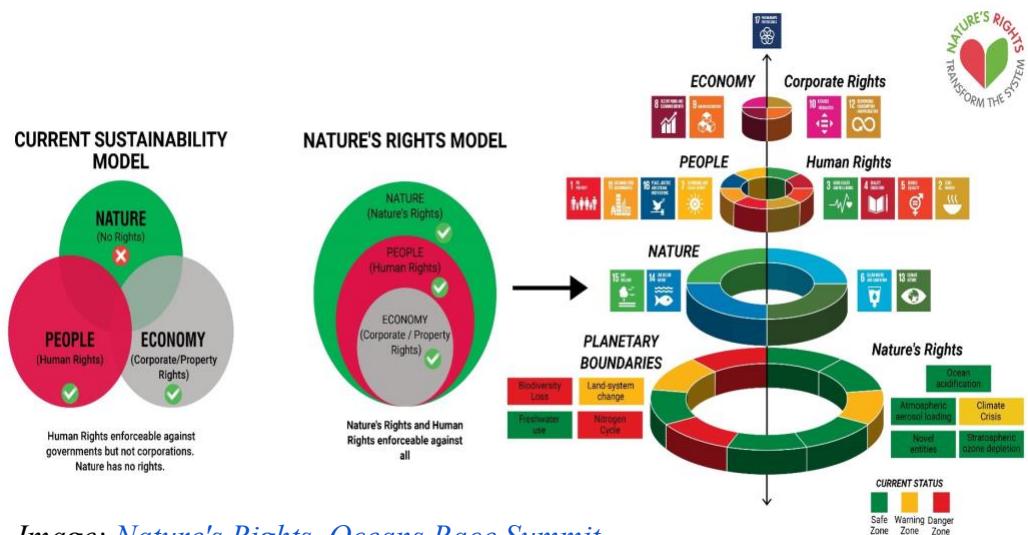
<sup>51</sup> Sutton, Philip. “Ecological Sustainability Return to Green Innovations Home Page.” Ecological sustainability, 2000. <http://www.green-innovations.asn.au/ecolsust.htm>.

<sup>52</sup> Montini, M. (2013). Revising International Environmental Law Through the Paradigm of Ecological Sustainability. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.2726637>, pg. 5.

<sup>53</sup> Villalba, Unai. “Buen Vivir vs Development: A Paradigm Shift in the Andes?” *Third World Quarterly*, September 2013. <https://doi.org/10.1080/01436597.2013.831594>, pgs. 1428 and 1430).

as “maximum sustainable yield,” our ocean-use paradigm would “converge towards a more holistic approach that balances both human well-being and ecological well-being.”<sup>54</sup> Instead of conserving the ocean for her use to humans, or “delivering essential benefits to *all people*,” (emphasis added) we would conserve the ocean for her own wellbeing and the entire Earth community. By implementing the Rights of Nature, this holistic approach of ecological sustainability would thereby shift our legal and economic responsibility.

This is made evident through the graphic below:



*Image: Nature's Rights, Oceans Race Summit*

Therefore, transformative change is needed in order to change perceptions and law: “unless law is made sustainable, it protects unsustainable conduct.”<sup>55</sup> The theory of change of the post-2020 framework, correlating to the 2030 Sustainable Development Goals, is to implement a “rights-based approach and recognizing the principle of intergenerational equity;” Rights of Nature is the unifying framework and overarching legal, ethical and governance ‘umbrella’ to achieve these goals.

## Conclusion:

It is essential that the Rights of Nature be reintegrated into the post-2020 framework. Through a rebalanced relationship with the environment, we can address the root causes of our environmental crisis and protect biodiversity while protecting humanity. To achieve the vision of living in harmony with Nature, the CBD must make bold changes to transform our relationship with Nature. Business as usual is no longer an option. It is not too late for the CBD to join this movement and lead the way. By supporting, implementing and enforcing the Rights of Nature, we can promote living in harmony with Nature while ensuring justice for people and the planet.

<sup>54</sup> Fisheries Management-2: The Ecosystem Approach to Fisheries, Food and Agriculture. (2003) *Organization of the United Nations*. <http://www.fao.org/3/ay4470e.html>.

<sup>55</sup> Ibid., pg. 10.