

## THE LEGAL CASE FOR THE UNIVERSAL DECLARATION OF THE RIGHTS OF MOTHER EARTH

By Cormac Cullinan

### The Declaration

The Universal Declaration of the Rights of Mother Earth (“the Declaration”), like the Universal Declaration of Human Rights, is not legally binding and in terms of prevailing notions of international law, it will not become an international legal instrument until it is formally adopted by States. Different laws, institutions and practices that are appropriate to the particular characteristics and legal culture of each place, will be required to implement the Declaration in different parts of the world.

The Declaration articulates, in the legal language of the international community, an entirely different world view from that which informs almost all contemporary governance systems. This world view understands human beings as members of a great community of life and as having distinct responsibilities to that community and to other beings within it. This understanding is not only reflected in the cosmologies of indigenous peoples throughout the world, is also consistent with contemporary scientific understandings regarding the interrelated nature of the cosmos and the functioning of natural systems. The Declaration is also an expression of the legal philosophy known as “Earth jurisprudence” which advocates an eco-centric approach to law and governance in order to ensure that human governance systems are consistent with natural systems of order.

The Declaration contains many characteristics that are essential to governance systems that seek to foster mutually-enhancing relationships between human beings, other-than-human beings, and Earth as whole. In the same way as the development of a living organism is guided by the genetic coding in its DNA, so the Declaration has the potential to guide the development of very different forms of governance and of human society. It is the seed from which viable human civilisation that live in harmony with Nature can grow. It also provides a basis for a common understanding and increased cooperation between people and organisation working on a range of social and environmental justice issues wherever they may be.

### Rights for human beings means right for all beings

The international community recognises that human beings have certain inherent human rights merely because they exist as humans, and that legal systems that do not recognise and uphold human rights are unjust. However humans exist within, and are completely dependent on the existence of, a community of other-than-human entities, including other species, rivers, mountains and the ecological communities which they create. Therefore, logically, all that exists (i.e. all beings) must also have inherent rights - including the right to exist and occupy their place within this “Earth community”.

Furthermore, if the proper functioning of the Earth community is essential to support human life, then the human right to life cannot be protected without protecting the rights of the Earth Community to exist and function. Just as humans are inseparable from the Earth Community so human rights are inseparable from the rights of all aspects of that community. The inherent rights and freedoms of all beings may be distinguished from one another but are ultimately indivisible. Therefore the proclamation of the Declaration is merely the recognition of an existing reality.

From a legal perspective, the argument in favour of enacting laws in every jurisdiction to implement and enforce the Declaration can be summarised as follows:

- (a) human governance systems are failing to prevent humans degrading the natural systems and processes which support life;
- (b) the main reason for this failure is that most contemporary governance systems are designed to facilitate the domination and exploitation by humans of the other members of the community of beings we call Earth (“the Earth Community” or “Mother Earth”) and often also enable the interests of a property-owning elite to prevail over the common interests of human society;
- (c) since human health and well being is derived from, and depends on, the continued healthy functioning of natural systems and processes, the legal, political and institutional structures of society must be restructured so that their primary purpose is to facilitate and guide people to live in ways that both benefits humans and contributes to the health of the whole Earth Community;
- (d) this will require governance systems that protect and balance the interests of all the members of the Earth Community and that prevent the rights of privileged minority prevailing over the rights of the community as a whole;
- (e) law is at the heart of human governance systems and rights are central to the functioning of contemporary legal systems; and
- (f) therefore in order for human governance systems to be effective in promoting and protecting the whole Earth Community (and thereby the wellbeing of its members, including humans) legal systems must evolve by recognising and upholding the rights of other-than-human members of the Earth Community and of future generations.

Underlying this argument are the understandings, firstly that human beings only exist and have meaning as “beings-in-relationship” with other beings, and secondly that the Universe is a self-ordering system which has “natural laws” that govern its functioning and which take precedence over human laws. This means that humans must comply with the “laws” of the Earth system or suffer the consequences. For example, if humans emit greenhouses gasses to such an extent that they destabilise natural systems and damage ecosystems, humans will inevitably suffer the potentially catastrophic impacts of dramatic climate change.

### **The failure of governance**

From a pragmatic perspective, one of the strongest reasons for adopting and implementing the Declaration as soon as possible is simply that existing governance systems are not working. Despite a huge increase in environmental laws and treaties over the last few decades and redoubled enforcement efforts, climate change, the loss of biological diversity and unique ecosystems, the depletion of fish stocks, the over-exploitation of fresh water resources, the loss of soil and desertification are continuing. The evidence that human regulatory systems are failing to prevent the destruction of the living communities and natural processes that are essential to most forms of life, is now overwhelming. Furthermore, the degradation of planetary ecosystems is now so severe that merely reducing the rate of destruction (as most environmental laws seek to do) is insufficient. We need to stop harmful activities and to take active measures to restore the health of ecosystems. Current regulatory frameworks will not be able to meet this challenge without recognising and upholding the rights of Mother Earth and of all beings to maintain their place within the Earth Community. As discussed below, this “rights-based” approach also has significant advantages for human societies, including promoting justice and social equity.

### **Changing “colonial” mindsets**

In order to make the fundamental changes to regulatory systems that will be necessary to address successfully the “environmental crises” of the 21<sup>st</sup> century it will be necessary to

address the factors that are driving inappropriate human modification of Earth. These drivers have both internal and external dimensions. The internal dimension includes individual and cultural beliefs that increased consumption will improve human well-being and that Earth consists of “resources” available for indefinite human exploitation. The external factors driving this destruction include political and economic systems based on the assumption that increases in gross domestic product (“GDP”) can be perpetuated eternally and the institutions, policies and laws that support and perpetuate environmental destruction and the conversion of aspects of Earth into property and profits.

Current legal systems may be described as colonial in character because they are designed to enable a specific group (i.e. human beings) to dominate and exploit the wider Earth Community as if the colonisers could return to a distant motherland which is unaffected by the negative effects of this exploitation. This is a potentially fatal delusion. Human beings are an integral and inseparable part of Earth. Consequently assaults on Earth reduce the long-term prospects for human well-being. This means that human attempts to dominate and exploit Earth are misplaced and that the only sustainable path to human well-being is for humans to find a way of living within the Earth community in a manner that respects and enhances it instead of harming it.

There are a number of ways in which the Declaration seeks to change the “colonial” worldview that legitimises and perpetuates the continuance of the exploitative relationship between humans and other beings. Firstly, it recognises that humans are part of an indivisible, living community of interrelated and interdependent beings<sup>1</sup> and thereby refutes one of the core assumptions of contemporary governance systems, namely that human beings are separate from, and superior to, other-than-human beings. (A conceptual division that is enforced by legal systems that define humans and corporations as subjects with rights and Earth and all other beings as property.)

Secondly, it recognises a form of law that exists prior to, and is superior to, laws made by human institutions.<sup>2</sup> The Declaration makes it quite clear that if human beings are to claim inherent, inalienable, human rights by virtue of the fact that we exist as humans, all beings must also have inherent, inalienable rights which arise from their existence.<sup>3</sup> It is important to appreciate that the Declaration does not purport to grant rights to Nature, but rather to recognise rights which already exist.

### **Balancing human rights with responsibilities**

By contextualising human rights within the rights of the more-than-human community, the Declaration indicates how existing legal systems (which already contain mechanisms to protect, enforce and balance rights) can be used to protect the interests of other beings and of Mother Earth or the Earth community as a whole. It also creates the need to balance each human right against the rights of all beings instead of only against the rights of other humans. Since from an eco-centric or Earth-centred perspective, the overriding priority is to maintain the integrity, functioning and health of the system as a whole. Therefore it follows that conflicts between these rights must be resolved in a way that maintains the integrity, balance and health of Earth.<sup>4</sup>

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<sup>1</sup> Preamble, paragraphs 1 and 4, Article 1(2).

<sup>2</sup> Article 1(4).

<sup>3</sup> For example, Article 1(4), (5) and (6).

<sup>4</sup> See Article 1(7).

By recognising the inherent rights of other beings, the Declaration also creates the need to define the corresponding obligations or duties of humans not to violate those rights. Accordingly a significant part of the Declaration (article 3) is devoted to defining the obligations of human beings to Mother Earth. The fundamental obligation is that “Every human being is responsible for respecting and living in harmony with Mother Earth.”<sup>5</sup> Enforcing these human obligations is likely to be the most important means of safeguarding the rights of the other members of the Earth community.

Most contemporary legal systems are heavily biased to favour the interests of human over other beings, and the interests of corporations and landowners over Nature and humans who do not own property. Legal systems that only protect the interests of human beings (whether as individuals or when acting through corporate entities) while simultaneously denying other beings equivalent protection inevitably permit human activities that are harmful to other beings and to the Earth Community as a whole. Recognising that humans are not the only beings with rights lessens this excessively pro-human, pro-property bias. It would mean that laws would have to be changed to ensure that any person who wished to convert land from its natural state into mines, houses, roads, or farms would not be authorised to do so unless he or she could justify the interference with the existing rights of natural communities on that land. Developments that threatened the right of a species to exist would not be permitted except in exceptional circumstances (e.g. to ensure human survival). This is what it will take to conserve the biological diversity of Earth.

#### **Rights help check abuses of power and underpin justice**

Legally enforceable rights operate as a check on the excessive accumulation and abuse of power. In free-market economies, an individual can acquire virtually unlimited economic power (purchasing power in the market) by endlessly accumulating more money. As we know, this produces huge and growing disparities in wealth which is detrimental to society as a whole. It also allows those who have accumulated economic power to have a disproportionate influence on political systems and hence to accumulate political power which can be used to change the rules of society and of the international community in their favour.

However the allocation of human rights cannot be changed in this way, and a poor or marginalised person has the same inherent rights as a wealthy or politically powerful person. Although in reality there may be large discrepancies in their abilities to enforce their rights, the existence of equally distributed, inherent rights provides a means for people to protect themselves and restrain the excessive and unfair use of political or economic power. This is more just and is beneficial to the whole society. It also provides a sound basis for the establishment of human societies that respect humans and other beings and that focus on maintaining mutually beneficial (and hence sustainable) relationships within the Earth Community.

On the other hand, if property regimes are extended in the name of using market mechanisms to protect the environment or to create a “green economy”, this will exacerbate the existing inequalities between people, societies and nations. Those who already have economic power will be able to use it to gain control of more and more of the shrinking supplies of food, water, and arable land, to the detriment of the vast majority of people and of the Earth Community as a whole.

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<sup>5</sup> Article 3(1).

### **Protecting not criminalising defenders of Mother Earth**

Defining Nature as property has meant that environmental activists can be prosecuted under laws that protect property from damage or that allow landowners to exclude others from their land (e.g. laws of trespass). The Declaration implicitly recognises that human laws have been superimposed on an existing natural system of order and that human laws that conflict with that system of order are illegitimate or “unlawful”. This means that instead of treating environmental activists who protect ecosystems as criminals, legal systems that give effect to the Declaration would protect their right to defend fundamental rights (i.e. the natural system of order) and would repeal or amend laws that deny those rights.

### **Using existing legal mechanisms to seek balance**

Governance systems based on property laws ensure that the rights of property owners to exploit their property (e.g. by mining, clearing indigenous vegetation and pumping water from rivers and aquifers) will almost invariably prevail over the protection of natural communities. Furthermore, most economic systems aim to increase their gross domestic product (“GDP”) forever, while consumerist societies encourage people to pursue happiness by accumulating and spending more and more money. One of the most effective ways available to increase economic power in the short-term (whether that be personal wealth, a company’s profits or the GDP of a state) is to exploit “natural resources”. Consequently we see a continual escalation in exploitation and consequently of harm to the Earth community. Despite increasing rhetoric about the importance of sustainable development, contemporary governance systems are not designed to balance human interests against those of other beings in a manner that is beneficial to Mother Earth as a whole. Instead of seeking this balance they promote the pursuit of infinite economic growth and sanction the endless exploitation of Mother Earth.

### **Moving from violence to cooperation**

As the competition for increasingly scarce “natural resources” such as oil and water intensifies, the use of force to resolve competing interests is on the increase. Increasingly draconian measures to exclude refugees fleeing the effects of climate change are already being debated in many countries. If this “colonial approach” is allowed to continue unchecked, one can anticipate a future of increased conflict in which the powerful will increasingly use force to exploit other humans. In this scenario, survival will be determined by the ability, not only to exploit and degrade nature, but also by the ability to exclude the majority of humans from sharing a shrinking supply of the necessities of life. Seen within this context, the Declaration is particularly important in articulating a viable path into the future based on participation and cooperative relationships between people and other beings, instead of escalating conflict, violence and exploitation.

### **Implementing the Declaration**

Implementing the Declaration may well be challenging, but humans may well not survive into the 22<sup>nd</sup> Century unless we adopt the world view articulated in the Declaration. It is difficult to see how humans will be able to prevent the continuing destruction of Earth, and to restore ecological balances and the integrity and health of ecosystems (including stabilising the climate system at levels conducive to human existence) without adopting governance systems that are effective in ensuring that humans comply with the fundamental rules of the Earth community of which they form part.

In the 16<sup>th</sup> and 17<sup>th</sup> Centuries the Catholic Church in Europe sought to maintain the fallacy that the Universe is centred on humans (i.e. anthropocentrism) by rejecting the evidence presented by Copernicus and Galileo that Earth orbits the sun instead of *vice versa*. Today

the same fear coupled with short-term self-interest, fuel denial of the reality that to survive and flourish humans must govern ourselves as members of the Earth Community and that the health and integrity of the whole is paramount. Denying the validity of the inherent rights recognised in the Declaration doesn't change the facts – it is simply a choice to continue believing in the fallacy that humans are separate from, and superior to, Earth and all other beings.

In ancient Greece divine order and the laws of nature were embodied by the titan Themis, the daughter of Gaia (Earth) and Uranus (Sky). In many countries the blindfolded figure of Themis holding the scales of justice is erected on court buildings to symbolise the process of weighing the competing rights of each party objectively in order to arrive at a balanced and just result. Legal systems ideally balance the competing rights of humans for the good of society as a whole. Implementing the Declaration would require legal systems to balance the rights of humans and other beings and thereby restore the natural justice of Themis to Mother Earth.