



The Bar Council

Reimagining law for the Earth

Law Reform Lecture 2024

Eleena Misra KC, Dr Helen Dancer, Zoë Leventhal KC,
Kyle Lischak, Dr Bonnie Holligan, Dr Helena Howe

2 July 2024

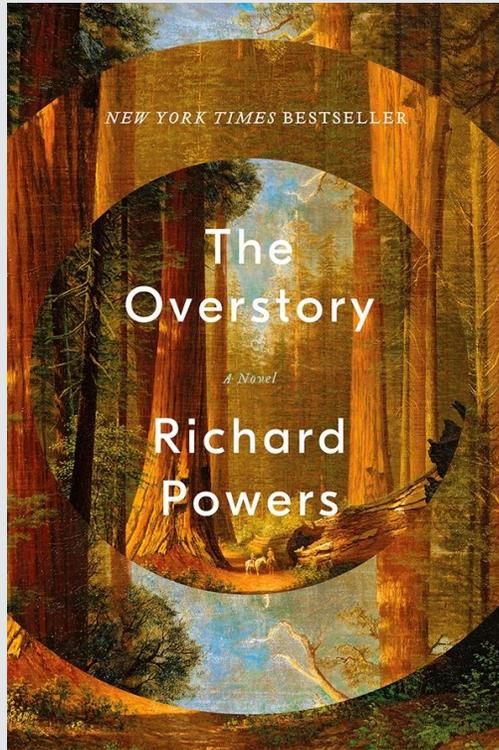
A large, leafy tree stands in the center of a sunlit forest clearing. The tree's trunk is thick and textured, and its branches spread out, casting shadows on the ground. The background shows a lush green landscape with rolling hills and a bright sky. The overall scene is peaceful and natural.

***Reimagining law
for the Earth***

Zoe Leventhal KC



Why?



- “People aren’t the apex species they think they are. Other creatures—bigger, smaller, slower, faster, older, younger, more powerful—call the shots, make the air, and eat sunlight. Without them, nothing.”





Why?



- UK State of Nature report 2023: 19% decline since 1970. Less than half of UK's biodiversity now remains – one of most nature depleted countries
- Global wildlife has reduced by 60% since 1970; in crisis & at tipping point
- Protecting nature is fundamental to mitigating climate emergency
- Anthropocentric approaches to law – with humans, and (even) sustainable development, at their centre = patently failing. Nature should therefore no longer be viewed as a resource for humans to exploit?



Current

international

models

- UN Sustainable Development Goals / Agenda 2030; closely tied to economic growth
- Model remains anthropocentric rather than ecocentric
- UN Convention for Biological Diversity: Restore 30% by 2030 (agreed at COP 15 December 2022: now a target of the Kunming-Montreal Global Biodiversity Framework, which includes G7 & EU)
- Is this enough? Is it possible without a paradigm systems shift?



Reimagining: inspiration from Ecuador

- Ecuador has recognised that nature itself has rights which need protecting
- First country to enshrine Rights of Nature (RoN) in its constitution in 2008
- New Constitutional Court in 2019



Ecuador's

Constitution

Preamble “celebrates nature, the Pacha Mama (Mother Earth), of which we are a part and which is vital to our existence”



Article 71. 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.

All persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature. To enforce and interpret these rights, the principles set forth in the Constitution shall be observed, as appropriate. ...

Article 72. Nature has the right to be restored... In those cases of severe or permanent environmental impact, including those caused by the exploitation of nonrenewable natural resources, the State shall establish the most effective mechanisms to achieve the restoration and shall adopt adequate measures to eliminate or mitigate harmful environmental consequences.

Article 73. The State shall apply preventive and restrictive measures on activities that might lead to the extinction of species, the destruction of ecosystems and the permanent alteration of natural cycles.



Los Cedros

Decision of Ecuador's Constitutional Court, 10 November 2021

Caso Nro. 1149-19-JP/21: *Revisión de Sentencia de Acción de Protección Bosque Protector Los Cedros* (2021).



- Mining permits granted for parts of Los Cedros protected forest; one of most diverse places on earth
- Court identified the rights of nature threatened by mining operations as having intrinsic value and rights of existence under the Art 71 because *“the Constitution ... conceives humanity as part of nature. Therefore, the rights of nature necessarily encompass the right of humanity to its existence as a species.”* [30]
- As the Court put it, *“[t]his is not a rhetorical lyricism, but rather a transcendent statement and a historical commitment that, according to the preamble of the Constitution, demands “a new form of civic coexistence, in diversity and harmony with nature”.* [31]



Los Cedros



- Court analysed each species and ecosystem in turn and considered the ecological tolerance principle
- Court “observed a high level of risk of irreversible damage, due to the great complexity of the ecosystem, the fragility in which this forest is found and the threat under which several of its plant and animal species run the risk of extinction, and the consequent destruction of the ecosystem or permanent alteration of its natural cycles” [118]
- Court held that the precautionary principle applied under Art 73 on a case-by-case basis, and described three stages: i) must be serious and irreversible damage; ii) scientific uncertainty (likely effects but inadequate evidence to assign probabilities, or scientific ignorance); and iii) state must assume worst case scenario and adopt effective and timely measures to avoid, reduce, mitigate or cease such effects [62]
- Concluded: applying this to the evidence and in light of the risks to nature, the mining permits granted in 2017 to Ecuador’s national mining company should therefore be declared null & void [164]



Wider impact?



Series of other Constitutional decisions since / now pending in Ecuador

Recognition by UN bodies

Decisions cited in dozens of courts internationally, and influencing the adoption of RoN laws in 14 other countries e.g. rights of rivers in Colombia and Bangladesh: see ecojurisprudence.org

See for a full discussion - Kauffman & Martin, *Transnational Environmental Law*, 12:2 (2023)



Ecocide



The crime of ecocide has been recognized in various countries (but not UK)

An international crime in peacetime? Amendments proposed to Rome Statute by Independent Expert Panel convened by the Stop Ecocide Foundation

Their definition: “ecocide” means 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.

Ongoing consultation by Chief Prosecutor of ICC in relation to environmental amendments to the Rome Statute. Deputy ICC prosecutor Nazhat Shameem Khan recently said:

“The Rome Statute and international criminal law now face a challenge to their own relevance if they do not accept the need for such adaptation and flexibility in relation to the reality of the planet.”

EU Environmental Crimes Directive and other developments

UK - private member’s bill introduced into House of Lords in 2024 (First reading stage)





Billy et al v Australia, Communication No. 3624/2019, UN Human Rights Committee (Sept 2022)

ClientEarth represented the Islanders

Held: The Australian Government was in violation of the fundamental rights of the Torres Straits Islanders whose land is being washed away, through Government inaction on climate change. Violation of the Islanders' right to a family life (Art 17) and their cultural rights to their ancestral homeland (Art 27). Compensation ordered.

The Committee took into account the Islanders' close, spiritual connection with their traditional lands, and the dependence of their cultural integrity on the health of their surrounding ecosystems, in finding breaches of both Articles.

UN Human Rights

Committee:

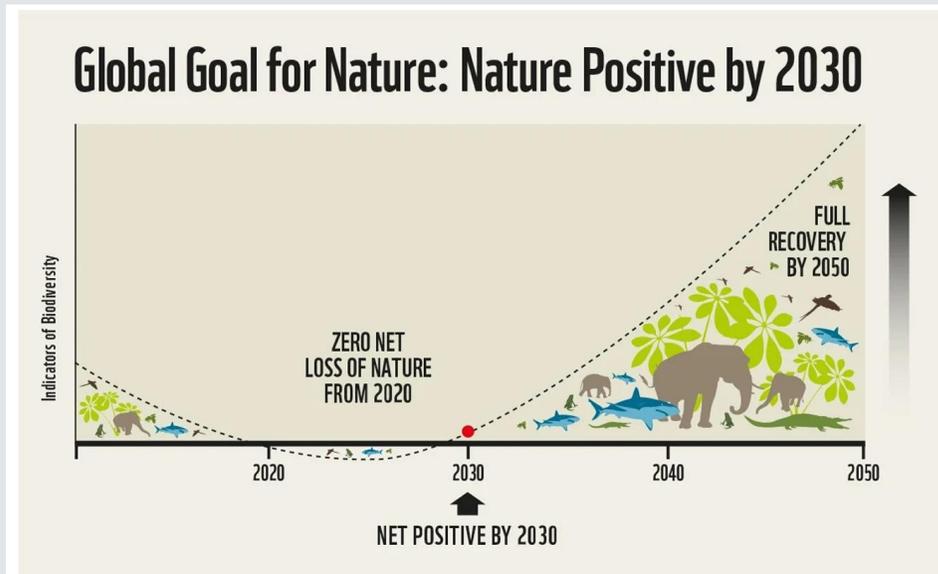
Torres Straits Islanders



Other developments

UK Climate & nature bill

- Climate change case law



- *Verein KlimaSeniorinnen Schweiz v. Switzerland* (ECtHR, App No 53600/20) (2024) 79 E.H.R.R. 1
- *Friends of the Earth v Secretary of State for Energy Security* (#2) [2024] EWHC 995 (Admin)
- *Finch v Surrey CC* [2024] UKSC 20



Rewriting the law to reflect the truth about nature?

“To be human is to confuse a satisfying story with a meaningful one, and to mistake life for something huge with two legs. No: life is mobilized on a vastly larger scale, and the world is failing precisely because no novel can make the contest for the world seem as compelling as the struggles between a few lost people.” (The Overstory, Richard Powers)

The Rights of Nature analysis enshrined in Ecuador’s constitution provides a fundamentally different, and in my view correct, way of seeing human’s place as intrinsically part of the natural world, rather than in dominion over it, or apart from it

I would argue that only by giving nature primacy, and making human rights a part of nature’s overall rights, do we truly recognise - and stand a chance of meeting - the existential threat to our planet





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Thank you