

ARTICLE

HUMAN RIGHTS & THE RIGHTS OF NATURE: FRIENDS OR FOES?

Jérémie Gilbert*

ABSTRACT

This Article explores the connections between human rights and the rights of nature. Rights of nature is emerging as a global movement to re-think and move away from dominant anthropocentric approaches to law. As it is based on the idea that nature has inherent rights, rights of nature is often labelled as the “human rights of nature.” However, this association with human rights, which are by nature anthropocentric, is also paradoxical. In exploring this paradoxical association between human rights and the rights of nature, this article argues that despite the anthropocentric nature of human rights, there are some strong alignments developing around the evolution of the right to a healthy environment. As analyzed in this Article, there is an emergent jurisprudence linking human rights law and the rights of nature which offers new perspective to understand how rights of nature might work in practice notably when rights are competing or clashing. One interest in associating human rights and the rights of nature is that human rights law is enriched by decades of legal developments, a diverse jurisprudence, and abundant campaigning and advocacy tools. With rights of nature being much “younger,” there might be lessons to be learned from the “older” human rights movement. The argument put forward is that there are some legal principles that have been developed under international human rights law that could serve as a catalyst to support future rights of nature advocacy.

Keywords: *rights of nature, human rights, right to a healthy environment, Indigenous peoples, proportionality*

* Roehampton Law School, University of Roehampton, London, UK – email: jeremie.gilbert@roehampton.ac.uk ORCID ID: <https://orcid.org/0000-0003-1377-3494>

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I. INTRODUCTION

Our planet is facing multiple, interdependent ecological crises ranging from climate change and biodiversity loss to high levels of persistent pollution creating an urgent need to rethink humankind approach to environmental governance. The failure of our legal systems to address these ever-expanding crises is a call

for a profound change to our legal approach to nature.¹ One emerging proposal is to support a new legal approach proclaiming the rights of nature. Rights of Nature (RoN) is an innovative and emerging concept that aims to protect the environment by recognizing legal rights for ecosystems and species.² It represents a paradigm shift in environmental governance—moving away from a purely anthropocentric view of the environment and its rights to acknowledging the intrinsic rights of nature. The idea is gaining momentum at various levels—from constitutional proclamation in Ecuador; legislative reforms in Bolivia and Uganda; courts’ rulings affirming the legal personality of specific ecosystems such as rivers in Bangladesh and Colombia; to post-colonial Indigenous settlements in Aotearoa/New Zealand and Canada.³ In the last decade alone, there have been hundreds of initiatives supporting the development of RoN globally.⁴ RoN have been advocated for at the international level, for example, Kunming-Montreal Global biodiversity framework included RoN in 2022.⁵ Although these

1. See generally FROM ENVIRONMENTAL TO ECOLOGICAL LAW (Kirsten Anker et al. eds., 2022); Massimiliano Montini, *The Double Failure of Environmental Regulation and Deregulation and the Need for Ecological Law*, 2016 IT. Y.B. INT’L L. 265; RESEARCH HANDBOOK ON LAW, GOVERNANCE AND PLANETARY BOUNDARIES (Duncan French & Louis J. Kotzé eds., 2021).

2. See generally DAVID BOYD, *THE RIGHTS OF NATURE: A LEGAL REVOLUTION THAT COULD SAVE THE WORLD* (2017); MIHNEA TĂNĂSESCU, *UNDERSTANDING THE RIGHTS OF NATURE: A CRITICAL INTRODUCTION* (2022); CAMERON LA FOLLETTE & CHRIS MASER, *SUSTAINABILITY AND THE RIGHTS OF NATURE* (2017).

3. For analysis of these different initiatives, see CRAIG KAUFFMAN & PAMELA MARTIN, *THE POLITICS OF RIGHTS OF NATURE: STRATEGIES FOR BUILDING A MORE SUSTAINABLE FUTURE* (2021).

4. In a 2022 quantitative study, Putzer et al. mapped over 400 legal initiatives across thirty-nine countries, see Alex Putzer et al., *Putting the Rights of Nature on the Map: A Quantitative Analysis of Rights of Nature Initiatives Across the World*, J. OF MAPS, June 2022, at 89-96. See also the Eco Jurisprudence Monitor, which maps over 430 distinct initiatives across forty-two different legal jurisdictions, ECO JURISPRUDENCE MONITOR, <https://ecojurisprudence.org/dashboard> [<https://perma.cc/L9A5-HXE3>] (last visited July 19, 2023).

5. U.N. Env’t Programme [UNEP], Convention on Biological Diversity, Kunming-Montreal Global Biodiversity Framework, U.N. Doc. CBD/COP/15/L.25, Section C ¶ 7 (Dec. 18, 2022); see also *id.* at Targets 16 and 19 (calling to enhance “Mother Earth centric actions.”); U.N. Secretary-General, *Harmony with Nature*, U.N. Doc. A/75/266 (July 28, 2020).

initiatives vary greatly—they share the central idea that nature and/or specific ecosystems, possess inherent legal rights outside of human interests.⁶ RoN is often associated with human rights⁷ to the extent that RoN is sometimes labelled as the “human rights of nature.”⁸ The values underlying human rights stress the crucial ideal that each human being is born with inherent rights.⁹ A similar logic is often put forward from a RoN perspective, with nature having inherent rights.¹⁰

However, this connection is also paradoxical since human rights are about fundamental freedoms, security, dignity, and the well-being of humans.¹¹ The relationship with nature only becomes an issue when environmental degradation directly impacts the rights of the humans.¹² RoN, however, propose a new non-anthropocentric approach to environmental governance where nature’s rights are not protected purely because of their

6. See generally CHRISTOPHER STONE, *SHOULD TREES HAVE STANDING? LAW, MORALITY, AND THE ENVIRONMENT* (3rd ed. 2010); CORMAC CULLINAN, *WILD LAW: A MANIFESTO FOR EARTH JUSTICE* (2011); Judith E. Koons, *Earth Jurisprudence: The Moral Value of Nature*, 25 PACE ENV’T L. REV. 263 (2008).

7. See Susana Borràs, *New Transitions From Human Rights to the Environment to the Rights of Nature*, 5 TRANSNAT’L ENV’T L. 115 (2016); Javier Sanjinés, *Human Rights and the Rights of Nature: The Displacements of Social Metaphor in Bolivia*, 14 HIOL: HISPANIC ISSUES ON LINE 161 (2014); Aurelio de Prada Garcia, *Human Rights and Rights of Nature: The Individual and Pachamama*, 45 RECHTSTHEORIE 355 (2014); Daniel P. Corrigan, *Human Rights and Rights of Nature: Prospects for a Linkage Argument*, in RIGHTS OF NATURE: A RE-EXAMINATION 101, 101-120 (Daniel Corrigan & Markku Oksanen eds., 2021).

8. See generally Elizabeth Macpherson, *The (Human) Rights of Nature: A Comparative Study of Emerging Legal Rights for Rivers and Lakes in the United States of America and Mexico*, 31 DUKE ENV’T L. & POL’Y 327 (2020).

9. See generally JOHANNES MORSINK, *INHERENT HUMAN RIGHTS: PHILOSOPHICAL ROOTS OF THE UNIVERSAL DECLARATION* (2009).

10. See, e.g., World People’s Conf. on Climate Change & the Rts. of Mother Earth, *Universal Declaration of Mother Earth*, art. 2, Apr. 22, 2010.

11. See Louis J. Kotzé, *Human Rights and the Environment in the Anthropocene*, 1 ANTHROPOCENE REV. 252 (2014); Idelber Avelar, *Amerindian Perspectivism and Non-human Rights*, 17 REVISTA CIENCIA Y CULTURA 255 (2013); Heiner Bielefeldt, *Moving Beyond Anthropocentrism? Human Rights and the Charge of Speciesism*, 43 HUM. RTS. Q. 515 (2021).

12. Frédéric Mégret, *The Anthropocentrism of Human Rights*, in THE ROUTLEDGE HANDBOOK OF INTERNATIONAL LAW AND ANTHROPOCENTRISM (Vincent Chapaux et al. eds., 2023).

value to humans.¹³ As a result, the connection between human rights law (HRL) and RoN needs to be unpacked as it seems paradoxical that a movement that is based on moving away from a dominant anthropocentric approach to law and society associates itself with human rights, which are by nature anthropocentric.¹⁴ There are broader philosophical issues with linking HRL and RoN—notably the fact that human and non-human entities do not share similar senses of inherent worth, duties, and obligations.¹⁵

There might also be some misalignments in this association, as there could be some clashes between some human rights, for example the right to property or the right to development, and RoN. There is also the fact that human rights are based on individualistic liberal principles—an approach that might be antonymic with the idea of nature having rights.¹⁶ By exploring some of the dichotomies between HRL and RoN, this Article asks whether HRL and RoN are friends or foes.

To address this question, the Article is organized as follows: Part II analyzes the connections that are often made between HRL and RoN. Part III explores whether HRL is too anthropocentric to align with some of the ecocentric ideas promoted under RoN. To do this, the Article reviews the emergence of the right to a healthy environment, as well as broader environmental human rights, with the goal of analyzing

13. See CORMAC CULLINAN, *WILD LAW: A MANIFESTO FOR EARTH JUSTICE* (2011); A. Bleby, *Rights of Nature as a Response to the Anthropocene*, 48 U.W. AUSTL. L. REV. 33 (2020); Joshua C. Gellers, *The Rights of Nature: Ethics, Law, and the Anthropocene*, in *RIGHTS FOR ROBOTS: ARTIFICIAL INTELLIGENCE, ANIMAL AND ENVIRONMENTAL LAW* 104 (2020).

14. See Marie-Catherine Petersmann, *Narcissus' Reflection in the Lake: Untold Narratives in Environmental Law Beyond the Anthropocentric Frame*, 30 J. ENV'T L. 235, 235-259 (2018); S. Prakash Sinha, *The Anthropocentric Theory of International Law as a Basis for Human Rights*, 10 CASE W. RES. J. INT'L L. 469 (1978).

15. See Mary Anne Warren, *The Rights of the Non-Human World*, in *ENVIRONMENTAL PHILOSOPHY* 109 (Robert Elliot & Arran Gare eds., 1983); Corrigan, *supra* note 7, at 101-120.

16. See Adam B. Seligman & David W. Montgomery, *The Tragedy of Human Rights: Liberalism and the Loss of Belonging*, 56 SOC'Y 203(2019); Alex Gourevitch, *Are Human Rights Liberal?*, 8 J. HUM. RTS. 301 (2009). See generally John Charvet & Elisa Kaczynska-Nay, *THE LIBERAL PROJECT AND HUMAN RIGHTS: THE THEORY AND PRACTICE OF A NEW WORLD ORDER* (2008).

how these could relate to some of the ideas behind RoN. Part IV argues that RoN advocacy will benefit from HRL's decades of advocacy. The argument put forward, then, is that the alignment between HRL and RoN is not only rhetorical but also strategic. One interest in linking two movements is that HRL is enriched by centuries of legal developments, including a rich and diverse jurisprudence, and abundant campaigning and advocacy tools. With RoN being much "younger," there are lessons to be learned from the "older" human rights movement.

II. MAPPING THE CONNECTIONS: FROM MORAL CLAIMS TO LEGAL RIGHTS

When trying to map the connections between HRL and RoN, three connections are often made: the first is philosophical and puts forward the idea that, not unlike human rights, RoN is based on moral ideals, which are translated and enforced in legal positivist systems. The translation of these moral ideals into the legal system assumes a similar grounding within the philosophical and moral justifications of inherent worth and value.¹⁷ The second association is historical and highlights the evolutionary nature of human rights subjects—with nature being the next rights-holder.¹⁸ The third connection lies in the increased dominance of legal language, and the legalization of rights-based language. Indeed, the language of human rights has increasingly been integrated into legal systems moving from ideals to legal positivism—a path that has also been followed by RoN.¹⁹

A. Philosophical and Moral Connections: Nature's Inherent Rights

The recognition of human rights is based, at least in part, on the ethical and moral belief that those rights exist because of

17. See *infra* Section II.A.

18. See *infra* Section II.B.

19. See *infra* Section II.C.

humans' capacities, needs, and vital interests.²⁰ Human rights are justified by an appeal to moral rights based on the inherent worth or intrinsic value of the rights bearer.²¹ McCrudden, who writes on human dignity and its relationship with human rights, summarizes the assumptions upon which human rights based as follows: "The first is that every human being possesses an intrinsic worth The second is that this intrinsic worth should be recognized and respected by others, and [third] some forms of treatment by others are inconsistent with, or required by, respect for this intrinsic worth."²²

Taking a non-anthropocentric approach, RoN is rooted in similar views acknowledging that nature has rights arising from the natural world's inherent worth independent of humans, capacities, needs, and vital interests.²³ The difference being that RoN build on ecocentric approaches that proclaim the moral worth, or moral status, of non-sentient organisms.²⁴ As John Nash expresses,

All life is sacred or intrinsically valuable and worthy of being treated as the subject of human justice. Indeed, the recognition of intrinsic value in nonhuman creatures implies the recognition of their legitimate claims for appropriate treatment from the human community and, therefore, for some level of rights and human responsibilities.²⁵

20. See generally PHILOSOPHICAL FOUNDATIONS OF HUMAN RIGHTS (Rowan Cruft et al. eds., 2015).

21. Although, as Tasioulas notes, the question of foundations and grounds of human rights as moral rights, is "the subject of deep and persistent disagreement" among human rights philosophers. See John Tasioulas, *On the Foundations of Human Rights*, in PHILOSOPHICAL FOUNDATIONS OF HUMAN RIGHTS, *supra* note 20, at 45.

22. Christopher McCrudden, *Human Dignity and Judicial Interpretation of Human Rights*, 19 EUR. J. INT'L L. 679 (2008).

23. See, e.g., PAUL W. TAYLOR, RESPECT FOR NATURE: A THEORY OF ENVIRONMENTAL ETHICS 46 (1986). See generally RODERICK FRAZIER NASH, THE RIGHTS OF NATURE: A HISTORY OF ENVIRONMENTAL ETHICS (1989).

24. "Ecocentrism" is the view that all forms of life, including organisms and ecological collectives such as populations, species, and ecosystems, possess intrinsic value. See John A. Vucetich, et al., *Evaluating Whether Nature's Intrinsic Value is an Axiom of or Anathema to Conservation*, 29 CONSERVATION BIOLOGY 321, 323 (2015).

25. James A. Nash, *The Case for Biotic Rights*, 18 YALE J. INT'L L. 235, 240 (1993).

This idea that just like human rights, the rights of nature are justified because of inherent worth and intrinsic values is not unchallenged.²⁶ For example, Patrik Baard argues that “RoN encompass entities that lack the properties which warrant moral standing in the specific form of rights.”²⁷ Likewise, for Thomas Sieger Derr, although a “good case can be made for valuing the natural world,” this “must stand on its own merits, its own bases, and not claim support from the language of human rights.”²⁸ These critics are part of a much broader philosophical debate on whether non-humans and entities that do not exercise moral reasoning can be rights-holders.²⁹

Despite these debates about the capacity of nature having inherent rights, several laws have already moved forward by proclaiming the inherent worth and value of nature. For example, the Constitution of Ecuador proclaims 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.”³⁰ Likewise, the 2014 Te Urewera Act, adopted in Aotearoa/New Zealand concerning the legal personality of the forest, highlights that the general purpose of the law is “to establish and preserve in perpetuity a legal identity and protected status for Te Urewera for its intrinsic worth, its distinctive natural and cultural values”³¹ These are only

26. The debate on whether nature has intrinsic value has been an ongoing discussion since the formation of environmental ethic. *See generally* PAUL W. TAYLOR, *RESPECT FOR NATURE: A THEORY OF ENVIRONMENTAL ETHICS* (2011); PATRIK BAARD, *ETHICS IN BIODIVERSITY CONSERVATION* (2022).

27. Patrik Baard, *Fundamental Challenges for Rights of Nature*, in *RIGHTS OF NATURE: A RE-EXAMINATION*, *supra* note 7, at 215; *see also* Patrik Baard, *Are Rights of Nature Manifesto Rights (And is That a Problem)?*, 29 *RES PUBLICA* 425 (2023).

28. Thomas Sieger Derr, *Human Rights and the Rights of Nature*, *J. MKTS. & MORALITY*, Fall 2000, at 187.

29. For analysis and review on these positions, see Visa Kurki, *Can Nature Hold Rights? It's Not as Easy as You Think*, 11 *TRANSNAT'L ENV'T L.* 525, 532 (2022).

30. CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR 2008 [CONSTITUTION], Oct. 20, 2008, art. 71 (Ecuador).

31. Te Urewera Act, subs. 4 (N.Z.); *see also* Tūhoe-Crown Settlement Act 2014 (N.Z.); Carwyn Jones, *Te Urewera Report of the Waitangi Tribunal*, 2014 *MĀORI L. REV.*, Oct. 2014.

illustrations as, more generally, the affirmation of the intrinsic value of nature leading to the proclamation of nature's inherent rights is at the heart of the RoN movement, and the different legislation that have been recently adopted reflect this approach. Although they are diverse, the unifying thread of these initiatives is their recognition that nature, or specific natural ecosystems such as rivers or forests, have inherent rights.³² From this perspective, there is a clear connection between the philosophical foundations of human rights centering on the inherent worth of human life and the RoN movement putting forward the inherent worth of the natural environment.

B. Nature as a Right-Holder

A second correlation that is often made between HRL and the RoN is the historical evolution of the rights-holders. Centuries ago, even only a few decades ago, human rights were still seen as mainly applying to wealthy white men, usually landowners.³³ The broadening of rights to women, children, and minorities is relatively recent in the evolution of human rights and follows social and political changes that were hard to envisage at the time.³⁴ In his seminal 1972 article concerning the legal standing of natural entities, Christopher Stone made this point highlighting that the expansion of legal rights to women, minorities, children, and corporations was considered unthinkable in the past.³⁵ Following this historical evolution, nature is the next grouping of rights-holders. There are criticisms to this historical analysis because, up until now, the evolutions of

32. For analysis, see Craig M. Kauffman & Pamela L. Martin, *Constructing Rights of Nature Norms in the US, Ecuador, and New Zealand*, 18 GLOB. ENV'T POL., no. 4, 2018, at 43 (analyzing how rights of nature are contributing to meta-norms circulating globally).

33. See Eric Engle, *Universal Human Rights: a Generational History* 12 ANN. SURV. INT'L & COMPAR. L. 219 (2006); PAUL GORDON LAUREN, *THE EVOLUTION OF INTERNATIONAL HUMAN RIGHTS* (2011); Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, 42 HARV. INT'L L.J. 201 (2001).

34. See Jack Donnelly, *The Relative Universality of Human Rights*, HUM. RTS. Q. 29 (2007); Yehezkel Dror, *Values and the Law*, 17 ANTIOCH REV., Winter 1957, at 440.

35. See Christopher D. Stone, *Should Trees Have Standing? Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450, 451-52 (1972). This article has been widely cited and extremely influential in the development of rights of nature.

rights-holders have concerned humans and not non-human entities. Critics have highlighted that comparisons cannot be drawn with the struggle to abolish slavery, or women's rights.³⁶ The counter-argument is that laws are constantly evolving with regard to the meaning of a legal personality.³⁷ As Stone notes, "There will be resistance to giving the thing 'rights' until it can be seen and valued for itself; yet, it is hard to see it and value it for itself until we can bring ourselves to give it 'rights.'"³⁸

Moreover, entities that are not humans already possess rights. Typical examples of this are corporations, but also include intergovernmental entities, states, trusts, and ships.³⁹ One could add that until recently there was strong resistance to the idea of animals as rights-holder, whereas there is now a significant amount of legal jurisprudence recognizing their inherent rights.⁴⁰ This evolution concerning the inherent rights of animals supports the evolution of non-human entities to be recognized as rights-holders.

C. The Legalization of Rights

A third connection between HRL and RoN concerns the increased "judicialization" or "legalization" of the moral ideas of inherent and fundamental worth and values. Although human rights have philosophical, sociological, psychological, and anthropological foundations,⁴¹ legal language has become a key

36. See Kurki, *supra* note 29, at 532.

37. See, e.g., Matthias Kramm, *When a River Becomes a Person*, 21 J. HUM. DEV. & CAPABILITIES 307 (2020).

38. Stone, *supra* note 35, at 456.

39. See Dinah Shelton, *Nature as a Legal Person*, 22 VERTIGO: LA REVUE ÉLECTRONIQUE EN SCIENCES DE L'ENVIRONNEMENT ¶¶ 18, 21 (2015);

40. See KEITH TESTER, ANIMALS AND SOCIETY: THE HUMANITY OF ANIMAL RIGHTS (2014); Jane Kotzmann & Cassandra Seery, *Dignity in International Human Rights Law: Potential Applicability in Relation to International Recognition of Animal Rights*, 26 MICH. ST. INT'L L. REV. 1 (2017).

41. See Damien Short, *Sociological and Anthropological Approaches*, in HUMAN RIGHTS: POLITICS AND PRACTICE 92-108 (2009); THE CAMBRIDGE HANDBOOK OF PSYCHOLOGY AND HUMAN RIGHTS (Neal S. Rubin & Roseanne L. Flores eds., 2020).

characteristic of human rights.⁴² There are several reasons why rights-based language has become dominant in human rights discourse and practice—notably the fact that rights have a “trumping force” over other interests and duties.⁴³ As Sieger Derr writes, “[M]ost of us understand that the word rights mean an overriding moral claim, not an ideal or a goal or a hope to be aimed at, but a duty to be done now.”⁴⁴ Unlike ideals, rights can and should be protected by law and are therefore enforceable.⁴⁵

There are a few lessons that advocates of RoN can learn from the legalization of human rights. Using law and normative frameworks supports the protection of the proclaimed inherent values of humans into the positivist legal systems of governance, making these enforceable in the judicial system. Moreover, the legalization of these inherent values means that a system needs to be put in place to enforce and protect these rights. For example, as noted by McInerney-Lankford in the context of the right to education: “[T]here is something fundamentally different between an education policy goal and the right to education because a right implies a duty.”⁴⁶ This is not limited to the right to education but is equally true for all human rights. The legalization of our inherent human rights has been an important factor in the way societies have progressed with integrating and accepting these as normative enforceable rights rather than moral ideals. Thus, learning from human rights law and its legalization, we could assume that moving the language of nature’s inherent values into a rights-based language would support the enforceability of these values. Arguably this is the road that RoN is following by pushing to integrate RoN language into

42. See John Tasioulas, *Saving Human Rights from Human Rights Law*, 52 VAND. J. TRANSNAT’L L. 1167 (2019).

43. See Ronald Dworkin, *Rights as Trumps*, in THEORIES OF RIGHTS 153–67 (Jeremy Waldron ed., 1984).

44. Sieger Derr, *supra* note 28, at 177.

45. See Alan Gewirth, *Why Rights are Indispensable*, 95 MIND, July 1986, at 329; Richard Wasserstrom, *Rights, Human Rights, and Racial Discrimination*, 61 J. PHILOSOPHY 628, 630 (1964).

46. Siobhán McInerney-Lankford, *Legal Methodologies and Human Rights Research: Challenges and Opportunities*, in RESEARCH METHODS IN HUMAN RIGHTS 38, 58 (Bård A. Andreassen et al. eds., 2017).

constitutions, laws, decrees, and courts decisions. As such the RoN movement is adopting similar approach to human rights by integrating key moral legal concepts in positivists legal instruments. In doing so, it is adopting a pragmatic approach, not very dissimilar to the declaratory value of rights-based language that has led human rights law developments in the last few decades.⁴⁷

On a less positive note, the legalization of nature's inherent worth and intrinsic values could represent a danger of further anthropocentrism. Laws and judicial mechanisms are mostly anthropocentric, placing humans at their center.⁴⁸ Anna Gear describes the concern with anthropocentrism in this way: "[When] it comes to law's relationship with . . . the lifeworld of the planet and its non-human denizens, it is intensely problematic that the human subject stands at the center of the juridical order as its only true agent and beneficiary."⁴⁹ Thus pushing the ideal of nature's inherent values into the legal system could lead to more anthropocentrism. It is precisely on that question of anthropocentrism that the next Part is now turning its attention by analyzing whether or not human rights law could contribute to the development of a less anthropocentric approach to our legal relationship with nature.

47. See, e.g., Dinah Shelton, *Declaratory Judgments*, in *REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW* 255–268 (2d. ed., 2006); Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 25 GA. J. INT'L & COMPAR. L. 287, 324–25 (1996); Mark E. Villiger, *Binding Effect and Declaratory Nature of the Judgments of the European Court of Human Rights*, in *JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS-EFFECTS AND IMPLEMENTATION* 33 (2017); Yuval Shany, *The Universality of Human Rights: Pragmatism Meets Idealism* (Hebrew Univ. of Jerusalem Int'l L.F., Working Series 06-18, 2018).

48. See THOMAS FRANCK, *THE EMPOWERED SELF: LAW AND SOCIETY IN THE AGE OF INDIVIDUALISM* (2001); Louis J. Kotzé & Duncan French, *The Anthropocentric Ontology of International Environmental Law and the Sustainable Development Goals: Towards an Ecocentric Rule of Law in the Anthropocene*, 7 *GLOB. J. COMPAR. L.* 5 (2018); Petersmann, *supra* note 14.

49. Anna Gear, *Deconstructing Anthropos: A Critical Legal Reflection on "Anthropocentric" Law and Anthropocene "Humanity"*, 26 *L. & CRITIQUE* 225 (2015).

III. ANTHROPOCENTRIC ENVIRONMENTAL HUMAN RIGHTS?

Human rights law is increasingly engaging with the protection of the environment—witnessing what is often labelled as the “greening” of human rights.⁵⁰ It is worth asking whether this greening of HRL is leading towards more visibility and rights-based language for nature or whether it is just another anthropocentric legal approach to nature? To answer this question, we first need to “locate” nature in human rights law.⁵¹ When trying to find nature in international human rights treaties, there are three main entry points. First, nature is approached as a source of essential resources to sustain and support the realization of certain human rights, such as the rights to food, to water and to health (including healthcare).⁵² Second, nature is part of the realization of the right to a healthy environment and, more broadly, is part of the ever-increasing jurisprudence linking environmental protection and human rights issues.⁵³ The third area where nature and human rights intersect is under the recognition of Indigenous people’s cultural and spiritual rights to land and natural resources.⁵⁴ By exploring these three areas where human rights and nature meet, the aim is to explore whether the relationship between human rights and nature is still dominated by an anthropocentric approach or whether this relationship has opened avenues to connect human rights and ecocentric approach to law that RoN promotes.

50. See Christiena Van der Bank & Marjoné Van der Bank, *Greening of Human Rights: A Reassessment*, 7 OIDA INT’L J. SUSTAINABLE DEV. 53 (2014); Liliana Lizarazo-Rodriguez, *The UNGPs on Business and Human Rights and the Greening of Human Rights Litigation: Fishing in Fragmented Waters?*, 13 SUSTAINABILITY 105 (2021).

51. On the concept of “locating nature” in international law, see LOCATING NATURE: MAKING AND UNMAKING INTERNATIONAL LAW (Usha Natarajan & Julia Dehm eds., 2022), especially chapter 8: “Who Do We Think We Are? Human Rights in a Time of Ecological Change”.

52. See *infra* Section III.A.

53. See *infra* Section III.B.

54. See *infra* Section III.C.

A. Nature as an Essential Resource to Sustain Human Livelihood

The first way nature is present within HRL is as a source to sustain human livelihood. This includes access to food, water, and other essential natural elements that are essential to sustain life. Resources from nature provide food and fuel and also serve as raw materials to produce essential goods. One of the first concerned human rights is the right to food, which requires that no human is deprived of access to adequate and safe food.⁵⁵ The right to food implies that food needs to be produced in a manner that is safe for human consumption, therefore suggesting that polluted sources of food are violating the right to food. This means that, indirectly, nature used for food production should be protected from sources of pollution, with Olivier De Schutter, the former UN Special Rapporteur on the Rights to Food, suggesting that a human-rights based approach to food production means adopting non-damaging agricultural practices such as agroecology.⁵⁶ On this subject, the 2017 report by the Special Rapporteur on the right to food analyses the impact of pesticide use in detail, stressing that the right to adequate food and the right to health clearly provide all people with protection against the excessive or inappropriate use of pesticides.⁵⁷ The recommendations for pesticide-free farming are accompanied by a shift to sustainable farming practices (such as organic farming, biodynamic farming, agroecology, farming with high environmental value, ecologically intensive farming) that take account of resource scarcity and climate change. Although not about ascribing its own rights, indirectly it means that agricultural production needs to respect nature, or at least not pollute it. Overall, the right to food is increasingly associated with good quality, non-polluted soils, supporting less damaging approach to

55. See Kerstin Mechlem, *Food Security and the Right to Food in the Discourse of the United Nations*, 10 EUR. L.J. 631 (2004); Hannah Wittman, *Food Sovereignty: A New Rights Framework for Food And Nature*, 2 ENV'T & SOC'Y 87 (2011).

56. See Olivier De Schutter (Special Rapporteur on the Right to Food), *Rep. on the Right to Food*, at 8, U.N. Doc. A/HRC/16/49 (2011).

57. See Special Rapporteur, *Rep. on the Special Rapporteur Right to Food*, U.N. Doc. A/HRC/34/48 (2017).

agriculture.⁵⁸ This might lead to more synergies between the right to food and the rights of nature to be free from human induced pollution.

Nature also becomes a human rights concern when it affects the realization of the right to water. The right to water includes the right of everyone to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic uses.⁵⁹ Even if not about water having rights, there is an indirect connection between the right to water, water quality, and accessibility to safe and clean water—opening an indirect right for water systems to be healthy (at least for human consumption).⁶⁰ For example, one could imagine that the ever-increasing jurisprudence on the right to water could join some of the arguments about recognizing the inherent rights of water “providers” such as rivers, streams, and underground sources. This line has not been crossed yet, but the connection between the human rights to water and the sanctity of clean and non-polluted water could potentially open a connection with the recognition of the rights of rivers and other freshwater ecosystems.⁶¹

The right to health is also relevant to this discussion, and it is not limited to the delivery of appropriate healthcare, but also encompasses rights regarding the underlying determinants of

58. See De Schutter, *supra* note 56.

59. As noted by the UN Human Rights Council: “[T]he human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity.” G.A. Res. 16/2, The Human Right to Safe Drinking Water, U.N. Doc. A/HRC/RES/16/2 (Apr. 8, 2011). For analysis on the right to water, see INGA WINKLER, *THE HUMAN RIGHT TO WATER: SIGNIFICANCE, LEGAL STATUS AND IMPLICATIONS FOR WATER ALLOCATION* (2014).

60. See Erik B. Bluemel, *The Implications of Formulating a Human Right to Water*, 31 *ECOLOGICAL Q.* 957 (2004); Léo Heller, *The Crisis in Water Supply: How Different It Can Look Through the Lens of the Human Right To Water?*, 31 *CAD. SAUDE PUBLICA* 447, 447-49 (2015); C. Balazs et al., *Monitoring the Human Right to Water in California: Development and Implementation of a Framework and Data Tool*, 23 *WATER POL’Y* 1189 (2021).

61. There are some limitations to this approach. See Erin O’Donnell, *Rivers as Living Beings: Rights in Law, But No Rights to Water?*, 29 *GRIFFITH L. REV.* 643 (2020).

health.⁶² This was highlighted by the CESCR noting that: “[T]he right to health embraces a wide range of socio-economic factors that promote conditions in which 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.”⁶³ This approach is based on an expansive approach to the right to life which is rooted on the need of ensuring access to enough food and water to ensure the right to health.⁶⁴

This focus on the rights to food, water and health is not aiming to provide a comprehensive review of the interaction between some of our human rights and access to nature as a vehicle to support the realization of these rights,⁶⁵ instead the aim here is to highlight that HRL has developed several relevant standards linking the realization of human rights with a non-polluted natural environment. Although this is far from the idea of inherent and autonomous rights of nature, this approach nonetheless acknowledges that nature is essential to the realization of our human rights.

62. See Rep. of the Office of the United Nations High Commissioner for Human Rights, Human Rights Council, U.N. Doc. A/HRC/32/23 (2016); see also Special Rapporteur on the Right to a Healthy Environment, Rep. of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, U.N. Doc. A/HRC/40/55 (2019).

63. Comm. on Economic, Social, and Cultural Rights, 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), on its Twenty-Second Session, ¶ 4, U.N. Doc. E/C.12/2000/4 (2000).

64. See the following statement from the Human Rights Committee: “Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.” Human Rights Comm., General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, ¶ 62, U.N. Doc. CCPR/C/GC/36 (2019).

65. For such analysis refer to JÉRÉMIE GILBERT, *NATURAL RESOURCES AND HUMAN RIGHTS* (2018).

B. From the Right to a Healthy Environment to a Right for Nature to be Healthy?

The second area of HRL that considers nature is environmental human rights. The United Nations has recognized that a safe, clean, healthy and sustainable environment is a precondition for the full enjoyment of the whole range of civil, political, social, economic, cultural rights.⁶⁶ The right to a healthy environment is both a standalone right and also a right attached to the realization of many other human rights.⁶⁷ A healthy environment might mean a right to clean air, to clean and non-polluted water, to healthy food and healthy ecosystems, to safe climate and to a non-toxic environment for humans. Although not about nature's rights, indirectly the right to healthy environment contains some positive protection for nature by indirectly providing some form of protection against pollution, damages to ecosystems, etc. However, this protection is only indirect. In other words, humans must demonstrate that a natural entity has been so badly affected that their human rights cannot be realized. Under this approach, nature cannot be the victim, though harms to it may be addressed—albeit indirectly—if a human can prove that their rights have been violated by the fact that nature experienced harm.

When it comes to environmental human rights litigation, courts have often highlighted that direct victims are persons who would have a valid personal interest in seeing a violation come to an end, but the fact that nature is affected is not in itself a factor.⁶⁸ For example, as the European Court of Human Rights (ECtHR) stated in the case of *Kyrtatos v. Greece*, “[even] assuming that the environment has been severely damaged . . . the applicants have not brought forward any convincing arguments showing that the

66. See G.A. Res. 76/L.75 (July 26, 2022) (recognizing the right to a clean, healthy, and sustainable environment as a human right); see also Human Rights Council Res. 48/13 (Oct. 8, 2021) (recognizing that the right to a clean, healthy, and sustainable environment is a human right).

67. See generally THE HUMAN RIGHT TO A HEALTHY ENVIRONMENT (John H. Knox & Ramin Pejan eds., 2018).

68. For analysis, see Petersmann, *supra* note 14; Louis J. Kotzé, *The Right to a Healthy Environment and Law's Hidden Subjects*, AJIL: UNBOUND 194 (2023).

alleged damage to the birds and other protected species . . . was of such a nature as to directly affect their own rights.”⁶⁹ As this case highlights, the damages done to nature (in this case birds) can only be taken into consideration if these harms directly affect the human rights of the applicants, i.e., humans.⁷⁰ Hence, the ECtHR took a very anthropocentric approach to human-nature relationship, focusing on the health of the humans.

However, despite this anthropocentric approach, the right to a healthy environment has provided a basis for establishing an autonomous right for nature to be healthy, outside of purely human interests. Such non-anthropocentric interpretation of the right to a healthy environment emerged from a 2017 Advisory Opinion on the environment and human rights from the Inter-American Court of Human Rights (IACtHR) which stated,

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 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.*⁷¹

69. *Kyrtatos v. Greece*, App. No. 41666/98, ¶ 53 (May 22, 2003) <https://hudoc.echr.coe.int/ENG?i=001-61099> [<https://perma.cc/YND3-PT89>].

70. For a recent illustration, see the Torres Strait Islanders petition, where the Human Rights Committee held that: “[W]hile the authors evoke feelings of insecurity engendered by a loss of predictability of seasonal weather patterns, seasonal timing, tides, and availability of traditional and culturally important food sources, they have not indicated that they have faced or presently face adverse impacts to their own health or a real and reasonably foreseeable risk of being exposed to a situation of physical endangerment or extreme precarity that could threaten their right to life, including their right to a life with dignity.” Human Rights Comm., Views Adopted by the Committee Under Article 5 (4) of the Optional Protocol, UN. Doc. CCPR/C/135/D/3624/2019, ¶ 8.6 (Sept. 22, 2022).

71. The Environment and Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity: Interpretation and Scope of Articles 4(1) and 5(1) in Relation to

This statement by the IACtHR marks is a significant departure from an anthropocentric reading of human rights law highlighting the intricate connections between humans and “other living organisms” as a source of autonomous rights. Crucially it also suggests that natural entities have rights independently of human interest – stating instead that they “also merit protection in their own right.” This non-anthropocentric approach was later confirmed by the IACtHR in *Indigenous Communities Members of the Lhaka Honhat Association v. Argentina* (2020).⁷² There, the Court engaged more specifically with the rights of nature by ruling that the right to a healthy environment protects components of the environment, such as forests, seas, rivers, and other natural features. Relying on its previous advisory opinion, the Court acknowledged the importance of the protection of nature in itself rather than for its usefulness to or effects on human beings.⁷³

With this decision, the IACtHR has opened a new ground to align the right of humans to a healthy environment and the rights of nature. This decision by the IACtHR is based on the progressive jurisprudence of the court regarding the rights of Indigenous peoples.⁷⁴ In this case, the plaintiffs were members of an Indigenous community in Argentina, who had put forward the importance of their relationship with nature as part of their cultural rights.⁷⁵ The Inter-American human rights system has been a pioneer in terms of the recognition of specific Indigenous peoples’ human rights and their connection to nature.⁷⁶ Notably,

Articles 1(1) and 2 of the American Convention on Human Rights), Advisory Opinion OC-23/17, Inter-Am Ct. H.R. (ser. A) No 23, ¶ 62 (Nov. 15, 2017) (emphasis added).

72. *Comunidades Indígenas Miembros de la Asociación Lhaka Honhat (Nuestra Tierra) v. Argentina*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 400 (Feb 6, 2020).

73. *Id.* ¶ 203.

74. See generally Thomas M. Antkowiak, *Rights, Resources, and Rhetoric: Indigenous Peoples and the Inter-American Court*, 35 U. PA. J. INT’L L. 113 (2013).

75. *Maria Antonia Tigre, Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, 115 AM. J. INT’L L. 706 (2021).

76. See Aled Dilwyn Fisher & Maria Lundberg, *Human Rights’ Legitimacy in the Face of the Global Ecological Crisis—Indigenous Peoples, Ecological Rights Claims and*

the IACtHR is one of the first human rights courts to recognize non-Western approaches to property rights by acknowledging custodianship and stewardship approaches to nature that Indigenous peoples have put forward.⁷⁷ As the subsequent Section will examine, the *Lhaka Honhat* decision might then be a specific interpretation of the rights of Indigenous peoples rather than broader statement about the right to a healthy environment.

C. Indigenous Peoples' Rights: Recognizing Cultural and Spiritual Relationships with Nature

Indigenous peoples have been instrumental in pushing for the proclamation of rights of nature in many countries, notably in Ecuador and Colombia.⁷⁸ Although there is considerable diversity among Indigenous peoples, across the globe many Indigenous advocates, representatives, and communities have highlighted the central importance of their cultural, spiritual, and ancestral relationships with nature.⁷⁹ As a result, over the last decades, Indigenous peoples have successfully pushed the boundaries of HRL to integrate their cultural, spiritual, and

the Inter-American Human Rights System, 6 J. HUM. RTS. & ENV'T 177 (2015); Antkowiak, *supra* note 74; Dina Lupin Townsend & Leo Townsend, Epistemic Injustice and Indigenous Peoples in the Inter-American Human Rights System, 35 SOCIAL EPISTEMOLOGY 147 (2021).

77. See Antkowiak, *supra* note 74; Alejandro Fuentes, *Protection of Indigenous Peoples' Traditional Lands and Exploitation Of Natural Resources: The Inter-American Court of Human Rights' Safeguards*, 24 INT'L J. MINORITY & GRP. RTS. 229 (2017).

78. See Juan José Guzmán, Decolonizing Law and Expanding Human Rights: Indigenous Conceptions and the Rights of Nature in Ecuador, 4 DEUSTO J. HUM. RTS. 59 (2019).

79. See María del Ángel Iglesias Vázquez, *Los Pueblos Indígenas y la Protección del Medioambiente: La Indigenización del Derecho Internacional, Derechos Bioculturales y Derechos De La Naturaleza*, 16 CADS. DE DEREITO ACTUAL 216 (2021); JULIÁN TOLE MARTÍNEZ, VOCES DE LA AMAZONÍA: EL PRESENTE Y EL FUTURO DE LOS DERECHOS HUMANOS Y LOS DERECHOS DE LA NATURALEZA, (2022); RESURGENCE AND RECONCILIATION: INDIGENOUS-SETTLER RELATIONS AND EARTH TEACHINGS (Michael Asch et al. eds., 2018); Samantha Muller et al., *Indigenous Sovereignties: Relational Ontologies and Environmental Management*, 57 GEOGRAPHICAL RSCH. 399 (2019); Erin O'Donnell et al., *Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature*, 9 TRANSNAT'L ENV'T L. 403 (2020).

relational approaches to nature.⁸⁰ Human rights institutions have acknowledged the relationship between the human rights of indigenous peoples and their cultural, spiritual or religious connections with the natural world. This has led to a rich jurisprudence opening the space to recognize kinship relationships between Indigenous peoples and nature as part of HRL.⁸¹ Several rulings by the IACtHR have highlighted the fact that both property rights and cultural rights should integrate indigenous peoples' kinship relationships with nature. For example, as the court notes in a case concerning the Yakye Axa Indigenous Community in Paraguay:

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.⁸²

This ruling by the IACtHR recognizes that Indigenous peoples' cultural rights include a relationship with nature that goes beyond human interests such as access to means of

80. See generally MATTIAS ÅHRÉN, *INDIGENOUS PEOPLES' STATUS IN THE INTERNATIONAL LEGAL SYSTEM* (2016); Claire Charters, *The Sweet Spot Between Formalism and Fairness: Indigenous Peoples' Contribution to International Law*, 115 AM. J. INT'L L. 123 (2021); Jérémie Gilbert, *INDIGENOUS PEOPLES' LAND RIGHTS UNDER INTERNATIONAL LAW: FROM VICTIMS TO ACTORS* (2016); Irene Watson, *Inter-Nation Relationships and the Natural World as Relation*, in *LOCATING NATURE: MAKING AND UNMAKING INTERNATIONAL LAW* 354 (Usha Natarajan & Julia Dehm eds., 2022).

81. Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 79, ¶¶ 148-49, 151 (Aug. 31, 2001); Case of the Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶¶ 131-32 (June 17, 2005); Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, Communication 276/2003, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.], ¶ 241 (Nov. 25, 2005), <https://achpr.au.int/en/decisions-communications/centre-minority-rights-development-kenya-and-minority-rights-group-27603> [<https://perma.cc/FK3C-6K7E>].

82. Case of the Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶ 135 (June 17, 2005)

subsistence, but also includes cultural and spiritual relationships. Legally, it means that cultural rights include the protection these cultural relationship to the natural world). Adopting a similar approach in *Kaliña and Lokono v. Suriname* (2015), the court acknowledged the communities' interconnection with the animals, plants, fish, stones, streams and rivers, highlighting that this relationship is based "on a profound respect for the environment, which includes both living beings and inanimate objects."⁸³ These cases are only illustrations as there is a rich body of rulings, decisions, and recommendations from international human rights institutions, including UN treaty monitoring bodies, acknowledging that Indigenous peoples' connections with nature is a significant element of their human rights.⁸⁴ Human rights institutions have increasingly recognized that the human rights of Indigenous peoples include a "multidimensional relationship with their ancestral lands,"⁸⁵ acknowledging that rights of indigenous peoples are intrinsically connected to the recognition of cultural relationships with the land and ancestral territories. This also includes a spiritual element, with, for example, the African Court on Human and Peoples' Rights (ACHPR) highlighting that "[i]n Indigenous societies in particular, the freedom to worship and to engage in religious ceremonies depends on access to land and the natural environment."⁸⁶ In this case concerning the Ogiek community in Kenya, the court recognized that spiritual connections to natural entities (in that case a forest) should be regarded as forming

83. Case of *Kaliña and Lokono Peoples v. Suriname*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 309, ¶¶ 33, 35, 36 (Nov. 25, 2015).

84. For analysis, see Kristen A. Carpenter & Angela R. Riley, *Indigenous Peoples and the Jurisgenerative Moment in Human Rights*, 102 CALIF. L. REV. 173 (2014). See also BRENDAN TOBIN, *INDIGENOUS PEOPLES, CUSTOMARY LAW AND HUMAN RIGHTS – WHY LIVING LAW MATTERS* (2014); Jérémie Gilbert, *Custodians of the Land: Indigenous Peoples, Human Rights and Cultural Integrity*, in *CULTURAL DIVERSITY, HERITAGE AND HUMAN RIGHTS* 31 (2010).

85. See Case of the *Moiwana Community v. Suriname*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 124 ¶¶ 101, 102–3 (June 15, 2005) ("[I]n order for the culture to preserve its very identity and integrity, [Indigenous peoples] . . . must maintain a fluid and multidimensional relationship with their ancestral lands").

86. African Commission on Human and Peoples' Rights v. Kenya, Application 006/2012, Afr. Comm'n H.P.R. ¶ 164 (May 26, 2017).

elements of the right of freedom of religion, and that cultural relationships with nature constitute a key element of their rights. This is based on the recognition that the relationship with nature is an essential element of the fundamental rights of Indigenous peoples.⁸⁷

This is not in itself a recognition of the rights of nature, as the considerations of nature are still essentially a by-product of protecting the fundamental human rights of Indigenous peoples. Arguably it is still an anthropocentric approach since nature is only seen via the cultural ties of Indigenous peoples. Nonetheless, this acknowledgment of the relationship with nature opens a new space, acknowledging a relationship between humans and nature that was not previously envisaged in human rights law. This approach recognizing cultural and spiritual relationships with nature opens a space to recognize Indigenous worldviews and ways of relating with nature.⁸⁸

Going back to the overall connections between HRL and nature, as analyzed so far in this article it can be concluded that nature is approached as (1) an essential resource to sustain life notably the realization of the rights to food, water and health; (2) part of the right to a healthy environment, and (3) as a component of Indigenous peoples' cultural rights.⁸⁹ As noted, although in themselves these approaches are still anthropocentric as they focus on what nature brings to humans, they do acknowledge specific relationships with nature. At the time of writing, the 2020 ruling from the Inter-American court concerning the Indigenous Lhaka Honhat Association in Argentina is still the only decision from an international human rights institution to have crossed the line of acknowledging that

87. See Jérémie Gilbert, *The Rights of Nature, Indigenous Peoples & International Human Rights Law: From Dichotomies to Synergies*, 13 J. HUM. RTS. & ENVIRONMENT 399 (2022).

88. This is not denying that Indigenous customs and practices are extremely diverse and are very specific to places, ecosystems, and natural environment, see Mihnea Tănăsescu, *Rights of Nature, Legal Personality, and Indigenous Philosophies*, 3 TRANSNAT'L ENV'T L. 429 (2020); Virginia Marshall, *Removing the Veil from the "Rights of Nature": The Dichotomy between First Nations Customary Rights and Environmental Legal Personhood*, 45 AUSTL. FEMINIST L.J. 1 (2020).

89. See sections A, B and C of this Article.

it also means that nature has rights independently of humans.⁹⁰ It remains to be seen if this would lead to more mainstream application of this approach in other rulings, but this opens a new chapter in the potential relationship between HRL and RoN, putting the emphasis on the relationships between humans and nature.

IV. FROM CLASHES OF RIGHTS TO CROSS-LEARNINGS

Up to this point, this Article has analyzed the relationship between HRL and RoN through the lens that they are compatible, or even self-supportive. This Part, however, focuses on some of the potential clashes of rights between human rights and the rights of nature, i.e., HRL and RoN being “foes.” As this Article examines below, there might some clashes between human rights and RoN, notably when it comes to balancing the interests of nature versus the interests of humans. However, these potential clashes of rights might be curable, notably in relying on the principle of proportionality that is used in human rights law to resolve competing interest.⁹¹ Moreover, the key human rights principles of the universalism interdependence and indivisibility might serve as relevant principles to support the emergence of RoN.⁹² In analyzing both the potential clashes, as well legal principle to solve these, the analysis concludes by providing areas where advocates of HRL and RoN can learn advocacy strategies from each other.⁹³ The argument developed below is that despite some potential clashes between HRL and RoN, there are some legal principles that have been developed under HRL that could serve as a basis to alleviate these clashes, as well as to serve as a catalyst to support future RoN advocacy.

90. *Comunidades Indígenas Miembros de la Asociación Lhaka Honhat (Nuestra Tierra) v. Argentina*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 400 (Feb 6, 2020).

91. See *infra* Section IV.A.

92. See *infra* Section IV.B.

93. See *infra* Section IV.C.

A. Clashes of Rights and Balancing of Competing Interests

The proclamation of nature's rights might not always align with human rights, and could even lead to some clashes. For example, in Bangladesh, following the 2019 ruling recognizing the rights of rivers, local human rights organizations expressed fear that the ruling could lead to the expropriation and forced eviction of fishermen and farmers who live in huts on illegally reclaimed land and depend on it for their livelihood.⁹⁴ This is only an example, as in theory, we could imagine that if rights of nature were to be proclaimed in other countries, this could lead to similar clashes. Imagine, for example, that human interests can go contrary to the rights of a tree, especially if that tree is seen as part of the property rights of an individual or a community. The right to property might specifically be an issue, since behind the idea of nature having rights is the idea that nature cannot be owned.⁹⁵ One could also easily imagine clashes between rights of nature and the right to development, or the right to food, or even the right to water.⁹⁶ Due to the fact that rights of nature proclamations are still in their infancy, there are not many examples of these clashes yet. But clashes between environmental concerns and human rights are not new as there is already a large body of analysis on clashes between environmental concerns and human rights.⁹⁷ As Dinah Shelton notes,

Measures of environmental protection almost inevitably restrict the scope of individual freedom to act, as well as have the potential to limit the enjoyment of human rights guaranteed by international or domestic law. This may result

94. See *Prime Islami Life Insurance Ltd v. Comm'r of Customs et al.*, Writ Petition No. 13898/2016, Supreme Court, High Court Division (2019) (Bangl.); see also Mohammed Sohiful Islam & Erin O'Donnell *Legal Rights for the Turag; Rivers as Living Entities in Bangladesh*, 23 ASIA PAC. J. ENV'T L. 160 (2020).

95. On potential clashes between property rights and rights of nature, see generally PETER BURDON, *EARTH JURISPRUDENCE: PRIVATE PROPERTY AND THE ENVIRONMENT* (2015).

96. For illustration and analysis of these potential clashes, see Geoffrey Garver, *Are Rights of Nature Radical Enough for Ecological Law?*, in *FROM ENVIRONMENTAL TO ECOLOGICAL LAW* 90 (2020).

97. See Marie-Catherine Petersmann, *When Environmental Protection and Human Rights Collide: The Politics of Conflict Management by Regional Courts* (2022).

in norm conflicts between, on the one hand, legislation designed to protect nature and on the other, constitutional or treaty-based human rights, especially those concerning property rights, indigenous peoples, and freedom of movement.⁹⁸

Likewise, in her recent book exploring these clashes between environmental concerns and human rights, Marie-Catherine Petersmann highlights that such clashes have included conflicts between animal welfare concerns and cultural or religious freedoms of certain communities; or conflicts between landscape preservation policies and land ownership, and conflicts between energy policies and the rights to adequate living conditions.⁹⁹ However, as also analyzed by both Shelton and Petersmann, there are also some important jurisprudential developments that helps addressing these clashes.

Indeed, there are some relevant lessons to be learned for RoN in the ways human rights courts have addressed the conflicts between environmental issues and human rights.

For example, in 2018 the European Court of Human Rights reviewed a case that illustrates how property rights could be affected by rules that are adopted to protect nature. This case concerned the rights of an Irish fisherman whose rights were impacted by a ban imposed by the Irish government to stop collecting “mussel seeds” (or immature mussels).¹⁰⁰ The ban was a response to protect the specific ecosystem that was considered to be in jeopardy. The applicant claimed that such ban, which resulted in considerable lost revenues, had been imposed in violation of their right to property.¹⁰¹ The court rejected the argument highlighting that the victims had not suffered a disproportionate burden since in imposing the ban the Irish

98. Dinah Shelton, *Resolving Conflicts between Human Rights and Environmental Protection: is there a Hierarchy?*, in *HIERARCHY IN INTERNATIONAL LAW: THE PLACE OF HUMAN RIGHTS* 206 (Erika de Wet & Jure Vidmar eds., 2012).

99. See Petersmann, *supra* note 97, at 97.

100. *Development Ltd. v. Ireland O’Sullivan McCarthy Mussel*, App. No. 44460/16 (June 7, 2018), <https://hudoc.echr.coe.int/eng?i=001-183395> [<https://perma.cc/PR4N-ENH3>].

101. *Id.*

government had ensured a fair balance between the general interests of society and the protection of individual rights.¹⁰² This case demonstrates the relevance of using the principles of proportionality to resolve clashes of rights between environmental concerns and individual human rights. Ultimately, the court did not question the environmental justification of the ban – neither did the court question the justiciability of the individual right to property – instead the court used the principle of proportionality to rule that the ban was justified and proportionate to the objective (i.e., the protection of the ecosystem).

The principle of proportionality is key when debates about the potential clash between RoN and HRL are raised.¹⁰³ It is indeed not unusual for rights to clash, to the opposite addressing clashes between human rights and competing economic and social interests often constitutes the very core of human rights cases. In such clashes the principle of proportionality is frequently employed to resolve contradictions between conflicting values.¹⁰⁴ From this perspective, the potential clashes that might emerge between HRL and RoN claims might not be so unusual and will place themselves amongst other clashes examined by the courts. There certainly would be some clashes of rights if ever RoN were to be embedded to the same level of protection that HRL has received in most legal systems. However, these clashes are not by themselves a dead-end, as there is a lot to learn from the jurisprudence which has emerged over the last decades on the balancing of rights and interests.¹⁰⁵

102. *Id.*

103. See Jan Sieckmann, *Proportionality as a Universal Human Rights Principle*, in *PROPORTIONALITY IN LAW: AN ANALYTICAL PERSPECTIVE* 3 (David Duarte & Jorge Silva Sampaio eds., 2018).

104. Proportionality is the standard that guides the balancing of human or fundamental rights in law, requiring that the interference with rights must be justified by reasons that keep a reasonable relation with the intensity of the interference, see Sieckmann, *supra* note 103.

105. See Başak Çalı, *Balancing Human Rights? Methodological Problems with Weights, Scales and Proportions*, 29 *HUM. RTS. Q.* 251 (2007). See generally EMILY REID, *BALANCING HUMAN RIGHTS, ENVIRONMENTAL PROTECTION AND INTERNATIONAL TRADE: LESSONS FROM THE EU EXPERIENCE* (2015).

One important element of this jurisprudence relates to the fact that proportionality is based on a non-hierarchical approach to rights and interests.¹⁰⁶ In the eventuality of clashes between HRL and RoN, the issue of hierarchical rights is often raised, with a danger that human rights would represent the highest hierarchical degree and nature's rights would be secondary.¹⁰⁷ Without denying the concerns of a hierarchy of rights that would place HRL on top (since law is by nature anthropocentric), the point is to highlight that this high level balancing of competing interests is not new to HRL, which has been dealing with extremely complex ethical balancing acts.¹⁰⁸ The human rights jurisprudence concerning clashes of rights and interest demonstrates that it is also reductive to think that these clashes are problematic, as ultimately rights are not proclaimed to be absolute.¹⁰⁹ Not denying that clash of rights is a real issue, the point here is that rights and interests always clash; this is the nature of the legal system, using the concept of proportionality to try to bring a sense of justice. In practice, it would mean that nature would have more of a say, at least nature's interests and rights will be integrated in the balance, which until now has not usually been the case.

106. See generally Aharon Barak, Proportionality and Principled Balancing, 4 L. & ETHICS HUM. RTS. 1 (2010); Juan Cianciardo, The Principle of Proportionality: The Challenges of Human Rights, 3 J. CIV. L. STUD. 177 (2010).

107. See Julien Bétaille, *Rights of Nature: Why It Might Not Save the Entire World*, 16 J. FOR EUR. ENV'T & PLANNING L. 35 (2019).

108. For illustrations, see Ben Golder & George Williams, *Balancing National Security and Human Rights: Assessing the Legal Response of Common Law Nations to the Threat of Terrorism*, 8 J. COMPAR. POL'Y ANALYSIS 43 (2006); Ann Quennerstedt, *Balancing the Rights of the Child and the Rights of Parents in the Convention on the Rights of the Child*, 8 J. HUM. RTS. 162 (2009); Viktoras Justickis, *Balancing Personal Data Protection with Other Human Rights and Public Interest: Between Theory and Practice*, 13 BALTIC J.L. & POL. 140 (2020); Francesca Camilleri, *Compulsory Vaccinations for Children: Balancing the Competing Human Rights at Stake*, 37 NETH. Q. HUM. RTS. 245 (2019).

109. As Wellman notes, "rights are essentially relational so that any real right holds against one or more second parties." CARL WELLMAN, *THE MORAL DIMENSIONS OF HUMAN RIGHTS* 24 (2011).

B. Universalism, Interdependencies, and Indivisibility of Rights

The principles of universalism, interdependencies and indivisibility of rights constitute another relevant potential area for cross-learnings between HRL and RoN. The evolution of HRL has been based on the core fundamental principles that human rights are universal, interdependent, and indivisible.¹¹⁰ The principle of universality is embedded in most international treaties and is often seen as paramount to the value of human rights.¹¹¹ This universalism is not without pushbacks and controversies—a lot of debates have taken place on the notion of cultural relativism.¹¹² Not unlike the considerations on universalism and cultural relativism taking place in HRL, there are also similar debates within RoN. The affirmation that nature has rights could be seen and proclaimed to be a universal truth, for all nature everywhere, supporting a universalist approach such as the one adopted in the Universal Declaration of the Rights of Mother Earth.¹¹³ As proponent of a more cultural relativist approach have argued, this universalism ignores the ecological, cultural, and political particularities of a place, leading to a what could also be labelled as cultural relativism within RoN.¹¹⁴ One of the associated dangers of adopting such a universalist language is the risk of imposing hegemonic values and rights-based language

110. See World Conference on Human Rights, Vienna Declaration and Programme of Action, U.N. Doc. A/CONF.157/23 (June 25, 1993).

111. See EVA BREMS, HUMAN RIGHTS: UNIVERSALITY AND DIVERSITY (2001); Louis Henkin, *The Universality of the Concept of Human Rights*, 506 ANNALS AM. ACAD. POL. & SOC. SCI. 10 (1989).

112. Proponents of the concept of cultural relativism argued that human rights are not universal but specific and relative based on the cultural values in question. See Jack Donnelly, “Cultural relativism and universal human rights.” 6 HUM. RTS. Q. 400 (1984); Ronald Cohen, *Human Rights and Cultural Relativism: The Need for a New Approach*, 91 AM. ANTHROPOLOGIST 1014 (1989).

113. World People’s Conf. on Climate Change & the Rts. of Mother Earth, Universal Declaration of Mother Earth, Apr. 22, 2010. For analysis, see Cristina Espinosa, *The Advocacy of the Previously Inconceivable: A Discourse Analysis of the Universal Declaration of the Rights of Mother Earth at Rio+ 20*, 23 J. ENV’T & DEV. 391 (2014).

114. See generally Eden Kinkaid, “Rights Of Nature” in *Translation: Assemblage Geographies, Boundary Objects, and Translocal Social Movements*, 44 TRANSACTIONS INST. BRIT. GEOGRAPHERS 555 (2019).

to peoples and places without any consideration for the local laws, traditions, worldviews and ways of relating to nature.¹¹⁵

In these debates concerning the danger of universalism, one danger that has been highlighted by proponents of more cultural relativists approaches concerns the danger of imposing Western values.¹¹⁶ As part of its universalist language, HRL is often criticized for being too Western.¹¹⁷ To avoid such danger, one learning point from HRL advocacy is the significance of ensuring dialogue, connections, and alignments between legal advocates, civil society organizations, grassroots and local communities.¹¹⁸ As Ignatieff who has analyzed the evolution of the human rights movement in detail, notes, “Human rights has gone global by going local, imbedding itself in the soil of cultures and worldviews independent of the West, in order to sustain ordinary people’s struggles against unjust states and oppressive social practices.”¹¹⁹ From this perspective, the slogan that is often used in HRL “from global to local and back” could also be a useful way to understand how RoN initiatives at local levels can feed and complement global approaches, and vice-versa. The learning message from HRL being that universal values are not necessary antonymic with integrating and respecting local cultural values.

115. On the western hegemonic impact of colonisation on law, see Emmanuelle Jouannet, *Universalism and Imperialism: The True-False Paradox of International Law?*, 18 *EUR. J. INT’L L.* 379, 390-391 (2007). See generally IRENE WATSON, *ABORIGINAL PEOPLES, COLONIALISM AND INTERNATIONAL LAW* (2014); NASSER HUSSAIN, *THE JURISPRUDENCE OF EMERGENCY: COLONIALISM AND THE RULE OF LAW* (2019); KEALLY MCBRIDE, *MR. MOTHERCOUNTRY: THE MAN WHO MADE THE RULE OF LAW* (2016).

116. See Ariel Rawson & Becky Mansfield, *Producing Juridical Knowledge: “Rights of Nature” Or The Naturalization of Rights?*, 1.1-2 *ENV’T & PLANNING E: NATURE AND SPACE* 99, 108 (2018).

117. See Thomas M. Franck, *Is Personal Freedom a Western Value?*, 91 *AM. J. INT’L L.* 593 (1997); Karen Engle, *Culture and Human Rights: The Asian Values Debate in Context*, 32 *N.Y.U. J. INT’L L. & POL.* 291 (1999); David Kennedy, *International Human Rights Movement: Part of the Problem?*, 15 *HARV. HUM. RTS. J.* 101, 114-16 (2002); César Rodríguez-Garavito, *The Future of Human Rights: From Gatekeeping to Symbiosis*, 11 *SUR-INT’L J. ON HUM RTS.* 499, 499, 502 (2014).

118. For a very insightful analysis, see Sarah Knuckey et al., *Power in Human Rights Advocate and Rights-holder Relationships*, 33 *HARV. HUM. RTS. J.* 1, 14-27 (2020).

119. MICHAEL IGNATIEFF, *HUMAN RIGHTS AS POLITICS AND IDOLATRY* 7 (2011).

The other two key principles of HRL—indivisibility and interdependence—also have a place in some RoN principles. For example, the Preamble to the Universal Declaration of the Rights of Mother Earth proclaims that, “[W]e, the peoples and nations of Earth, considering that we are all part of Mother Earth, an indivisible, living community of interrelated and interdependent beings with a common destiny”¹²⁰ These ideas of interdependence and indivisibility between humans and nature are also reflected RoN declarations. For example, the law establishing the legal personality of the Whanganui River in Aotearoa/New Zealand proclaims that the river is an indivisible and living whole, “comprising the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements.”¹²¹ Rights of nature legislation also highlight the indivisibility and interdependence of the rights. For example, the 2019 environmental law of Uganda stating: “Nature has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution.”¹²² These rights to exist, strive, reproduce, maintain and regenerate vital cycles and to restoration are indivisible and interdependent in the sense they cannot be exercised and fulfil in isolation.¹²³ A very similar logic to the HRL principle of interdependencies and indivisibility of rights. The argument here is that these principles of indivisibility and interdependency are relevant in the field of RoN as these could support future legal developments putting the

120. World People’s Conf. on Climate Change & the Rts. of Mother Earth, Universal Declaration of Mother Earth, Apr. 22, 2010. For analysis, see Paola Villavicencio Calzadilla & Louis J. Kotzé, *Living in Harmony with Nature? A Critical Appraisal of the Rights of Mother Earth in Bolivia*, 7 *TRANSNAT’L ENV’T L.* 397 (2018).

121. Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, subs 12, (N.Z.).

122. National Environment Act, 2019 (Act 5), §4(1) (Uganda).

123. For example, see the language in Constitution of Ecuador: “Nature, or Pachamama, 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.” CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR 2008 [CONSTITUTION], Oct. 20, 2008, art. 71 (Ecuador).

emphasis on the interconnections/interdependences between humans and nature, and indivisibility with the natural world.¹²⁴

C. Legal Advocacy, Implementation and Campaigning

Pushing the cross-learning between HR and RoN further, it is worth exploring the learning opportunities that decades of human rights legal advocacy, implementation and campaigning can offer in the RoN space. One of the first points is that overall international human rights suffers from a serious “implementation gap” due to the lack of enforcement of many of the international obligations that governments have ratified.¹²⁵ Despite this implementation gap, a general lack of enforcement, as well political backlashes, HRL is still perceived as a positive force to support advocacy, lobbying and campaigning for social justice.¹²⁶ In that sense some lessons can be learned from a RoN perspective in terms of the relevance of international and transnational legal advocacy, going beyond the stumbling block of implementation.

Looking back at the last few decades, a significant element of HRL advocacy has been the widespread codification and development of international instruments concerning the contents and reach of human rights. As the 2020 report *Rights of Rivers*—which analyzes the global emergence of the rights of rivers—notes, “The international human rights system has the benefit of widespread codification and uptake by nations, and principles have been elaborated over time to specific groups of

124. Erin Daly & James R. May, *Indivisibility of Human and Environmental Rights*, in *ELGAR ENCYCLOPEDIA OF ENVIRONMENTAL LAW* 171 (2019); *see also* SASKIA STUCKI, *One Rights: Indivisibility and Interdependence of Human and Animal Rights*, in *ONE RIGHTS: HUMAN AND ANIMAL RIGHTS IN THE ANTHROPOCENE* 91 (2023).

125. *See* Cees J. Hamelink, *Human Rights: The Implementation Gap*, 5 J. INT’L COMM’N 54 (1998); Scott Leckie, *The Inter-state Complaint Procedure in International Human Rights Law: Hopeful Prospects or Wishful Thinking?*, 10 HUM. RTS. Q. 249, 250 (1988).

126. *See* UNDERSTANDING SOCIAL ACTION, PROMOTING HUMAN RIGHTS 10-15 (Andrew K. Woods et al. eds., 2012). *See generally* JO BECKER, *CAMPAIGNING FOR JUSTICE: HUMAN RIGHTS ADVOCACY IN PRACTICE* (2013).

rights holders and duty bearers.”¹²⁷ This international codification of human rights principles is a relevant factor to bear in mind in terms of RoN advocacy and campaigning. Notably there are some tensions within the field of RoN between pushing the international legal/diplomatic routes and focusing on localized battles.¹²⁸ One of the successes of HRL has been to push level for the development and codification of a rights-based approach to fundamental rights at the international level, which has supported localized forms of advocacy and campaigning.¹²⁹ Looking back at the Universal Declaration of Human Rights (UDHR) adopted in 1948, it would have been hard to envisage that it would lead to the development of such rich area of international law recognizing and proclaiming the importance of fundamental human rights.¹³⁰ There is no denying that HRL is now a significant branch of international law, influencing and leading the development of other areas of international law and diplomacy.¹³¹ Although for the time being, RoN is getting only minimal attention in international law, there is the emergence of stronger international advocacy with for example the integration of RoN in the Kunming-Montreal Global biodiversity framework adopted in December 2022.¹³² This first step in international legal

127. CYRUS R. VANCE CTR. FOR INT’L JUST. ET AL., RIGHTS OF RIVERS: A GLOBAL SURVEY OF THE RAPIDLY DEVELOPING RIGHTS OF NATURE JURISPRUDENCE PERTAINING TO RIVERS 8 (2020).

128. See Eden Kinkaid, “Rights of Nature” in translation: *Assemblage Geographies, Boundary Objects, and Translocal Social Movements*, 44 TRANSACTIONS INST. BRIT. GEOGRAPHERS 555, 556-57 (2019).

129. See *The Practice of Human Rights: Tracking Law Between the Global and the Local* (Mark Goodale & Sally Engle Merry eds., 2007).

130. See *The Universal Declaration of Human Rights: The Travaux Préparatoires* (William A. Schabas ed., 2013).

131. See generally KRIANGSAK KITTICHAISAREE, INTERNATIONAL HUMAN RIGHTS LAW AND DIPLOMACY (2020).

132. Kunming-Montreal Global Biodiversity Framework, UN. Doc. CBD/COP/15/L.25, § C, ¶ 7 (Dec. 18 2022); *id.* at Targets 16, 19 (calling to enhance “Mother Earth centric actions”). The incorporation of the rights of nature into the post-2020 Global Biodiversity Framework was the result of efforts by a transnational working group of lawyers and activists.

advocacy could lead to further RoN integration in international treaty rights.¹³³

In terms of tools for advocacy, another relevant lesson from decades of HRL international advocacy is the emergence of the “respect, protect, and fulfill” framework. This framework developed by the UN Committee on Economic and Social Rights in the context of supporting the implementation of the right to food in the 1980s, has since become a supportive framework to support the realization of other human rights to the extent that it is embedded in most UN human rights advocacy as way to support the implementation of HRL.¹³⁴ In a nutshell, “respect” means that states must refrain from interfering with or curtailing the enjoyment of human rights. “Protect” requires states to protect individuals and groups against human rights abuses, and “fulfill” means that states must take positive action to facilitate the enjoyment of basic human rights.¹³⁵ Although specific to HRL, this “respect, protect, and fulfil” framework resonates with RoN advocacy: e.g., respect nature, protect nature, and fulfill the different rights of nature (such as the right to exist, flourish, regenerate its vital cycles).

The development of this “respect, protect, and fulfill” framework is only one example of the creativity of the UN human rights institutions in their advocacy to support the development of a strong corpus of human rights, showing the possibility of legal creativity to support new legal framework. The lessons that can be drawn from decades of HRL advocacy, legal codification, and frustration with the lack of implementation are relevant points to engage into constructive reflection on the future of RoN international legal advocacy. One lesson being that we should not conflate the legal existence of a right with the efficiency of its

133. For analysis of other initiatives at international level, see Jérémie Gilbert et al., *The Rights of Nature as a Legal Response to the Global Environmental Crisis? A Critical Review of International Law's "Greening" Agenda*, 2003 NETH. Y.B. INT'L L. 47, 48-67.

134. See David Jason Karp, *What is the Responsibility to Respect Human Rights? Reconsidering the "Respect, Protect, and Fulfill" Framework*, 12 INT'L THEORY 83 (2020).

135. For analysis of this typology of “respect, protect, fulfil,” see OLIVIER DE SCHUTTER, *INTERNATIONAL HUMAN RIGHTS LAW: CASES, MATERIALS, COMMENTARY* 280-91 (2014).

enforcement. Transforming the ideal of the inherent worth and value of the natural environment might not in itself be the “magic wand” or the “legal revolution” that will could “save the world,”¹³⁶ but it is a legal framework that can support lobbying and advocacy to propose new approaches to environmental governance.

Using the terminology and framework of RoN can act as a unified banner to rally very different and sometimes contradictory perspectives. Human rights advocacy does not regroup homogenous causes and approaches, to the opposite various, and sometimes polar opposite, voices and interests are regrouped under the banner of human rights. It does not take away the usefulness and unifying basis of the human-rights based language to support fights and social justice campaigns in their local diversities. Thus, another point of cross-learning between HRL and RoN is that although the concepts behind RoN might not represents the diversity, richness and various views on how law should engage more with the idea of nature having rights, not unlike human rights - it offers a unified platform for advocacy for social and environmental changes.

V. CONCLUSION

So are human rights and nature’s rights friends or foes? As this Article analyzed, the mutual relationship drawn between HRL and RoN is embedded in the moral rights language of inherent worth and values. As this Article noted, this connection between HRL and RoN is not unchallenged, especially in moral philosophy where the connections between sentience and moral rights are highly contested terrains.¹³⁷ Beyond the philosophical and ethical issues raised by expanding the sphere of inherent rights to nonhumans, another problematic issue in aligning HRL and RoN is the fact that rights-based language used in HRL is anthropocentric—which creates paradox in applying HRL language to RoN. However, as the second part of this Article

136. DAVID R. BOYD, *THE RIGHTS OF NATURE: A LEGAL REVOLUTION THAT COULD SAVE THE WORLD* xxxiii (2017).

137. *See supra* Section II.A.

analyzed, the anthropocentric nature of HRL is has begun facing challenges. Notable among those challenges is the recognition that human rights cannot not be achieved separately from nature.¹³⁸ This recognition of the inherent relationship between HRL and RoN takes different forms: from recognizing that essential human rights such as food, water and health are reliant on a certain level of a “healthy nature” to the emergence of a right to a healthy environment as a key human right to the push by Indigenous peoples’ rights advocates to link cultural rights with a relational approach to nature.¹³⁹ This has already led to some clear connecting statements highlighting the self-supportive ideals between HRL and RoN.¹⁴⁰ The developing jurisprudence linking cultural and spiritual rights, a right to healthy environment and nature is supporting the emergence of a rights-based approach supporting a much more relational approach to nature.

Not sweeping under the carpet the fact that there will certainly be some clashes between HRL and RoN in future disputes between humans’ and nature’s interests, it is important to bear in mind that clashes are common and part of functioning justice system. As noted in this Article, there is a rich jurisprudence using the doctrine of proportionality under HRL, which points toward the possibility of non-hierarchical relationships between rights. Disputes will certainly arise between the rights of humans and nature, but these are not necessarily hierarchical.¹⁴¹ Even when indivisible and interdependent, some human rights are put against each other, but that does not mean that one person’s rights are more important than another’s. Some takeaways from decades of HRL advocacy that may provide the basis for successful RoN advocacy strategies include the legal value of declaratory idealistic principles; the challenges of enforcement; and the relevance of developing specific frameworks to support the development of the law such as the

138. *See supra* Section III.B

139. *See supra* Section III.C.

140. *See supra* Section III.B.

141. *See supra* Section IV.A.

“respect, protect, and fulfill” framework. The declaratory and idealistic importance of human rights law is also useful to bear in mind. RoN also embraces a somewhat idealistic approach, but the declaratory impact of these idealistic values is significant. Not unlike human rights, RoN captures the imagination and can support social movements with a language of rights-based demands for change.

