

A Tribunal for Earth: why it matters

By Cormac Cullinan

“You never change things by fighting the existing reality. To change something, build a new model that makes the existing model obsolete.” – R. Buckminster Fuller[1]

Introduction

Imagine how different the world would be if courts decided on the legitimacy – or otherwise – of human conduct on the basis of whether or it was in the best interests of the whole community of life. Imagine if there were an international tribunal that concerned itself with the fundamental rights of all beings, including humans, and decided matters on the basis of what was best for the Earth community as a whole, regardless of politics; an Earth Tribunal of respected individuals that drew on the wisdom of humanity as whole, respected the laws of Nature and was not beholden to governments or corporations. The establishment of the International Tribunal for the Rights of Nature is intended to give effect to this dream. This bold venture by the members of the Global Alliance for the Rights of Nature is a creative response to the current impasse at the international level which has led to a widening chasm between what global civil society wants done and what governments are willing to agree to and implement.[2]

The impasse

The international governance system of the early 21st Century is an arid wasteland devoid of leadership and of any discernible tracks towards a viable future for most of humanity. The way forward simply isn't visible from within the existing worldview. Both the international governance system based on national sovereignty over “natural resources” and virtually all national legal systems and institutions have been designed to serve the imperial project of extending human control over every aspect of the planet so that we can wring the maximum out of it for our exclusive benefit. International law legitimises the exercise by national governments of the power to regulate the exploitation by humans of every aspect of Earth, subject only to any restraining rules which those governments may have voluntarily subjected themselves to by means of a treaty, and which they are willing to implement. National governments have in turn established legal systems and institutions that define Nature as property and that encourage and legitimise its exploitation in order to increase gross domestic product (GDP). The allocation of the rights to exploit has been fundamental to the development of capitalist and semi-capitalist economic systems that concentrate money and power. Unsurprisingly most of the richest corporations have amassed their enormous assets from oil and gas exploitation and mining. Many, if not all of them, favour maintaining the *status quo* and are willing to put considerable resources towards that end. The problem facing humanity at present is that despite the gains in the wellbeing of many (but by no means all) humans generated by the imperial project for many centuries, particularly since the Industrial Revolution, it is now clear that project cannot succeed.

From now on each generation will have to meet their need within an environment that is considerably less benign than that of their parents. It is now apparent that the bonanza of extra energy derived from coal, gas and oil which fuelled the development of industrialised societies has a shadow aspect – climate change and the acidification of soil, oceans and fresh water. By designing legal and economic systems to promote economic growth at (almost) any cost we have inadvertently established systems that modify and destroy ecosystems to such an extent that the conditions for human wellbeing and survival are being progressively

degraded and destabilised. The longer the current systems continue the worse the prognosis for humanity. Many people already understand that in order for human beings (and many other beings) to flourish in the foreseeable future it is essential that we abandon the imperial project of global domination and exploitation as soon as possible and redirect our considerable talents towards healing the harm we have caused and to ensuring that we live lives that benefit rather than harm, the Earth community. However, a number of factors conspire to prevent such a transition occurring. For example, *most institutions are inculcating young people with values and skills appropriate to maintaining the status quo rather than those relevant to the dramatically different conditions that they will encounter.* Similarly most governments and legislatures are most responsive to the interests of the social groups with the greatest vested interests in maintaining the status quo, and courts are bound to apply legislation and in common-law jurisdictions, are bound by precedent. Worse still, the law is used to suppress those who take action to defend Earth and other beings, and to convict them as criminals guilty of anything from property damage to terrorism.

Contemporary governance systems are not only based on values that are antithetical to the establishment of civilisations in which human co-exist harmoniously with other beings, they are designed to prevent change of the nature and extent that is necessary to preserve a viable future for humanity, or at least for most people. This means that it is extremely unlikely that the quantum leap in societal aspirations, values, norms and decision-making that is necessary to re-orient society so fundamentally can be achieved by incrementally reforming current governance systems. This is borne out by the on-going inability of both international and national legal systems to prevent harmful changes such as climate change, the loss of biological diversity and the degradation of soil and freshwater, from continuing to accelerate. Even the laudable development and recognition of various human rights by legal systems omits to recognise the fundamental principle of reciprocity. Human rights, such as the rights to water and to life, are empty political promises unless we honour our duty to respect and protect the whole hydrological cycle, including the rights of rivers to flow, and of the forest to grow.

This raises a disturbing question. If the new governance systems that we require cannot grow from the compromised rootstock of current governance systems, is the destruction of the old a necessary pre-condition for the germination of the new? Must contemporary civilisation burn to provide the ashes from which an entirely new civilisation will be borne? Or is it possible for the shoots of a fundamentally new governance system to grow amidst the decay of contemporary systems?

Recognising human duties to respect the rights of other members of the Earth community

In September 2008 the people of Ecuador adopted a new constitution that commits the states and peoples of Ecuador to promoting human wellbeing in a manner that is in harmony with nature and that respects the rights of nature. The preamble to the Constitution refers to the intention of the peoples of Ecuador “to build a new order of cohabitation for citizens, in its diversity and in harmony with nature, to achieve well-being.” On 22 April 2010 the Universal Declaration of the Rights of Mother Earth (the Earth Rights Declaration) was proclaimed by the more than 32 000 participants in the People’s World Conference on Climate Change and the Rights of Mother Earth held in Cochabamba, Bolivia. The Earth Rights Declaration recognises that Earth is an indivisible, living community of interrelated and interdependent beings with inherent rights, and defines fundamental

human responsibilities in relation to other beings and to the community as whole. (The Earth Rights Declaration uses the ancient term “Mother Earth” to refer to this community in order to emphasise that humans should relate to the being that gives them life in a deeply respectful manner and not as an inanimate “resource” to be managed.) The Earth Rights Declaration recognises that all natural entities which exist as part of Mother Earth, including plants, animals, rivers and ecosystems, are subjects who have the inherent and inalienable right to exist and to play their role within the community of beings. However a substantial proportion of the Earth Rights Declaration (article 3) is devoted to articulating the duties of human beings, states and public and private institutions to recognise and defend the rights of other-than-human members of the Earth community. The Earth Rights Declaration also proclaims the determination of the peoples and nations of Earth to work together to replace exploitative values, worldviews and political, economic and legal systems with those that respect and defend the rights and harmonious co-existence of all beings. The People’s World Conference in Cochabamba called for the building of a “Global People’s Movement for Mother Earth” which inspired the formation in September 2010 of the Global Alliance for the Rights of Nature (GARN). The Alliance enables hundreds of organisation throughout the world who share the worldview reflected in the Earth Rights Declaration, to collaborate.[3]

The idea of a Tribunal

A few months before the GARN meet in Ecuador in January 2014, Alberto Acosta, the former President of the Constituent Assembly that drafted the Ecuadorian Constitution, proposed the establishment of an international ethics tribunal to hear cases involving significant violations of the rights of Mother Earth. The idea was inspired in part by the International War Crimes Tribunal that was established in November 1966 by British philosopher and Nobel Prize winner Bertrand Russell and hosted by French philosopher and writer Jean-Paul Sartre, in order to investigate American foreign policy and military intervention in Vietnam. The Russell Tribunal was based on the view that criminal conduct (particularly human rights violations) should be treated as such regardless of which state committed it. However a rights of nature tribunal could not simply apply an existing body of international law since the content of international law (for example the concept of state sovereignty over natural resources) is part of the problem.

The GARN decided to establish an international tribunal (subsequently named the “International Rights of Nature Tribunal”) but decided that while the Tribunal could have regard to laws which recognised rights of Nature (such as the Constitution of Ecuador) it could not simply apply an existing body of international law like the Russell Tribunal. Instead the Tribunal must be guided primarily by the worldview reflected in the Earth Rights Declaration and by our (imperfect) knowledge of the systems of order inherent in the universe. In this regard there are some similarities between the Tribunal and the Permanent Peoples’ Tribunal (PPT) which was itself inspired by the Russell Tribunal. The PPT was established by the Lelio Basso Foundation[4] in June 1979 and seeks to identify and publicise cases of systematic violation of fundamental rights. It is guided by the principles expressed in the Universal Declaration of the Rights of Peoples which was adopted by various organisation in Algiers in 1976[5].

The Tribunal is launched

Dr Vandana Shiva presided over the first hearings of the Tribunal in Quito, Ecuador on 17 January 2014 when it was first convened in Quito, Ecuador.[6] The Tribunal subsequently conducted hearings in Lima, Peru (5-6 December 2014),[7] and will be hearing cases from 4

to 5 December 2015 in Paris shortly before the 21st meeting of the Convention of the Parties of the United Nations Framework Convention on Climate Change.

In addition regional chambers of the Tribunal conducted hearings in Quito 5-6 December 2014, San Francisco, USA (5 October 2014) and Brisbane, Australia (15 October 2014). The Tribunal has heard a wide-range of cases including cases concerning hydraulic fracturing (“fracking”), mining, the Great Barrier Reef, and State persecution of environmentalists.[8]

Constituting the Tribunal

Although the Tribunal is already functioning, the GARN intends to constitute formally by entering into a “People’s Convention”. Article 9 of the draft People’s Convention for the Establishment of the International Rights of Nature Tribunal provides that the Convention may be signed by representatives of a nation, tribe or other traditional group of indigenous peoples, any organisation that wishes to promote the effective implementation of the rights and duties in the Earth Rights Declaration in respect of a specific geographical area or areas, or any specific being such as a river, or species; or any local community. The preamble expresses the conviction of the peoples and nations who are parties to the Convention that “this is the appropriate time to establish an international tribunal to hear cases involving allegations of severe violations of the Earth Rights Declaration, and if those allegations are proved, to make findings and rulings and deliver opinions on the action that should be taken to ensure that the health and integrity of any ecological community harmed by those violations is, as far as possible, restored and future harm is prevented”.

Article 2 provides that the Tribunal is established:

- “(a) to investigate, hear and decide cases involving alleged violations of the Earth Rights Declaration;
- (b) to further develop Earth jurisprudence by writing and disseminating judgements that interpret the Earth Rights Declaration and apply the rights and obligations in it to the specific facts of the cases which it hears;
- (c) to promote both universal acceptance among the peoples of the world that they have a duty to respect the intrinsic rights of all natural beings, and universal observance of the rights and duties contained in the Earth Rights Declaration; and
- (d) to demonstrate how the application of the rights and duties in the Earth Rights Declaration promote the harmonious co-existence of humans and other beings in a manner that enhances the integrity, health and functioning of the whole Earth community.”

How it functions

The Tribunal must function in accordance with statutes and rules of procedure adopted by the Tribunal. The members of the Tribunal (judges) are elected by an electoral college convened at least once every three years and constituted in way that ensures that all the regions of the world are represented. The Convention provides that the Tribunal will have a secretariat managed by a secretary general who is answerable to the members of the Tribunal. Regional chambers of the Tribunal and regional secretariats may be established in order to hear cases specific to that area or biome. It also provides for the establishment of a Mother Earth Defender’s office headed by a Mother Earth Defender. The Mother Earth Defender has a variety of functions including: investigating and initiating cases, leading evidence before the Tribunal as a representative of Mother Earth (as a prosecutor representing the public might do in a conventional criminal court) and representing Mother Earth in any mediation, restorative justice or other proceedings related to a case before the Tribunal that do not take place before the Tribunal. Cases brought to the Tribunal are first subjected to an initial evaluation to determine whether or not there is credible evidence that a significant violation of the Earth Rights Declaration has occurred in order to

determine whether or not the Tribunal should hear the case at a later date. Cases are presented to the Tribunal by the Mother Earth Defender who also presents the legal arguments as to why the Earth Rights Declaration has been violated. However most of the evidence placed before the Tribunal is the form of testimonies by affected parties.

The significance of the Tribunal

A succession of failed Conferences of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC) has proven that this route to preventing climate change is blocked. This was also evident at the 2012 Rio +20 summit in Brazil and in the COPs of other international environmental treaties such as the Convention on Biological Diversity and the Bonn Convention on Migratory Species. The existing international mechanisms are obsolete in the sense that they are self-evidently unable to lead global society out of its current self-destructive modes of civilisation despite the rapidly rising pressure to do so and the tsunami of scientific evidence that the current “development” trajectory of almost all States is leading us inexorably towards catastrophe. Perhaps the most obvious significance of the Tribunal is as another example of citizen-lead initiatives which is responding to this obsolescence by cutting new paths into the future that circumvent existing governance structures. It is about the people of the world taking responsibility for their own futures and shifting their energies from criticising and lobbying governments operating within inappropriate legal structures and beginning to build institutions that can pioneer new forms of governance.

Like the Permanent People’s Tribunal, the Tribunal derives its legitimacy from, and is guided by, “people’s documents” which reflect the worldview, values and principles of a community of people and like-minded organisations rather than those of states. However the Tribunal goes further than the PPT by moving beyond the PPT’s anthropocentric focus on violations of peoples’ rights to self-determination.[9] The worldview which informs the Earth Rights Declaration and the Tribunal is based on the recognition that the rights of human communities can only be protected in the long term by protecting the rights of all that has come into being to continue to play their roles within the Earth community. Consistent with this, the Tribunal explicitly recognised the need to align human conduct not only with agreed principles, but also with the universal “laws” or system of order that is not determined by human beings. The Tribunal recognises that, as the great ecological philosopher Thomas Berry, said “The Universe in the primary lawgiver” and consequently its decisions must be guided by more than articles in a declaration. An understanding universally recognised by indigenous peoples.

Much of the evidence presented to first few hearings of the Tribunal to date has been by communities affected by projects that are having a devastating impact on the places where they live (for example, the establishment of major mines or dams, or hydraulic fracturing) in situations where national laws do not provide effective means for the communities to protect themselves or the ecological communities of which they form part. These communities often express their gratitude for simply being heard in an international forum. However by evaluating these local events against the universal requirements of the Earth Rights Declaration and the laws of Nature itself, the Tribunal is able to show how each apparently local struggle is an aspect of a global problem. Communities everywhere are fighting the same struggles against the same forces. The local is global and vice versa. The Tribunal is also distinctive in that it was borne out of global civil society movements and enjoys the active support and participation of many indigenous peoples. The preamble to the Convention characterises it as answering the call by indigenous peoples for the

establishment of a climate justice tribunal with the full and effective participation of indigenous peoples, and their principles of justice[10] and the call for an International Climate and Environmental Justice Tribunal which emanated from the World People's Conference on Climate Change and the Rights of Mother Earth.[11] Although much work is still required to build support for the Tribunal, it has the potential to appeal to a wide-range of constituencies including: environmentalists, conservationists, social justice advocates, indigenous peoples, local communities, women, youth, faith-based communities, and animal rights advocates. Furthermore, as the members of the GARN show, its appeal is global and the members of the Tribunal come from many different regions of the world. An important aspect of the Tribunal is that it does not condemn ecological injustices with the authority of a panel of highly experienced and respected individuals from many continents and peoples (including indigenous peoples), it also explains why these are violations of the Earth Rights Declaration and what should be done to repair the harm done by such violations. In doing so explicitly positions itself as a body that will play a positive role in finding ways to address the major challenges of the 21st Century.

Conclusion

The Tribunal has been hailed by those who have attended hearings as a powerful and innovative initiative to establish new international norms of behaviour similar to the emergence of international human rights law after the adoption of the Universal Declaration of Human Rights. It articulates an integral worldview to replace the dissociated, exploitative worldviews of most contemporary cultures and shows how different the outcomes would be if our governance systems reflected this worldview. The Tribunal is a key element in the process of developing workable systems of governance designed to ensure that humans live in harmony with nature in order to replace the current systems that legitimise and facilitate the exploitation of nature to the detriment of us all. A key determinant of its success will be the extent to which global social movements, local communities and organisations support it and enhance its legitimacy and moral authority. The greater the legitimacy and authority of the Tribunal, the more effective it will be in contributing to the emergence of new viable forms of human civilisation. We will formally establish the International Tribunal for the Rights of Nature on **4 December 2015** in Paris. We are inviting you, and all the members and supporters of the Global Alliance for the Rights of Nature, to be part of this historic occasion.

(Note: emphases added)

Additional Resources

For further information and reports on the Tribunal see:

<http://therightsofnature.org>

Maloney, Michelle *Finally being heard: The Great Barrier Reef and the International Rights of Nature Tribunal*, <https://www104.griffith.edu.au/index.php/gjlhd/article/view/659>

1st hearing (Quito)

<http://earthlawyers.org/rights-nature-tribunal-ecuador/>

2nd hearing (Lima)

www.redd-monitor.org/2014/12/11/redd-on-trial-as-long-as-nature-is-seen-as-property-in-law-there-can-be-no-justice-for-communities-the-climate-or-nature/

<http://www.theguardian.com/environment/andes-to-the-amazon/2014/dec/10/fracking-redd-lima-climate-talks-slammed-nature-tribunal>

<https://warriorpublications.wordpress.com/2014/12/11/ecuador-indigenous-leader-found-dead-days-before-planned-lima-protest/>

<http://www.downtoearth.org.in/news/ecuadors-antimining-activist-killed-ahead-of-his-visit-to-lima-47812>

3rd hearing (Paris)

<http://therightsofnature.org/rights-of-nature-tribunal-paris/>

[1] Richard Buckminster Fuller (12 July 1895 – 1 July 1983) was an American philosopher, systems theorist, architect, and inventor, known to many of his friends and fans as “Bucky” Fuller. This quotation was quoted in *Beyond Civilization : Humanity’s Next Great Adventure* (1999), by Daniel Quinn, p. 137.

[2] For example, at the 2012 United Nations Conference on Sustainable Development held in Rio de Janeiro, Brazil (“Rio +20”) the civil society organisation participating in the parallel “People’s Space” rejected the entire document produced by the governments entitled “The Future we want”. This raises the question of who the “we” referred to in that title, refers to.

[3] See www.therightsofnature.org

[4] http://www.internazionaleleliobasso.it/?page_id=207&lang=en

[5] http://www.algerie-tpp.org/tpp/en/declaration_algiers.htm

[6] A report on the first hearing is available at <http://earthlawyers.org/rights-nature-tribunal-ecuador>.

[7] For reports on these hearings see: <http://www.theguardian.com/environment/andes-to-the-amazon/2014/dec/10/fracking-redd-lima-climate-talks-slammed-nature-tribunal> ; www.youtube.com/watch?v=6yHfL8cjGds

[8] For more information see www.therightsofnature.org.

[9] The PPT has addressed industrial disasters which caused great damage to the planet, such as Bhopal (1992) and Chernobyl (1996), but very much from a human rights perspective.

[10] Indigenous People’s Declaration: *Mother Earth can live without us, but we can’t live without her* adopted on 21 April, 2010

[11] Final Declaration of the World People’s Conference on Climate Change and the Rights of Mother Earth, 22 April 2010.

<http://therightsofnature.org/a-tribunal-for-earth-why-it-matters/>
Retrieved 221st October 2016