



**Supplement to MCRB's Briefing Paper on
Biodiversity, Human Rights and Business**

The Nexus between Biodiversity and Ecosystem Services, Human Rights: Further Reading

November 2018

This Supplement to MCRB's Briefing Paper on Biodiversity, Human Rights and Business in Myanmar provides further background on how the links between environmental protection and biodiversity conservation and human rights have been increasingly recognised. It also links this to recognition of business's responsibility to respect human rights, and includes case studies and legal developments.

1. Building an Understanding of the Nexus

Although both human rights and biodiversity protection are well-established areas of public policy, recognition of the linkages between them has been slow to develop. In part, this may stem from a model of conservation that has often excluded people from areas over which they have traditionally enjoyed usage rights, leading to tensions between conservationists and communities. The Millennium Ecosystem Assessment helped to build bridges because it highlighted for the first time the links between ecosystem services and human well-being. More recently, as activists (environmental or human rights defenders) have increasingly become aligned at the intersection of these two areas, calls for the protection of environmental rights have intensified.

The UN Environment and the UN Office of the High Commissioner for Human Rights have strengthened cooperation in highlighting these deepening linkages (see **Box 1**). In 2017, the UN Special Rapporteur (UNSR) on Human Rights and the Environment, Mr. John Knox, submitted a report to the UN Human Rights Council.¹ In the report he described the importance of biodiversity and related ecosystem services for the full enjoyment of human rights and outlined the application of human rights obligations to biodiversity-related actions.² In his 2018 report to the Human Rights Council, Knox calls on States to "respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment", which would include taking "effective steps to ensure the conservation and sustainable use of the ecosystems and biological diversity on which the full enjoyment of human rights depends". Knox goes on to state that "the responsibility of business enterprises to respect human rights includes the responsibility to avoid causing or contributing to adverse human rights impacts through environmental harm; to address such impacts when they occur and to seek to prevent or mitigate adverse human rights".

The UNSR's report reflects a gradual shift away from the historical (and understandable) tensions that had marked the relationship between advocates of human rights and advocates of biodiversity protection.

Historically, the principles and approaches that underpinned establishing Protected Areas for biodiversity conservation originate from the colonial era and have persisted into recent times. For example, the establishment of Protected Areas across some of Africa has safeguarded wildlife, but at considerable cost to local communities. In 1951 the Serengeti National Park in Tanzania resulted in the involuntary displacement of 50,000 Maasai Protected Area pastoralists.³ More recently, in 2004, the Ethiopian government resettled over 500 people outside the borders of the Nechasar National Park in southern Ethiopia to clear the park of encumbrances before handing it over to the African Parks Foundation, which was awarded a contract to manage it.⁴

1 For more [Biographical details and information on the work of John Knox, Special Rapporteur](#)

2 [A/HRC/34/49](#), 19 January 2017. Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

3 See Viet, P. and Benson, C. (2004). [When Parks and People Collide](#), Human Rights Dialogue, Vol. 2(11), 13-14

4 See Adams, W. and Hutton J. (2007). [People, Parks and Poverty: Political Ecology and Biodiversity Conservation](#),

BOX 1 - KEY LINKAGES BETWEEN BIODIVERSITY, ECOSYSTEM SERVICES AND HUMAN RIGHTS

- The full enjoyment of human rights includes the rights to life, health, food and water. These depend on the ecosystem services that in turn depend on biodiversity.
- Without the services provided by healthy ecosystems, the ability to enjoy many rights, including the rights to life, health, food, water and participation in cultural life, would be severely compromised or impossible.
- The full enjoyment of human rights thus depends on biodiversity. Conversely, degradation and loss of biodiversity undermine people's ability to enjoy their human rights.

John Knox's report highlights particular ecosystem services that directly support the full enjoyment of the rights to life and health; the right to an adequate standard of living; and the right to non-discrimination in the enjoyment of rights. These are supported by several examples: one of the best-known connections between biodiversity and health is the derivation of medicinal drugs from natural products. The benefits of biodiversity are particularly evident in relation to the right to food. Biodiversity also helps to support the right of access to clean and safe water through, for example, forest areas that significantly improve water flow regulation by reducing runoff and providing greater water storage.

Human rights advocates have argued that poor people pay a disproportionately high cost for conservation, while receiving few of its benefits. They have called for the participation of affected people in decisions regarding the establishment of Protected Areas and the use of wildlife, to ensure that people's rights are not secondary to the legitimate imperatives of conservation. Conversely, advocates of conservation have argued that in some instances, biodiversity protection is incompatible with the presence of people, especially where the species of concern are at risk of hunting or poaching, by virtue of their value as bush-meat or for trade (either of live animals or valued parts of animals such as skin, horn or bone).

The idea that Protected Areas should be socially and economically inclusive has grown to become part of mainstream conservation thinking. By the 1980s, the whole conservation paradigm had changed to embrace social inclusion rather than exclusion.⁶ Community-based approaches have been the focus of conservation strategies in the developing world in the last two decades of the twentieth century. The Integrated Conservation and Development Projects (ICDPs) approach promoted a combination of buffer zones and general local development support to reduce the pressure on a protected area.

Subsequent concerns that local communities were recipients of assistance (and still largely excluded) under ICDP arrangements led to the emergence of 'community-based conservation' (CBC), which

Conservation & Society, Vol. 5(2), 147-83

5 Ibid.

6 Hulme, D. and Murpree, M. (Eds) (2001). *African Wildlife and Livelihoods: The promise and performance of community conservation*. James Currey, Oxford

has biodiversity conservation as one of its goals and community involvement as its approach.⁷ However, the evidence regarding the success of CBC is mixed: while some have achieved gains in community development, a number of authors argue that they have made few positive impacts on conservation.⁸

Over time, a stronger commitment to human rights and social justice has enhanced the legitimacy of conservation efforts and helped mitigate the historical tensions between advocates of human rights and advocates of biodiversity protection. One common and ongoing challenge is a lack of attention to how rights to resources and biodiversity need to be distributed and regulated among individuals, communities, and the state, and the institutional arrangements that may be required to enable this to happen.⁹ These issues have implications for Myanmar and how it recognises these rights in permitting private sector projects.

2. Relevant Legal Developments

More recently, a few countries have passed laws to confer on environmental features the same legal rights as a person. In some cases, these rights have been won through litigation in the courts. While such instances are still the exception rather than the rule, they are symbolically important in signalling options for Myanmar as it develops strategies to ensure the long-term protection of biodiversity. It could consider such an option to protect some of the rivers or other environmental features that have deep cultural meaning for Myanmar peoples.

The first legal opinion on biodiversity, human rights, society and business might dates from 1972. The Sierra Club (an environmental NGO founded in 1892) unsuccessfully petitioned the US Supreme Court to halt the development of a skiing resort in the Mineral King Valley within the Sequoia National Forest in California. In expressing his opinion disagreeing with the majority of other judges, Justice William Douglas argued that that environmental features such as rivers ought to enjoy "legal standing," to enable concerned parties to litigate in the name of the ecosystem features at risk. At the core of Douglas's opinion (see **Box 2**) was the relationship between biodiversity, human rights, society and business, and a desire to ensure a meaningful voice for advocates of conservation in development decision-making.

While the case helped broaden the right of environmental groups to sue on behalf of undeveloped nature, the US justice system - in common with most jurisdictions - still explicitly limits to humans the ability to bring a claim in federal court. However, 45 years later in 2017 a number of landmark rulings in other countries have effectively enshrined Justice Douglas's vision into national laws. As set out below, environmental features - to date all the cases have been about rivers - are treated as legal persons so that someone can represent the river in court and sue on its behalf to prevent harm or claim damages for harm done. While few in number, they signal a growing trend to provide nature with new avenues of legal protection that go beyond the standard forms of environmental protection to date (see **Box 3** on page 6).

⁷ Lele, S. et al. (2010). [Beyond exclusion: alternative approaches to biodiversity conservation in the developing tropics](#). Current Opinion in Environmental Sustainability, Vol. 2, 94-100

⁸ Adams, W. and Hutton J. (2007). [People, Parks and Poverty: Political Ecology and Biodiversity Conservation](#), Conservation & Society, Vol. 5(2), 147-83

⁹ Lele, S. et al. (2010). [Beyond exclusion: alternative approaches to biodiversity conservation in the developing tropics](#). Current Opinion in Environmental Sustainability, Vol. 2, 94-100

BOX 2 - US SUPREME COURT OPINES ON BIODIVERSITY, HUMAN RIGHTS, SOCIETY AND BUSINESS

Excerpts from Justice William Douglas's dissenting opinion, US Supreme Court, *Sierra Club v. Morton*, 405 U.S. 727 (1972)

"Contemporary public concern for protecting nature's ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their own preservation... Inanimate objects are sometimes parties in litigation. A ship has a legal personality, a fiction found useful for maritime purposes. The corporation sole - a creature of ecclesiastical law - is an acceptable adversary and large fortunes ride on its cases. The ordinary corporation is a "person" for purposes of the adjudicatory processes, whether it represents proprietary, spiritual, aesthetic, or charitable causes. So, it should be as respects valleys, alpine meadows, rivers, lakes, estuaries, beaches, ridges, groves of trees, swampland, or even air that feels the destructive pressures of modern technology and modern life. The river, for example, is the living symbol of all the life it sustains or nourishes - fish, aquatic insects, water ouzels, otter, fisher, deer, elk, bear, and all other animals, including man, who are dependent on it or who enjoy it for its sight, its sound, or its life. The river as plaintiff speaks for the ecological unit of life that is part of it. Those people who have a meaningful relation to that body of water - whether it be a fisherman, a canoeist, a zoologist, or a logger - must be able to speak for the values which the river represents, and which are threatened with destruction. Those who have that intimate relation with the inanimate object about to be injured, polluted, or otherwise despoiled are its legitimate spokesmen."

The Constitution of Ecuador and Bolivian Law of the Rights of Mother offer other examples of how nature can be invested with rights (see **Box 4** on page 7).

BOX 3 - EXAMPLES OF CASES TO DATE CONFERRING RIGHTS ON RIVERS

- New Zealand:** On the 14 March 2017, the New Zealand Parliament voted to protect a river through the Te Awa Tupua (Whanganui River) Claims Settlement Bill (the Bill).¹⁰ The Whanganui River, situated in the country's North Island, is New Zealand's longest navigable river. The local Māori tribe of Whanganui in the North Island has fought for the recognition of their river – the third-largest in New Zealand – as an ancestor since the 1870's. One part of the Whanganui River Deed of Settlement is directed towards the establishment of Te Pā Auroa, a new legal framework, which is centred on the legal recognition of the river from the mountains to the sea, its tributaries, and all its physical and metaphysical elements, as an indivisible and living whole. The **river is now recognised as a legal person and has all the rights, powers, duties, and liabilities of a legal person.** Two people, one nominated by the Iwi sub-tribe and one nominated by a government minister have the responsibility "to act and speak for and on behalf of Te Awa Tupua", "to promote and protect the health and well-being of Te Awa Tupua", and to perform landowner functions with respect land vested in Te Awa Tupua under the legislation. The status of the Whanganui River as a legal person **means if someone abuses or harms the river, the law now sees no distinction between harming the tribe or harming the river because they are one and the same.** The move follows the earlier recognition by New Zealand's Government of the Te Urewera National Park as a legal entity in 2013, with all the rights of a person.¹¹ In both instances, the change in status was also accompanied by a financial settlement to support the ongoing protection of ecosystems.
- India:** On 20 March 2017, the High Court of the State of Uttarakhand declared **the Ganga and Yamuna and their tributaries had the same legal rights as a person, in response to the urgent need to reduce pollution in two rivers considered sacred in the Hindu religion.** The High Court order was based on public interest litigation concerning illegal sand mining and stone crushing on the banks of the Ganga. It stated that "the Rivers Ganga and Yamuna, all their tributaries, streams, every natural water flowing with flow continuously or intermittently of these rivers, are declared as juristic/legal persons /living entities having the status of a legal person with all corresponding rights, duties and liabilities of a living person in order to preserve and conserve river Ganga and Yamuna". "The extraordinary situation has arisen since Rivers Ganga and Yamuna are losing their very existence," the court said, noting that "this situation requires extraordinary measures." However, on 7 July 2017 the Indian Supreme Court stopped the implementation of the court order following a plea by the Uttarakhand government.¹²
- Colombia:** In May 2017, the country's constitutional court awarded rights to the Atrato, a river that flows through the globally recognised "biodiversity hotspot" of Colombia's north-western Pacific rainforest. The Atrato River has been awarded rights to protection, conservation, maintenance and restoration **not because of what it provides for human life use, but it should be equated with human life.**¹³

BOX 4 - EXAMPLES OF LEGISLATION CONFERRING RIGHTS ON NATURE/MOTHER EARTH

- Ecuador** had already given **legal rights to nature in its Constitution** adopted in 2008.¹⁴ Article 71 states that nature, or Pacha Mama, "has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes. All persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature." Article 73 requires the State to "apply preventive and restrictive measures on activities that might lead to the extinction of species, the destruction of ecosystems and the permanent alteration of natural cycles".
- Bolivia**, through the **Law of the Rights of Mother Earth** (Law 071 of the Plurinational State, December 2010), defines Mother Earth as "the dynamic living system formed by the indivisible community of all life systems and living beings whom are interrelated, interdependent, and complementary, which share a common destiny" (Article 4).¹⁵ The law establishes the juridical character of Mother Earth in Article 5 as "collective subject of public interest", to ensure the protection of her rights. By attributing a legal personality to Mother Earth, through its human representatives it can bring an action to defend its rights.

10 See the [Te Awa Tupua \(Whanganui River Claims Settlement\) Act 2017](#). Published under the authority of the House of Representatives, New Zealand Government

11 See the New Zealand Government (2013), the [Treaty Settlement documents](#) under which the TeUrewera was established as its own legal entity, overseen by a governance board of Crown and Ngāi Tūhoe peoples representatives. (Accessed 28-09-2018)

12 See the Outlook. [Supreme Courts Stays Uttarakhand HC Order Declaring Ganga, Yamuna a living Entity](#). 07-07-2017

13 See The Independent. [Can a river have legal rights? A different approach to protecting the environment](#). 13-10-2017

14 See the Political Database of the Americas (2011). [Constitution Of The Republic Of Ecuador](#). Republic of Ecuador, National Assembly

15 See the [Law of the Rights of Mother Earth](#) (2010). Plurinational State of Bolivia, Legislative Assembly

Photo Credits:

Cover: Makusheva I., 2015; Macleod Island, Myeik Archipelago, Myanmar

Back Cover: Makusheva I., 2015; Kayah State, Myanmar



Myanmar Centre for
Responsible Business

ADDRESS:

6(a) Shin Saw Pu Road
Kayin Chan Ward, Ahlone Township, Yangon
Myanmar

P. +95 1 512613

E. info@myanmar-responsiblebusiness.org
www.mcrb.org.mm
www.myanmar-responsiblebusiness.org