Submission by Earth Law Center to the United Nations
Development Programme
How to Include the Rule of Law in the Post 2015 Development Agenda
August 29, 2013

Earth Law Center is a 501(c)(3) public benefit organization dedicated to advancing laws, economic structures, and governance systems that reflect the rights of the natural world to exist, thrive and evolve. Staff has considerable expertise in advancing sustainable environmental laws and policies at the local, state and federal levels, particularly with respect to water and waterways. The Center is also a contributing author to the upcoming Rule of Law for Nature: New Dimensions and Ideas in Environmental Law (NY: Cambridge University Press) (Christina Voigt, ed.), containing reflections from legal experts around the globe on this evolving area of the law. We welcome the opportunity to submit these inputs and contributions to UNDP for inclusion in the e-consultation on “Rule of Law and the Post-2015 Development Agenda, Phase II.” We attach for your reference our August 8, 2013 inputs to UNDP pursuant to the e-consultation on “Rule of Law and the Post-2015 Development Agenda, Phase I.”

Question 1. How can we measure progress on rule of law within a future post-2015 development framework? Which targets and indicators on the rule of law, justice and security could be proposed that would enable us to advance towards universal goals but also allow the space to reflect national priorities and context specificities?

As described in more detail in our response to the Phase I e-consultation (see below), we must expand our justice-based view of the rule of law to encompass the natural world, just as we expanded it to encompass people everywhere through the Universal Declaration of Human Rights. The intent of the Universal Declaration of Human Rights is to protect humans’ inherent rights from the excesses of potentially harmful governing bodies. The Preamble of the Universal Declaration of Human Rights further describes application of the rule of law as “essential” to the protection of human rights. However, even a vastly improved implementation of the rule of law will fail to protect human rights unless it also encompasses protection of the natural world – our partner and provider on Earth – from the excesses of humans and human governance systems. As a result of our failure to recognize this necessity, significant, overlapping violations of both human rights and environmental rights are occurring with increasing frequency worldwide.

To begin to address this problem, we must recognize the inherent rights of the natural world to exist, thrive and evolve, as reflected in the Universal Declaration of the Rights of Mother Earth and Ecuador’s Constitution (discussed further in the attached Phase I comments). The Drafting Committee of the Universal Declaration of Human Rights explained that the “value of the human person...did not originate in the decision of a worldly power, but rather in the fact of existing.” (Emphasis added.) Like our own

value, the value of nature does not arise from our decisions on its worth, but from its existence on this planet.

Not surprisingly, our deep interconnections with nature mean that when we violate nature’s rights, so too do we violate human rights. Just a few examples of this overlap of human rights and environmental rights violations are provided below, to illustrate the need to reflect the rights of nature in our laws in order to advance both human and environmental well-being:

**Madhya Pradesh, India** (2012)²: Coal mining by the Indian government is reportedly forcing thousands of tribal villagers to leave the forest and their traditional home and livelihoods.

- **Human Rights Violations:** It is reported that tribal villagers are being evicted from their traditional homes by the Indian government for existing and proposed coal mines, with little voice in the matter. Forest areas have been declared privatized and villagers are no longer allowed to enter. Many villagers in the region rely on the forests for food collection and/or their livelihoods.

- **Environmental Rights Violations:** The report estimates that 1.1 million hectares of forest are under threat from 13 coal fields in Madhya Pradesh, Chhattisgarh, Odisha, Jharkhand and Vidarbha. The analysis reports that almost all coal fields overlap with endangered species habitat. Of the 1.1 million hectares of forest at risk, over 185,000 hectares are inhabited by tigers, over 270,000 hectares by leopards, and over 55,000 hectares by elephants. In addition, the mines will impact tiger reserves identified as essential for the long-term survival of the species.

**Manila, Philippines** (2013)³: The Senate of the Philippines reports that murders of environmental advocates and journalists is a significant problem in the country.

- **Human Rights Violations:** The Senate reports that since 2001, fifty-six environmental advocates have been murdered, including those supporting forest protection and protesting illegal lumber collection.

- **Environmental Rights Violations:** The deforestation rate in the Philippines is reportedly the highest in East Asia and Southeast Asia regions at 1.4 percent annually. The extensive deforestation puts many species at risk, including the endangered Philippine eagle. Deforestation in the region has also been blamed for increasingly severe impacts from typhoons, as illegal logging “hotspots” have been hardest hit by recent storms.

**Ardahan, Turkey** (2011)⁴: The United Kingdom government reports that British Petroleum (BP) has failed to investigate and respond to complaints by local Kurdish villagers of intimidation, false arrest and torture by state security forces guarding BP's oil pipeline.

- **Human Rights Violations:** State security forces along the Caspian oil pipeline in Turkey reportedly have used intimidation, detainment and torture techniques upon objectors to the pipeline.

- **Environmental Rights Violations:** The pipeline reportedly transports 1 million barrels of oil every day from the Caspian Sea to Turkey, where it is loaded on supertankers to Europe. Oil pipelines

can harm the environment through ruptures and spills, as was seen in the 2008 rupture along the Turkey-Iraq border, which left a large oil slick and contaminated waterways near Ataturk Dam.

South Cotabato, Philippines (2012)\(^5\): The Mindanao Examiner reported that Philippine soldiers allegedly murdered a native tribal leader’s wife and children in response to the tribal leader’s campaign to protect his fellow natives and their ancestral lands from a major mining company.

- Human Rights Violations: Philippine soldiers are reportedly accused of murdering a native tribal leader’s family in response to his campaign to protect his people and ancestral lands from the highly controversial Tampakan Mine, a $5.9 billion project which will extract copper and gold and be the country’s largest mining complex.

- Environmental Rights Violations: The Tampakan Mine will straddle three watersheds and require 3,935 hectares of forest and lands to be cleared for operations. Copper and gold will be extracted, requiring large amounts of water and resulting in toxic byproducts (tailings) that will be held in a facility near one of the tributaries to the Mal River, the biggest river system in the area. The project is expected to produce 2.7 billion tons of mine waste, and storage will reportedly cover 500 hectares of land. Many are concerned about a disaster similar to the one in Boac, Marinduque, at the then third-largest copper mine (now shut down). The Boac mine was responsible for multiple tailing spills, including one in 1996 that filled the Boac River with 3-4 million tons of metal-enriched and acidic tailings.

Jeju Island, South Korea (2012)\(^6\): The National Network of Korean Civil Society for Opposing the Naval Base in Jeju Island published two issue reports concerning Jeju Naval Base construction. The reports highlight arrests, excessive use of force by police, violations of freedom of assembly, and environmental destruction.

- Human Rights Violations: Cases have been collected by the Gangjeong Human Rights Violation Investigation Team, who report entry denials of foreign human rights defenders, freedom of peaceful assembly and associations, excessive use of force by the police, impunity for police violence, and major human rights violations.

- Environmental Rights Violations: Jeju is the only locale in UNESCO’s nature and science field with designations of Biosphere Reserve in 2002, World Natural Heritage in 2007, and World Geopark in 2010. The route where large ships and submarines will traffic reportedly moves through the UNESCO World Heritage Site known as Jeju Volcanic Island and Lava Tubes, made up of 18,846 hectares including three islets off Jeju Island. Concerns over environmental destruction include water pollution from construction and ship traffic, and endangered soft-coral reef destruction from dredging of the seafloor.

Dhaka, Bangladesh (2012)\(^7\): Human Rights Watch reports that leather tanneries in the Bangladesh capital are flooding local neighborhoods with toxic chemicals.

- Human Rights Violations: It is reported that young children are part of the workforce in tanneries, where they are exposed to toxic chemicals without even minimally adequate protection on the job. In addition, toxic tannery byproduct flows freely into the surrounding neighborhoods through open gutters, exposing the population to extremely toxic chemicals.

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Environmental Rights Violations: Toxins (including sulfuric acid, chromium and lead) are reportedly released through gutters and run into a local stream that flows to the Buriganga River. The government estimates that 21,000 cubic meters of wastewater is released each day with no prior treatment. The Buriganga River, once teeming with fish, is reportedly lifeless due to the pollution from tanneries upriver. The government’s environmental department has admitted that nothing is being done to stop the severe environmental pollution.

As these and (unfortunately) numerous other examples indicate, violations of human rights will continue until we create governance systems and rule of law frameworks that recognize and protect the rights of the natural world. This is because both sets of rights violations are driven by an overarching neoliberal economic system premised falsely on the myth of endless growth on a finite planet, which is negatively impacting the rights of the many to the short-term benefit of the few. In order to address the flaws in our implementation of the rule of law for humans, we must address its foundational failures.

Accordingly, in response to Question 1, we respond that we must measure progress on the rule of law through the adoption of international, national, state and local laws that recognize the inherent rights of nature to exist, thrive and evolve. We also need to implement such provisions actively, through measureable outreach to and education of court and administrative agency systems, and through adoption of regulations and programs that provide day-to-day guidance in how to live our lives consistent with the rights of nature.

These actions to recognize the rights of nature are necessary though not sufficient to address the above-described rights violations, however. We also should measure progress in the rule of law by our efforts in dismantling one of its chief impediments – our neoliberal economic model, fueled by the destruction of the natural world – and by replacing it with ecological economics models, which recognize the importance of protecting the well-being of natural systems. Current economic growth models have a tight hold over our legal system, with long-term, significant and (in many cases) irreversible impacts. We must eliminate the economic incentives to violations of human and environmental rights in order to truly begin to implement the rule of law.

**Question 2.** In what ways could this framework address inequities and marginalization of specific groups of people who may face significant barriers in accessing justice and security (e.g. specific targets and indicators)?

As described in the examples above, economically marginalized people are much more likely to face significant barriers in accessing justice and security than those people who have the means to (largely, though not exclusively) better isolate themselves from the impacts of environmental rights violations. Certainly the first step, as described in the response to Question 3, is to begin to deliberately gather data on these types of human and environmental rights violations worldwide. Economically marginalized areas could also be the more specific targets for initial oversight and enforcement actions against those who would commit such rights violations. They could also be priority areas for education and outreach around modifications of law and policy to recognize the rights of natural systems. Finally, such areas could also be a focus for pilot programs to implement alternative economic models and structures that work with – not against – nature in building sustainable local economies, which empower rather than degrade.

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Question 3. The UN Secretary-General’s High Level Panel Report on the post-2015 development agenda calls for a “data revolution.” In your opinion, is such a “data revolution” possible in the area of rule of law? What actions can be taken and what investments are required, for example, to collect the data on rule of law? Please provide specific recommendations/initiatives that could be undertaken.

The examples provided above illustrate that there are significant instances worldwide of major human rights violations overlapped with serious environmental rights violations. Again, these instances of overlap are no coincidence; they arise from flawed economic models and from legal systems that fail to recognize the inherent rights of the natural world.

Such data, however, are scattered, rather than compiled in a focused way that would allow thoughtful responses to be crafted and acted upon. Much of the compilation work to date has been done by NGOs and investigative journalists. The UN’s recognition and summary of these violations has been comparatively weak in light of the UN’s potential for gathering this information and using it to advance change. This is particularly true given that the UN is already well aware of these major violations – many of which are perpetrated by State actors – but has yet to act on this knowledge in a meaningful way.

For example, in 2000, the UN Commission on Human Rights established a mandate to support implementation of the UN’s 1998 Declaration on human rights defenders. In a December 2011 report, the Special Rapporteur on Human Rights Defenders compiled communications she had received with regard to violations of the rights of human rights defenders that occurred while they were defending the environment. Some of the findings of her report are as follows:

- The Rapporteur “has received, and continues to receive, allegations indicating that security guards employed by oil and mining companies allegedly use death threats, acts of intimidation and attacks against defenders who denounce the perceived negative impact of the companies’ activities on the enjoyment of human rights by local communities.” (page 12)
- “According to the information received, defenders working on [land and environmental issues] seem to face a high risk of violations to their physical integrity, including attempted killings (Brazil, Ecuador), killings (Brazil, Cambodia, Ecuador, El Salvador, Honduras, Mexico, Philippines), attacks (Brazil, Mexico, Papua New Guinea), assault and ill-treatment (Philippines), and excessive use of force by the police during demonstrations (India). They have also been subjected to threats and death threats (Brazil, El Salvador, Guatemala, Mexico, Nigeria, Peru, Philippines) and different forms of intimidation (Peru, Bahamas, Brazil, Guatemala, Papua New Guinea) and harassment (China, Mexico, Peru).” (page 12)
- Information of human rights violations of “[d]efenders working on land and environmental issues in connection with extractive industries and construction and development projects in the Americas” occurred most often during the reporting period, as compared with other regions. These defenders “also faced the highest risk of death as a result of their human rights activities.” (page 13)
- Women human rights defenders were at special risk. Women defenders working on land and environmental issues “have been subjected to threats against their physical integrity including: killings, mostly in the Americas (Colombia, Guatemala, Honduras); excessive use of force

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against them during protests (Brazil, India and Nepal); and attacks by armed assailants (Guatemala). They have also been subjected to threats and death threats (Colombia, Ecuador, Mexico, Philippines, Peru); and harassment and intimidation (Bahamas, Mexico, Peru), including against their families (Colombia). Some of them have been arrested and arbitrarily detained (India, Nepal and Nigeria).” (pages 14-15)

- Another group of defenders that also appears to be at particular risk is journalists working on land and environmental issues. Journalists working on these issues “have been killed (Honduras, Mexico); suffered physical attacks (Russian Federation, Uganda) and death threats (Honduras, El Salvador); and been subject to different forms of intimidation (Guatemala),” among other risks and intimidations. (page 15)

Notably, in many (and sometimes most) cases, the perpetrators of these acts are in fact the State itself. For example, the report notes that violations against defenders working on land and environmental issues in connection with the activities of extractive industries as well as construction and development “have been carried out by both State and non-State actors” (page 13). Most of the violations against woman in particular were by State actors (page 15).

In light of the reality of State responsibility for the often severe violations enumerated in the UN report (e.g., “many are killed because of their work”), the conclusions of the report were extraordinarily tepid. They include the following (page 20):

- “States should give full recognition to the important work carried out by defenders working on land and environmental issues . . . .” (This “recommendation” sidesteps the fact that States themselves conduct violence against defenders and so are unlikely to acknowledge defenders’ work as “important” without more than a simple reminder.)
- “States should not tolerate the stigmatization of the work of these defenders by public officials or the media . . . as this can foster a climate of intimidation and harassment which might encourage rejection and even violence against defenders.” (The almost surprised tone of this recommendation is at odds with the findings that State violence against defenders does occur and on a regular basis – not “might” occur in exceptional circumstances.)
- “States should combat impunity for attacks and violations against these defenders, particularly by non-State actors and those acting in collusion with them, by ensuring prompt and impartial investigations into allegations and appropriate redress and reparation to victims.” (Again, this recommendation ignores State complicity in these attacks, as well as the important question of who is to conduct such investigations where the State is the culprit.)

The lack of any meaningful response by the UN to the enumerated, often State-caused gross violations of human and environmental rights articulated in the report is of all the more concern because this pattern was not “news” to the UN at the time of the report’s writing. Many of the same conclusions were made in a related 2007 Human Rights Council report, including findings of State-initiated violence against environmental defenders for their work.11 As in the 2011 report, though, the 2007 report merely recommended that States “show increased tolerance for criticism” and “make use of the often specialized knowledge of defenders in order to achieve the realization” of human rights (page 25). The Special Representative also recommended that States “facilitate human rights defenders’ activities that

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contribute towards achieving the goals of the Millennium Declaration” (page 25). It strains credulity to think that States actively killing and imprisoning human rights defenders will change course due solely to UN reminders about their Millennium Declaration responsibilities and the need to accept criticism gracefully.

Clearly, the rule of law is not being followed in many countries worldwide, particularly with respect to the activities of defenders of environmental and human rights. To date, the UN has failed to offer a response commensurate with the gravity of these violations. This must change. Accordingly, as described above and in the attached August 8, 2013 inputs, one element of the post-2015 framework must be full implementation and enforcement of the rule of law in order to protect both human and environmental rights.

In addition, as noted above, the UN must take a stronger stance against the neoliberal economic model that is driving much of this violence. For example, the 2011 report recommends that:

States should give full recognition to the important work carried out by defenders working on land and environmental issues in trying to find a balance between economic development and respect of the environment, including the right to use land, natural wealth and resources . . . . (page 20, emphasis added)

This recommendation misses the point of our integration with and dependence on the Earth. There is no “balance” between economic development and respect of the environment. As ecological economists explain,12 our economic models are in fact subsumed within, and completely dependent on, ecological systems, and so the well-being and rights of the natural environment must demand our primary attention. In other words, we must reject the myth of trying to support economics on the back of the environment, and instead adopt economic systems that create incentive/disincentive structures that recognize the fact that we – and our economics – are just one element of the Earth. We may claim a “right” to use “land, natural wealth and resources,” but if we exercise that “right” outside the boundaries of Earth’s systems, as we are doing now, we will not be exercising that claim for long. We must evolve our economic system through measureable, accountable process if we are to succeed in our post-2015 goals.

One critical element of ensuring the success of such efforts is the amount and quality of data. The UN must conduct an active, assertive campaign to obtain the data it needs to both outline the scope of the problem of overlapping human/environmental rights violations, and then to create metrics against which further data can be collected to assess progress in recognizing the rights of nature in law, and adjusting our economic system to reflect the tenets of ecological economics.

To date, the UN’s data collection efforts in the area of human/environmental rights violations has been tepid at best. For the December 2011 report, the Special Rapporteur sent 234 communications to 71 States for information, which resulted in only a 39% response rate (page 3). During the reporting period, the Special Rapporteur conducted a site visit only in India, and left on the table 29 outstanding visit requests, some of which had been ignored by States for many years. The report merely noted in response to this pointed silence that the “Special Rapporteur regrets that some of these requests are

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long-standing, and hopes that States will give due attention to all her requests in a timely manner” (page 4).

Again, this must change. To address this very significant problem of overlapping human and environmental rights violations, we must deliberately and assertively gather data on these types of human and environmental rights violations worldwide and begin to review them for the types of responses that must be taken to evolve the rule of law to effectively protect the right of all humans and the natural world. Accountability measures must be built in to address the many States resisting such data gathering, to ensure that we daylight these growing abuses.

We strongly urge the UN to begin this data collection effort now in order to inform the development of the post-2015 framework, rather than make its initiation part of the post-2015 framework. Data collection particularly must be started now in order to have a clear picture of the scope of the hurdles faced, lest we aim well short of our process and substance targets for human and ecological well-being. The post-2015 framework itself would then include a mandate to continue and update this type of data collection, to assess our progress in reaching our goals for well-being.

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Thank you for the opportunity to submit these comments. If you have any questions or would like additional information, please do not hesitate to contact us.

Sincerely,

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Attachment: Submission by Earth Law Center to the United Nations Development Programme (August 8, 2013)
Submission by Earth Law Center to the United Nations Development Programme
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Earth Law Center is a 501(c)(3) public benefit organization dedicated to advancing laws, economic structures, and governance systems that reflect the rights of the natural world to exist, thrive and evolve. Staff has considerable expertise in advancing sustainable environmental laws and policies at the local, state and federal levels, particularly with respect to water and waterways. The Center is also a contributing author to the upcoming Rule of Law for Nature: New Dimensions and Ideas in Environmental Law (NY: Cambridge University Press) (Christina Voigt, ed.), containing reflections from legal experts around the globe on this evolving area of the law.13 We welcome the opportunity to submit these inputs and contributions to UNDP for inclusion in the e-consultation on “Rule of Law and the Post-2015 Development Agenda, Phase I.”

In brief, we call on the UNDP to reflect on the 1987 Declaration of the World Commission on Environment and Development that “[h]uman laws must be reformulated to keep human activities in harmony with the unchanging and universal laws of nature.”14 As described below and in the upcoming Rule of Law for Nature, an evolving rule of law that incorporates and respects the laws and rights of nature, and that includes transparent, equitable, and effective processes of law and justice that advance those rights, is essential to guide us toward lifestyles in harmony with each other and the planet.

Question 1. Why is it important to consider the rule of law as part of the post-2015 development agenda?

Despite achieving some notable successes over the years, our current environmental laws and agreements have been unable to prevent increasingly grave challenges such as climate change, depleted waterways, and disappearing species and natural habitats – all of which contribute to the growing human populations without clean water, safe shelter, healthy food or other basic necessities. These dilemmas result in large part because our overarching legal and economic systems treat the natural world as property that can be exploited and degraded, rather than as an integral ecological partner with its own rights to exist and thrive. Protection of nature is generally subsumed to the incessant driver of economic growth. We assume our environmental laws will prevent significant damage by ensuring that humans take from nature a little less, and a little less quickly. But this simply slows, never stops, the downward slide.

In order for us to succeed in our post-2015 goals, we must create governance systems that recognize our interconnections with the natural world and acknowledge its rights to exist and thrive. We must accept “nature’s rule of law,” which dictates that we simply cannot continue growth indefinitely on a finite planet. This is a simple law, and yet our perspective on the “rule of law” ignores it. By creating a

legal system that incorporates and respects ecosystem rights, we will prompt planning and actions that ensure that we truly live sustainably, consistent with the environment’s own natural laws.

This is not solely a matter of observing the laws of science, though that is essential. We must expand our justice-based view of the rule of law to encompass the natural world, just as we expanded it to encompass people everywhere through the Universal Declaration of Human Rights. The UNDP concept note for this e-consultation provides guidance in this regard, stating that the rule of law reflects a “shared normative notion that human dignity and justice matter.” The concept note adds that, if developed and applied properly, the rule of law will result in a “legal and political order with a set of values.” The Universal Declaration of Human Rights set the foundation for this vision of value- and rights-based governance, stating in Article 1 that “All human beings are born free and equal in dignity and rights.” The Declaration’s Drafting Committee explained that the “value of the human person…did not originate in the decision of a worldly power, but rather in the fact of existing.” (Emphasis added.)

Just as the Universal Declaration of Human Rights aims to protect humans’ inherent rights from the excesses of potentially harmful governing bodies, so too should we protect the natural world – our partner and provider on Earth – from the excesses of humans and human governance systems. Like our own value, the value of nature does not arise from our decisions on its worth, but from its existence on this planet. This perspective is reflected in the 2010 “Universal Declaration of the Rights of Mother Earth,” approved by an assembled delegation of over 35,000 people representing 140 countries in Cochabamba, Bolivia, who drew significantly from the Universal Declaration of Human Rights for this purpose. The Universal Declaration of the Rights of Mother Earth finds that “[t]he inherent rights of Mother Earth are inalienable in that they arise from the same source as existence,” and defends the rights-bearing entity (i.e., nature and its elements) from the excesses of governing authorities. Nature’s rights include the “the right to life and to exist” (Article 2, Section 1), and the “right to a place and to play its role in Mother Earth for her harmonious functioning” (Article 2, Section 2). The Declaration further requires “damages caused by human violations of the inherent rights” to be “rectified,” with those responsible “held accountable” (Article 3, Section 2).

Our overarching legal and economic systems are driving ongoing degradation of the natural world by treating it as merely property with no rights of its own. Current environmental laws are failing because they accept these systems implicitly. Such harmful governance systems, and our actions pursuant to them, must be altered to recognize nature’s “rule of law” as a limiting factor on our actions. Recognition of the rights of nature to exist, thrive and evolve will advance protection of the natural world from the excesses of human governance and private actions, which in turn will protect our own inherent, human rights to life, liberty and security of person.

**Question 2.** In your opinion, which, if any, dimensions of justice (access to justice and legal empowerment) and security (violation reduction) are necessary for sustainable development - including social, economic, environmental and human development?

The UN has emphasized that adherence to the rule of law is necessary to achieve both “durable peace” and “sustained economic progress and development.” Neither is achievable, however, through application of a rule of law that ignores the laws of the natural world within which we are bound. Environmental well-being and justice is essential to human well-being, justice and security.

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15 See [http://pwccc.wordpress.com/programa/](http://pwccc.wordpress.com/programa/).
This interconnection is particularly evident in the case of water. The UN has recognized the human right to water as “a pre-requisite to the realization of all other human rights.”\footnote{16} However, over-diversion, pollution and privatization are threatening the world’s water, and with it world security. According to UN-Water, by 2025 1.8 billion people will be living in regions with absolute water scarcity, and up to two-thirds of the world’s population will be under “water stress” conditions. Climate change will only exacerbate these trends. In the opening days of the 67th Session of the UN General Assembly, Secretary General Ban Ki-moon called for urgent action on climate change to ensure water security worldwide.\footnote{17} Moreover, in a recent report on the potential for a “devastating” 4°C increase by 2100, the World Bank found such an increase would prompt “substantially exacerbated water scarcity in many regions.”\footnote{18} Large-scale biodiversity losses would also be expected, “driving a transition of the Earth’s ecosystems into a state unknown in human experience,” with concomitant damage to the myriad systems on which humans depend.\footnote{19}

Numerous studies have raised the alarm about existing and potential violence associated with the continued depletion of essential elements of the natural world, particularly water. As observed by former UN Secretary-General Kofi Annan, “water issues contain the seeds of violent conflict.”\footnote{20} In addition, intelligence experts believe that water will potentially used “as a weapon or to further terrorist objectives.”\footnote{21} New, effective water governance strategies are needed now to preserve peace and create a mutually flourishing relationship with each other and the world’s waters.

The Preamble of the Universal Declaration of Human Rights describes application of the rule of law as “essential” to the protection of human rights. As Earth Law Center will describe in more detail in Phase II of this e-consultation, significant, overlapping violations of both human rights and environmental rights are occurring with increasing frequency worldwide. These incidences are driven by an overarching economic system premised falsely on the myth of endless growth on a finite planet, and are negatively impacting the many to the short-term benefit of the few. In order to address the flaws in our implementation of the rule of law for humans, we must address its foundational failure to encompass the natural world, on which we are utterly dependent.


\footnote{17} UN News Centre, (September 27, 2012), “Action on climate change crucial to water and food security, Ban stresses at UN event,” available at: \url{http://www.un.org/apps/news/story.asp?NewsID=43082&Cr=climate+change&Cr1=#.UOSFoncaxDw}.


\footnote{19} Id., p. 7.


Question 3. What are some examples of the role that justice and security institutions (including laws and policies as well as informal rules of social interaction) play in enabling sustainable development? How can the role of informal/non-state justice systems be factored into the articulation of a post-2015 development framework?

Evolving our governance principles to implement the rights of ecosystems and species through an expanded rule of law will allow us to begin the necessary process of recognizing nature’s needs and limits in our daily lives, which presumably is a major goal of the post-2015 process. There is growing precedent for this path. In 2008 Ecuador adopted a constitutional provision endowing nature with inalienable, enforceable legal rights. Its new Constitution declares the natural world has the right to exist, persist, maintain itself and regenerate its vital cycles, structure, functions and processes in evolution. Like the Universal Declaration of Human Rights and Universal Declaration of the Rights of Mother Earth, the Constitution includes provisions in support of full, equitable and transparent application and enforcement. These provisions provide the natural world with a right to restoration independent of humans’ right to compensation, and specify a clear process for enforcement of the rights of nature before public bodies.

Ecuador’s Constitutional provisions were tested in a successful March 2011 case brought on behalf of the Vilcabamba River, in which the court found the river’s constitutional right to flow had been violated by destructive road development practices and ordered the river be fully restored to health. However, more recently, litigation over the applicability of Ecuador’s Constitutional rights of nature provisions to the proposed Mirador Mine\(^2\) illustrates the need for significant judicial (and administrative) education on the application of these provisions on a regular basis. This proposed open pit copper and gold mine would be developed in biodiversity “hot spot,” involve clear-cutting at least 5,000 acres, destroy local hydrology, and potentially cause the extinction of several species. Despite the apparently clear applicability of the Constitutional protections, the lower court in early 2013 found that the Mine was in the national interest and that oversight would avoid irreparable impacts. Litigation and legislative advocacy continues, but the example illustrates the tight hold that current economic growth models have over our legal system, with long-term, significant and (despite the lower court’s finding) irreversible impacts. Judicial systems will need to be educated as we (ideally) transition to governance that enforces nature’s rights, which is essential if we are to achieve any sort of truly sustainable livelihoods in the future.

Another model for recognizing the rights of nature has been adopted in New Zealand, through agreements between Maori iwi and the Crown government. An August 2012 agreement recognized the Whanganui River as having rights and standing as a legal entity, with co-guardians to be assigned to protect those rights. The agreement “recognises the intrinsic interconnection between the Whanganui River and the people of the River (both iwi and the community generally)” and finds “the health and wellbeing of the Whanganui River is intrinsically interconnected with the health and wellbeing of the people.”\(^2\) This agreement is a promising start to a series of agreements that will create a system of governance that protects the rights of the river and its watersheds. In other words, the agreement expands the rule of law to include the natural world, and prompts residents to act on that governance

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foundation through implementation provisions that recognize and respect the limits of the natural world.

Finally, municipalities around the United States similarly are passing local laws that create enforceable rights for "[n]atural communities and ecosystems, including ... water systems ... to exist and flourish."\textsuperscript{24} Most recently, the City of Santa Monica, California unanimously adopted a city Sustainability Rights Ordinance\textsuperscript{25} recognizing that “natural communities and ecosystems possess fundamental and inalienable rights to exist and flourish,” and providing citizens with enforcement authority to protect those rights. The Ordinance establishes that Santa Monicans possess rights to “clean water from sustainable sources; marine waters safe for active and passive recreation; clean indoor and outdoor air; a sustainable food system that provides healthy, locally grown food; a sustainable climate that supports thriving human life and a flourishing biodiverse environment . . . and a sustainable energy future based on renewable energy sources.” In recognition of the growing power of corporations over both the health of the environment and our democratic institutions, the Ordinance pointedly adds that “corporate entities... do not enjoy special privileges or powers under the law that subordinate the community’s rights to their private interests.” With these provisions, Santa Monicans established their right to protect their city and implement their own sustainability goals\textsuperscript{26} against corporate and other entities with different plans.

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Thank you for the opportunity to submit these comments. If you have any questions or would like additional information, please do not hesitate to contact us. We look forward to providing additional comments in the Phase II period of this e-consultation.

Sincerely,

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\textsuperscript{24} City of Pittsburgh Legislative Information Center (Dec. 1, 2010), available at: \url{http://pittsburghpa.gov/lic/} and also at: \url{http://earthlawcenter.org/static/uploads/documents/Marcellus_Shale_Ord_Pittsburgh_1.pdf}.
\textsuperscript{25}City of Santa Monica, Ordinance 2421, “City of Santa Monica Sustainability Rights Ordinance” (April 9, 2013), available at: \url{http://qcode.us/codes/santamonica/} and at \url{http://earthlawcenter.org/static/uploads/documents/Final_SM_Ordinance_signed.pdf} (signed and including all adopted Findings).
\textsuperscript{26} City of Santa Monica, “Sustainable City Plan,” available at: \url{http://www.smgov.net/Departments/OSE/categories/sustainability.aspx}.