

WE NEED TO RECOGNISE THE RIGHTS OF NATURE

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The debates about a Bill of Human Rights are now widespread globally for the obvious reasons of the gross lack of humanity within our societies. One of the elements of human rights, as presaged in the Scottish Government's consultation paper for exampleⁱ, is 'the human right to a healthy environment'. This is supported in the RSE response to the consultation in the following terms "The right to a healthy environment is recognised in many countries through various means. Nevertheless, the scope and utility of this right remains the subject of ongoing debate"ⁱⁱ. Unfortunately, the caveat quoted puts even this issue into the difficult category. This paper seeks to move the debate forward by broadening its scope. In our response to the Scottish Government's consultation on biodiversity, the RSE stated that "In the development of its proposals for the forthcoming Natural Environment Bill, the RSE recommends that the Scottish Government considers the institution of a charter for nature, echoing the international Earth Charter"ⁱⁱⁱ. This has been recently reinforced in the RSE advice to the Scottish Government on the proposed Natural Environment Bill.

The issue is whether, in addition to the apparently agreed proposition for the human right to a healthy environment, Scotland should go further and argue for a Rights of or for Nature to be recognised and included in the planned Natural Environmental Bill or in some other form, such as a Statement or Charter.

Why a Rights of Nature?

The relatively recent recognition of the biodiversity crisis and its link to the climate crisis has been a major step forward in our understanding of the scale and interconnectedness of what is happening in the natural world as a result of human activities and behaviours^{iv}. The decline in the number of species, the level of extinctions at a rate never before known in human history, the degradation of ecosystems, and the degradation and bulk loss of soil are all well-known and the reasons understood^v. The arguments that these are a result of natural fluctuations has been soundly demolished by scientists. This crisis has more obvious manifestations in what can be seen around Scotland^{vi} in the way the land is used for the production of food and fibre. Friable soils are left exposed to wind and water erosion in the winter months, especially in the vegetable growing areas so that the loss rate far exceeds the rate of natural replenishment. The expansion of commercial timber has resulted in soil and biodiversity loss due to poor practices in ground preparation and use of inappropriate management and harvesting techniques. The quality of our rivers and beaches has been reduced because of the inadequacies of the design and the capacity of our water, sewage and treatment facilities resulting in discharge of untreated matter into our rivers and streams and onto our beaches. We care about this from the perspective of the effect on human health. But is there not another dimension that should matter: the effect on the natural environment itself?

What we are seeing now is not a recent phenomenon, but one that has been ongoing since humans first settled on planet Earth, as environmental historians have demonstrated. Flannery noted this over 70,000 years ago in Australia through his anthropological researchers^{vii}. Lovelock^{viii} noted the sea change in the level of environmental exploitation with the onset of the industrial revolution. More recently Smout^{ix} and now Oram^x have documented these trends in their environmental histories of Scotland.

In other words, society has taken the view that nature is a resource to be exploited for human benefit. It is an anthropocentric view. Stock was taken in the Millennium Ecosystem Reviews^{xi}, but one of the major rubrics which has emerged from this outstanding work is the concept of ‘ecosystem services’; in other words, what the environment naturally provides for humans.

Society almost seems to accept that the definition of a new era in our Earth timeline, the Anthropocene, as an admission of the human dominating effect on the planet compared with any previous period in its history. Is this ethically acceptable? Whether it is the rise of green politics or the increasing membership of environmental charities or not, it is clear from the scientific evidence that society is continuing to cause the degradation of nature and to undermine its natural functionality and therefore reducing the resources available to humankind.

There is a reasonable argument therefore that we should not only recognise the pattern and speed of environmental degradation, but we should take action beyond what is currently being done to help reverse the situation.

A word of caution. The nature focussed approach to the natural environment and its protection and conservation was the prevailing philosophy until the 1980s in the UK. There was growing resentment that this approach ignored humans and arguably led to many of the conservation versus development conflicts, such as the Flow Country and the Cairngorms Funicular arguments in Scotland. As a result a people and nature approach evolved. For instance, it was at the heart of the UK government’s proposals for reform of the nature conservation and the establishment of Scottish Natural Heritage as Section 1 of the Natural Heritage (Scotland) Act 1991 makes abundantly clear. Since then, the debate has shifted further with the argument that people are part of nature. Whether this is philosophically sustainable is debateable. A further argument is that the natural environment has long standing cultural and spiritual connotations. *Mother Earth* is a concept in many countries relating to the dignity and cultural significance of citizens guardianship, as well as the care which a mother gives in the mores of most societies. The aesthetic appeal of nature was recognised long ago, for example through the writings of Sir Walter Scott and the paintings of J. M. W. Turner. More recently, epidemiological experts have argued the benefits of engagement in and with the natural world. This was further emphasised during and following the COVID-19 pandemic.

The cautionary warning is that there are dangers in pursuing a wholly nature centric approach. This is not the stance taken in this paper as there needs to be a debate on how central nature should be and hence my argument for formal consideration of Rights of Nature. This means turning the current thinking on its head by recognising the social, cultural, spiritual, economic and ethical components of the natural world.

The current position

There are many possibilities that are worthy of consideration, some are more likely to be more realistic than others.

The United Nations General Assembly approved in 2022 a Resolution *The human right to a clean, healthy and sustainable environment*^{xiii} as part of the International Covenant on Economic, Social and Cultural Rights (ICESCR). It was approved in the context of the interdecadal efforts from the Stockholm Conference in 1972 onwards to focus on human rights. It does recognise the negative effect that humans have had on, *inter alia*, “unsustainable management and use of natural resources”. Inevitably the Resolution focuses

on human rights in order to obtain multi state agreement and to be consistent with the poverty alleviation and other human benefits of the Sustainable Development Goals. Any movement towards a more nature focussed approach, beyond that in the suite of Earth Summit Conventions, as amended through the periodic Conferences of Parties on Biodiversity, Climate Change and Combating Desertification, is most unlikely.

Within Europe neither the European Convention on Human Rights nor the European Social Charter have provisions of a right to a healthy environment. However, the Parliamentary Assembly of the Council of Europe recommended in 2021 the drafting of an additional protocol on human rights to a healthy environment. As with matters of this complexity, discussions are ongoing.

The previous UK Government stated that all Economic, Social and Cultural rights are assumed to be implemented through sectoral law, e.g., Water Industry Acts, not via a specific human right to a healthy environment. The position of the new UK administration on this matter is not yet clear.

In Scotland, the Scottish Human Rights Commission is considering a human right to a healthy environment and made recommendations as such for the proposed Human Rights Scotland Bill. However, this Bill is not in the Programme of Government for 2024-25 Parliamentary session.

Globally, there are examples of nature's rights. Countries such as India, Colombia, Ecuador and New Zealand have it in various forms from the constitution to statute and local laws.^{xiii}

There seems to be no appetite or even debate for a rights of nature legislation as the issue is seen from a human rights perspective, although the interdependence between human rights and a healthy environment is recognised.

What options are there in Scotland?

Statutory provision

The Natural Environment Bill proposed for the 2024-25 parliamentary session is a possibility to at least air the arguments for human and nature rights. In our briefing paper to the Scottish Government, the RSE sets out our arguments for both the human and nature rights elements. Once the Bill is published, the RSE could propose amendments to be put forward by a sympathetic opposition MSP in order to flush out the Scottish Government's view both on human rights to the environment and rights of nature.

The Scottish Government's definition of biodiversity is relevant as it embraces for the first time all of the elements of nature, not just biodiversity:

“Nature includes biodiversity, geodiversity and the natural elements of our landscapes and seascapes. It encompasses all the underpinning features and forces that have continued since the Earth was formed from summit to seabed including rocks, landforms, soils and processes like weather systems.”^{xiv}

This definition should be on the face of the Natural Environment Bill.

Although the Human Rights Bill appears to be on the political backburner, it could come up in the final year of this parliament, the 2025-26 session prior to the May 2026 elections. Again, RSE could any consultation paper and seek to persuade a friendly MSP to put

amendments forward. This all depends what reaction, if any, RSE achieves though the Natural Environmental Bill debates discussed above. In all of these efforts, we must bear in mind that any statutory provision will not be nature centric but people centric.

Could the revised definition of nature form the basis of a new approach, such as a charter or guardianship? I will briefly consider each of these.

Charter

There are many models that could be used as a basis for a ***Scottish Charter for Nature***. An amendment to the Earth Charter^{xv} could be argued as its time to update in the light of twin crises and marine environment concerns. The Digne Declaration *International Declaration of the Rights of the Memory of the Earth* is a possible model for example^{xvi}, as is the Scottish Geodiversity Charter^{xvii} and the Edinburgh Declaration on Biodiversity^{xviii}.

Code of Guardianship or Stewardship

The major change that is needed to redress the balance from exploitive approaches to nature to caring for the environment and its natural resources and functions is to develop the concept of **stewardship** or **guardianship**. These place the responsibility on society as a whole, and on citizens and on rights holders in land and water, to play their part in caring for the environment.

Scottish has already played a leading role in the articulation of the Scottish Land Rights and Responsibilities Statement arising from the Land Reform (Scotland) Act 2016. Codification and advice by Environmental Standards Scotland and the Scottish Land Commission in developing a Nature Charter or Nature Stewardship Code would be a step forward.

ⁱ [A Human Rights Bill for Scotland: consultation - gov.scot](#)

ⁱⁱ [Human Rights Bill for Scotland - Royal Society of Edinburgh : Royal Society of Edinburgh](#)

ⁱⁱⁱ The Royal Society of Edinburgh (2024): Scotland's strategic framework for biodiversity consultation.

^{iv} IPBES report [Nexus assessment | IPBES secretariat](#)

^v https://en.wikipedia.org/wiki/Global_Assessment_Report_on_Biodiversity_and_Ecosystem_Services

^{vi} <https://www.nature.scot/state-nature-report-shows-scotlands-wildlife-continues-decline>

^{vii} Flannery, T. 1994. *The Future eaters*.

^{viii} Lovelock, J. 1988. *The ages of Gaia*.

^{ix} Smout, T. C. 2000. *Nature Contested*.

^x Oram, R. D. 2025 *A land won from waste*.

^{xi} [Millennium Ecosystem Assessment](#)

^{xii} [The human right to a clean, healthy and sustainable environment : \(un.org\)](#)

^{xiii} [Nature's Voice: The Rise of the Rights of Nature in the Legal System - Environmental Law Foundation](#)

^{xiv} [Scottish Biodiversity Strategy to 2045 - gov.scot](#)

^{xv} [Earth Charter in Action - Powering a global movement](#)

^{xvi} Digne Declaration [The International Declaration of the Rights of the Memory of the Earth - Géoparc de Haute-Provence](#)

^{xvii} Scottish Geodiversity Charter <https://scotlandsgiodiversitycharter.org/wp-content/uploads/2019/06/scotlands-geodiversity-charter2018-2023.pdf>

^{xviii} Edinburgh Declaration on Biodiversity [Edinburgh Declaration on post-2020 global biodiversity framework - gov.scot](#)