

## Press Release

### The rights of nature need to be added to the German constitution - a task for the government!

Our animal welfare act does not protect the animals, it regulates their use. Our wildlife conservation law is regularly ignored at court when the economic interests of farmers, owners and investors are at stake. Our environmental legislation regulates the destruction of the environment, instead of putting an end to it. In order to give nature (ecosystems, flora and fauna) the legal protection that it urgently requires, we demand ecological adaptation of our legislation and recognition of the rights of nature.

Despite extensive environmental legislation and bureaucracy, we have failed to stop the extinction of species and the destruction of many ecosystems, and to get the climate crisis under control, in Germany and worldwide.

Transformation of our legislation into ecological law is not sufficient, but it is a mandatory step towards solving this crisis of humanity. The law needs to be turned right side up and acknowledge that humans are part of nature and only have a future if they respect the rights of nature. This means we need an ecologically conscious constitution and consequently a further development of our legislation pertaining to wildlife protection and animal welfare, as well as civil and economic law.

This further development of the constitution is also in the interest of humans. Human dignity as secured by Article 1 of the constitution can only be protected enduringly if the rights of nature are also recognized and respected.

In our legal system, the recognition of nature as a legal person is certainly possible. Thus far, the obstacles have been on the political level or have been based on misunderstandings and lack of knowledge. There is no legal reason to doubt that it makes sense and is legally possible to introduce the rights of nature and thereby strengthen nature's legal position.

The fight for the rights of nature is happening today throughout the world on many levels. More and more parliaments and courts have recognized nature as a legal subject. In Germany, a board member of the German Environmental Foundation is now leading the way. On 24 September 2021, a citizens' initiative in Bavaria, the "Rights of nature referendum", initiated a reform proposal for the Bavarian constitution.

In the Rights of Nature network, attorneys and organizations have joined together and jointly developed a concrete proposal for a constitutional reform, which should do justice to the extent of the ecological crisis.

## Proposal for revision of the German Grundgesetz (GG)

### Article 1 GG

- ¶ 1 unchanged, (1) Human dignity shall be inviolable. Its respect and protection is the duty of all state authority.
- ¶ 2 unchanged, (2) The German people therefore acknowledge inviolable and inalienable human rights as the basis of human community, of peace and of justice in the world.
- ¶ 3 is new **(3) The dignity of nature demands that the natural foundations of existence be protected, cultivated and maintained and that the intrinsic value of the natural co-vironment be respected throughout all of nature.**
- ¶ 3 becomes ¶ 4 (4) The legislature, executive and judiciary shall be bound by The following basic rights as directly applicable law.

### Article 2 GG

- ¶ 1 (1) Every person has the right to free development of their personality, insofar as this does not breach the rights of others, **including those of the natural co-vironment**, or violate the constitutional order or moral law.
- ¶ 2 unchanged, (2) Every person shall have the right to life and physical integrity. The freedom of every person shall be inviolable. These rights may be interfered with only on a legal basis.

### Article 14 GG

- (1) Property and inheritance rights shall be guaranteed. Their content and limits shall be defined by the laws.



## ¶ 2 (bold is new)

(2) Property entails obligations. Its use shall also serve the public good **and the natural co-environment.**

(3) Expropriation shall only be permissible for the public good. It may only be ordered by law or on the basis of a law that determines the nature and extent of compensation. Such compensation shall be determined by establishing an equitable balance between the public interest and the interests of the persons involved. In case of dispute concerning the amount of compensation, recourse before a court of law is open.

## Article 19 GG

(1) Insofar as a basic right according to this constitution may be restricted by law or on the basis of a law, such law must apply in general and not just to an individual case. In addition, the law must specify the basic right affected and the Article in question.

(2) Under no circumstances may a basic right be infringed upon in its essence.

(3) The basic rights shall also apply to domestic legal entities insofar as they are, in their essence, applicable.

## ¶ 4 is new

**(4) The basic rights shall also apply to nature insofar as they are, in their essence, applicable. Nature is capable of holding rights. It shall be respected and protected by legislation, executive powers and judiciary.**

## ¶ 4 becomes ¶ 5

(5) Should a person's rights be violated by public authority, legal recourse is open to them. Insofar as no other jurisdiction has been established, recourse shall be to a court or law. Article 10, paragraph 2, sentence 2 remains unaffected.

## Article 20 a GG

[bold = new]

**Every living being has its natural dignity and the right to live according to its nature within the framework of natural cycles, food chains and biotopes.**



The state, mindful also of its responsibility towards future generations, shall protect **the rights of nature**, the natural foundations of life, **plants** and animals within the framework of the constitutional order through legislation and, in accordance with law and justice, through the executive powers and the judiciary.

## Article 56 GG

On assuming office, the Federal President shall take the following oath before the assembled Members of the Bundestag and the Bundesrat:

[bold = new]

“I swear that I will devote my efforts to the well-being of the German people, promote their welfare, protect them from harm, **protect the natural co-vironment**, uphold and defend the constitution and the laws of the Federation, perform my duties conscientiously and do justice to all. So help me God.”

The oath may also be taken without religious affirmation.

## Art. 64 ¶ 2 unchanged

(1) Federal Ministers shall be appointed and dismissed by the Federal President on proposal of the Federal Chancellor.

(2) On assuming office, the Federal Chancellor and the Federal Ministers shall take the oath specified in Article 56 before the Bundestag.

## Grounds

### Starting point

In recent decades it has not been possible to stop the overexploitation of ecological resources. The planetary boundaries, as published by the Stockholm Resilience Center, show very clearly where the major challenges lie. The functional diversity of all terrestrial and aquatic ecosystems is threatened by the way landscape zones, forests, steppes and moors, but also the oceans, are being thrown out of balance and destroyed by overuse through deforestation, industrial agriculture, overgrazing, overfishing and pollution. The bio-geo-chemical influx into rivers, especially nitrate and phosphorus, affect the soil and water and all life processes, which weakens the food chains and thus the ecosystems.

The massive ecological effects of our activities have triggered a global change, which presents an enormous challenge to civilization and demands a life-sustaining and strengthening cultivation of our common future. Climate change is part of this planetary transformation, to the detriment of Homo sapiens and of the flora and fauna. Human activities and their effects are changing the earth balance in terms of climate, ecology, materials, landscape and geochemistry so dominantly from a geological point of view and have such a drastic impact on the landscape that they can be detected in the sedimentation of the latest centuries. In 2002, in his essay “Geology of Mankind” in the science magazine “Nature”, the atmospheric chemist and Nobel Prize winner Paul Crutzen referred to this connection for the first time as a separate geochronological epoch: the Anthropocene.

### Planetary overload

The destruction of the ecological basis of existence usually results from economic activities that are driven by national interests and corporate profit expectations. These interests are protected by a legal framework and enforced in accordance with national, regional and multilateral agreements. Time and time again, these forces prove overwhelming.

When weighed against human and economic interests, the interests of fauna, flora and biotopes are regularly defeated in court. This is the expression of a way of thinking: humans see themselves as privileged creatures that stand outside of nature.

This thinking has given rise to societal practices that exceed the planet’s limits.

### Animals as fellow creatures

Unless we succeed in halting this development, humans, fauna, flora, and all ecosystems (e.g. Oceans, rainforests) will face yet further irreversible and devastating consequences. Scientists with the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) have pointed out that the destruction of nature by humans and the threat to biodiversity also make the transmission of infectious diseases to humans more likely.

The outbreak of new pandemics is no coincidence: The coronavirus, Ebola, HIV, SARS and MERS were all transmitted from animals to humans. Wherever natural and species protection are lacking, the risk of future pandemics increases globally.

It is now up to us to take better care of nature with its plants and animals. This applies both to species in the wild and those used in agriculture. Particularly the latter require significantly improved protection. For instance, animal protection legislation, which is primarily animal usage legislation, does not protect cattle, pigs and chickens from pain and suffering. Their natural rights are deliberately disregarded.

The Network for the Rights of Nature holds that it is proper and necessary for our society to start perceiving plants and animals as fellow creatures and not as objects and subordinate creatures. This will sooner or later require the recognition of basic rights for plants and animals, so long as they are applicable to them.

### **The ecological adaptation of legislation**

In order to stop and reverse these malformations and excesses of inhumanity and injustice towards animal, we need an ecological adaptation of our legislation and the recognition of the right of nature to life and development.

Such an advancement of our legislation is also in the interest of humanity, We can protect the existence, dignity and basic rights of humanity particularly well by establishing and enforcing rights of nature. The rights of nature to life and development must therefor be weighted highly in any legislation and in all judicial considerations and effectively enforced,

Recognizing nature as a legal subject means expanding the radius of legal enfranchisement from human persons and companies with legal capacity (e.g. corporations) to include flora and fauna, bodies of water, landscapes and the atmosphere. We, the Network for the Rights of Nature, propose acknowledging them as nonhuman legal subjects and advancing our legal system to an ecological legal system.

### **Rights of Nature – a prerequisite for freedom**

Our western understanding of freedom has in the past emphasized the autonomy of humans toward society and nature. Nature remains the other.

However, we have increasingly come to the realization that life in all its forms and ecological interdependencies is a sine qua non condition for human freedom.

When natural exploitation becomes natural destruction, freedom disappears and self-destruction begins. Today this scenario has become exceedingly likely worldwide, and especially for poor, young and unborn people.

This was acknowledged in the decision of the German Supreme Court of 24 March 2021 (Ref. 1 BvR 2656/18).-It guides the way toward an ecological litigation of civil liberties. For it recognizes effective climate protection as a prerequisite for securing the civil liberties of future generations. Just as the exercise of individual liberties is only possible within the framework of equal rights for all humans, in the future it must also be practiced within the framework of the rights of the natural co-vironment.

Thus, the recognition of the legal capacity of the natural co-vironment is an expression of our conception of freedom which considers the objectively extant ecological integration of humanity. In practical legal terms this means that there can no longer be a right to natural exploitation but “only” a right to ecologically sustainable usage. The point is to preserve nature as a necessary condition for our existence and prosperity and to recognize its rights as a basis for collective and individual freedom.

### **Acknowledging Nature as a legal subject is possible**

The law regulates the relationships of persons to each other and to things. Our law is not just a set of standards. It is also a societal process which is continually advanced by legislative, executive and judicial institutions.

Currently, German and European law do not recognize any subjective rights of nature that can be claimed in court by human representatives. As it stands, nature can be owned, used and destroyed. Besides humans, subjective rights are currently also granted to legal persons (see pg. 1) (e.g. limited companies, corporations, cooperatives). Unlike nature, they can claim and, where applicable, assert their rights.

Class action suit laws in German animal and natural protection legislation are insufficient. They only apply to a few special cases and do not go far enough, especially since they do not grant nature any subjective rights and there are no protective obligations that can be derived from protective rights.

Our legal system could recognize nature as a legal subject without problem. One does not have to be a human person to possess legal capacity. The obstacles lie on the political level, or they are based on misunderstandings and ignorance. In terms of civilizational history, important ethical discourses have led to the formulation of rights. Throughout this process, the circle of legal subjects has constantly increased (e.g. slaves and women were originally excluded). Children and people lacking legal agency are not only protected by the law, they have rights that can be enforced.

There are now a variety of nonhuman legal subjects, such as companies and organizations.

So there is no reason to doubt the possibility and usefulness of introducing rights of nature and thus strengthening nature’s legal position.

The discussion around rights of nature, which hasn’t just been held since Christopher D. Stone’s “Should Trees Have Standing” and the so-called seal suit, has received some upswing in the recent past. Courts around the world are increasingly aligning with Stone’s argumentation: If even companies have rights, this must also apply to single natural objects such as rivers. In Ecuador, the rights of nature have been guaranteed on a constitutional level since 2008. Since 2017, the glaciers Gangotri and Yamunotri in India as well as the Whanganui River in New Zealand have been independent bearers of subjective rights. The rights of nature have also increasingly been applied in legislation and in court.



The most common arguments against the rights of nature are unjustified or based on misunderstanding.

Opponents of the “rights of nature” often argue that

- a) nature cannot explain or defend itself because it is incapable of expressing itself, or
- b) we cannot know what nature wants.

Regarding a), we can say that this also applies to limited companies and public corporations (legal persons). They, too, do not appear in court. Their interests – just like those of children – are also asserted by representatives in court. In general, we ourselves also need an attorney.

Regarding b), it is worth noting that ecosystem and behavioral research can gauge what the species-specific needs of animals are and under what conditions plants, animals and ecosystems can sustain and advance themselves.

The recognition of the rights of nature would not make any and all use of nature impossible. The courts always take into consideration all conflicting interests.

### **Rights of Nature: A long-time global movement**

The movement for rights of nature is globally active on all fronts. And it has already achieved many successes<sup>7</sup>:

- International: The rights of nature have repeatedly been topic of debate in the UN Dialogue on the Harmony with Nature resolution and the agendas of the International Union for the Conservation of Nature (IUCN)
- European: The European Economic and Social Committee recently published a study demanding and comprehensively justifying an EU charter of the Rights of Nature .
- National: The rights of nature have already been codified in some legal systems. In Ecuador they are part of the constitution, in Bolivia they are the subject of individual legal regulations. And there is a growing number of parliamentary initiatives (in Sweden, in Switzerland and in France, among others). Rivers and Landscapes have been recognized as legal persons by courts, as well as the rights of animals. The Party of the Greens in the Netherlands has adopted the demand for rights of nature into their party program. And only recently a non-partisan coalition of national council members in Switzerland spoke out for the embedding of the rights of nature in the Swiss Federal Constitution.
- Local: A multitude of communities have codified the rights of nature in their communal constitutions, especially in the USA. In Mexico City, the rights of nature are recognized in the municipal constitution.
- Civic: The movement for rights of nature is also growing in civil society. There is a multitude of environmental legal organizations, such as the Ecological Law and Governance Association, Global Alliance for Rights of Nature, Earth Law Alliance, Earth Justice, IUCN World, Commission on Environmental Law and legal experts who support the fight for the rights of nature worldwide. Many indigenous peoples also advocate for the rights of nature and thus for the protection of their basis of life (forests, rivers, lakes etc.).

### **What changes if the rights of nature are recognized?**

Natural protection law would change substantially; since § 1 BNatschG has so far been interpreted in such a way that nature has no legal capacity. Species protection is regulated in the provisions of §§ 39ff – general species protection and 44 ff – special species protection.

The fundamental importance of such a new way of thinking was also pointed out in the study **Towards an EU Charter of the Fundamental Rights of Nature** conducted on behalf of the Sustainable Development Observatory of the European Economic and Social Committee. Our current environmental legislation is not capable of shaping the fundamental relationships between humanity and nature that the Anthropocene requires. It can only react point by point.

That is why we need this paradigm shift: a legal system which recognizes that Humanity is part of the system of nature and its existence and flourishing rely on such relationships between it and nature and all its subsystems as are conducive to life.

In Ecuador we see that environmental movements and indigenous peoples feel empowered by the rights of nature to use them not only judicially but also as a tool in public discourse. With its verdict in the case of Los Cedros late last year, the Ecuadorian constitutional court proved that whether or not the rights of nature are guaranteed or not makes a difference. The suing mining concerns were barred from any intrusion into the ecologically sensitive area - despite already existing permits.

Further important precedent lawsuits are pendant. Ecuador shows us that it takes time for this legal paradigm shift to be understood by all and catches on in judicial practice on all levels.

### **Our Relationship with Nature**

The recognition of the rights of nature is more than a new augmented legal text. An examination of the rights of nature forces all of us to rethink our relationship with and perception of nature, gain a new understanding of it, and fill it with life appropriately. We, the Network for the Rights of Nature, acknowledge that we are part of nature, and that the survivability of nature is a necessary condition for a life fit for humanity.

The recognition of the rights of nature goes hand in hand with a new way of thinking that is already present in many indigenous cultures.

## Participants in the consultation process since 2020

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