

Environmental Rights & Rights of Nature

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1. Human Rights and the Environment

Interconnection between environmental protection & the enjoyment of human rights

Substantive environmental rights

Procedural environmental rights

‘Substantive’ Environmental Rights

**A right to a minimum level of environmental quality –
e.g. a right to a ‘healthy’ environment**

The right to a healthy environment is recognised by many jurisdictions around the world in their constitutions or legislative framework

UN General Assembly (July 2022) recognised ‘the right to a clean, healthy and sustainable environment’ as a human right

‘Procedural’ Environmental Rights

The set of rights necessary to support / enforce the substantive right to a healthy environment including:

The right of access to information on the environment

The right to participate in environmental decision-making

The right of access to justice in environmental matters

Aarhus Convention

An international agreement to which Ireland is a Party

Requires States to guarantee the three procedural rights

The three 'Aarhus rights' are necessary to protect:

'the [substantive] right of every person of present and future generations to live in an environment adequate to his or her health and well-being'.

Environmental Constitutionalism

‘Climate Case Ireland’

Friends of the Irish Environment v Government of Ireland

[2020] IESC 49

Important Supreme Court decision from 31 July 2020

2. Rights of Nature

‘Rights of Nature’ laws provide a framework to reconceptualise our relationship with nature

Consider nature itself as a legal entity with enforceable rights

Nature as a ‘rights-holder’

Rights of Nature laws: typical elements

The right of nature:

To exist, to flourish / perpetuate and to restoration if degraded

To be a party in administrative proceedings / litigation where its rights are impacted / likely to be impacted.

Anyone who considers that the rights of nature have been (or are likely to be) impacted can act (has authority) to defend those rights on behalf of nature.

Rights of Nature laws: modalities

Rights of Nature can be recognised at the constitutional level (e.g. in Ecuador since 2008) or in legislation (e.g. in Bolivia since 2010)

Rights of Nature laws: examples

Constitutional Court of Ecuador

Decision in December 2021 concerning a protected forest ecosystem *Los Cedros*

Spain passed a law granting legal personality to the *Mar Menor* (a saltwater lagoon) in October 2022

3. Implementation & the Environmental Law Enforcement Gap

Fundamental importance of implementation of current body of environmental law / nature law.

High-quality legislative framework + appropriate structures / co-ordination to support enforcement activity + expertise, capacity & resources

A coherent overarching policy on nature protection / restoration + the political will / resources to underpin and drive progress

4. Strengthening Environmental Governance

**Quality of our nature laws & the wider environmental law architecture +
A coherent approach to law and policy development**

Transparency / accountability

Fundamental role of the 'Aarhus rights' here

Public trust in the environmental governance structure

Environmental education & awareness of environmental rights