**IPSP WORKING GROUP**

**ECOLOGICAL RULE OF LAW**

**Building a global conversation to implement protection of ecosystems**

**And ecological transition of societies**

First proposal — June 2024

**Context: THE ECOLOGICAL TRANSITION OF HUMAN SOCIETIES**

Over the past 60 years, the greatest effort has been focused on protecting ecosystems[[1]](#footnote-1). This effort must be continued and deepened, but the most important thing is to accelerate and deepen the change in the way of life of human societies, to adapt it to the current stage of natural systems. For this, we need deal with the question of ecological transition of human societies i.e. to put the focus how to transition to more bioecocentric human societies. There is a cluster of problematic and interconnected issues that make up the ecological transition of human societies a very complex task to undertake:

**The challenge of how to transform production.** It is necessary to move away from the highly demanding extractive production paradigm of natural resources. A series of key intervened questions that refer to how, should be addressed: (a) boost the effort in technological innovation; (b) establish climatic obligations of companies; (c) assume the obligation to deal with the *life product cycle*; (d) prohibit the use of the technique of programmed obsolescence.; (e) implement recycling and reuse programs.

**The challenge of transforming consumption- more sober societies.** It is necessary to overcome the paradigm of sustainable consumption. A number of key questions concerned with how should be addressed: (a) generate a more sober consumer culture, for example, energy saving; (b) tend to achieve a greater product durability; (c) it is essential to eradicate the promotion of consumer stereotypes through marketing techniques; (d) boost the collectivization of the effort of consumers, for example to produce solar energy or biogas or in the use of certain consumer goods.

**The challenge of how to inhabit the territory and build new cities.** A number of key intervened questions concerning how, should be addressed: (a) strengthening mechanisms to anticipate the negative effects of new technologies through *Responsible Research and Innovation* (RRI) or the application of the precautionary principle or the idea of anticipate *risks of development*; (b) introducing the *disaster risk reduction* management paradigm and regulate the situation of disaster and climate migrants; (c) promoting climate change adaptation actions by the development of the Paris Agreement Loss and Damage mechanism. (d) working on urban planning; (e) innovative urban mobility designs.

**Project: AN ECOLOGICAL RULE OF LAW FOR AN ECOLOGICAL SOCIETAL TRANSITION**

* Human societies have an institutional architecture that must change in order for society to change.
* The ecosystem protection and transition have a regulatory dimension and needs an institutional design.
* Both require legal knowledge and to act not only on public policy makers but also on legislators and judges, so that they will all make their decisions considering the existence of a strong ecological and transitional component in their decisions.
* An ecological rule of law will imply that all political, legislative and judicial decisions will recognize the need to respect the proper functioning of ecosystems and generate the ecological transition of human societies.
* How to implement an "ecological rule of law"? How to incorporate the ecological and climate component in all branches of law, so that not only environmental law is concerned with the protection of ecosystems?

A series of key interlinked questions concerning the “how” needs to be addressed:

**AXE 1. Work with judges’ networks and judicial powers to generate a toolbox culture to implement the ecological rule of law in judicial decision making**. A judicial activism of the Supreme and Constitutional Courts that in their judgments should promote the incorporation of the ecological and climate element as an element of the rule of law is crucial. Here the "*dialogue of judges*" is central.

**AXE 2. Work with legislative powers to elaborate new norms and legislative reforms to put in function the idea of ecological rule of law** (including Private Law). Ideas such as the recreation of commons or the incorporation of collective rights of present and future generations into the proper functioning of ecosystems are plausible responses.

**AXE 3. Work with academic networks, judicial powers and policy makers to elaborate instruments to operationalize process as well as indicators to measure and evaluate implementation of the ecological rule of law.** There is already a tradition of indicators measuring the environmental performance of ecosystem protection policies. However, nothing has been done so far to measure processes and in particular such as the rule of law - in the sense of regulation and institutional design that does (or not) contribute to achieving results. An effort to develop a technology of indicators for the ecological rule of law already exists (the International Center for Comparative Environmental Law) but it has not been implemented yet.

**AXE 4. Work with international organizations and policy makers to generate participatory institutional designs for decision-making and to improve the implementation of instruments to democratize the decision-making process**. Transformations require democratizing decision-making, which means institutional innovations in relation to: (a) how new technologies are decided; (b) how companies decide; (c) how state institutions make decisions. Institutional design is required to guarantee access to public information as well as instances and processes of direct and indirect participation of the public. The Aarhus Convention (1998) and the Escazu Agreement (2021) can provide frameworks to experiment institutional innovations.

**Proposal: THE WORKING GROUP ON ECOLOGICAL RULE OF LAW**

**1.1 BUILDING A GLOBAL CONVERSATION ON THE ECOLOGICAL RULE OF LAW**

* The predominance of the modern western paradigm over the natural world, seems to have entered a phase of crisis produced by the growing accumulation of episodes.
* The rupture of the modern western paradigm marks the beginning of a period characterized by the search for a new paradigm and the opening of the horizon of possible future worlds, the multiplication of alternatives on the cosmovision of the relation of humanity with Nature and of the toolbox required to institutionalize and regulate it.
* There is a global scenario in which there are different initiatives that try to refound the relationship between humanity and natural systems in a kind of “environmental global constitution”: the initiative of the "Global Pact for the Environment"[[2]](#footnote-2); the project of a "Third universal declaration of human rights"[[3]](#footnote-3); the initiative “Harmony with Nature”[[4]](#footnote-4); the initiative of the UN Universal Declaration of the Rights of Mother Earth; the initiative to globalize the "ecological rule of law" promoted by the International Union for Conservation of Nature[[5]](#footnote-5) and UNEP global reports on the ecological rule of law (2019 and 2023)[[6]](#footnote-6).
* The Global South is particularly rich in this field: not only because “green courts”[[7]](#footnote-7) proliferate there (such as the Superior Court of Justice of Brazil, the Supreme Court of Justice of Argentina, the Constitutional Courts of Colombia, South Africa and India) but also because there exists a “dialogue of judges” (meetings have been held and statements prepared on the ecological rule of law).
* All of these initiatives seek to write a global ecological constitution: in some cases, through a written text of hard law, in others through soft law or establishing a culture of the “ecological rule of law.”
* While it is difficult to date the beginning of the global initiative to promote the idea of ​​an environmental rule of law, it can be noted that its birth can be found in the World Declaration of the International Union for Conservation of Nature (IUCN) on the Rule of Law in environmental matters, adopted at the IUCN World Congress of Environmental Law, held in the city of Rio de Janeiro, Brazil, in April 2016.[[8]](#footnote-8)
* After that, in the context of the global debate about “global environmental constitution”, some international organizations, networks of intellectuals, jurists and judges developed initiatives in this regard and today they function as promoters of this idea.
* This idea can be a first step. May be perfectly coupled with other initiatives that in the global context seek to respond to the need for better and deeper legal protection of ecosystems. It has the advantage of its enormous plasticity, universality and does not require new multilateral agreements for its implementation. In this sense it can be implemented immediately
* IPSP may wish to act as a promoter and sounding board for these initiatives with the final objective of generating a second generation of proposals 10 years after the birth of an ecological rule of law.
* IPSP could also be key in more strongly introducing the issue of the ecological transition of human societies into the ecological rule of law that, until now, has paid more attention to the protection of natural ecosystems but not so much to promote change in the ways of life of human societies.
* A starting point would be to generate a conversation around these issues beginning with the Global South intellectuals and members of the judiciary who are linked to the debate on global ecological constitutionalism and in particular to the idea of ​​the ecological rule of law, either directly or through the institutions that bring them together and that can function as partners of this initiative.

**1.2 POTENTIAL STAKEHOLDERS**

**AXE 1. Judges’ networks and judicial powers to generate a culture of ecological rule of law in judicial decision making**:

1. IUCN WCEL Global Judicial Institute on the Environment Task Force [[9]](#footnote-9)
2. Nationals Green Courts and judges
3. OAS. Our Common Home: A Platform for Dialogue [[10]](#footnote-10)
4. United Nations Environment Program [[11]](#footnote-11)
5. (…)

**AXE 2. Work with legislative powers to elaborate new norms and legislative reforms to put in function the idea of ecological rule of law**

(…)

**AXE 3. Work with academic networks, judicial powers and policy makers to elaborate instruments to measure and evaluate implementation of the ecological rule of law. develop and operationalize process and outcome indicators.**

1. International Center for Comparative Environmental Law (CIDCE) [[12]](#footnote-12)
2. IUCN WCEL Global Judicial Institute on the Environment Task Force

**AXE 4. Work with policy makers and international organizations to elaborate end improve instruments to democratize the decision-making process in the sense of ecological rule of law. generate participatory institutional designs for decision-making**.

1. Escazu Agreement Committee to Support Implementation and Compliance [[13]](#footnote-13)
2. Aarhus Convention Compliance Committee
   1. **MAIN ACTIVITIES**

* In the first phase, the initiative will begin by carrying out three workshops in the Global South. The local point of support could be the existing institutes of advanced studies if they are interested in the initiative. The workshops would bring together local or regional communities of academics, intellectuals, legislators and judges who have been working in this field. The workshops aim to: (1) contribute to densifying the global conversation about how to move towards a global ecological constitution and the ecological rule of law. (2) map the views and experiences of some of the most active superior courts of the Southern hemisphere (India, Argentina, Brazil, South Africa, Colombia) on key topics such as human development, exploitation of natural resources, protection of environmental assets, protection of groups vulnerable to environmental damage. (3) identify success stories and cases.

Workshop 1: Implementing the ecological rule of law in Latin America. Instituto de Estudios Avanzados del Litoral, Argentina

Workshop 2: Implementing the ecological rule of law in Asia/Oceania (India-New Zealand)

Workshop 3: Implementing the ecological rule of law in Africa

In a second stage, the discussion would move to the Global North with a second series of workshops in North America and Europe.

**3.4 MAIN OUTPUTS**

The ultimate goal is to build a **second generation of proposals** that improve the implementation of the ecological rule of law at a global level. Among others:

* Proposals of technical **tools for judicial powers** to put in function the ecological rule of law
* Proposals for **generate a culture** of ecological rule of law in judicial decision making.
* Proposals of **new norms and legislative reforms** to put in function ecological rule of law.
* Proposals of **internal institutional arrangements in legislative powers** to put in function the ecological rule of law.
* Proposals of **instruments to measure and evaluate implementation** of the ecological rule of law, specially develop and operationalize **process and outcome indicators**.
* Proposals of **new institutional arrangements or improve existing instruments, to democratize the decision-making process**.

1. Biodiversity, rainforest, wetlands and stable climate for futures generations. [↑](#footnote-ref-1)
2. A/72/L.51 May 7th 2018. Yann Aguila | Jorge E. Viñuales, “A Global Pact for the Environment: Conceptual foundations”, Revue of European, comparative and international environmental law », available in <https://globalpactenvironment.org/uploads/Aguila_et_al-2019-Review_of_European_Comparative__International_Environmental_Law.pdf> [↑](#footnote-ref-2)
3. See also the initiative “Project of Global Pact International” del CIDCE, Revue Juridique de l’Environnement, 2017/2 (Vol. 42), p. 380-397. [↑](#footnote-ref-3)
4. <http://www.harmonywithnatureun.org/>. Also « The Future that we want », Rio+20 which recognizes in paragraph 39 that for sustainable development "it is necessary to promote harmony with nature." [↑](#footnote-ref-4)
5. UICN World Conservation Congress 2012, Res 100: “Incorporation of the Rights of Nature as the organizational focal point in IUCN’s decision making”. UICN adopted the “Universal Declaration of the Rights of Nature 2020”. The World Commission on Environmental law adopted the "World Declaration of the International Union for Conservation of Nature (IUCN) on the rule of law in environmental matters", "IUCN World Congress on Environmental Law”, Rio de Janeiro, Brazil, April 26-29, 2016.

   <https://www.iucn.org/sites/dev/files/content/documents/world_declaration_on_the_environmental_rule_of_law_final_2017-3-17.pdf> [↑](#footnote-ref-5)
6. [file:///C:/Users/cosim/Downloads/Environmental\_rule\_of\_law%20(6).pdf](about:blank)

   <https://wedocs.unep.org/bitstream/handle/20.500.11822/43943/Environmental_rule_of_law_progress.pdf?sequence=3> [↑](#footnote-ref-6)
7. These courts are characterized by their activism in high level conflicts; activism that basically consists of transforming gigantic social conflicts into institutional frameworks, for which they try to deploy sectoral “public policies”, opening decisions through citizen participation mechanisms and communication strategies. [↑](#footnote-ref-7)
8. Disponible en https://www.iucn.org/sites/dev/files/content/documents/world\_declaration\_spanish\_version.pdf [↑](#footnote-ref-8)
9. <https://www.iucn.org/our-union/commissions/group/iucn-wcel-global-judicial-institute-environment-task-force> [↑](#footnote-ref-9)
10. <https://www.oas.org/en/sg/commonhome/environmental-rule-law.asp> [↑](#footnote-ref-10)
11. <https://www.unep.org/resources/publication/environmental-rule-law-tracking-progress-and-charting-future-directions> [↑](#footnote-ref-11)
12. <https://cidce.org/en/> [↑](#footnote-ref-12)
13. <https://www.cepal.org/en/publications/48347-rules-relating-structure-and-functions-committee-support-implementation> [↑](#footnote-ref-13)