

# Towards Stockholm+50 Webinar 3: **Environmental Rights, Human Rights, and Environmental Justice**

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# The Web of Life and Rights

Daniel Magraw

# 1948 Universal Declaration as a word cloud



# 1972 Stockholm Declaration – Principle 1

“man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations”

# 1992 Rio Declaration – Principle 1

“Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.”

# ECOSYSTEM SERVICES -- the first empirical basis for the right to a healthy environment

- Provisioning
- Regulating
- Cultural
- Servicing

**Conclusion:**

**Nature is the infrastructure of society.**

# ANTHROPOCENE

Earth is experiencing a new epoch where human beings and human activity exert the largest impact on the biosphere.

This new era began as early as the European Industrial Revolution.

Types of human effects:

- Anthropogenic climate change
- Diminishing biodiversity
- Pollution from hazardous chemicals and waste
- Deforestation
- Geological changes from human activity such as damming rivers, mining and landscaping

# Examples of Recent Environmental Warnings

Pollution causes 9 million deaths per year - Lancet Commission on Pollution and Health

Serious steps needed now to limit global warming but major harm will still occur - 1.5 Degree Report, by IPCC

60% decline in wildlife population 1970-2014

3 billion (29%) fewer birds in North America since 1970

1 million species at risk of extinction - Living Planet, by ZSL & WWF; Others

More plastic than fish in oceans by 2050 - Marine Plastic Litter & Microplastics, by UNEA

Massive internal displacement (>143 million)

As many as 1 billion refugees by 2100 - Groundswell, by World Bank; Others





# There is also good news

Many local environmental conditions are improving:

- Air pollution in Los Angeles & Denver
- Pollution in Chesapeake Bay

Some global problems are improving:

- Depletion of ozone layer

Integration of human rights and environmental protection –

The major success story of international law and sustainable development of the past 50 years.

# Initial Positions



# Strategy: Everything but the kitchen sink



# Increasingly coordinated efforts were made in:

- Academia
- Governments
- NGOs & Think Tanks – CIEL, Earthjustice, URG, Others
- UN, ILO, WHO & other IGOs
- Regional Human Rights System – litigation, hearings, reports
  - European Court of Human Rights
  - Inter-American Comm'n & Court of Human Rights
  - African Comm'n & Court on Human and Peoples' Rights
- Domestic court litigation
- UN Human Rights Committees & Special Rapporteurs

# John Knox, the first Special Rapporteur on Human Rights and Environment (2012-2018)

- Elaborated the conceptual relationship between human rights and environmental protection
- Conducted a mapping of 14 aspects of the human rights system to identify procedural and substantive obligations
  - **This is the second empirical basis for the right to a healthy environment**
- Worked to protect Environmental Human Rights Defenders
- Explored how human rights and climate change are related



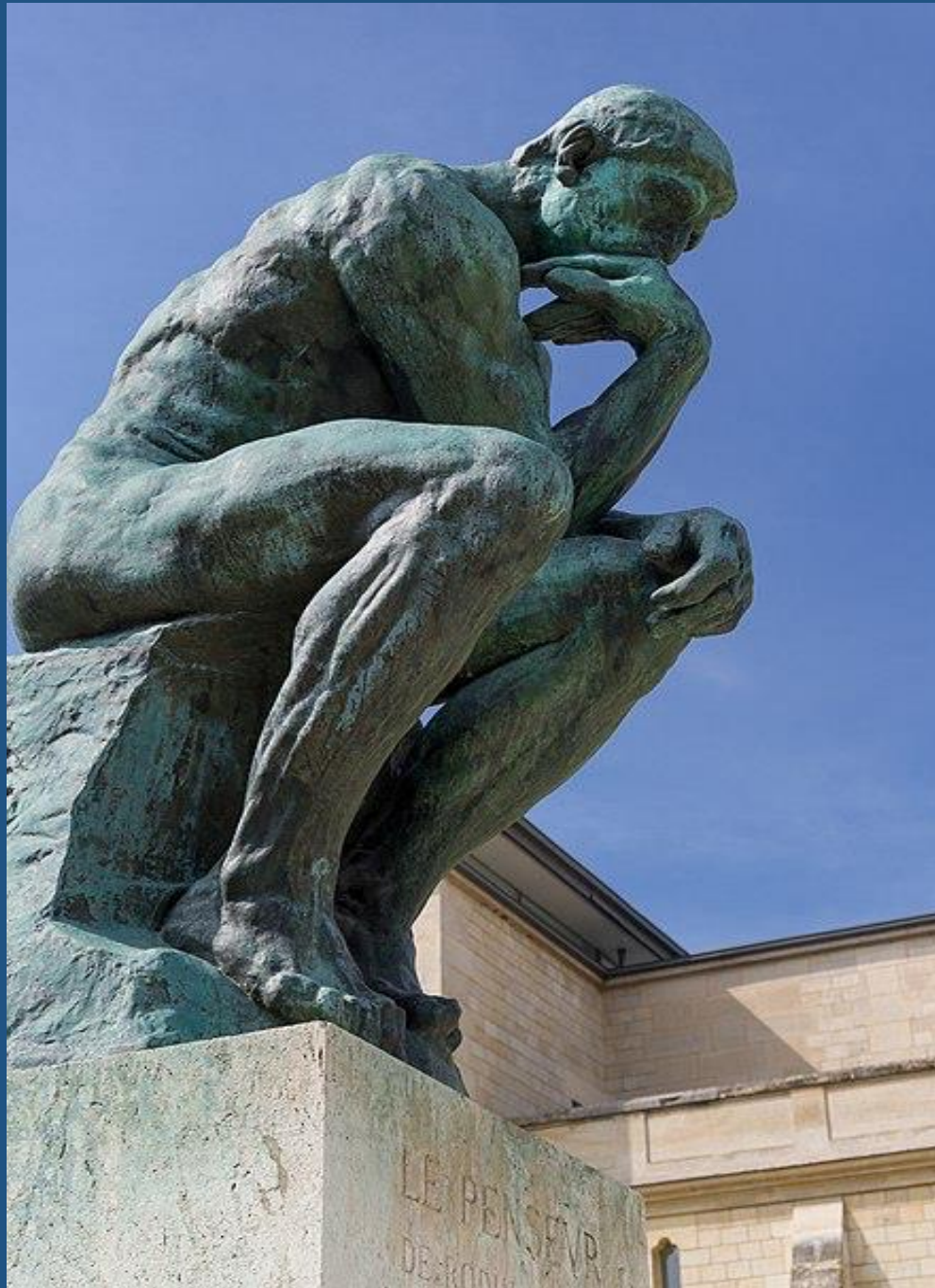
## **FRAMEWORK PRINCIPLES ON HUMAN RIGHTS AND THE ENVIRONMENT**

2018

The main human rights obligations relating to the enjoyment  
of a safe, clean, healthy and sustainable environment.

**John Knox also produced  
Framework Principles on  
Human Rights and the  
Environment.**

**These are very important,  
but did not include the right  
to a healthy environment.**



WHAT IS THE STATE  
OF THE LAW?

# Human rights and the environment are interdependent

- A healthy environment is necessary for the enjoyment of a vast array of human rights.
- The exercise of human rights is vital to the protection of the environment.



# States must protect human rights from environmental harm

## States have:

1. Procedural obligations
2. Substantive obligations
3. Heightened obligations to those who are most vulnerable and for Indigenous Peoples

# Procedural Obligations

States have duties under human rights law:

- to assess environmental impacts on human rights
- to make environmental information public
- to facilitate participation in environmental decision-making (e.g., rights to free speech, privacy, opinion, assembly)
- to provide effective remedies for environmental harms to human rights

# An average of 4 environmentalists are murdered every week

- Environmental Human Rights Defenders
- Almost no prosecutions
- Problem seems worse in LA and East Asia, but there is incomplete data.

# States have obligations to

- protect environmental defenders (often referred to as environmental human rights defenders – EHRDs) when they are subject to threats;
- refrain from placing restrictions that would hinder the performance of their work; and
- conduct serious and effective investigations of any violations against them.

Inter-American Court of Human Rights, *Kawas-Fernandez v Honduras*, p145 (2009)

# Substantive obligations

- States must protect against foreseeable environmental harm to human rights.
- States must protect against harm from non-State actors, including business entities.
- States have discretion to strike a balance between environmental protection, social development and economic development.
- But the balance cannot be unreasonable, or result in unjustified, foreseeable infringements of human rights.

States  
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In 2018, the Human Rights Council directed the Special Rapporteur to report to the UN General Assembly on the human right to a healthy environment



# The Human Rights Commission rejected the right to a healthy environment in 1994. What has changed since then?

- Increased knowledge of ecosystem services & understanding that nature is the infrastructure of society
- Explication of the relationship between human rights and environment, including via John Knox's mapping exercise
- Massive adoption of the right to a healthy environment by States in national constitutions, national laws and legally binding regional human rights treaties
  - More than 155 countries are legally bound to respect R2HE as a result of national constitutions, national legislation or treaties



# What would a right to a healthy environment consist of?

- My initial skepticism
- Inuit case & the Maldives
- There are many formulations, e.g., safe, healthy, clean and sustainable.
- A functional definition: “right to an environment capable of supporting human society and the full enjoyment of human rights” (Male’ Declaration)

# The Right to a Clean, Healthy and Sustainable Environment (R2HE)

- Human Rights Council Resolution 48/13 – 8 October 2021
  - This changed the pantheon of human rights by adding an environmental right
  - R2HE recognized by 43 yes, 0 no, 4 abstentions (China, India, Japan, Russia)
  - The USA actively opposed R2HE in the Council but did not have a vote; it has continued to oppose R2HE at UNEP and the UN General Assembly
- UN General Assembly will likely consider R2HE in June 2022
  - 100 countries officially endorsed Resolution 48/13

**In 1986, the UN General Assembly articulated five guidelines for developing instruments regarding human rights. The right to a healthy environment satisfies all five criteria.**

1. Be consistent with the existing body of international human rights law;
2. Be of fundamental character and derive from the inherent dignity and worth of the human person;
3. Be sufficiently precise to give rise to identifiable and practicable rights and obligations;
4. Provide, where appropriate, realistic and effective implementation machinery, including reporting systems; and
5. Attract broad international support.

# What does the right to a healthy environment (R2HE) add?

R2HE **adds substance** – it is more than just the sum of other rights.

R2HE **clarifies the scope** of States' obligation to protect the environment.

R2HE is a **capstone**, solidifying and organizing the existing law of environmental human rights, resulting in a **normative cascade**.

R2HE can be a **“hook” for organizing projects and allocating resources** within the UN and national and local governments.

R2HE might be a **springboard** for resetting humans' relationship to nature, away from a hierarchical, anthropocentric vision, and exploring the extent to which nature has rights.

R2HE **clarifies the content of environmental justice** – R2HE is the unspoken assumption of environmental justice.

# What Does Environmental Justice mean?

- No universally agreed definition
- 5 components
  - No disproportionate impact of environmental harm
  - Equal access to environmental amenities such as clean drinking water and parks
  - Safe and meaningful opportunity to participate in environmental decision making (i.e., not just “equal” opportunity)
  - Access to remedies for environmental harm
  - A safe, clean, healthy and sustainable environment – i.e., the right to a healthy environment – i.e., the “unspoken assumption”

# PARIS AGREEMENT: Preamble - 2015

- *Taking into account* the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities,
- *Acknowledging* that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity,
- *Noting* the importance of ensuring the integrity of all ecosystems, including oceans, and the protection of biodiversity, recognized by some cultures as Mother Earth, and noting the importance for some of the concept of "climate justice", when taking action to address climate change,

# OUTSTANDING ISSUES

- Right to a Healthy Environment – in General Assembly
- Transboundary/Extraterritorial Obligations
- Business & Human Rights
- Rights of Nature

# Imagining the Future

Introduced and

Moderated by Leida Rijnhout

**Common Themes from the Imagining Essays:** Li Lin

**Climate Change & Geoengineering:** Silvia Ribeiro

**Environmental Justice:** Dianne Dillon-Ridgley

**Humans' Relation to Nature:** Bruce Byers



# Climate change and geoengineering

**Silvia Ribeiro**

ETC group



# Climate Geoengineering

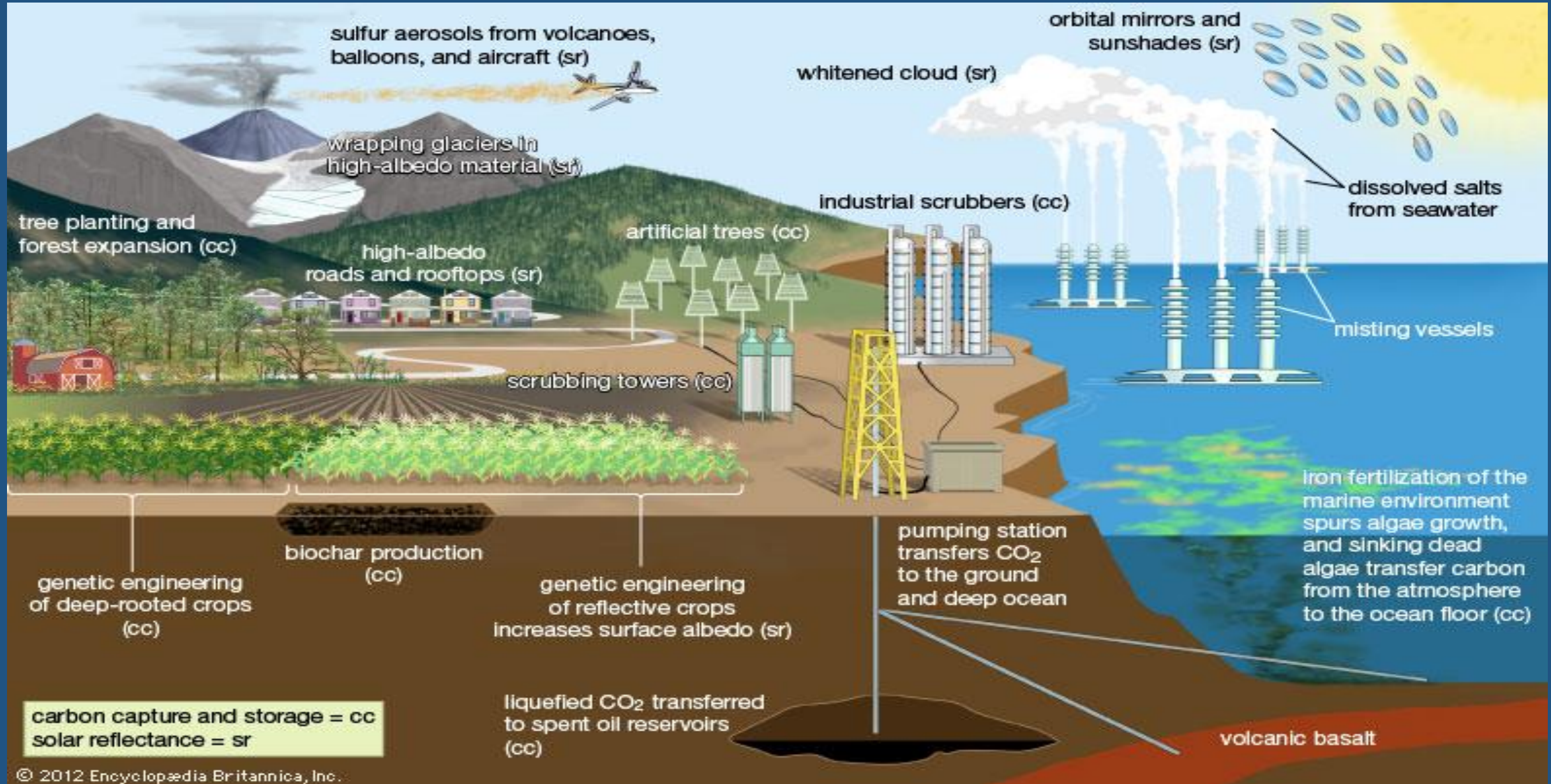


A set of **technologies** to **intentionally** intervene in and **alter** **Earth systems on a large scale** –to **manipulate the climate system** to counteract part of the effects of climate change

- A technofix for climate change



# Proposed geoengineering techniques to intervene LAND, OCEAN & AIR



# Huge uncertainties and potential impacts

- Geoengineering techniques do not aim to address the root causes of climate change
- Drivers of climate change would continue
- Large environmental, social, political, economic risks
- None of the proposed techniques has proven to function to address climate change, much less at the scale required
- Carbon Capture Storage facilities exists only at micro scale. 80% is for Enhanced Oil Recovery (pump more oil) and will increase GHG emissions

# Why is geoengineering dangerous?

- Mega-scale / transboundary
- High-risk and unreliable
- Non testable, no experimental phase
- Unequal impacts
- A “perfect excuse” to avoid making reductions
- Intergenerational injustice
- Human rights violations
- Unilateral / exacerbates power imbalance

# Geoengineering under UN moratoria

- In 2008, the CBD took a consensus decision to call for a moratoria on Ocean Fertilization
- In 2010, the CBD called for a moratoria on all geoengineering techniques (excepting CCS from fossil fuels)
- The London Convention/ Protocol took a decision in 2013 to not allow ocean fertilization activities, excepting legitimate scientific research



# Scientists call vs solar geoengineering

Over 250 high level scientists call to not use Solar Geoengineering (2022)

Solar  
Geoengineering  
Non-Use Agreement

About

Non-Use Agreement

Resources

Media

TAKE ACTION

We call for an International Non-Use Agreement  
on Solar Geoengineering

Find Out More

# Environmental Rights, Human Rights & Environmental Justice

- Need to address the causes of climate change, including fossil fuel economies and inequity of emissions: 10% population with highest consumption cause 45% GHG (IPCC 2022)
- Manipulation of Earth Systems will increase violations of ER, HR and EJ
- Respect rights, honor precaution and CBD / LC decisions
- Recognize and support the many alternatives to stop climate change that exists or can be developed and scaled up, that are environmentally sound and socially just, that are proven and affordable, on food systems, energy, buildings, public transport , lifestyle, and others



# For more information

- <https://www.geoengineeringmonitor.org/>
- <https://www.etcgroup.org/>
- <https://www.solargeoeng.org/>
- <https://stopsolargeo.org/>
- Hands Off Mother Earth Manifesto  
(+200 CSO from 45 countries)
- <https://www.handsoffmotherearth.org/>

# Proposed Revision for Principle 1:

“The rights of all living beings must be respected, protected, and promoted; nonhuman species must not be treated as of lesser, or only instrumental, value compared to humans; and the ecosystems of the biosphere must not be colonized and exploited as resources, nor conceived as of value only for the human species.”

# Legacy Webinars

**Thank you, and please register to join the next webinars!**

**3 May 16:00 CET - Webinar 5: The Environment & Education - Looking to the Future**

**4 May 16:00 CET - Webinar 6: Civil Society, the Environment, & the United Nations Environment Programme**

**12 May 16:00 CET Webinar 5: Connecting the Dots – Making a Forceful Canon of the Rio Conventions & the Multilateral Environmental Agreements (originally 2 May)**

**(Date TBC) Webinar 7: Science & the Environment**