



**DISCUSSION PAPER AND COMMENTARY
ON
THE DRAFT PEOPLE'S CHARTER FOR AFRICA**

Prepared for: **Indalo Yethu**

Attention: Christelle Terblanche

Prepared by:

Cormac Cullinan
EnAct International
70 Rosmead Avenue, Kenilworth
Cape Town, 7708
Tel: 021 671 7002
Fax: 021 671 7003
www.enact-international.com

23 August 2011

Our ref. CP Cullinan/jb/N20-001

Ubunye House, 70 Rosmead Avenue, Kenilworth, Cape Town 7708
T +27 (0) 21 671 7002 F +27 (0) 21 671 7003 www.enact-international.com

Cullwin Consulting CC (CK 98/23950/23) trading as EnAct International
Principals: CP Cullinan, I Coetzee, GN Daniels, SD Kvalsvig
Consultants: L Jackson, GS Nel

Cape Town Durban Lisbon Edinburgh

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1. INTRODUCTION

This discussion document: explains the approach taken in formulating the draft People's Charter for Africa ("the Charter"), discusses the world view that informs it and the approach taken in drafting it; makes proposals regarding a process to finalising it that will build legitimacy of it, and explains the text in some detail.

The Charter is intended to be an aspirational document with a uniquely African character that can function as a common manifesto which can be used to unite and mobilise many different sectors of South African civil society (e.g. civil rights organisations, trades unions, rural people's organisations, traditional leaders, etc.) around a common agenda. It is important to appreciate that **the Charter discussed in this document is intended as the starting point for an extensive discussion and not an end point in itself**. The final version of the Charter will only have legitimacy as a political document if it is the product of a fully participatory process that is acceptable to the constituencies that we wish to champion it. **The process that is used to develop the Charter will determine its legitimacy and effectiveness.**

The Charter was originally conceived as a document that would articulate specific demands of the people of South Africa regarding the measures that should be taken to address the global challenge of climate change, and which would be presented to the participants at the 17th meeting of the Conference of the Parties of the United Nations Framework Convention on Climate Change in Durban in December 2011 ("COP 17"). However the Charter does not focus specifically on climate change and instead seeks to address the dysfunctional relationship between humans and Nature which drives the human behaviour that causes climate change, among many other symptoms. This reflects the understanding emerging from popular movements throughout the world, and in particular from the People's World Conference on Climate Change and the Rights of Mother Earth held in April 2010 in Cochabamba, Bolivia.

The People's World Conference adopted the approach that climate change cannot be adequately and effectively addressed without tackling the root causes, which include not only inappropriate values and aspirations (e.g. consumerism) but also structural causes, such as economic, legal and governance systems. This approach contrasts strongly with that within the meetings of the COP of the UNFCCC which focus on addressing the symptoms of the problem (e.g. excessive emissions of greenhouse gasses) and avoid addressing the systemic causes of this. For example, most of the discussions at the COP 17 will focus on establishing targets for reducing emissions of greenhouse gases ("GHGs") and mechanisms to fund emission reductions (mitigation), and measures to help States adapt (where possible) to the unavoidable impacts of climate change (adaptation).

2. RATIONALE FOR THE CHARTER

The Charter is informed by the perception that addressing each environmental issue and its related social impacts, separately will not bring about the degree of societal change that is necessary to respond adequately to major challenges such as global climate change. It is time to abandon playing within the system and to adopt "game-breaking" strategies that shift

the discourse to a more favourable terrain and are capable of transforming societal values and structures sufficiently to begin re-orienting societies towards ecological sustainability.

Currently most legal systems only recognise humans and corporations as being legal subjects capable of having legal rights. However until legal systems recognise and protect the rights of all aspects of Nature (i.e. all that has come into being as part of Earth) to make their contribution to the integrity and functioning of Earth, legal systems will continue to be ineffective in striking an ecologically acceptable balance between the interests of humans and those of natural communities.

Furthermore, we can only safeguard human rights by recognising and defending the rights of all the beings that contribute to the integrity and health of the Earth community. The human right to life has no value if forests and mountains have no right to exist and to play their role in sustaining the streams of fresh water on which our lives depend. As more and more people begin to appreciate this, the historical barriers between environmental and social justice activism are dissolving.

One of the features that distinguishes the Charter from other political documents is that it does not adopt a human-centred (anthropocentric) approach and instead recognises the reality that we humans are part of community of life that is integral to our well being.

3. AN AFRICAN PERSPECTIVE

The Charter seeks to articulate an indigenous African perspective and to reflect traditional African ethics that are common to the vast majority of ethnic groups throughout Africa. This approach has been adopted to make the Charter more meaningful to most South Africans (and indeed Africans) and also to show the global community that African ethics have the potential to make an important contribution to the resolution of global environmental crises such as climate change. As Munyaradzi Murove, puts it:

“... Africa yet possesses in its own traditional culture the roots of an ethical paradigm to solve the current environmental crisis. This is an ethic of an interdependence of individuals within the larger society to which they belong and to the environment on which they all depend. This ethic is based on the concepts of *Ukama* (Shona) and *Ubuntu/Botho* (Zulu, Xhosa, Sotho and Tswana).

While the Shona word *Ukama* means relatedness, *Ubuntu* implies that humanness is derived from our relatedness with others, not only those currently living but also through past and future generations. When these two concepts are compounded, together they provide an ethical outlook that suggests that human well-being is indispensable from our dependence on, and interdependence with, all that exists and particularly with the immediate environment on which all humanity depends. Were this to be developed as an environmental ethic appropriate to the contemporary world it would inspire people north and south to combat threats of pollution and environmental degradation.”¹

¹ Murove, Munyaradzi Felix, “An African Environmental Ethic based on the Concepts of Ukama and Ubuntu” in African Ethics. An Anthology of Comparative and Applied Ethics, Murove, Munyaradzi Felix (Ed), 2009, University of KwaZulu Natal Press, pp. 315 to 316.

4. APPROACH AND INFLUENCES

The Charter has been deliberately modelled on the Freedom Charter that was adopted the Congress of the People at Kliptown on 26 June 1955, and is influenced by the *Universal Declaration of the Rights of Mother Earth* ("the Universal Declaration") which was proclaimed on 22 April 2010 by the People's World Conference on Climate Change and the Rights of Mother Earth which was attended by more than 35,000 people and many governments. (The Universal Declaration is reproduced in **Annex A** for ease of reference.)

Although the content of the Charter differs substantially from that of the Freedom Charter, the Charter adopts some of the style of language and the format of the Freedom Charter in an attempt to give the Charter additional resonance and to draw on existing understandings of how such a document can be used to unite and mobilise civil society.

The links to the Universal Declaration are important to enable the Charter to serve as a means of creating unity and solidarity not only among communities and organisations within South Africa but also to connect them with a rapidly emerging global movement. The text of the Charter is substantially different from that of the Universal Declaration, both because the nature and purpose of the two documents are different, and because of its specifically African approach. However, the world view and the aspirations reflected in the Charter are fully consistent with those reflected in the Universal Declaration. The Charter may therefore be understood as a country-specific (or African) articulation of the global approach reflected in the Universal Declaration.

5. DRAFTING APPROACH

The words in the Charter have been chosen to reflect indigenous African understandings of the role and responsibilities of human beings within the cosmos. Some of the key concepts used in the draft Charter are discussed below.

5.1 Community and interdependence

The Charter builds on the fundamental African concept of community and the interrelatedness of all beings. It is important to appreciate that the African concept of community goes far beyond the Western idea of a group of people who have a degree of shared identity by virtue of the fact that they live in a particular place (e.g. a village) or have a shared history. From the perspective of African philosophy, the individual self can only come into existence through its relationships with other members of the community within which it exists, and the community itself is created by this network of relationships. The individual and the community are inseparable and in a sense co-create one another.

According to Schutte the key insight into the African idea of persons is that persons only exist in relation to other persons:

"The human self is not something that first exists on its own and then enters into relationship with its surroundings. It exists only in relationship to its surroundings; these relationships are what it is. The most important of these are the relationships we have with other persons. That is why, in all African languages, there is the local variant of the Zulu saying *umuntu ngumuntu*

ngabantu (a person is a person through persons). As African philosophers are fond of saying, "I am because we are." (Schutte, 2009: 91)

Another example of this idea is the Sotho proverb "*Motho ke motho ka batho*" which Ramose explains means that to be human is to affirm one's humanity by recognising the humanity of others and by establishing humane relations with them. (Ramose, 2009: 308) As Ramose expresses it:

"Wholeness is the regulative principle here since what is asserted is that the single individual is incomplete without the other." (Ramose, 2009: 308)

It follows from this that participation in the community is essential for the individual and that recognising the interdependence of all is an essential aspect of being human. As Murove points out:

"Personhood is relationally constituted to such an extent that there cannot be personhood outside *Ukama* with others. Kasenene added that 'African societies emphasise interdependence and the individual's obligations to the community.' Here it follows equally that anyone who failed to recognise the all-pervasive reality of interdependence would thus be characterised as lacking *Ubuntu* or *Botho* (humanness)." (Murove, 2009: 322)

5.2 The community of life

It is important to appreciate that the concept of "community" extends far beyond the living human beings which a particular individual may have relationships with during his or her lifetime. It embraces both ancestors and generations to come as well as other-than-human beings since all are bound together by living forces to create the unified whole that is the universe.

"Not merely material, not purely spiritual, the forces that make the universe are seen instead as *life*, living energy, forces of life. The African conception of life includes both the physical and the spiritual. It applies to everything; stones are alive as well as animals. The difference is that animals have more life force than stones, and people more than animals." (Schutte, 2009: 90)

This understanding is reflected in the draft Charter by the use of the term "community of life" which is intended to emphasize that human beings exist not only as members of human communities but also as members of the living community of the universe.

This understanding is also central to the Universal Declaration which states in article 1 that:

"Article (1) Mother Earth is a Living Being

(2) Mother Earth is a unique, indivisible, self-regulating community of interrelated beings that sustains, contains and reproduces all beings.

(3) Each being is defined by its relationship as an integral part of Mother Earth."

Therefore from this perspective the entire universe is alive and each being (i.e. distinct aspect of the whole that exists or has "come into being") merits respect as part of the whole.

5.3 Natural communities

The term “natural communities” has been used in the draft Charter to indicate particular communities which exist within the greater “community of life”. These may be understood as ecological communities or ecosystems but the term encompasses any human beings which live within the natural community in question. Consequently the term “natural community” should not be equated with “the environment” which is everything that surrounds humans but is usually thought of as excluding human beings.

5.4 Respect and Harmony

The concept of respect is fundamental to African society and mutual respect is understood as being essential both to maintain the cohesiveness of the community and harmony within it. Furthermore, as the following quote from Ramose makes clear, maintaining the harmony necessary to ensure that humans coexist peacefully within the community of life requires constant balancing of human interests with those of the other members of the community.

“The concept of harmony in African thought is comprehensive in the sense that it conceives of balance in terms of the totality of the relations that can be maintained between and among human beings, as well as between human beings and physical nature. The quest for harmony is thus the striving to maintain a comprehensive but specific relational condition among organisms and entities. It is the constant striving to strike, and then maintain, a balance between human beings and physical nature.” (Ramose, 2009: 309)

The importance of maintaining harmonious relationships is emphasized in many African practises. For example, traditional healers gathering medicinal plants will usually leave a pinch of snuff or some other symbolic gift in return for having taken medicinal plants and to honour the principle of reciprocity.

From this perspective climate change can be understood as a consequence of taking too much carbon from Earth and releasing it into the atmosphere without taking the necessary reciprocal measures to maintain the natural balance and avoid destabilising the system. The negative impacts of climate change on human societies would, from a traditional perspective, be understood as a foreseeable consequence of having behaved with a lack of *Ubuntu* or appropriate regard to the interrelatedness of all aspects of the community of life.

5.5 Living well

The concept of “living well” or “well-being” is well understood by indigenous people in Latin America. Their understanding of living well is very different from the capitalist notion of “the good life”. Their understanding is that in order to live a good life one must live in harmony with Mother Earth (*Pachamama*) and that the role of the State is to safeguard the essential conditions necessary for living a good life.

In essence, the view of many indigenous peoples in Latin America is that if they have intact communities, clean air, fertile land, and pure water then they are able to live a good life and that the primary responsibility of the State is to ensure that the basic pre-requisites for a good life are not undermined. From this perspective, a good life can only be achieved by living harmoniously with nature whereas in industrialised societies human well-being is

sought at the expense of natural communities (which are degraded in order to allow humans to monopolise energy, food, territory, etc.).

Bolivians sometimes use the analogy of a plant to explain why it is necessary to protect earth in order for humans to flourish. They explain that in order for a leaf to be healthy, it must be part of a healthy plant which in turn must be rooted in fertile and well watered soil. In the same way, in order for a person to be healthy they must be part of a healthy community that is rooted in a healthy natural environment or natural community.

A recent article by the renown Brazilian liberation theologian Leonardo Boff which explains this concept in more detail is attached as **Annex B**.

6. PROCESS

In order for the Charter to be effective as a common manifesto for mobilising and inspiring a wide range of social actors, it is necessary for it to have legitimacy in their eyes. This can only be achieved if the final Charter is seen as an authentic expression of the collective world view of a wide range of people. That in turn will only occur if the final document is the product of a process that is broad, inclusive and trust worthy. The enduring appeal of the Freedom Charter can be attributed to the fact that it was an outcome of a very extensive process of consultation in which hundreds of thousands of people participated and could therefore legitimately be regarded as the articulation of the "voice of the people".

Furthermore, the process of raising awareness about a document such as the Freedom Charter or this Charter and of mobilising people to engage with the issues and to identify and articulate their vision for a very different society, is arguably more valuable than the output itself. Consequently **the nature of the process used to develop and adopt the Charter is even more important than the text of the draft Charter used to initiate the process.**

In this regard the following points are relevant.

- It is desirable to form a wide coalition of organisations to advance this idea to ensure that the initiative is not "still born" by virtue of the perception that it is being driven by a particular sector or group of organisations that do not enjoy widespread support.
- The participating organisations and individuals should collectively design the process that is used to finalise the Charter.
- The process must be highly participatory and it is extremely important not to give the impression that individuals and organisations are merely being asked to rubber stamp a pre-existing text or to lend credibility to a process where the outcome has already been determined. For this reason, **the draft Charter should be kept confidential until such time as a credible group of organisations has determined an appropriate process and strategy for initiating a process of developing such a Charter as a people's document.**
- In order for the ideas which underlie the Charter and the Universal Declaration to be adequately discussed within organisations it will be necessary to train groups of individuals within those organisations so that they have the necessary knowledge and understanding to lead discussions within their organisations.
- There is now insufficient time before the COP 17 to have a fully participatory process to discuss the draft Charter, make comments on it, to revise the draft to take account of those comments and to adopt an acceptable text. This means that if the COP17 is seen as the end point, any document which is produced by then will have limited legitimacy by virtue of the limited nature of the process.
- It is extremely unlikely that any document presented to the COP17 negotiators in Durban would have any impact whatsoever on the negotiations at that late stage. Instead of seeing the COP17 as an end point, it may well be desirable to see the

preparations for the COP17 as providing opportunities for carrying forward the discussion regarding the Charter which is intended to have implications far beyond the COP17 and even the issue of climate change.

- It is important that an initiative such as this does not fail since failure would make it very difficult if not impossible to repeat as such an initiative at a later stage.

For the above reasons, it is recommended that a series of meetings be initiated between key sectors of civil society (including the faith communities, social justice organisations, environmental organisations, trades unions, rural communities etc.) with a view to reaching agreement on an appropriate process to take this initiative forward and on how to constitute a credible group which could receive and process comments on the draft Charter.

7. COMMENTARY ON THE TEXT

THE PEOPLE'S CHARTER FOR AFRICA

We, the peoples of South Africa,

Grateful to Africa for feeding our bodies, sheltering us, inspiring our imaginations, and shaping our many cultures and spiritual beliefs;

Mindful that the ancestral wisdom of Africa teaches that we come into being through our relationships with the whole community of life and that to unfold our full humanity we must respect and live in peace with all beings;

Commentary

1st paragraph. Although the title of the Charter refers to "Africa" the first line refers only to the peoples of South Africa. It would be appropriate to consider the possibility of launching a pan-African initiative (i.e. so that "South" could be deleted from the first line) since the philosophical underpinnings of the draft Charter would be familiar to Africans throughout the continent. However, care must be taken not to cause offence by presuming that a document prepared by South Africans represents an authentic voice of the peoples of Africa as a whole.

2nd paragraph. This paragraph expresses gratitude as a means of establishing from the outset that this document is not yet another expression of the desire of humanity to impose its will on Earth, but rather to recognise and assume our responsibilities in return for the gifts given to us.

3rd paragraph. The reference to the "ancestral wisdom of Africa" is intended to immediately situate the document within the African philosophical tradition (discussed more fully above) in a way that caters both for those who believe that ancestors participate in the living communities of the present and those who do not. This paragraph is intended to emphasize that the attempt to live in harmony with the whole community of life is central to becoming fully human and consequently the Charter is motivated by the deepest desires of humanity.

Inspired by our love for this ancient land and for the animals, plants, mountains and rivers that are our kin and who safeguard the wellbeing our people;

Mourning the harm that has been caused to the community of life by the arrogant and disrespectful manner in which industrialised societies treat other members of that community;

Convinced of the need to take decisive action to turn the course of our societies away from selfishness, greed, exploitation, and separateness;

Commentary

1st paragraph This paragraph is intended to indicate that the supporters of the Charter are motivated by love and the recognition of their interdependence with, and dependence on, all the other members of the community of life.

2nd paragraph. This paragraph is intended to acknowledge the losses we and the whole community of life have suffered as a consequence of the arrogance, disrespect, selfishness, greed, exploitation, and arrogance displayed by industrialised societies which has fuelled divisions between humans and the other members of the community of life.

3rd paragraph. The need to take decisive action is central to the role of the Charter as a document to mobilise action. The reference to "separateness" is intended to draw attention to the similarities between the political systems constructed in South Africa to impose separation between people (i.e. the *Apartheid* regime) and those which enforce the separation of humans from the other members of the community of life.

Determined to create healthy human communities in which everyone lives well through respecting Earth in all her many forms;

Standing in solidarity with all who defend the rights of the natural communities to which we belong;

Pledge ourselves to strive whole-heartedly together to live in harmony within the community of life and to respect and defend the rights of all beings to fulfil their role within that community.

Commentary

1st paragraph This paragraph is to express the positive vision of the Charter.

2nd and 3rd paragraphs. These paragraphs express the importance of acting in solidarity with other like-minded people to defend the integrity of the community of life.

Earth is sacred

Earth is sacred to us and no person or legal entity has the right to pollute or degrade the soils, waters, and atmosphere that sustain life.

All plants, animals and other creatures are our kin and we shall respect, uphold and defend their rights to play their unique role within the community of life.

Sacred forests, pools, mountains and other places shall remain wild.

Commentary

1st paragraph. If Earth is sacred then it is illegitimate to destroy it for commercial reasons.

“Traditional African culture had started from the premise that the whole universe, not merely “man” [*sic*], had been created in the image of God. And so many African societies made some trees sacred, some hills holy, some animal’s totemic siblings, some forests the abode of ancestors. African culture made no sharp distinction between the human race and other species. While some monkeys were sacred, some humans were evil.” (Mazrui, 1999: 563, quoted by Murove, 2009: 326).

2nd paragraph. This paragraph reflects the African understanding that there is not a distinct division between humans and all other species and that all are animated by life forces and are part of the community of life. This has long been recognised by African societies and indeed many African clans have totem animals which are regarded as part of their ancestral lineage and which merits specific respect in the present. Thus the African concept of relatedness (*Ukama*) is also used to link humans with other than human members of the community of life. As Murove points out:

“*Ukama*, through totemic ancestorhood, advances the idea of a unifying principle linking the identity of a person or community to past and future generations and the natural world

...

Totemic ancestorhood thus testifies that there is indissoluble solidarity between humanity and the natural environment. Being in *Ukama* implies that no entities are self-sufficient or enjoy existence independently from others.” (Murove (2009): 320)

3rd paragraph. The reference to sacred forests, pools, etc. is intended to provide a basis for local communities to resist the development of sacred places, many of which are under threats throughout Africa.

Each has the right to its place in the community

Every creature, large or small, every plant, rock, mountain, river, or sea that has come into being has the right to exist in its place, to be respected and to fulfil its role within the community of life.

Commentary

The idea that each being has a right to exist and the right to be respected for its role within the whole, is central to the Charter. This idea is also embodied in the Universal Declaration which provides in Article 2 (Inherent rights of Mother Earth) that:

“Each being has the right to a place and to play its role in Mother Earth for her harmonious functioning.” (article 2(2)).

Article 2(1) of the Universal Declaration also states that:

“Mother Earth and all beings of which she is composed have the following inherent rights:

- (a) the right to life and to exist;
- (b) the right to be respected;
- (c) the right to continue their vital cycles and processes free from human disruptions;
- (d) the right to maintain its identity and integrity as a distinct, self-regulating and interrelated being;
- (e) the right to water as a source of life;
- (f) the right to clean air;
- (g) the right to integral health;
- (h) the right to be free from contamination, pollution and toxic or radioactive waste;
- (i) the right to not have its genetic structure modified or disrupted in a manner that threatens its integrity or vital and healthy functioning;
- (j) the right to full and prompt restoration the violation of the rights recognized in this Declaration caused by human activities.”

All shall live well

We shall respect the rights of all the other members of the natural communities to which we belong so that all may live well in harmony with one another.

We shall safeguard the fertility of the soils, the purity of water and air, and the health of natural communities that make living well possible so that all beings can live well now and in the future.

Human communities shall provide their people with food, water, shelter and social opportunities in ways that do not prevent natural communities from doing the same for their other members.

No person has the right to pursue their own wellbeing at the expense of the natural communities, systems and processes that sustain us all.

Commentary

1st paragraph. The Latin American concept of “living well” and the centrality of respect within African thought has been explained above. This paragraph is intended to link these two fundamental ideas.

4th paragraph. This paragraph is intended to make the point that it is illegitimate for narrow self-interests to prevail over the interests of the community of a life as a whole. This links with the provision in the Universal Declaration that:

“Every being has the right to wellbeing and to live free from torture or cruel treatment by human beings.” (Article 2(3)).

A giving for every taking

Every person and each generation shall maintain natural balances by giving to natural communities in return for what they receive.

Until the composition of the atmosphere is restored to balance each person and each generation must ensure that their presence on Earth causes more carbon to be removed from the atmosphere than is release into it.

Commentary

1st paragraph. This sentence is intended to express the concept of reciprocity which is fundamental to indigenous world perspectives and also to the maintenance of natural balances.

2nd paragraph. The second paragraph applies the principle expressed in the previous paragraph and draws attention to the fact that all persons now living, both individually and collectively, must take action to address climate change.

Healing shall replace exploitation

Human activities that disrupt vital ecological balances and functions shall be stopped and replaced with practices that improve the health of natural communities.

Practices that erode the land and deplete the natural fertility of the soil shall be replaced with growing and harvesting practices that work with natural processes to enhance the fertility of the land and the health and resilience of natural communities.

Commentary

1st paragraph. This sentence expresses the general principle that it is no longer sufficient for humans to stop harmful activities, we must also adopt new practices that make a positive contribution to the health of natural communities in order to heal the harm that has been done.

2nd paragraph. This paragraph applies the general principle in the first paragraph to agriculture. Industrial agriculture currently makes a significant contribution to global greenhouse gas emissions. On the other hand organic farming practises that focus on using natural processes to enhance the fertility of the soil can play a significant role in increasing the amount of carbon sequestered in the soil. This paragraph is intended to be consistent with concept of “food sovereignty” which has been developed under the auspices of the Food and Agriculture Organization of the United Nations (“FAO”).

“Food sovereignty” has been defined as follows.

“Food sovereignty is the right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems. It puts the aspirations and needs of those who produce, distribute and consume food at the heart of food systems and policies rather than the demands of markets and corporations. It defends the interests and inclusion of the next generation. It offers a strategy to resist and dismantle the current corporate trade and food regime, and directions for food, farming, pastoral and fisheries systems determined by local producers and users. Food sovereignty prioritises local and national economies and markets and empowers peasant and family farmer-driven agriculture, artisanal - fishing, pastoralist-led grazing, and food production, distribution and consumption based on environmental, social and economic sustainability. Food sovereignty promotes transparent trade that guarantees just incomes to all peoples as well as the rights of consumers to control their food and nutrition. It ensures that the rights to use and manage lands, territories, waters, seeds, livestock and biodiversity are in the hands of those of us who produce food. Food sovereignty implies new social relations free of oppression and inequality between men and women, peoples, racial groups, social and economic classes and generations.”

(DECLARATION OF NYÉLÉNI FORUM FOR FOOD SOVEREIGNTY, 2007).

The Declaration of Nyéléni defines six interrelated principles of food sovereignty including the following.

“Works with Nature: Food sovereignty uses the contributions of nature in diverse, low external input agro ecological production and harvesting methods that maximise the contribution of ecosystems and improve resilience and adaptation, especially in the face of climate change; it seeks to “heal the planet so that the planet may heal us”; and rejects methods that harm beneficial ecosystem functions, that depend on energy intensive monocultures and livestock factories, destructive fishing practices and other industrialised production methods, which damage the environment and contribute to global warming.”

Communities shall decide for themselves

The rights of people to benefit from the land and other beings flows from our relationships with them and decisions that impact on the integrity or health of a natural community shall be made by people who have deep relationships with that community and will experience the consequences of the decisions most directly.

Those who are not part of a natural community do not have the right to make decisions or take actions that harm or threaten the integrity, health or functioning of that community.

Those who intentionally or recklessly damage natural communities or put them at risk shall forfeit the right to make decisions that may harm them.

Commentary

1st and 2nd paragraphs. In most industrialised countries, including South Africa, decisions that have major impacts on natural communities, including the people who depend upon them, are typically made by distant decision-makers and often against the wishes of the local people. This article seeks to reverse that by making it clear that those people who have the strongest relationships with the natural community in question and that will experience the consequences of the decision, are best placed to make those decisions and that their perspectives should prevail over those of outsiders.

African customary law approaches to land use rights flow from this perspective. Living indigenous customary law systems (i.e. those that continue to evolve in response to changing circumstances and have not been codified by colonial or post-colonial governments) are characterised by the understanding that a person's right to have access to land flows from their membership of, and status within, a human community. Typically all members of a group have rights of access to land either because they are members of the group (e.g. born into clan) or because they had submitted themselves to the political authority of the group.² The land of the community may not be bought or sold.

However use rights are allocated among those entitled to them in a range of ways, which may include inheritance (e.g. of a family home) or allocation by agreement with neighbours, or by persons or councils with administrative responsibility to allocate rights such as areas to grow crops or the right to pasture animals or collect wood, timber or medicinal plants from communal areas.

² Cousins, Ben. "*Characterising 'communal' tenure: nested systems and flexible boundaries*", Chapter 5 in Claassens, Aninka and Cousins, Ben, Land, Power and Customs. Controversies generated by South Africa's Communal Land Rights Act, 2008, UCT Press, Cape Town, at pp 111 and 112-3

The approach taken in the Charter is aligned with traditional African approaches to regulating land use and the following points are relevant to note.

1. Land rights (i.e. the entitlement to use land) flows from social relations within a community (rather than the market) and are distinct from the means used to control the use of the land (i.e. the systems of authority which decide who within the community may use a particular area for a particular purpose).
2. The exercise of land rights is always limited by obligations and must be balanced against the rights and privileges of others³ and are inclusive in that they shared and exist relative to the rights of others, rather than exclusive (Cousins, 2011: 129 citing Okoth-Ogendo's conceptual framework)
3. Since members of the community have a right to land which is not derived from an authority such as a chief, chiefs, headmen, sub-headmen and others responsible for allocating land to be used by members of the community for various purposes are accountable to the community for the proper performance of this function (i.e. "downward accountability" rather than "upward accountability" to the State).
4. Allocation decisions are taken at different levels, which together form a "nested" system of land administration. Typically rights to build a home or cultivate land are allocated on a highly decentralised basis while rights to use communal resources (e.g. common grazing land) are allocated at a higher level at which the interests of all those who shared those rights could be taken into account. For example, Schapera describes how a young man wanting land to cultivate or to build a house would first approach his father and only if the father did not have suitable land to allocate would the young man seek those rights at higher levels, first from neighbours, then from a headman, and ultimately from a chief (Schapera, 1955: 204, cited by Cousins, 2011: 123). Similarly, Fay (2005) describes how in Hobeni in the Eastern Cape primary decision-making regarding the allocation of land rests with "those who inhabit and use the land: neighbourhoods organised under neighbourhood members and sub-headmen" and is characterised by "downward accountability and flexibility" (Fay, 2005: 199).⁴
5. Access to land is maintained by active involvement in social processes of production (Okoth-Ogendo, 2011: 100) so that for example, if the right to cultivate a field is not exercised for a period it may be reallocated.

3rd paragraph. This paragraph is intended to provide a basis for denying corporations or individuals that deliberately make decisions that harm natural communities, the right to make such decisions. For example specific corporations could be deprived of the right to own land (and hence to make land use decisions).

³ Cousins, Ben *ibid* at p 111.

⁴ Quoted by Cousins (2011) at p 125.

Communities shall protect themselves

Each community has the right to defend itself from being harmed by outsiders.

People who respect and live in harmony with the other members of a natural community shall care for and defend that community and stop human activities that they have good reason to believe may harm the community.

Commentary

1st paragraph. This paragraph is intended to assert a right of community self-defence in order to strengthen the basis for many community struggles.

2nd paragraph. This paragraph provides that people have a positive obligation to care for and defend natural communities to which they belong that goes beyond self-defence.

Life before property and profit

The rights of present and future generations to live in harmony within healthy natural communities shall prevail over the rights of any person or legal entity to property or profits.

The interests of corporations, the state and other artificial entities shall not be permitted to take precedence over the interests of natural communities.

Commentary

1st paragraph. This article expresses the fundamental understanding that the interests of the community as a whole must take precedence over those of any individual. This is consistent with African philosophies in which:

“Mutual care for one another as human beings precedes concern for the accumulation and safe guarding of wealth as though such a concern were an end in itself”.
(Ramose, 2011: 312)

2nd paragraph. The second paragraph is intended to draw attention to the fact that the abstract interests of artificial legal entities such as corporations usually prevail over the actual interests of natural communities and of the community of life as a whole, and that this must be stopped.

Those that harm Earth shall be held accountable

Any person or legal entity that harms or profits at the expense of a natural community shall be held accountable for restoring its integrity, functioning and health.

No person shall be permitted to use corporations or other legal devices to avoid or limit their responsibilities to their fellow members of natural communities.

Corporations and legal entities that harm or violate the rights of natural communities shall forfeit their privileges as legal persons.

Commentary

1st paragraph. This paragraph is intended to introduce the concept of restorative justice (i.e. those that harm a community are responsible for restoring it to health rather than being subject to punishment) which is central to African customary law.

2nd paragraph. This sentence draws attention to the importance of preventing the use of legal devices to avoid liability (a considerable amount of damage to Earth is caused by corporations).

3rd paragraph. Incorporation as a legal person entitles a corporation to many rights which should it should forfeit if it violates the fundamental rights of natural communities.

All shall have legal rights

The *Universal Declaration of the Rights of Mother Earth* shall be adopted and implemented.

Laws that recognise, respect, and protect the rights of all members of natural communities shall replace those that give people or legal entities the right to pollute the waters, seas, soils, and atmosphere, to inflict cruelty and to violate the rights of natural communities.

Commentary

1st paragraph. This paragraph makes an explicit reference to the Universal Declaration in order to ensure that the Charter can also be used to build support for the global movement which is coalescing around the Universal Declaration.

2nd paragraph. This paragraph is based on the understanding that Mother Earth (or the community of life) has certain intrinsic rights (e.g. to exist and function) and that these must be recognised and upheld by legal systems. It also draws attention to the fact that the legal systems of industrialised countries legitimise on-going harm to the community of life and that such laws must be repealed.

Public bodies shall safeguard the conditions for living well

Public bodies shall promote human development through living well in respectful co-existence within natural communities and shall safeguard the conditions necessary to do so.

In order to do so they shall:

- (a) make the effective protection of the integrity and health of natural communities and the maintenance of the conditions necessary to live well their highest priority;
- (b) develop and implement policies, laws and systems that prevent human activities from disrupting the natural processes and functions on which we all depend;
- (c) cease funding activities that disrupt or endanger vital natural processes and systems; and
- (d) promote values, technologies, production methods and behaviour patterns that enable people to live well and that benefit the whole community of life.

Commentary

1st paragraph. This paragraph is intended to draw attention to the need to re-orientate systems of governance so that they seek to promote human development through living well in harmony with Nature (i.e. living well) rather than by exploiting Nature. In order to do so governments and public bodies must establish the protection of the integrity and health of natural communities and the maintenance of conditions necessary to live well as their highest priority. This means that social goals such as economic growth, development, job creation and profit can no longer be seen as the most important social goals.

2nd paragraph. One of the intentions of this paragraph is to emphasise that the perspective reflected in the Charter requires a fundamental reframing of social goals (towards living well) and the restructuring of governance systems so that they will support the attainment of these new social goals.

Let all people who love Earth now say, as we say here:

WE SHALL STRIVE TOGETHER, INSPIRED BY OUR LOVE OF LIFE UNTIL ALL ARE LIVING WELL!

MAYIBUYE IAFRIKA! IAFRIKA MAYIBUYE!

Commentary

The final paragraphs are modelled on the Freedom Charter. The corresponding provisions of the Freedom Charter state:

“Let all people who love their people and their country now say, as we say here:

THESE FREEDOMS WE WILL FIGHT FOR, SIDE BY SIDE, THROUGHOUT OUR LIVES, UNTIL WE HAVE WON OUR LIBERTY”

The final exhortations “Mayibuye iAfrika” featured prominently throughout the liberation struggle in South Africa and loosely translated means “May Africa return”. During the struggle against apartheid this was understood as a call for the return of the land to the people who had been dispossessed by the process of colonisation and the apartheid system. In this context, it is intended to be a call for the reintegration of people within the natural communities of Africa as a continuation of the political struggles to become fully emancipated.

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ANNEX A

UNIVERSAL DECLARATION OF THE RIGHTS OF MOTHER EARTH

Preamble

We, the peoples and nations of Earth:

considering that we are all part of Mother Earth, an indivisible, living community of interrelated and interdependent beings with a common destiny;

gratefully acknowledging that Mother Earth is the source of life, nourishment and learning and provides everything we need to live well;

recognizing that the capitalist system and all forms of depredation, exploitation, abuse and contamination have caused great destruction, degradation and disruption of Mother Earth, putting life as we know it today at risk through phenomena such as climate change;

convinced that in an interdependent living community it is not possible to recognize the rights of only human beings without causing an imbalance within Mother Earth;

affirming that to guarantee human rights it is necessary to recognize and defend the rights of Mother Earth and all beings in her and that there are existing cultures, practices and laws that do so;

conscious of the urgency of taking decisive, collective action to transform structures and systems that cause climate change and other threats to Mother Earth;

proclaim this Universal Declaration of the Rights of Mother Earth, and call on the General Assembly of the United Nation to adopt it, as a common standard of achievement for all peoples and all nations of the world, and to the end that every individual and institution takes responsibility for promoting through teaching, education, and consciousness raising, respect for the rights recognized in this Declaration and ensure through prompt and progressive measures and mechanisms, national and international, their universal and effective recognition and observance among all peoples and States in the world.

Article 1. Mother Earth

- (1) Mother Earth is a living being.
- (2) Mother Earth is a unique, indivisible, self-regulating community of interrelated beings that sustains, contains and reproduces all beings.
- (3) Each being is defined by its relationships as an integral part of Mother Earth.
- (4) The inherent rights of Mother Earth are inalienable in that they arise from the same source as existence.

- (5) Mother Earth and all beings are entitled to all the inherent rights recognized in this Declaration without distinction of any kind, such as may be made between organic and inorganic beings, species, origin, use to human beings, or any other status.
- (6) Just as human beings have human rights, all other beings also have rights which are specific to their species or kind and appropriate for their role and function within the communities within which they exist.
- (7) The rights of each being are limited by the rights of other beings and any conflict between their rights must be resolved in a way that maintains the integrity, balance and health of Mother Earth.

Article 2. Inherent Rights of Mother Earth

- (1) Mother Earth and all beings of which she is composed have the following inherent rights:
 - (a) the right to life and to exist;
 - (b) the right to be respected;
 - (c) the right to continue their vital cycles and processes free from human disruptions;
 - (d) the right to maintain its identity and integrity as a distinct, self-regulating and interrelated being;
 - (e) the right to water as a source of life;
 - (f) the right to clean air;
 - (g) the right to integral health;
 - (h) the right to be free from contamination, pollution and toxic or radioactive waste;
 - (i) the right to not have its genetic structure modified or disrupted in a manner that threatens its integrity or vital and healthy functioning;
 - (j) the right to full and prompt restoration of the violation of the rights recognized in this Declaration caused by human activities;
- (2) Each being has the right to a place and to play its role in Mother Earth for her harmonious functioning.
- (3) Every being has the right to wellbeing and to live free from torture or cruel treatment by human beings.

Article 3. Obligations of human beings to Mother Earth

- (1) Every human being is responsible for respecting and living in harmony with Mother Earth.

- (2) Human beings, all States, and all public and private institutions must:
- (a) act in accordance with the rights and obligations recognized in this Declaration;
 - (b) recognize and promote the full implementation and enforcement of the rights and obligations recognized in this Declaration;
 - (c) promote and participate in learning, analysis, interpretation and communication about how to live in harmony with Mother Earth in accordance with this Declaration;
 - (d) ensure that the pursuit of human wellbeing contributes to the wellbeing of Mother Earth, now and in the future;
 - (e) establish and apply effective norms and laws for the defence, protection and conservation of the rights of Mother Earth;
 - (f) respect, protect, conserve and where necessary, restore the integrity, of the vital ecological cycles, processes and balances of Mother Earth;
 - (g) guarantee that the damages caused by human violations of the inherent rights recognized in this Declaration are rectified and that those responsible are held accountable for restoring the integrity and health of Mother Earth;
 - (h) empower human beings and institutions to defend the rights of Mother Earth and of all beings;
 - (i) establish precautionary and restrictive measures to prevent human activities from causing species extinction, the destruction of ecosystems or the disruption of ecological cycles;
 - (j) guarantee peace and eliminate nuclear, chemical and biological weapons;
 - (k) promote and support practices of respect for Mother Earth and all beings, in accordance with their own cultures, traditions and customs;
 - (l) promote economic systems that are in harmony with Mother Earth and in accordance with the rights recognized in this Declaration.

Article 4. Definitions

- (1) The term "being" includes ecosystems, natural communities, species and all other natural entities which exist as part of Mother Earth.
- (2) Nothing in this Declaration restricts the recognition of other inherent rights of all beings or specified beings.

ANNEX B

The Latin-American contribution to a geosociety

Of the many projects in existence in Latin America, such as solidarity economics, family organic agriculture, clean alternative energies, The Peasant's Way, The Zapatista Movement, and others, we would point out two for the universal relevance they bear as expressions of a new type of socialism: the first is "Living Well" and the second, "Community Democracy and of the Earth".

Leonardo Boff

Thursday, August 18, 2011

Resistance is growing around the world to the big multilateral companies' system of the domination of globalized capital over nations, individual people, and nature. For better or worse, a tendency is appearing of ecologically oriented practices and projects, that are already trying out the new. The basis is always solidarity economics, respect for the cycles of nature, synergy with Mother Earth, economics at the service of life and not for profit, and politics sustained by hospitality, tolerance, cooperation and solidarity among the most diverse peoples, thereby suppressing the seeds of religious and political fundamentalism, and of the terrorism that we have seen in the United States and, now, in Norway.

Of the many projects in existence in Latin America, such as solidarity economics, family organic agriculture, clean alternative energies, *The Peasant's Way, The Zapatista Movement*, and others, we would point out two for the universal relevance they bear as expressions of a new type of socialism: the first is "*Living Well*" and the second, "*Community Democracy and of the Earth*".

"*Living Well*" is present throughout *Abya Yala* (the original name of the continent known as "*South America*"), from the extreme North to the extreme South, under many names, two being the best known: ***suma qamaña*** (from the Aymara culture) and ***suma kawsay*** (from the Quechua culture.) Both names mean "*the process of life in plenitude*." This results from a harmonious personal and social life and a material and spiritual equilibrium. In the first place, it is knowing how to live well, and then, knowing how to coexist: with others, with the community, with the Divinity, with Mother Earth, with her energies present in the mountains, the waters, the woods and the jungles, in the soil, the sun, the moon and in every being. A harmony is sought, not through accumulation of wealth, but by producing what is enough and dignified for everyone, with respect for the cycles of *Pachamama* and the needs of future generations.

That "*Living Well*" has nothing to do with our "*living better*" or "*quality of life*." Our living better presupposes accumulating the material means to be able to consume more, within the dynamic of an unlimited progress whose motor is competition, and a relationship based on the mere use of nature, with no respect for its intrinsic value and without recognizing oneself as part of nature. That some may live well, millions must live poorly.

"*Living Well*" is not simply identified with our "*common good*" thinking only in function of human beings in society, in an unconscious anthropo-and-sociocentrism. "*Living Well*" touches all that exists, nature, with all her different beings, all humans, the search for the equilibrium among all, also with the spirits, with the wise persons, (the Grandfathers and

Grandmothers already gone), with God, that all may coexist in harmony. "Live Well" cannot be imagined without the community, the widest community possible, human, natural, Earthy and cosmic. "Minga", the work in community, expresses well this spirit of cooperation.

This category of "Good Living" and "Living Well" is enshrined in the Constitutions of Ecuador and Bolivia. The big task of the State is to create conditions such that «Living Well» may be for all beings, and not just for humans.

This perspective, born in the periphery of the world, with all its utopian ideals, is directed to all because it is an attempt to respond to the present crisis, that will be able to guarantee the future of life, of humanity and the Earth.

The other Latin American contribution to a different kind of world is *'Democracy of the Community and of the Earth'*. "It is a type of social life, already in existence in the cultures of Abya Yala. It was repressed by colonization, but now, with the indigenous movement retaking its identity, it is catching the eye of analysts. It is a form of participation that goes beyond the classic, European type of representative and participative democracy. It includes them, but adopts a new element: the community as a whole. The community participates in developing projects, in debating them, in creating consensus around them, and in their implementation. This form of democracy presupposes an already established community life in the population.

It differs from the other type of democracy because it includes the whole community, nature and Mother Earth. It recognizes the rights of nature, of the animals, the jungles, the waters, as they appear in the new Constitutions of Ecuador and Bolivia. The juridical personhood of all other beings is widened, especially to Mother Earth. By virtue of being living beings, they have an intrinsic value and are carriers of dignity and rights, and for that reason they are deserving of respect.

Democracy will then be socio-Earthly-planetary, the democracy of the Earth. There are some who say: all this is utopia. And it is. But it is a necessary utopia. When we have overcome the crisis of the Earth (if we do), the path of humanity will be to organize ourselves globally around «Living Well» and to the «Democracy of the Earth,» the Bio-civilization. There are already signs that anticipate this future.

Leonardo Boff, Theologian, Earthcharter Commission

(Free translation from the Spanish sent by Melina

Alfaro, alfaro_melina@yahoo.com.ar, done at Refugio del Rio Grande, Texas, EE.UU.)