

# Rights of Rivers

A global survey of the rapidly developing Rights of Nature jurisprudence pertaining to rivers



CYRUS R. VANCE CENTER  
FOR INTERNATIONAL JUSTICE

**THIS REPORT IS A COLLABORATION OF:**



The [Cyrus R. Vance Center for International Justice](#) advances global justice by engaging lawyers across borders to support civil society and an ethically active legal profession. The Vance Center is a unique collaboration of international lawyers catalyzing public interest innovation. A non-profit program of the New York City Bar Association, the Vance Center brings together law firms and other partners worldwide to pioneer international justice initiatives and provide pro bono legal representation to social justice NGOs in the areas of human rights, environment and good governance. The Environment Program, which collaborated with International Rivers and the Earth Law Center in the research and preparation of this report, focuses on human rights and the environment, climate change, water source and river protection, biodiversity conservation, toxic pollution, and protection of environmental defenders. Susan Kath, Director of the Environment Program, was joined on this project by Sam Bookman, Pro Bono Practice Fellow, and Nathalya Desterro, Environment Program Fellow.



[Earth Law Center](#) has worked since 2008 to advance and uphold Earth-centered legal paradigms that support healthy, functioning ecosystems as their overarching goal. Much of our work has taken the form of advancing the Rights of Nature movement. However, we are increasingly focused on achieving broader legal and societal reform necessary to achieve an ecocentric society that lives in harmony with Nature. Towards these goals, Earth Law Center helps write, pass, and enforce laws, declarations, resolutions, and policies throughout the world upholding the well-being of all life on our shared planet. We also work to educate the next generation of legal professionals with the tools they need to help restore the Earth to health. Grant Willson, Executive Director & Directing Attorney, worked on this project for Earth Law Center.



[International Rivers](#) is a global organization with regional offices in Asia, Africa and Latin America that works with river-dependent and dam-affected communities to ensure their voices are heard and their rights respected. The organization helps build well-resourced, active networks of civil society groups to protect rivers and defend the rights of communities that depend on them. It also undertakes independent, investigative research, generating robust data and evidence to inform policies and campaigns. International Rivers is independent and fearless in campaigning to expose and resist destructive projects, while also engaging with all relevant stakeholders to realize a world where water and energy needs are met without degrading nature or increasing poverty, and where people have the right to participate in decisions that affect their lives. Monti Aguirre, coordinator of the organization's work on permanent river protections, and Maureen Harris, Director of Programs, worked on this project, including conceptualizing, contributing to, and editing the final report. Laurel Levin and Nick Guroff managed its production.

Front Cover Image: *River rapids cut between rocks.* Photo courtesy of International Rivers.

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MÜNSTER, GERMANY | *Sunset over the water.* Photo courtesy of Latrach Med Jamil (Unsplash)

# Executive Summary

'Rights of Nature' is the idea that nature possesses fundamental rights, just as humans do. The Rights of Nature movement has ancient roots, arising from Indigenous traditions that have always treated humans as part of nature, rather than distinct from it. In Western societies, the movement is new but rapidly developing. Most Rights of Nature legal precedent has emerged in the last 12 years as a direct response to the failures of modern environmental law to adequately address the escalating ecological crisis. Rights of Nature seeks to rewrite the legal system to work for the environment instead of against it.

The Rights of Nature movement is growing. It is led by Indigenous peoples, civil society, legal experts, and youth, who all demand systemic reform of our treatment of nature. Relatively unheard of a decade ago, students around the world are now learning about Rights of Nature in school and elsewhere. Politicians are running on Rights of Nature platforms. Artists, filmmakers, and writers are capturing this decisive moment in history—when humankind must either relearn how to live in harmony with nature or else face devastating consequences.

Earth's ecological systems are deteriorating dramatically. In 2018, a major report from the United Nations found that 20 to 30 percent of assessed species are likely to be at increased risk of extinction in the event of a temperature increase of 1.5-2.5°C, with the rate increasing to 40 to 70 percent of species at a 3.5°C increase.<sup>1</sup> The report also highlighted the emerging water crisis, with 7 to 77 million people expected to experience water stress due to climate change by the 2020s.<sup>2</sup> According to a 2014 World Health Organization Report, more than 250,000 annual deaths may occur between 2030 and 2050 due to climate change impacts.<sup>3</sup> Researchers warn that our warming world may be only a few years away from a "point of no return."<sup>4</sup>

This ecological crisis extends beyond climate change. Earth has already crossed more than four of the nine planetary boundaries, or environmental tipping points.<sup>5</sup> Recent studies estimate a 40 percent decline in insect populations, which play a critical role in numerous

ecological processes such as pollination, pest control, and decomposition.<sup>6</sup> The anthropogenic destruction of about 80 percent of the world's native forests, particularly in the tropics, has resulted in disastrous consequences for these ecosystems and the global climate, and has caused fragmentation of critical habitat and increased spread of tropical diseases.<sup>7</sup> A 2019 United Nations report on biodiversity found that human activity is driving mass extinction and global biodiversity loss, with dire ramifications for human well-being and society. This report warned that "transformative change" is needed to save humanity and nature.<sup>8</sup>

**A Rights of Nature approach offers such transformative change. First, it recognizes that nature is not mere human property, but instead possesses basic rights."**

A Rights of Nature approach offers such transformative change. First, it recognizes that nature is not mere human property, but instead possesses basic rights. These rights can be established by defining nature as a "subject of rights," as a "legal person," as a "rights-bearing entity," or through other terminology. Nature's rights may include rights to exist and to thrive, and the right to restoration. Second, Rights of Nature typically gives nature legal standing, which means its rights can be directly defended in a court of law. Third, a Rights of Nature approach creates duties for humans to act as guardians or stewards of the natural world. Many Rights of Nature laws and decisions create guardianship bodies—a group of people or an entity with a legal duty to uphold the rights and interests of nature.

The past few years has seen a dramatic increase in the number and variety of laws and jurisdictions around the world exploring pathways to legal recognition of Rights of Nature.<sup>9</sup> These developments include 'blanket' Rights of Nature laws that recognize these rights across an entire jurisdiction. They also involve the recognition of 'legal personhood' or rights for specific ecosystems, such as rivers.

This report explores efforts around the world to recognize Rights of Nature in domestic and international law. The report begins by outlining the philosophical foundations of the Rights of Nature movement. It then charts the products of those efforts,

surveying United Nations resolutions, as well as constitutional amendments, legislative enactments, and judicial decisions, across Oceania (Aotearoa/New Zealand and Australia); South America (Bolivia, Brazil, Colombia, and Ecuador); Asia (India, Bangladesh and the Philippines), North and Central America (the United States, Costa Rica, and Mexico), and Africa (Uganda).

Rivers have become a central focus in the Rights of Nature. Globally, river systems are under extreme pressure. Many of the world's rivers suffer from extraordinary over-exploitation—through extraction, pollution, damming, alteration of natural flow regimes, and loss of water quality, and changes to riverine ecosystems, habitats and watersheds. As a result, freshwater vertebrate species are declining more than twice as fast as land-based and marine vertebrates.<sup>10</sup>

Rivers are the subject of many of the case studies in this report, from the Whanganui River treaty settlement and legislation in Aotearoa/New Zealand, to the *Atrato River* decision of Colombia's Constitutional Court, to India's Uttarakhand High Court ruling on the Ganges and Yamuna rivers. The cases illustrate the important role that rivers have played within both the Rights of Nature jurisprudence and the broader movement to support these rights. They help bring legal shape to the ways in which rivers are valued and understood—as sacred, living entities, as holistic and interconnected ecosystems, and as watersheds incorporating water, land, and forests.

Rights of Nature approaches vary. In some of the surveyed cases, Rights of Nature are grounded in Indigenous jurisprudence and treaty rights. In others, they are enacted as constitutional rights, encoded within national laws, or passed as executive actions. The cases also encompass local ordinances, often developed in situations where communities are fighting against federal inaction—as in the examples of the United States and Brazil.

Other approaches, such as environmental human rights<sup>11</sup> and biocultural rights affirmed by the Colombian Constitutional Court, view Rights of Nature as an extension of the international *human* rights framework. Many of the cases in this report demonstrate the critical importance of strategic litigation, and of judicial action and court decisions that apply the law in new ways according to emerging norms.

This report examines the varying efficacy and force of these approaches. While there have been important

successes, the legal recognition of Rights of Nature remains novel and faces implementation and enforcement challenges. In many cases, the practical impact is yet to be seen.<sup>12</sup> However, experience from other rights-based social movements, such as those progressing the rights of women and Indigenous peoples, demonstrate that even non-binding measures can often be effective in shifting social values and building movements.

Behind the legislative developments and judicial decisions outlined in this report are the actions of many people organizing to bring about change. For example, constitutional and legislative amendments in Ecuador and Bolivia were driven by peoples' movements for an ecologically sound and community-centered development model, rooted in the Indigenous concept of *Sumak Kawsay*.<sup>13</sup> A civil society campaign in Uganda helped ensure that Rights of Nature was enshrined in the country's new environmental protection law. The intention of this report is to inform, connect, and inspire these movements.

Rights of Nature jurisprudence is still in its infancy, as courts and legislators continue to develop and define concepts and approaches. Nonetheless, the cases outlined in this report provide useful observations and experience—for legal experts, legislators and policymakers, community and Indigenous leaders, civil society, and others—on the path to making Rights of Nature a reality.

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**The Rights of Nature movement includes a diverse array of actors and many different jurisprudential and advocacy approaches. This report explores this diversity, but also many of the similarities that mark out the movement as distinctive. Drawing on the case studies in this report, the following features and experience can be seen across different components of the Rights of Nature movement.**

**Normative value:** Alongside concrete outcomes of new laws and cases, the concepts enshrined by Rights of Nature measures have important normative value, and reframe exploitative or destructive relationships between people and Nature. For example, in Aotearoa/New Zealand and South America, Rights of Nature jurisprudence draws heavily on Indigenous notions of “*kaitiakitanga*” or guardianship, which views humans as stewards, rather than owners, of the environment.

In the *Atrato River* case, the Colombian Constitutional Court pointed to diverse cultural practices of local and Indigenous communities and their links to local ecosystems and the preservation of biodiversity as the foundation for biocultural rights, which reflect the relationship of “profound unity” between humans and nature.

**Knowledge exchange:** Rights of Nature is already a transnational jurisprudence. There is growing acknowledgment of such rights within the United Nations system and they are enshrined in numerous UN General Assembly resolutions. Countries from Aotearoa/New Zealand, Bangladesh, Colombia and Uganda have cited one another’s decisions and analysis in passing new laws and deciding cases. As Rights of Nature develops, concepts and approaches will continue to travel across and between international and domestic legal systems. An important role for the movement is to continue to support this exchange, both within and across countries.

**Connection to human rights:** Advocates can draw upon existing legal approaches to develop Rights of Nature alongside other areas of international and domestic law. In some jurisdictions, recognition of Rights of Nature is connected to human rights, including the right to a healthy environment and Indigenous peoples’ rights. Colombian courts have drawn extensively on human rights jurisprudence in cases affirming Rights of Nature. The international human rights system has the benefit of widespread codification and uptake by nations, and principles have been elaborated over time to specific groups of rights holders and duty bearers. Environmental law also offers important approaches, including with respect to remediation and enforcement. At the same time, Rights of Nature entails a fundamental shift from the anthropogenic assumptions in these legal fields to an ecocentric approach that views nature not as an object or property but as a “subject of rights.”

**Strategic litigation:** Strategic litigation and judicial decisions have played a critical role in moving the dial forward. Court decisions can inform the development of legislation, institutions, and environmental planning. The Colombian cases demonstrate that Rights of Nature can be judicially developed even in the absence of clear direction from national or local legislators. The Bangladesh High Court decision in 2019, the outcome of a civil society lawsuit, is even more groundbreaking, with a national apex court recognizing the rights of all rivers within the country. However, strategic litigation may face procedural constraints. Legal innovations,

such as expanded procedural rules for standing and evidence in Bhutan and the Philippines, provide possible models in overcoming these constraints by making it easier for concerned individuals to bring environmental claims on behalf of nature.

**Guardianship:** In many cases, Rights of Nature remedies have involved the creation of a guardianship body responsible for particular natural phenomena—a river, forest, or an entire ecosystem. Guardianship bodies are often advised by experts and required to regularly report on their progress. Experience shows the critical importance of guardianship bodies that are robust, well-funded, and unbiased in order to hold the government accountable and put landmark court decisions into practice. To ensure efficacy, guardianship bodies should be established through consultation and public participation, have an independent mandate, and be equipped with adequate funding and resources. Guardianship requires the right balance of representation to address power imbalances, and be inclusive of government, Indigenous and community representatives, civil society, and academia.

**Specialist authorities/tribunals:** Other models include the establishment of independent authorities, as in the case of the Yarra River in Australia, in which the Birrarung Council was created by legislation to act on behalf of the river and advocate “for protection and preservation.” Ombudsman and specialist tribunals are established or tasked in some jurisdictions with investigating and addressing maladministration or rights violations. They have potential to play an important role in standard setting and accountability. However, examples from Bolivia and international civil society highlight risks where such agencies are not properly established or their competence is not recognized by governments.

**Local ordinances:** The United States and Brazil cases provide examples of local Rights of Nature ordinances and other actions by local authorities, as well as tribal and Indigenous jurisdictions and councils, in response to inaction or violations at state or federal level. While such measures often lack teeth, making them vulnerable to legal challenges or federal override, they may nonetheless hold moral and political force as part of a wider campaign. The mere fact of recognizing and proclaiming rights can help transform social and cultural values and raise the visibility of the Rights of Nature.

**Remedies and enforcement:** Remedies for violations of Rights of Nature may include both restitutive

and preventive measures. Alongside creation of new guardianship bodies, courts have ordered environmental action plans, demarcation of protected areas, data collection and studies, judicial oversight and monitoring, and awarded damages, rehabilitation and restoration. However, court decisions often face implementation challenges and are sometimes nullified by higher courts or executive orders. In many countries, the extensive influence of extractive industries over governments entails a significant risk that legislative or judicial gains will retain only symbolic value in the face of competing interests that favor exploitation. Enforcement may improve as Rights of Nature grows in prominence within political and judicial cultures. Civil society monitoring and advocacy, together with executive action, is needed to ensure progress.

**A grassroots and global movement:** The cases demonstrate the importance of collective action and a strong and committed movement of local communities, environmental activists, lawyers, and others in efforts that may eventually culminate in court decisions and legislation. The work of campaigners, artists, educators, and others has an equally vital role within this movement. Rights of Nature is emerging within a new generation of ecocentric laws that provide the basis for a different kind of legal system. As decisions and laws continue to grow and expand, and as others join the movement, Rights of Nature offers a pathway towards new forms of governance and co-existence rooted in principles of respect for and harmony with nature.



*Watercrafts on river. Photo courtesy of Jeremy Bishop.*



# Glossary

**ACCIÓN DE TUTELA:** A feature of Colombian law which allows cases to be brought where fundamental constitutional rights have been breached. An acción de tutela (or tutela action) is an order issued by a court which requires a person's constitutional rights to be respected. It is similar to the Mexican amparo action. Although a tutela action is not considered the proper lawsuit for violation of collective rights (those held by groups rather than individuals), the Colombian Constitutional Court has allowed tutela actions to be brought in cases involving the right to a healthy environment or the rights of rivers. *See also: popular action; protective action; protective measures; public civil action.*

**ANTHROPOCENTRIC:** An anthropocentric worldview is one which regards human beings as the most important elements of existence. In law, an anthropocentric framework often means recognizing human beings as the only beings who can hold rights and have legal personhood: In an anthropocentric worldview, animals and nature do not have rights. *See also: legal personhood; ecocentric; biocentric.*

**BIOCENTRIC:** A biocentric worldview considers human beings to be on the same level as other living things. This is different to an *anthropocentric* worldview (which places human beings on the highest level); and an *ecocentric* worldview (which places the natural world, including non-living things, at the highest level). *See also: anthropocentric; ecocentric.*

**BIOCULTURAL RIGHTS:** A term used by the Colombian Supreme Court in the *Atrato River* case to refer to the rights of communities to autonomously manage their territories and natural resources. The concept recognizes that many communities, and particularly Indigenous communities, develop their own culture and traditions in response to the environment. *See also: Indigenous customary law.*

**ECOCENTRIC:** A worldview that considers all features of the natural world—including nonliving things—to be of equal importance. This is different to an *anthropocentric* worldview (which places humans at the center), and a *biocentric* worldview (which considers humans and other living things to be worth the same). *See also: anthropocentric; biocentric.*

**INDIGENOUS CUSTOMARY LAW:** “Customary law” is a phrase used to describe legal systems and obligations which arise from practice, rather than from formal written laws. Customary law is found in many legal cultures (for example, international customary law), including Indigenous nonwestern legal cultures. Many Indigenous groups are governed by customary law. For example, in Aotearoa/New Zealand, Māori are governed by a system of customary law called tikanga Māori.

**LEGAL PERSONHOOD (OR LEGAL PERSONALITY):** A *legal* person is an entity which can sue and be sued, own property, and enter into contracts. This includes *natural* persons (human beings), but it also includes entities such as companies and ships. In many cases discussed in this report, nature has been recognized as a legal person.

**MOTHER EARTH/PACHA MAMA:** Many traditional cultures have recognized the earth as a giver of sustenance and life. In some cultures, this recognition has been personified as a literal or metaphorical deity, often depicted as a mother. In Andean culture, for example, the earth has been recognized as the living being Pacha Mama or Mother Earth. Pacha Mama is now recognized in Bolivian law and the Constitution of Ecuador. *See also: Sumak Kawsay.*

**POPULAR ACTION:** A feature of Colombian law which allows groups to bring court cases where they allege that their collective constitutional rights have been breached. *See also: acción de tutela; protection action; protective measures; public civil action.*



Two canoes filled with flowers.  
Photo courtesy of Quang Nguyen Vinh (Pexels).

**PROCEDURAL RIGHTS:** The entitlements that a person has to a certain *process*. A procedural right could include the right to a fair hearing in a court; access to information; or a right to participate in a decision-making process. Unlike substantive rights, procedural rights do not guarantee any *outcomes*. In the United States, procedural rights are sometimes referred to as “procedural due process.” See also: *substantive rights; standing; personhood*.

**PROTECTION ACTION:** A feature of Ecuadorian law which allows people to bring court cases to receive remedies for violations of constitutional rights. See also: *acción de tutela; popular action; protective measures; public civil action*.

**PROTECTIVE MEASURES:** A judicial tool used to protect the Rights of Nature and associated rights. Protective measures may include injunctions (such as orders to stop harmful activities), but can also include other remedies (such as compensation). Examples of protective measures include the tutela action and popular action in Colombia, public civil action in Brazil, and protection action in Ecuador. See also: *acción de tutela; popular action; protection action; public civil action*.

**PUBLIC CIVIL ACTION:** A feature of Brazilian law that allows the protection of public and social assets, the environment, and other collective and indivisible interests. See also: *acción de tutela; popular action; protection action; protective measures*.

**REMEDIES:** An order or award from a court which recognizes or enforces a legal right. Common forms of remedies include damages (an award of money); coercive orders or injunctions (orders requiring or prohibiting someone from doing something); or a declaration (publicly recognizing the rights of a person).

**RIGHTS OF NATURE:** A term used to describe rights held by natural features such as rivers, forests, animals,

and ecosystems. In most cases where Rights of Nature have been found to exist, they have included *procedural* rights such as *legal personhood* and *standing*; and substantive rights, such as the right to be left free of pollution. See also: *legal personhood; standing; procedural rights; substantive rights*.

**STANDING:** The ability to bring a lawsuit to court. In other words, courts will only hear cases brought by legal persons who the court recognizes as having standing. In some countries, such as the United States, standing has strict requirements: For example, a person must have suffered an injury, caused by the defendant and which the court is capable of resolving. See also: *legal personhood*.

**SUBSTANTIVE RIGHTS:** The entitlements that a person has to certain outcomes. For example, under many human rights treaties a person has the right not to be tortured, or has the right to a certain standard of healthcare services. Unlike procedural rights, substantive rights relate to an outcome: They do not affect a process that might lead to that outcome. Often it will be necessary to have procedural rights in order to secure substantive outcomes (for example, it might be necessary to take a case to court in order to be released from prison). See also: *procedural rights*.

**SUJETO DE DERECHOS:** The Spanish term for legal subject (literal translation) or *legal person*. A legal subject has legal personhood and rights according to the rules defined in each jurisdiction. In the Rights of Nature jurisprudence, legal personhood is acquired by law, either through a legislative act or judicial order. See also: *legal personhood; Rights of Nature*.

**SUMAK KAWSAY:** Literally means “living well” or “good living.” It defines a way of life that embraces harmony between communities, peoples, and nature. Sumak Kawsay is an important concept in many Andean cultures, and has been recognized by the Constitution of Ecuador. See also: *Mother Earth/Pacha Mama*

# 1. Introduction

The natural environment has traditionally been the subject of a legal regime of property-based ownership. Under this regime, environmental phenomena lack legal identity and agency, and a human owner has the right to modify natural features or destroy them at will.<sup>14</sup> Recent developments in several jurisdictions (and at the international level) have disrupted this regime by developing Rights of Nature. These are not rights conferred by human beings, but instead a recognition of rights that have always existed.<sup>15</sup> Although conceptions of these rights vary, they all broadly maintain that natural phenomena “have an independent and inalienable right to exist and flourish ... to being recognized as rights-bearing entities. As such, they have rights that can be enforced by people, governments, and communities on behalf of nature.”<sup>16</sup> In practice, Rights of Nature create duties for humans to act as guardians on behalf of the “non-human world.”<sup>17</sup>

There is a growing movement to recognize Rights of Nature in domestic and international law.<sup>18</sup> This report begins by outlining the philosophical foundations of this Rights of Nature movement. It then charts the products of those efforts, surveying United Nations resolutions, as well as constitutional amendments, legislative enactments, and judicial decisions across Oceania (Aotearoa/New Zealand and Australia); South America (Bolivia, Brazil, Colombia, and Ecuador); Asia (India, Bangladesh and the Philippines), North and Central America (the United States, Costa Rica, and Mexico), and Africa (Uganda). Rivers have become a central focus for Rights of Nature and are the subject of many of the case studies in this report.

The report surveys the success or otherwise of these cases. While there have been some important successes—particularly in Latin America and Aotearoa/New Zealand—the legal recognition of Rights of Nature remains novel, and it is yet to be seen what impact it will have in practice.<sup>19</sup>

In preparing this report, we have sought to compile the most comprehensive and current information about the application of Rights of Nature. However, the movement is fast-evolving and internationally dispersed. We cannot guarantee that this report accounts for every major development in the Rights of Nature movement—and we expect (and hope) that new developments mean it is not current for long. The global character of the Rights of Nature movement means that many of the sources consulted are not written in English. Where this is the case, we have relied on a mix of bilingual authors, official and unofficial translations, automatic translation services, and news reports to analyze the materials. Where possible, we have included original foreign language versions of quotations in footnotes.

## 2.

# Rights of Nature: Philosophical Foundations

**The Rights of Nature movement has its origins in two sources: customary Indigenous jurisprudence, which emphasizes the living and indivisible qualities of nature; and more recently developed Western theoretical conceptions, linked explicitly to substantive and procedural jurisprudential doctrines.**

Concepts akin to the Rights of Nature have long featured in many systems of Indigenous customary law.<sup>20</sup> Many Indigenous communities recognize natural phenomena as subjects with legal personhood deserving of protection and respect, rather than commodities over which property rights can be exercised.<sup>21</sup> Such systems often identify humans as part of a larger, indivisible natural order rather than masters over it. In these models, human beings are subsumed by the natural environment and owe duties towards it.<sup>22</sup> For example, the Aotearoa/New Zealand Māori<sup>23</sup> concept of *kaitiakitanga* emphasizes stewardship rather than ownership over natural resources,<sup>24</sup> while the South American Kichwan notion of Sumac Kawsay conceives of a harmonious relationship with nature as essential to leading a good life.<sup>25</sup> The widely held notion of Mother Earth/Pacha Mama evokes the idea of nature as having legal personhood and rights.<sup>26</sup> Indigenous legal systems provide an important precedent for the development of the international Rights of Nature movement, and Indigenous groups are prominent within the movement. For example, the enshrinement of Rights of Nature in both the Ecuadorian Constitution and Aotearoa/New Zealand statute (discussed below) reflects Indigenous traditions and was driven by Indigenous advocacy.<sup>27</sup>

Within Western property systems, the modern Rights of Nature movement is often traced to a 1972 article,

*Should Trees Have Standing?* by Professor Christopher Stone.<sup>28</sup> The starting point of Stone's analysis is that it is no more absurd for nature to have rights than for any other routinely recognized nonhuman legal persons, such as ships or corporations.<sup>29</sup> For Stone, the need for such a right was clear: In the absence of at least a procedural right of standing, neither environmental groups nor nature itself could defend itself in court. Stone argued that the right should incorporate due process and planning rights found in existing environmental protection law,<sup>30</sup> as well as substantive rights to protection against irreparable damage.<sup>31</sup> Procedurally, Stone argued that a Right of Nature must be more than symbolic. Instead, it must include powers to bring legal proceedings, collect relief for injury, and have that relief applied for nature's benefit.<sup>32</sup> Stone thus conceived of the Right of Nature as incorporating a right of standing, to be exercised by a "friend of the natural object through an application for guardianship. The friend could then collect relief for the injury incurred by nature as a result of human activity".<sup>33</sup>

Stone's conception of a Right of Nature as a right for others to litigate on its behalf has been influential in the United States and abroad. His 1972 article was cited with approval by Justice William O. Douglas in the United States Supreme Court, dissenting in the case of *Sierra Club v. Morton*.<sup>34</sup> His ideas were further developed by the environmental historian Roderick Nash in a 1989 book, *The Rights of Nature: A History of Environmental Ethics*.<sup>35</sup> Drawing heavily on parallels to the antislavery movement, Nash maintained that Rights of Nature were the logical extension of a gradual movement to extend the scope of natural rights within humankind, and then to nonhuman phenomena.<sup>36</sup> For Nash, Rights of Nature are the inevitable culmination of the rights project.

Other scholars have developed different theoretical explanations. For example, Leimbacher adopts a utilitarian approach, arguing that Rights of Nature are necessary to avoid global environmental catastrophe.<sup>37</sup> Klaus Bosselmann's influential 1992 work argued for a complete redesign of the state to recognize equivalence between human and natural rights, shifting away from the anthropocentric Nature of law and providing a radical alternative to Stone's more modest argument.<sup>38</sup> Some constitutional theorists have argued that Rights of Nature are necessary in order to preserve conditions to allow future generations to participate in the constitutional project.<sup>39</sup> There is now a well-developed body of scholarship promoting Rights of Nature via a range of philosophical justifications.

# 3.

## Rights of Nature in Practice: The International Level

### 3.1 Rights of Nature in the United Nations System

Although no formal Rights of Nature exist at the level of international law, there is growing acknowledgment of such rights within the United Nations (UN) system. Since 1992, resolutions of the United Nations General Assembly (UNGA) have regularly acknowledged these rights. This process began with the adoption of the Rio Declaration on Environment and Development (“Rio Declaration”),<sup>40</sup> Principle 1 of which provides that “Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in *harmony with nature*.”<sup>41</sup>

**This paradigm of ‘harmony with nature’ as a condition of human development has been the touchstone for international recognition of the Rights of Nature.”**

This paradigm of “harmony with nature” as a condition of human development has been the touchstone for international recognition of the Rights of Nature. Under the “harmony with nature” framework, the UNGA in 2009 proclaimed April 22 “International Mother Earth Day,” and in August of that year the first Report of the Secretary-General on Harmony with Nature was released.<sup>42</sup> This acknowledgment of “Mother Earth” gives some recognition to the Rights of Nature movement: Although largely symbolic, it provides a metaphorical basis to conceive of nature as having legal personhood, and refers to some

Indigenous legal traditions. The 2009 proclamation has been followed by many reports of the Secretary-General; annual “interactive dialogues” (since 2011);<sup>43</sup> and nine further UNGA resolutions promoting the development of “harmony with Nature”. Several of these UNGA resolutions have included recognition that “some countries recognize the Rights of Nature in the context of the promotion of sustainable development” and make reference to the value of Indigenous environmental approaches.<sup>44</sup> Similarly, the preamble to the 2015 Paris Climate Agreement<sup>45</sup> notes “the protection of biodiversity recognized by some cultures as Mother Earth.”<sup>46</sup>

In 2012, the UN Conference on Sustainable Development (“Rio+20”) produced a political outcome document entitled “The Future We Want,” which was adopted by a resolution of the UNGA.<sup>47</sup> That document reaffirmed the acknowledgment of Rights of Nature at the international level, by acknowledging that “the Earth and its ecosystems are our home and that ‘Mother Earth’ is a common expression in a number of countries and regions, and we note that some countries recognize the Rights of Nature in the context of the promotion of sustainable development.”<sup>48</sup> In sum, although Rights of Nature have not been formally enshrined in international law, they are increasingly recognized and influential in international agreements and UNGA resolutions.

### 3.2 International Rights of Nature Tribunal

The International Rights of Nature Tribunal (IRNT) is a civil society initiative, created in 2014 by the Global Alliance for the Rights of Nature.<sup>49</sup> It followed on from the Universal Declaration of the Rights of Mother Earth, which was passed at a conference attended by thousands of civil society delegates from around the world.<sup>50</sup> Although the tribunal does not have legal authority, it issues recommendations to improve protection of the rights of Nature.

The tribunal has met for five sessions since its creation: 2014 (in Quito and Lima); 2015 (in Paris); 2017 (in Bonn) and 2019 (in Chile). The next tribunal will occur in Marseille, France in 2021 with a focus on aquatic ecosystems. In addition to the five international sessions of the IRNT, “Regional Chambers” have conducted their own independent hearings, and in 2016 a Permanent Regional Tribunal was created in Australia.

One of the IRNT's most significant decisions related to the Territorio Indígena y Parque Nacional Isiboro Secure (TIPNIS), a region of Bolivia.<sup>51</sup> The Bolivian government intended to construct a road through a protected national park, impacting the park environment and local Indigenous communities. In a 2019 decision, the tribunal found that the authorizing legislation (Law No. 969 of 2017) lacked adequate consultation with Indigenous peoples, and was consequently invalid.<sup>52</sup> The court analyzed the rights of Indigenous people protected by the Bolivian Constitution, as well as Bolivian Rights of Nature legislation (see section 4.2.1) and Supreme Court jurisprudence. The tribunal requested the Bolivian Government to immediately halt construction of the TIPNIS road.

The Bolivian government appears unlikely to comply with the IRNT's decision. The Bolivian Minister of State, Dr. Carlos Romero Bonifaz, has rejected the authority of the IRNT, and instead has defended Bolivia's national efforts in recognizing the Rights of Nature and Indigenous peoples.<sup>53</sup>



WENATCHEE, UNITED STATES | *Bird perched on wood.*  
Photo courtesy of Franke Cone (Pexels)

## 4.

# Rights of Nature In Practice: Domestic Case Studies

At the domestic level, Rights of Nature have been enshrined in constitutional amendments; treaty settlements; national, state and local level legislation; and judicial rulings. This section explores the development of these initiatives across several country case studies and provides a brief assessment of their effectiveness. It should be noted that the Rights of Nature movement is in its infancy, and any comprehensive assessment of its success would be premature.

Two observations, however, deserve mention. First, it is clear that Rights of Nature is now a truly transnational jurisprudence.<sup>54</sup> Not only is it a global phenomenon, but its ideas travel across international and domestic law, and between the domestic laws of different countries. Countries as diverse as Aotearoa/New Zealand, Bangladesh, Colombia, and Uganda have cited one another's jurisprudence in passing laws and deciding cases which enshrine environmental rights.

Secondly, it appears that the character of Rights of Nature remedies is coalescing, particularly in cases of court-ordered remedies. Following the model established in Aotearoa/New Zealand and developed in Colombia, remedies typically involve the creation of a body which exercises rights and duties of guardianship over particular natural phenomena—such as rivers, forests, or entire ecosystems. In many cases, guardianship bodies are advised by expert advisory groups, and are required to regularly report on their progress (either to the public or to a court exercising supervisory jurisdiction).

A partial catalogue of many of these developments can be found online at [the website of the UN's Harmony with Nature initiative](#).

## 4.1. Oceania

Aotearoa/New Zealand has been a pioneer in the Rights of Nature movement, with extensive legislative reforms encoding traditional Māori legal values into statutory law. In Australia success has been more modest, although traces of a Rights of Nature approach can be found in measures to protect the Yarra River.



## 4.1.1 Aotearoa/New Zealand

In Aotearoa/New Zealand, Rights of Nature are framed as rights of legal personhood, which are vested in a particular representative body (with strong input from Indigenous Māori communities). As is the case in South America, Aotearoa/New Zealand Rights of Nature jurisprudence draws heavily on Indigenous concepts, particularly the notion of *kaitiakitanga* (guardianship; that humans are stewards, and not owners, of the natural environment). *Kaitiakitanga* was first enshrined as a principle of Aotearoa/New Zealand law in 1990, with the passage of section 7(a) of the Resource Management Act.

Rights of Nature in Aotearoa/New Zealand have been primarily advanced through legislation rather than judicial decisions. Typically, such legislation is the product of a negotiation between the Aotearoa/New Zealand government and Māori iwi (tribes) resolving historic breaches of the Treaty of Waitangi, Aotearoa/New Zealand's founding document. This has resulted in the recognition of the legal personhood of a national park (Te Urewera Act 2014), a river (Te Awa Tupua/Whanganui River Settlement Act 2017), and pending legislation to recognize legal personhood in a mountain (Mt. Taranaki).

### (a) Te Urewera Act 2014 (Urewera Ecosystem)

As part of a negotiated settlement with the Tūhoe iwi, the Aotearoa/New Zealand Parliament enacted the Te Urewera Act in 2014. The act converts Te Urewera National Park, formerly owned and administered by Aotearoa/New Zealand government agencies, into a legal entity with distinct "rights, powers, duties, and liabilities of a legal person."<sup>55</sup> However, unlike the broad-ranging provisions found in Bolivian and Ecuadorian legislation (which allow any person to act on nature's behalf), the Te Urewera Act vests those responsibilities in the Te Urewera Board, which is in turn guided by principles of biodiversity, public use and enjoyment, and traditional concepts of Tūhoe tikanga (law) and environmental governance. The Te Urewera Board is responsible for acting "on behalf of, and in the name of, Te Urewera." Members of the Board are appointed by Tūhoe and the government; since 2017, the majority of appointees have been Tūhoe-appointed. The Act therefore ties Te Urewera's *rights* to stewardship *duties* by the tangata whenua, the Indigenous groups with the closest ties to the land.

### (b) Te Awa Tupua Act 2017 (Whanganui River)

Following on from the Te Urewera model, and as part of its settlement with a collective of several Whanganui iwi, the Aotearoa/New Zealand Parliament enacted the Te Awa Tupua (Whanganui River Claims Settlement) Act in 2017. The settlement concerns the Whanganui River, Aotearoa/New Zealand's third longest river. Since the mid-1850s, the local Whanganui iwi had challenged the colonial government's impact on the well-being of the river and have fought to have their rights and relationship with the river recognized. Importantly, the Whanganui iwi have long recognized the river as an indivisible whole and have opposed the property-based system of parceling adjoining land for private ownership.<sup>56</sup>

Initial negotiations between the government and the Whanganui River Māori Trust Board (representing the iwi) took place between 2002 and 2004, with no result. Negotiations resumed in 2009, at a time when the Rights of Nature movement was gaining traction at the United Nations and across South American (see above). In 2011, a Record of Understanding was reached which committed the government to granting recognition of the Whanganui River's legal personhood. This was followed by a 2012 agreement which set out key elements of the Te Awa Tupua framework.

"Te Awa Tupua" (literally, "the supernatural river") is a concept which embraces the spiritual aspects of the river and the intrinsic relationship between the river and the tangata whenua (local Indigenous guardians). It includes the indivisible river system, "from the mountains to the sea and all its tributaries and ecosystems."

Following on from its commitments made in negotiations, the Aotearoa/New Zealand Parliament enacted the Te Awa Tupua Act in 2017. The act declares that "Te Awa Tupua is a legal person and has all the rights, powers, duties, and liabilities of a legal person." However, like the Te Urewera Act of 2014, this does not give all persons a right to sue on its behalf. Instead, the act creates an entity, Te Pou Tupua, to act on Te Awa Tupua's behalf. Te Pou Tupua comprises one nominee of tangata whenua, and one government nominee, and has "full capacity and all the powers reasonably necessary to achieve its purpose."

The effect of Te Awa Tupua is limited. It does not restrict any existing private property rights, or ownership interests in water or wildlife. However, the 2017 act does transfer all government-owned land on

the bed of the Whanganui River to the management of Te Pou Tupua, which acts as landowner “to act and speak for and on behalf of Te Awa Tupua.” It is to be guided by Tupua te Kawa, “values that represent the essence of Te Awa Tupua,” which include the river as a source of spiritual and physical sustenance, the indivisible living nature of the river, its connection with Indigenous people, and the multiplicity of local communities.

### **(c) Mount Taranaki Record of Settlement**

In December 2017, the Aotearoa/New Zealand government reached an agreement with several iwi as part of its settlement negotiations concerning Mount Taranaki and its surrounding ranges. The record states that the settlement incorporates “the Ngā Iwi o Taranaki [local tribes’] view of Ngā Maunga [the mountains] as a living being, which ... is a living, indivisible whole incorporating the peaks ... [and] encompasses all of the physical and metaphysical elements of Ngā Maunga from the peaks through to all of the surrounding environs.” The record commits the government to repealing the existing statute which vests the mountain as government land, declaring the mountain to have legal personhood and a set of values, and transferring all government-owned land to the mountain’s legal person, overseen by a joint governance entity. The agreement records that the governance entity will “act and speak on behalf of Ngā Maunga as its representative,” and have standing before planning boards, courts, and tribunals.

### **(d) Aotearoa/New Zealand: An Evaluation**

Legislative developments in Aotearoa/New Zealand have garnered a significant level of international attention, including a citation by constitutional courts in Colombia and India. However, the Te Urewera Act 2014 and Te Awa Tupua Act 2017 have rarely been invoked in Aotearoa/New Zealand courts or political debates. This likely suggests that the implementation of the statutes has been uncontroversial, and that the bodies set up to represent these new natural persons have not encountered any significant difficulties. Given the recent establishment of these regimes, it would be premature to assess whether they have produced meaningful changes in the protection of nature: Given the complexity of the issues associated with river management, any impact will likely take several years.<sup>57</sup>

## **4.1.2 Australia**

Australian law has not recognized the Rights of Nature. However, recently enacted measures to protect the Yarra River in the State of Victoria incorporate several components of Rights of Nature philosophy. In particular, the measures create a statutory body to act on the river’s behalf and recognize the importance of Indigenous involvement in the river’s governance.

### **(a) Yarra Protection (Wilip-gin Birrarung murrn) Act 2017**

The Yarra River, which flows through Melbourne, was a traditional source of food and transport for Aboriginal groups.<sup>58</sup> In recent years, however, the river has been affected by significant levels of pollution.<sup>59</sup> In response to this environmental degradation, the government of the State of Victoria enacted the Yarra River Protection (Wilip-gin Birrarung murrn) Act of 2017.<sup>60</sup>

Although the act does not recognize the river as possessing distinct legal personality, it incorporates many features of the explicitly self-defined Rights of Nature regimes (such as the Aotearoa/New Zealand Awa Tupua regime). Section 1(a) of the act declares the river to be “one living and integrated natural entity.”<sup>61</sup> The act creates a new entity, the Birrarung Council, to act on behalf of the river and advocate “for protection and preservation.”<sup>62</sup> Furthermore, the first “general principle” of the act is that “[p]roposed development and decision-making should be based on the effective integration of environmental, social and cultural considerations in order to improve public health and well-being and environmental benefit.”<sup>63</sup> The act recognizes the intrinsic connection between the river and local communities, particularly the local Indigenous owners who are recognized as “custodians” of the river.<sup>64</sup>

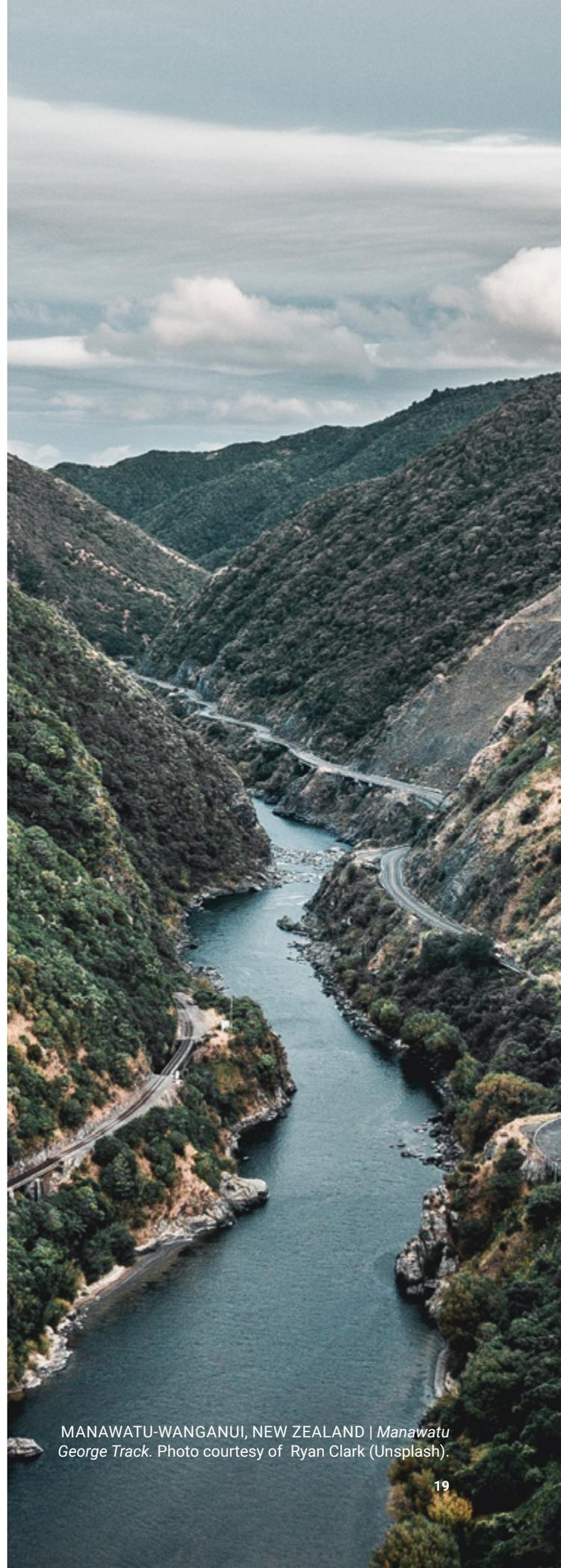
Indigenous media commentators have noted that the act combines traditional custodial knowledge with modern river management expertise under a rubric of an “integrated natural entity.”<sup>65</sup> Thus, “although the new law will not give the Yarra River full legal personhood, it does enshrine a voice for traditional owners in the river’s management and protection—a voice that has been unheard for too long.”<sup>66</sup>

## (b) The Yarra Strategic Plan

Part 4 of the act mandates the creation of a Yarra Strategic Plan (“plan”). Before creating a plan, the responsible government agency is required to develop a “long-term community vision document,” outlining a 50-year vision which reflects the “unique characteristics of Yarra River land,” as well as “community values.”<sup>67</sup> The act also establishes duties of transparency and consultation in the creation of the plan.<sup>68</sup>

In 2017, the Victorian state government appointed Melbourne Water, a statutory body responsible for the protection of city resources, as the agency responsible for developing the plan.<sup>69</sup> The plan was issued later that year, and is guided by five objectives: (1) a healthy river; (2) protection of the alluvial Great Yarra Parklands; (3) recognition of the culturally diverse riverscape; (4) securing the “Yarra footprint”; and (5) modern governance.<sup>70</sup>

Melbourne Water is independent of the Birrarung Council. This independence allows the Birrarung Council to act as an unconstrained advocate for the river. In doing so, the Yarra River protection regime comes close to granting the river rights to independent representation and guardianship, similar to those adopted through explicit Rights of Nature measures (such as those in Aotearoa/New Zealand).



MANAWATU-WANGANUI, NEW ZEALAND | *Manawatu George Track*. Photo courtesy of Ryan Clark (Unsplash).

## 4.2.

# South America

South America—and in particular, Bolivia, Colombia, and Ecuador—has been a major focus of the Rights of Nature movement. Inspired and often led by Indigenous movements, Rights of Nature have been enshrined in national constitutions (Ecuador) and legislation (Bolivia), as well as the subject of extensive litigation and protective measures (Brazil and Colombia). It remains an open question, however, whether these successes at the level of formal law will be translated into concrete environmental improvements.

## 4.2.1 Bolivia

Bolivia has been a lead state actor in the Rights of Nature movement at the international level. The Bolivian government led negotiations which resulted in the 2009 Proclamation, and has since contributed both diplomatic energy and funding to the development of the Harmony with Nature program at the UN.<sup>71</sup> As with many other South American and postcolonial states, Bolivian Rights of Nature measures find their conceptual grounding in Indigenous Kwecha jurisprudence, and particularly the concepts of Pacha Mama (Mother Earth) and Sumac Kawsay (Living Well). Furthermore, Rights of Nature in Bolivia are viewed as encoding socialist alternatives to capitalism.

This report summarizes two legislative developments in Bolivia, including the 2010 Law on the Rights of Mother Earth, the 2012 Framework Law on Mother Earth and the Holistic Development for Living Well.

### **(a) 2010 Law on the Rights of Mother Earth (Ley (Corta) de Derechos de Madre Tierra)**

Bolivia enacted its first Rights of Nature statute in 2010. The Law of the Rights of Mother Earth, Law 71 of 2010, art. 3, states that Pacha Mama/Mother Earth is a dynamic living system with legal personality, comprising an indivisible community of all living things and organisms. Specifically, it states that:

Mother Earth is the dynamic living system formed by the indivisible community of all life systems and living beings, interrelated, interdependent and complementary, that share a common destiny. Mother Earth is considered sacred, according to the worldviews/cosmovisions of nations and Indigenous original peoples and peasant communities.<sup>72</sup>

Article 7 of the law establishes that the rights of Mother Earth include rights to life, diversity of life, water, clean air, equilibrium, restoration, and pollution-free living.<sup>73</sup>

Articles 5-6 of the law set out the practical dimensions of Mother Earth's rights. Article 5 establishes that "[f]or the purpose of protecting and enforcing its rights, Mother Earth takes on the character of collective public interest", and that consequently "all its components, including human communities, are entitled" to claim Mother Earth's rights.<sup>74</sup> Article 6 confirms that all Bolivians may exercise rights under the act, and that the collective Mother Earth's rights contained in Article

7 may limit individual rights.<sup>75</sup> Thus, any Bolivian may bring an action on nature's behalf. The law imposes a duty on the State, at all levels of government, to develop public policies and "systematic actions of prevention, early warning, protection, and precaution in order to prevent human activities causing the extinction of living populations, the alteration of the cycles and processes that ensure life, or the destruction of livelihoods, including cultural systems that are part of Mother Earth."<sup>76</sup>

**Mother Earth is the dynamic living system formed by the indivisible community of all life systems and living beings, interrelated, interdependent and complementary, that share a common destiny. Mother Earth is considered sacred, according to the worldviews/cosmovisions of nations and Indigenous original peoples and peasant communities."**

### **(b) 2012 Framework Law of Mother Earth and Holistic Development for Living Well (La Ley Marco de la Madre Tierra y Desarrollo Integral para Vivir Bien)**

Bolivia's 2010 law was followed in 2012 by the Framework Law of Mother Earth and Holistic Development for Living Well, Law 300 of 2012.<sup>77</sup> As the title suggests, the 2012 Law links the Rights of Nature to the further concepts of "holistic development" and "living well (Sumac Kawsay)". Article 1 states its purpose is to "establish holistic development and life systems of Mother Earth to regenerate, strengthening ancestral knowledge."<sup>78</sup> Living Well/Sumac Kawsay is further defined as "a civilizational and cultural alternative to capitalism based on the Indigenous worldview (cosmovision) ... [that] signifies living in complementarity, harmony and balance with Mother Earth and societies, in equality and solidarity and eliminating inequalities and forms of domination. It is to Live Well amongst each other, Live Well with our surroundings and Live Well with ourselves."<sup>79</sup> The 2012 Law thus reflects an approach inherited from Indigenous law that human flourishing depends on the Rights of Nature being upheld.

In addition to these high-level clauses, the 2012 law establishes enforcement rights enforcement mechanisms. Article 53 creates the Plurinational Authority of Mother Earth, responsible for setting policies on climate change. Significantly, art. 4.2 establishes an enforceable right to climate justice, which can be brought by victims of climate change who have been denied their right to “live well.” Article 48 sets out a process for the mapping of ecosystems, or “Life Zones,” with future planning decisions to be made on the basis of the commitment to Mother Earth.

### (c) Bolivia: An Evaluation

There have been few concrete applications of the Bolivian Rights of Nature statutes. We are not aware of any instances where Law 71 of 2010 has resulted in litigation or successful claims brought on nature’s behalf. However, the Bolivian approach has strong support from the central government, which has combined environmental stewardship with postcolonial rejection of traditional capitalism.<sup>80</sup> The legal measures in Bolivia, therefore, may be better characterized as a reflection rather than a cause of that country’s commitment to the Rights of Nature movement. Nevertheless, given the importance of extractive industries to the Bolivian economy, some skepticism has been expressed as to whether the Rights of Nature legislation will lead to concrete legal action.<sup>81</sup> Furthermore, even as Rights of Nature have been promoted in Bolivia, other environmental protections have been rolled back, and a planned Office for an Ombudsman for Rights of Nature has not been established.<sup>82</sup>

## 4.2.2 Colombia

The development of Rights of Nature in Colombia differs from the experience in Bolivia. Rather than being legislated for by politicians, Rights of Nature have instead been recognized by courts through strategic litigation. Rights have been recognized by both of Colombia’s apex courts: the Constitutional Court and the Supreme Court.

This report discusses several Colombian cases, beginning with the seminal *Atrato River Case* (decided by the Constitutional Court) and the *Amazon Rainforest*

case. These two cases developed the Rights of Nature framework, interpreted from Colombian and transnational legal sources. That approach has been followed in several subsequent cases, including the *Cauca River Case*, *Magdalena River Case*, and the *Coello Combeima and Cocora Rivers Case*. The Colombian decisions are marked by strong remedies, including the creation of new guardianship entities overseen by courts and with regular reporting requirements. Colombian environmental advocates have expressed hope that this hands-on framework will lead to concrete environmental improvements, especially to the quality of Colombia’s rivers.

### (a) Atrato River Case

#### BACKGROUND

The Constitutional Court of Colombia first recognized Rights of Nature in a case concerning the Atrato River, one of the largest rivers in the country, in 2017. Claimants alleged that the river—which is home to many Indigenous and Afro-American communities, as well as significant biodiversity—has experienced effects of pollution sustained as a result of extensive mining in the area.<sup>83</sup> The case was brought by a group of nongovernmental organizations who sought an *acción de tutela*, an action for the protection of constitutional rights. Because the text of the Colombian Constitution does not include rights to water or Rights of Nature, the claimants primarily argued that the pollution violated the constitutional rights to life, equality, and the healthy environment of the nearby communities,<sup>84</sup> and consequently sought an order that intensive mining activities be stopped.<sup>85</sup>

The case was dismissed by the local Administrative Court of Cundinamarca, which found it inadmissible under the *tutela* procedure on the ground that it raised issues of collective rather than individual rights.<sup>86</sup> The dismissal was upheld by the intermediate Supreme Administrative Court on the separate grounds that the community had failed to establish that there had been irreparable damage, and that the claimants had not exhausted all other remedies required under the principle of subsidiarity.<sup>87</sup>

## CONSTITUTIONAL COURT DECISION

The case was subsequently appealed to the Colombian Constitutional Court, where the claimants were successful. The case is notable for two reasons.

First, the Constitutional Court applied a broad-ranging interpretation of the rights in question, finding that the pollution threatened not only rights enumerated in the Constitution but also rights to “water, food security, the healthy environment, and the culture and the territory of the ethnic communities that inhabit the Atrato River basin.”<sup>88</sup> This expanded set of rights were implied not only by Colombia’s constitutional right to a healthy environment, but also as a necessary prerequisite to the constitutional right to life. In particular, the court found that the right to water was “a sine qua non requirement for the exercise of other rights.”<sup>89</sup> The court observed that the Colombian constitutional framework required it to give substantive, and not merely formal effect to its provisions, and imposed a duty on the state to secure (among other outcomes) the dignity, material equality, and well-being of its citizens.<sup>90</sup>

Secondly, and perhaps more radically, the court found that the rights violated were not only those of local communities, but also of the river itself—judicially recognized Rights of Nature. The court declared the Atrato River to be “sujeto de derechos,” an entity in its own right.<sup>91</sup> In making this finding, the court recognized a need to move away from an anthropocentric approach to constitutional law.<sup>92</sup> Instead, it found that constitutional environmental obligations go beyond the explicit text of constitutional provisions,<sup>93</sup> and “integrates, in an essential way, the spirit that informs all of the Constitution.”<sup>94</sup>

Consequently, it was incumbent on the court to take an ecocentric approach, one which:

... starts from a basic premise according to which the land does not belong to man and, on the contrary, assumes that man is the one who belongs to the earth, like any other species.”

According to this interpretation, the human species is just one more event in a long evolutionary chain that has lasted for billions of years and therefore is not in any way the owner of other species, biodiversity, or resources as well as the fate of the planet. Consequently, this theory conceives of nature as a real subject of rights that must be recognized by the States and exercised under the tutelage of their legal representatives, for example, by the communities that inhabit it or that have a special relationship with it.<sup>95</sup>

**This theory conceives of nature as a real subject of rights that must be recognized by the States and exercised under the tutelage of their legal representatives, for example, by the communities that inhabit it or that have a special relationship with it.”**

The court concluded that recognizing Rights of Nature was the most effective legal expression of an ecocentric approach. Such an approach placed natural phenomena on an equal footing with humans, and “[o]nly from an attitude of deep respect and humility with Nature, its members and its culture is it possible to enter into a relationship with them in fair and equitable terms, leaving aside any concept that is limited to what is simply utilitarian, economic or efficient.”<sup>96</sup> Such an approach was demanded by the constitutional “precautionary principle,” which had the effect of making Colombia’s constitution an “ecological constitution.”<sup>97</sup>

Furthermore, the court found support for its finding in the South American constitutional model of “plurinationalism”: The recognition of indivisible legal personality for nature could be found in Indigenous custom.<sup>98</sup> The court recognized the close relationship between Rights of Nature, and the rights of local and Indigenous communities. Such a relationship rests on diverse cultural practice linked to local ecosystems; the responses of human beings to environmental changes; ancestral practices which contribute to biodiversity; spiritual and cultural meanings of biodiversity; and the observation that protection of culture can enhance the conservation of nature.<sup>99</sup> The court consequently adopted what it described as “biocultural rights,” reflecting “the relationship of profound unity between nature and the human species.”<sup>100</sup>

Applying this approach to the case of the Atrato River, the court accepted factual evidence that mining had had a disastrous impact on the river ecosystem and surrounding land.<sup>101</sup> The court concluded that “the defendant state authorities are responsible for the violation of the fundamental rights to life, to health, to water, to food security, to the healthy environment, and to culture and to the territory of the claimant ethnic communities for their omission to not take effective actions to stop the development of illegal mining activities.”<sup>102</sup>

## REMEDIES AND COMPLIANCE

On the question of remedies, the court criticized the government's environmental management of the river as lacking in coordination.<sup>103</sup> In addition to declaring a breach of fundamental rights,<sup>104</sup> the court ordered the state authorities to "adopt holistic approaches to conservation that take into account the profound relationship between biological and cultural diversity," recognizing the "biocultural rights" framework which flowed from the Atrato River's legal personality.<sup>105</sup> Consequently, the court declared that "the Atrato River is subject to rights that imply its protection, conservation, maintenance, and in this specific case, restoration."<sup>106</sup> Citing the Aotearoa/New Zealand Te Awa Tupua model, the court ordered the creation of a body to exercise legal guardianship over the river, comprising representatives from both government and local communities.<sup>107</sup> Furthermore, the court ordered the government and local communities to form a Commission of River Atrato Guardians to implement the ruling and develop an appropriate institutional response to the court's findings, and ordered that the Commission be advised by civil society and a panel of experts.<sup>108</sup> The court gave orders requiring state authorities to: develop a plan to decontaminate the waterways; end illegal mining; create a plan for the recovery of traditional food production by river communities; carry out toxicology and epidemiological studies of the river; create a set of environmental indicators; and provide semi-annual compliance reports to the court.<sup>109</sup>

Early developments indicated that Colombian authorities have substantially complied with the Constitutional Court's decision. In May 2018, the Ministry of the Environment created the Commission of River Atrato Guardians, with representation from both the Ministry and local communities.<sup>110</sup> The Commission has been charged with overseeing compliance with the court's orders.<sup>111</sup> However, there remain significant challenges in operation, due to a lack of funding for guardianship bodies and to disagreements between the different groups represented on guardianship bodies.<sup>112</sup>

Furthermore, the Ministry of the Environment, together with local representatives of local government, has met the Constitutional Court's requirements to provide regular reports on compliance with the court's orders.<sup>113</sup> These reports detail mining prohibitions, bans on the use of mercury, projects for recovery of degraded areas and the development of various action plans to restore the Atrato River ecosystems and its human communities.<sup>114</sup>

## (b) Amazon Rainforest Case

### SUPREME COURT DECISION

In April 2018, the Supreme Court of Colombia—Colombia's highest non-constitutional court—applied the Constitutional Court's jurisprudence to the protection of the Amazon rainforest ecosystem.<sup>115</sup> The case was brought by a group of children who argued that over the course of their lifetimes their health would be impacted by rising temperatures resulting from climate change.<sup>116</sup> They argued that the Colombian government had committed itself to a program of combating climate change by reducing deforestation through a mix of national enforcement and international commitments (and in particular the Paris Accords), and that these commitments required judicial enforcement.<sup>117</sup> The claimants sought an order from the court requiring the government to prevent deforestation of the Amazon rainforest.

As with the Constitutional Court in the *Atrato River* case, the Supreme Court allowed the claim to proceed even though it was grounded primarily in collective, rather than individual, rights. The court found that the right to a healthy environment was so fundamental that individual rights (including rights to life, health, liberty, and human dignity) were contingent upon it.<sup>118</sup> The Supreme Court also followed the Constitutional Court in recognizing a fundamental right to water.<sup>119</sup> The court therefore allowed the claim to proceed as a tutela action.<sup>120</sup>

On the substantive questions, the Supreme Court cited the Constitutional Court's finding that the Colombian Constitution needed to be interpreted according to an "ecocentric" framework.<sup>121</sup> The court took this approach one step further, concluding that the rights contained in the Colombian Constitution were also owed as duties to future generations.<sup>122</sup> Like the Constitutional Court, the Supreme Court considered the Rights of Nature to be a natural extension of the ecocentric framework. Such an approach framed human beings as part of natural ecosystems, linked together with the natural environment and future generations. Because human beings and the natural environment are morally indistinguishable, they must be endowed with similar rights.<sup>123</sup>

The court then canvassed Colombia's various international and domestic environmental rights commitments.<sup>124</sup> The court found Colombia's constitutional guarantees, as interpreted by the Constitutional Court in the *Atrato River* case, to form

an “ecological constitution.”<sup>125</sup> The court accepted, as a factual matter, that deforestation of the Amazon contributes to environmental degradation and climate change. It further found that the Colombian state authorities had failed to combat deforestation, thus violating constitutional guarantees to future generations, and to the environment itself as an entity in its own right.<sup>126</sup> The court formally recognized the Amazon rainforest as a “sujeto de derechos,” an entity in its own right, as “a holder of rights to protection, conservation, maintenance and restoration by the State and the territorial entities that comprise it.”<sup>127</sup>

## REMEDIES AND COMPLIANCE

Following on from these findings, the Supreme Court issued five orders:<sup>128</sup>

1. That the government, together with the affected communities, formulate short-, medium-, and long-term plans of action to curb the rate of deforestation in the Amazon rainforest, to be presented within four months;
2. That the government, together with the affected communities, develop an “intergenerational pact,” including measures aimed at reducing deforestation and greenhouse gas emissions to zero, as well as national, regional and local execution strategies, to be formulated within five months;
3. That each of the municipalities of the Colombian Amazon update and implement Land Management Plans within a period of five months, to include plans of action to reduce deforestation within their territories;
4. That the government departments responsible for sustainable development develop action plans to prevent deforestation, to be formulated within five months; and,
5. That within 48 hours of the judgment, the government must intensify its enforcement measures to prevent deforestation.

The parties subject to the Supreme Court’s orders took initial steps toward compliance by meeting in May 2018, and civil society groups have commented that the government, including the military, has been more willing to engage on environmental issues since the Supreme Court issued its ruling.<sup>129</sup> Work has begun on drafting the “intergenerational pact” as ordered by the court.<sup>130</sup> However, some groups have criticized the

government for failing to adequately consult with local communities, and implementation has still been slow: At the time of writing, litigation to enforce the Supreme Court’s decision is ongoing.<sup>131</sup>

## (c) Nariño Executive Order

The groundbreaking *Atrato River* and *Amazon Rainforest* cases have been followed by legislative and judicial developments throughout Colombia. In 2019, the department of Nariño became the first department in Colombia to recognize the Rights of Nature through executive action.<sup>132</sup> In Decree 348 of 2019, Governor Romero Galeano imposed regulations requiring the province to promote and guarantee the protection of “ecosistemas estratégicos” (strategic ecosystems).<sup>133</sup> The decree explicitly made reference to the jurisprudence of the Colombian superior courts, as well as overseas legal developments.<sup>134</sup>

## (d) Cauca River Case

Several recent decisions by circuit and provincial Colombian courts have applied the “ecocentric” jurisprudence of the Constitutional and Supreme Courts.<sup>135</sup> First, in response to a tutela action, on June 17, 2019 the Superior Court of Medellín recognized the rights of the Cauca River, a major source of fisheries, transport, and tourism.<sup>136</sup> The complainants alleged that the management and construction of the Ituango Hydroelectric Dam had significantly decreased the Cauca River’s flow, “considerably affecting the entire ecosystem of fauna and flora that depends directly” on the river.<sup>137</sup> The complainants sought orders against the dam owners and various government agencies:

- requiring the dam owners to develop a publicly available recovery plan for the river;
- recognizing the Cauca River as a subject of rights, and that its rights had been violated by mismanagement of the dam;
- requiring the dam managers to “deploy protocols, strategies, guidelines and actions in order to find immediate solutions to compensate for the huge environmental, social, economic and cultural damage”; and
- requiring the national and state governments to exercise legal guardianship over the river, through the creation of a commission of guardians.<sup>138</sup>

The claim was rejected by the Circuit Court of Medellín on the basis that the dam owners intended to address the environmental effects of the dam, and that there had been no omissions on the part of the government agencies.<sup>139</sup> The Supreme Court of Medellín overturned the decision. The Supreme Court found that although a tutela action was ordinarily inappropriate for alleged breaches of collective, rather than individual rights, in the case of fundamental environmental rights collective and individual rights were so closely related as to be inseparable.<sup>140</sup> The court also noted that actions involving environmental rights had the potential to affect the fundamental rights and dignity of future generations.<sup>141</sup> As well as citing earlier Colombian Rights of Nature jurisprudence, the court extensively cited international instruments, including the Rio Declaration, the Stockholm Declaration,<sup>142</sup> and the preamble to the UN Charter (in particular, the need to “save succeeding generations from the scourge of war.”<sup>143</sup>

Having recognized the importance of fundamental environmental rights and the Rights of Nature, the court observed that “nothing would be done by simply recognizing the category of rights to future generations ... if there were not at the same time the way to exercise these rights, in other words, actions must be granted from now on to defend their interests.”<sup>144</sup> Citing the *Atrato River* case as precedent, the court found “(i) [t]hat future generations are subject to rights of very special protection [especialísima protección]; (ii) that they have fundamental rights to dignity, water, security, food, and a healthy environment; and (iii) that the Cauca River is a legal subject [sujeto de derecho] which implies, as with the River Atrato, its protection, conservation, maintenance and restoration, by municipal and state entities.”<sup>145</sup> The court issued orders:

- finding the dam owners responsible for breaches fundamental rights;
- ordering the national government—together with local communities—to act as a legal guardian over the river by creating a formal commission of river guardians and an expert advisory board; and
- that the Attorney-General, Ombudsman<sup>146</sup> and Comptroller-General ensure that the orders be executed and make semiannual reports.<sup>147</sup>

### (c) The Magdalena River Case

The *Cauca River* decision is particularly important because it applies the decision of the Constitutional Court in the *Atrato River* case at a lower level, adopting the “ecological constitution” framework. Several other cases have similarly applied this framework in respect of rivers.

The complaint in the *Magdalena Rivers* case was filed by two environmental activists.<sup>148</sup> The complaint alleged that the construction of the *El Quimbo* hydroelectric would cause extensive damage to the local environment, and to the livelihoods of nearby local communities. The claimants alleged that the Magdalena River was being contaminated by untreated water, in part because many municipalities lacked wastewater treatment systems.

The complaint requested:

- the protection of the fundamental rights to health, water, a healthy environment, and dignified life for the communities adjoining the Magdalena River;
- the preparation of a publicly available plan setting out a strategy for mitigation and recovery of the Magdalena River, its tributaries, and all affected areas, together with a plan to build new wastewater treatment facilities for all municipalities lacking proper working treatment systems;
- the recognition of the Magdalena River as “sujeto de derechos,” in line with the *Atrato River* precedent; and
- designating the national and state government and relevant government agencies to exercise guardianship over the river through the creation of a commission of guardians.

Following the precedent of the *Atrato River* and the *Cauca River* cases, the court accepted the tutela action as a legitimate tool to seek protection of the collective rights when they are intrinsically connected to fundamental rights.

The court rejected the defendants’ argument that the Magdalena River tributaries had contaminants within acceptable levels, and that contamination to the river itself could not be attributed to the *El Quimbo* dam construction. The court, however, found that no government agency had directly tested the contamination effects of the dam, and thus had failed in their legal duties to assess all impacts of the project.<sup>149</sup>

The court concluded that the most effective remedy would be to develop wastewater treatment upstream from the dam, and recognize the rights of the Magdalena River, its basin, and its tributaries.<sup>150</sup> The court expressly cited the precedent of the *Atrato River* and *Cauca River* cases:<sup>151</sup>

Consequently, one case law precedent stands out, Judgment T-622 of 2016, in which the Atrato River was given special protection as a source of food, environment, and biodiversity, and the importance of conserving the future value of the right to water, recognizing the protection of natural wealth and the concept of the green or ecological constitution, thus promoting the categorization of the river as a subject of rights as an indispensable element of conserving nature.

Something similar happened in the department of Antioquia through the Superior Court of Medellín, which in Judgment of the Court of Appeals No. 38 of June 17, 2019, revoked the sentence issued by the Fourth Civil Court of the Circuit of Medellín and in consequence granted the rights of future generations as subjects of special rights protection and in turn recognized the Río Cauca, its basin and tributaries, as an entity the subject of rights.

[The court also noted a separate case, the River Pance case, in which another river was recognized as a subject of rights.]<sup>152</sup>

For this reason, based on the responsibility attributed by the State to the Head of the Ministry of Environment and Sustainable Development, the National Environmental Licensing Authority (ANLA), the Regional Autonomous Corporation of the Río Grande de la Magdalena, the Government of the Department of Huila, the Autonomous Corporation for the Region of the Magdalena River, Enel-Emgesa [the electrical generation company] and the community in general, they are called to protect and avoid the possible violation of the fundamental rights of future generations, whether to life, water, and a healthy environment, framed as a guarantee, that allows for full enjoyment and exercise in relation to the natural resources and ecosystems that together make up the largest river sources in Colombia, which include the Río Magdalena.

Based on the previous judgments, the future generations will be recognized as the subjects of rights, and consequently will be granted the protection of fundamental rights to water, a dignified life and healthy environment; therefore, full



COLOMBIA | Boat filled with fruit along the Magdalena River.  
Photo courtesy of International Rivers.

recognition will be given to the Magdalena River, its basin and tributaries as an entity subject to rights, whose protection, conservation, maintenance and restoration will be the responsibility of the State, Enel-Emgesa, and the community.

Finally, the court ordered that: (i) a Commission of Guardians for the Magdalena River should be created within three months; and (ii) State governments and others would be responsible for contamination studies and the construction of wastewater treatment facilities. The court designated the Federal Attorney-General's Office as responsible for overseeing compliance with the court orders, and to report to the court twice each year.

### **(f) The Coello, Combeima and Cocora Rivers Case**

This popular action<sup>153</sup> was brought by the municipality of Ibagué in the Administrative Tribunal of Tolima. It was brought against several defendants, including the National Environmental Licensing Authority (ANLA) and the Ministry of the Environment. The claimants challenged gold mining and prospecting by the state-owned mining exploration agency, Ingeominas, as well as several other companies operating in the Coello, Combeima, and Cocora River Basins. The claimants argued that the mining and prospecting activities depleted the water of the river system, and impacted the right to life of the neighboring populations by impeding access to clean water and soil.<sup>154</sup> The plaintiffs further argued that since ANLA had licensed the mining activities, it had breached the residents' rights to life and to a healthy environment.<sup>155</sup>

The court discussed the concept of the Ecological Constitution [La Constitución Ecológica], as developed in the *Atrato River* and *Amazon Rainforest* cases.<sup>156</sup> Citing decisions of the Constitutional Court, the Colombian Council of State, and administrative decrees,<sup>157</sup> the court concluded that Colombia's constitution places significant environmental obligations on government agencies. Specifically, the court found that the Ministry of the Environment, ANLA, Ingeominas, and the National Mining Agency all owed constitutional and administrative duties to secure collective environmental interests. Such obligations may take the form of a duty to provide public services, or an obligation to secure a fundamental right. In relation to water, state agencies owe *both* a duty to provide adequate public services (under articles

365-67 of the Constitution),<sup>158</sup> and secure water as a fundamental right (as guaranteed by domestic and international law).<sup>159</sup>

Having established that the Colombian government owed this two-part set of obligations in respect to water, the court then considered the content of these obligations.<sup>160</sup> The court drew extensively on the jurisprudence of the UN Committee on Economic, Social and Cultural Rights' (CESCR), which has established that rights demand three categories of obligations: to "respect," "protect," and "fulfill."<sup>161</sup> Respect implies state non-interference with rights to water; protect implies positive measures (such as legislation) to prevent third parties from interfering with citizens' rights; and fulfill requires the state to take "positive actions in order to facilitate, provide and promote full effectiveness of law."<sup>162</sup> The court also cited CESCR's General Comment 15, which requires that rights to water include rights of availability, accessibility, and quality.<sup>163</sup> The court extensively developed these requirements, the summary of which is beyond the scope of this report.<sup>164</sup>

The court then carried out a proportionality analysis.<sup>165</sup> The court found that technical reports prior to the mining exploration established a "clear risk" of environmental impacts for the Coello River basin and its residents.<sup>166</sup> Such a risk, in this case, was disproportionate to the potential infringements of the rights to a healthy environment, public safety, and health (among others).<sup>167</sup>

The court consequently found that the rights of the community had been violated, and held the defendants jointly and severally liable.<sup>168</sup> In awarding remedies, the court drew heavily on the *Atrato River* decision,<sup>169</sup> and awarded a similar remedy.<sup>170</sup> Altogether, the court issued 26 orders. Among other things, it ordered the national government to appoint a representative committee of guardians, as well as an expert advisory board. Several government agencies were ordered to develop a decontamination plan for the rivers, including: (i) the restoration of the Coello, Combeima, and Cocora rivers; (ii) the elimination of sand banks ("bancos de arena") created by mining activities; and (iii) the reforestation of areas affected by legal and illegal mining. The government was instructed to carry out these tasks in cooperation with local residents and Indigenous peoples. Government agencies were further ordered to conduct toxic and epidemiological studies to identify the extent of pollution, to begin within three months and end within nine months of the court order.<sup>171</sup> The court mandated that these measures be

used to develop metrics to assess the improvement or deterioration of the rivers over time. Finally, the court ordered that the Attorney-General, the Office of the Ombudsman and the Comptroller-General were required within three months to convene a panel of experts to monitor the remedial process, and to deliver semiannual reports to the court.<sup>172</sup>

Furthermore, the court ordered: the cessation of mining activities in the river basin; a halt on the processing of applications for new mining concessions (and the suspension of some existing ones); remediation of the pollution, based on the findings of a study to be carried out by the University of Tolima; the creation of a new national park; regular progress reporting (backed by threats of criminal sanctions); action by the national government to carry out risk mitigation strategies

to guarantee water supply to Ibagué; and monetary compensation. The court concluded by declaring a violation of environmental rights; declaring the liability of governmental agencies and mining companies; and recognizing the legal personhood of the Coello, Combeima, and Cocora rivers, as well as their basins and tributaries, as “individual entities, subject to rights protection, conservation, maintenance, and restoration by the State and communities.”

### **(g) The La Plata River Case**

This tutela action was filed against the Empresa de Servicios Públicos de La Plata–Huila (“Empresa”), a municipal agency which operated a wastewater treatment facility.<sup>173</sup> As a result of poor maintenance, the facility collapsed and polluted the nearby La Plata River, posing a serious health risk to the neighboring community and contamination risks to the local environment. As in the *Atrato River* case, the harm resulted primarily from an omission by a government agency. The claimants sought protection of fundamental rights to life, health, dignity, and a healthy environment. They also sought recognition of the La Plata River as a “sujeto de derecho,” and orders to ensure the proper maintenance and restoration of the treatment plant and its surroundings.

Citing the *Atrato River* case, the court accepted the tutela claim as an acceptable procedure in cases involving collective rights, where those collective rights are intrinsically connected to constitutionally protected fundamental rights.

Extending the *Atrato River* line of cases further, the court recognized the La Plata River and its basin and tributaries as “sujetos de derecho”.<sup>174</sup>

... constitutional case law has held that the intrinsic value of nature transcends the anthropocentric perspective and “(...) focuses on an ‘ecocentric-anthropic’ criterion, which places the human being on par with the ecosystem, whose purpose is to avoid pretentious, careless and irresponsible treatment of the environmental resource and of all its context, to satisfy materialistic ends, without any protectionist or conservationist respect.”<sup>175</sup>

“It is not about impeding development but about understanding that there is a “better development,” which allows the satisfaction of needs of present and future generations in harmony with nature, preventing by means of interdependence the irrational use of resources that harms humanity until the point of extinction.

[...]

So, for this specific case, this judicial stance with deep respect for nature, and following environmental doctrinal precedent, will recognize the “Río la Plata” as the subject of rights, will evaluate the alleged facts concerning the water resource because of its condition, and adopt the protection measures it deems necessary, once the case is examined by considering the rights of the guardians.

**“It is not about impeding development but about understanding that there is a ‘better development,’ which allows the satisfaction of needs of present and future generations in harmony with nature, preventing by means of interdependence the irrational use of resources that harms humanity until the point of extinction.**

The court ordered the defendant to develop, within 48 hours, a plan to restore the wastewater facility and its surroundings, and to coordinate medical assistance for the affected communities.

The court concluded with the following observations:<sup>176</sup>

Finally, it shall be emphasized that, in accordance with the values and principles that inspire the global ecological order, the specialized instruments that have been cited and the internal regulatory framework, the decision here goes beyond deciding a particular dispute; it constitutes, above all, the firm purpose of environmental justice of recognizing that only from the harmony that should exist between human beings and nature, and the deep respect that must exist considering this harmony, is it possible to satisfy the needs of the present generation and build a better future for the coming ones, along with “the defense of our most precious surroundings, our common home, The Planet.”<sup>177</sup>

## (h) Pueblo Awá Case

### BACKGROUND

The lengthy armed conflict between the Fuerzas Armadas Revolucionarias de Colombia–Ejército del Pueblo (FARC-EP) and the Colombian Government concluded after a four-year negotiation process that resulted in a number of agreements between the FARC-EP and the Colombian Government. The parties executed the landmark Agreement to Create a Special Jurisdiction for Peace<sup>178</sup> in September 2015. The Agreement created a special jurisdiction (Jurisdicción Especial para la Paz or JEP) to hear cases related to the armed conflict.<sup>179</sup> The JEP has subject matter jurisdiction over crimes committed in direct or indirect connection to the armed conflict and in accordance with article 62 of Law No. 1957/2019. The JEP also has personal jurisdiction over the individuals involved in the armed conflict and in accordance with Article 63 of Law No. 1957/2019. The special jurisdiction was necessary in order to apply special rules and pardons that formed part of the peace agreement.<sup>180</sup>

In September 2018, the Unidad Indígena del Pueblo Awá/Asociación de Autoridades Tradicionales Indígenas Awá (UNIPA), a group representing the Pueblo Awá Indigenous people, filed a preliminary brief with the JEP. UNIPA alleged that the Pueblo Awá had been subjected to major human rights abuses stemming from the armed conflict, including homicides, forced disappearances, arbitrary detention, environmental damage, and forced displacement. The JEP granted subject matter jurisdiction and the case proceeded as Case No. 02/2018.

### JEP DECISION

UNIPA filed a further request in September 2019. UNIPA maintained that the 32 Indigenous councils of the Awá people be recognized as entities with collective rights; and, significantly, that the Awá territory itself (called “Katsa Su” in Awapit, the Awá language) also be recognized as a collective entity with legal rights and personhood. This would allow the Awá councils and Katsa Su to be recognized as victims of the armed conflict. UNIPA alleged that both the Awá people and Katsa Su were subjected to “homicides, forced disappearance, threats, recruitment, forced displacement and confinement, incidents with MAP/MUSE and AEI, gender-based violence, arbitrary detentions and violation of due process, restrictions and limitations of mobility in ancestral territories, armed contacts and harassment, environmental and collective rights offense and violations of IHL [international humanitarian law].”<sup>181</sup>

The JEP acknowledged that the conflict had impacted both the personal rights of the Awá People and the rights of their natural surroundings. Citing an earlier decision of the Constitutional Court, the JEP acknowledged that the Pueblo Awá were particularly vulnerable, “among other causes, due to the existence of patterns of discrimination, the pressure of the majority culture on their worldview.” As a result of this vulnerability, the armed conflict had “generated in the Indigenous communities and other ethnically diverse groups ... the dispossession or strategic use of their lands and territories, serious issue in itself.” Many of these risks are associated with the defense of the integral life of the territory, of the rivers, of the animals, of the sea, of the mangroves, the mountain, of the sacred sites and of the people.”<sup>182</sup>

The JEP continued:

it should be considered that the armed conflict has broken the social fabric and promoted individual or segmented actions within the communities. In this sense, the processes before the JEP must be an opportunity for the peoples to reconstruct the communication channels that have been fractured and limit their performance under the principles of the Indigenous movement: unity, autonomy, territory and culture. For this reason, with full respect for their own autonomy and dynamics, the JEP must strive to create the conditions for the peoples to maintain their unity in the exercise of the right of participation.<sup>183</sup>

On this basis, the JEP recognized the collective rights of the Pueblo Awá and the Katsa Su. The JEP further observed that:

... for some indigenous peoples, the experiences of war are not limited to the damages caused to people, but their consequences are also imprinted in the beings that inhabit their territories and in the singular natural environment. The disappearance of charms, protective spirits, or spiritual parents describes a series of effects that transcend human spheres, that is, they affect both the rights of people and the web of relationships in which nonhuman people, places, and agencies participate. Rather, “when humans harm nonhumans or nature, an energy imbalance is created that leads to changes in physical life.”<sup>184</sup>

... the ethnic-racial, territorial and gender approaches adopted by the JEP make it possible to show that the damages in the context of the armed conflict generated differentiated and disproportionate impacts in particular to indigenous peoples, women and children. The armed conflict creates a permanent scenario of violation of their rights, which has even led to jeopardizing the survival and culture of their peoples, the relationship between women and their territory, the link and integrity between the individual and collective, the possibility of keeping the spiritual force tied to the material life from generation to generation. The effects and impacts of serious consequences on women, their cultures, communities and territories, have been understood and differentiated from epistemological approaches such as studies on intersectionality.<sup>185</sup>

In reaching this decision, the JEP drew on principles of general Colombian law beyond its own special jurisdiction. Citing Colombian Decree-Law 4633 of 2011, the court observed that Colombian statute law:

...incorporates the notion of territory as a victim, understanding it “[...] as living integrality and sustenance of identity and harmony, in accordance with the particular worldview of the indigenous peoples and by virtue of the special and collective bond that they sustain with it, it suffers damage when it is violated or desecrated by the internal armed conflict and its related and underlying factors.” Thus, this rule states that peoples have “special and collective ties” with Mother Earth and have the right to “harmonious coexistence in the territories.” In addition, it recognizes that the territory is a “living integrality and sustenance of identity and

harmony” and “suffers damage when it is violated or desecrated by the internal armed conflict.” Therefore, “spiritual sanitation” is part of the integral repair of the territory.<sup>186</sup>

The JEP also drew on the conclusions of the Colombian Constitutional Court in Order 004 of 2009, in which it was recognized that the Awá People were “in serious danger of being exterminated physically and culturally, because of the internal armed conflict and the omission of the authorities in providing adequate and timely protection, for which reason continues to be the victim of countless violations of its individual and collective fundamental rights, which has exacerbated the confinement and/or forced displacement suffered.”<sup>187</sup>

From a Rights of Nature perspective, the essential part of the JEP decision is the recognition of the unbreakable relationship between the land, and the human beings that inhabit it. The JEP observed that:

... the Katsa Su is woven from relationships endowed with sacred meaning and integrated by various community, social and natural relationships that underpin the existence and identity of the Awá People. In the words of a member of the people, “Without territory we do not exist.”<sup>188</sup>

This reasoning was bolstered by Article 330 of the Colombian Constitution, which sets out the fundamental right of Indigenous peoples to their territory.<sup>189</sup>

The JEP accredited the Katsa Su and the 32 Indigenous councils as victims in their capacity as collective subjects of law. This decision is not subject to appeal, and is therefore final.

The recognition of the territory as subject of rights by the JEP is an important precedent, notable in its mention of Katsa Su in a personified manner throughout the decision. This precedent should provide the Katsa Su with standing to file suit in its name for the numerous violations of rights suffered by the Katsa Su.



## (i) Colombia: An Evaluation

The Colombian experience demonstrates that Rights of Nature can be judicially developed without clear direction from national or local legislators. The Rights of Nature cases have followed a clear pattern established in the *Atrato River* case, with a remedies formula involving a declaration of Rights of Nature; the appointment of river guardians, advisory boards, and monitoring agencies; and a requirement of regular reporting back to the court. The Colombian jurisprudence is significant for its careful elaboration of Rights of Nature merging from commonly found constitutional rights, such as the right to life and the right to a healthy environment, while drawing on international and comparative law.

Thus far, although the Colombian government has formally accepted the validity of these decisions, it has been slow to comply. Civil society organizations have claimed that guardianship bodies are underfunded and consultation with local bodies is poor. It will be important to monitor this trend as the number of orders continues to expand.

The Colombian jurisprudence is open to some criticism. Notably—and despite the courts’ “ecological constitution” approach—the rights of rivers rest on some anthropocentric assumptions. The recognition of rivers’ rights is based in large part on their ability to support human communities and future generations, rather than as ecosystems in and of themselves. In this respect, the Rights of Nature may be contingent on whether or not there is an immediate human cost to their exploitation. Furthermore, although the *Atrato River Case* involved remedies which flowed directly from the recognition of legal personhood (the creation of the Commission of Guardians), in other cases—such as the *Amazon Rainforest* case—such recognition appears to be incidental.<sup>190</sup> It is beyond dispute, however, that the Colombian approach has so far embodied the most developed judicial application of the right to a healthy environment.

## 4.2.3 Ecuador

The Rights of Nature movement has won extensive recognition in Ecuador, and rights were constitutionally codified in 2008. This codification has triggered subsequent litigation, although it is unclear whether judicial decisions have been effectively enforced.

### (a) Constitutional Amendment

In 2008, Ecuador became the first country in the world to recognize the Rights of Nature in its national constitution. Articles 71-74 of the national constitution, which binds both state and non-state actors, provide that:<sup>191</sup>

**Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.”**

#### ARTICLE 71

Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.

All persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature. To enforce and interpret these rights, the principles set forth in the Constitution shall be observed, as appropriate.

The State shall give incentives to natural persons and legal entities and to communities to protect nature and to promote respect for all the elements comprising an ecosystem.

#### ARTICLE 72

Nature has the right to be restored. This restoration shall be apart from the obligation of the State and natural persons or legal entities to compensate individuals and communities that depend on affected natural systems.

In those cases of severe or permanent environmental impact, including those caused by the exploitation of nonrenewable natural resources, the State shall establish the most effective mechanisms to achieve the restoration and shall adopt adequate measures to eliminate or mitigate harmful environmental consequences.

#### ARTICLE 73

The State shall apply preventive and restrictive measures on activities that might lead to the extinction of species, the destruction of ecosystems and the permanent alteration of natural cycles.

The introduction of organisms and organic and inorganic material that might definitively alter the nation's genetic assets is forbidden.

#### ARTICLE 74

Persons, communities, peoples, and nations shall have the right to benefit from the environment and the natural wealth enabling them to enjoy the good way of living.

Environmental services shall not be subject to appropriation; their production, delivery, use and development shall be regulated by the State.

Articles 71-74 were strongly influenced by Indigenous Kwecha concepts, including Sumac Kawsay, and was driven by the populist, anti-capitalist wave which brought socialist Rafael Correa to the presidency in 2007.<sup>192</sup> Sumac Kawsay is also referenced in the preamble to the Constitution, which recalls that:<sup>193</sup>

Recognizing our age-old roots, wrought by women and men from various peoples, celebrating nature, the Pacha Mama (Mother Earth), of whom we are part and which is vital to our existence ... [and] calling up the wisdom of all the cultures that enrich us as a society ... [We h]ereby decide to build a new form of public coexistence, in diversity and harmony with nature, to achieve the Buen Vivir, the sumac kawsay.

The new constitution was adopted by popular referendum in 2008.<sup>194</sup> In formulating articles 71-74, the Ecuadorian government received advice from the Community Environmental Legal Defense Fund, a United States-based NGO.<sup>195</sup>

## **(b) Vilcabamba River Case**

Articles 71-74 of the 2008 Constitution triggered several attempts at litigation. The first successful attempt was the *Vilcabamba River Case*.

### **FACTS**

The first successful litigation advanced under articles 71-74 of the Ecuadorian Constitution reached the judiciary in 2011 and was brought on behalf of the Vilcabamba River.<sup>196</sup> The appellants brought a *protección* action, a streamlined constitutional procedure, to the Provincial Court of Justice in Loja. In a *protección* action, Article 88 of the Constitution of Ecuador removes procedural barriers such as standing and pleading formalities.<sup>197</sup> The action was brought in order to prevent the use of heavy machinery in road construction adjacent to the river. Two nearby property owners alleged that the use of heavy machinery had deposited rocks and other construction materials into the river, which caused pollution and flooding.<sup>198</sup> The case had been dismissed by a lower court on procedural grounds (failing to name the provincial government as a party).

### **APPEALS COURT DECISION**

The appeals court determined that the trial court had erroneously dismissed the complaint, finding that the local (rather than provincial) government was the appropriate defendant.

Having resolved the procedural issue, the court granted the *protección* action. The court recognized articles 71-74 of the Constitution as a strong endorsement of the Rights of Nature, citing comments made by the President of the Constituent Assembly which framed the 2008 Constitution.<sup>199</sup> The court further determined that the *protección* procedure was appropriate in this case: “[g]iven the indisputable, elemental, and irremediable importance of nature, and taking into account how notorious and evident is its process of degradation, the *protección* action is the only suitable and effective way to end and immediately remedy a specific harm to the environment.” The court determined that judges faced with claims brought under the Rights of Nature provisions were to adopt a precautionary principle, shifting the burden to potential polluters to demonstrate that their activities were unlikely to cause significant harm to nature.<sup>200</sup> Significantly, the court found that “environmental damage may be based on possibilities and

probabilities,” thus allowing probabilistic evidence to be presented by the claimant.<sup>201</sup>

The court issued a series of remedial orders. The local government was ordered to issue an apology in a local newspaper; present a plan for remediation and rehabilitation within 30 days; secure appropriate environmental permits; clean up existing damage; protect against oil spills and leakage from heavy machinery; implement an appropriate warning system; and designate appropriate dumping sites. The court further ordered the creation of a committee to oversee the enforcement of the order.<sup>202</sup>

### **ENFORCEMENT**

The Vilcabamba litigation demonstrates the difficulty of enforcement in cases involving reluctant government authorities. Several months after the order was issued, the provincial government had failed to comply,<sup>203</sup> prompting criticism from several observers.<sup>204</sup> The property owners brought an action challenging this noncompliance in March 2012, which was eventually rejected by the Constitutional Court of Ecuador in March 2018.<sup>205</sup> The court found that the provincial government had sufficiently complied with the remedial orders.<sup>206</sup>

## **(c) The Goldminers’ Case**

Since the Vilcabamba litigation, several trial and appellate courts have applied the constitutional Rights of Nature provisions.<sup>207</sup> This includes cases where claims have been brought against private landowners. One example of such a case concerned gold mining in the San Lorenzo and Eloy Alfaro districts.<sup>208</sup> The case was brought on behalf of the environment by the Ecuadorian government in the name of the Interior Minister, who alleged that illegal gold mining activity had polluted nearby rivers and thus violated the Rights of Nature.

The court accepted the argument that the illegal mining activities violated the Constitution’s Rights of Nature provisions. Extraordinarily, the court not only ordered that the goldminers cease their activity, but that armed forces and police should “collaborate to control the illegal mining [in the area] including the destruction of all of the items, tools and other utensils that constitute a grave danger to nature and that are found at the site where there is serious harm to the environment.”<sup>209</sup> Ecuadorian authorities promptly complied with the

order, destroying a substantial amount of equipment through the use of explosives.<sup>210</sup>

#### **(d) Ecuador: An Evaluation**

The Ecuadorian experience is significant because it marks the most comprehensive attempt to incorporate Rights of Nature within a national *constitutional* order.<sup>211</sup> It should be noted, however, that Rights of Nature do not enjoy primacy over other rights: The Ecuadorian Constitution explicitly places them on equal footing with conventional human rights.<sup>212</sup> Nature is not included in the list of entities deserving of greater constitutional protection, appearing at Article 81 of the Constitution.<sup>213</sup> However, as subsequent case law has demonstrated, the constitutional entrenchment of rights does give them primacy over ordinary legislative and executive action.<sup>214</sup>

The Constitution combines the two strands of the Rights of Nature movement: the holistic values inherited from Indigenous law, and the more formal rights of standing advocated by Western theorists such as Christopher Stone (see above). The substance of the rights, which includes both restitutive and preventive measures, is potentially wide-ranging, and suggests the possibility of extensive remedies.

Notwithstanding the significance of the constitutional protection of Rights of Nature, some observers have been skeptical of the Ecuadorian constitutional codification. Academic commentators have suggested that articles 71-74 were part of a bargain between President Correa and Indigenous groups, which secured Correa's support for more extensive presidential powers in the 2008 constitution.<sup>215</sup> Furthermore, it has been pointed out that these powers gave then-President Correa extensive control over Ecuador's natural resources, so that Rights of Nature will be more difficult to enforce. This left President Correa open to accusations of "greenwashing" his own personal political gain.<sup>216</sup>

A recent survey of Ecuadorian Rights of Nature litigation found that litigants had been successful in 10 of 13 cases surveyed.<sup>217</sup> Despite these victories, critics suggest that the constitutional enshrinement of Rights of Nature has not led to wholesale transformation of Ecuador's approach to the environment. David Boyd notes that the underlying political culture (and economic reality) remains committed to industrialization, even where it poses a threat to the

natural environment.<sup>218</sup> He suggests that the success of litigation may be dependent on whether the outcome suits the purposes of the Ecuadorian government, citing the Goldminers' Case as one such example.<sup>219</sup> Craig M. Kauffman and Pamela L. Martin, however, argue that the Ecuadorian experience may be improving, as Rights of Nature become part of mainstream political and judicial culture.<sup>220</sup>

#### **4.2.4. Brazil**

Environmental rights are enshrined in Article 225 of Brazil's 1988 Federal Constitution. However, Article 225 embodies the traditional paradigm of property rights held by human beings, and is described as an "asset":<sup>221</sup>

All have the right to an ecologically balanced environment, which is an asset of common use and essential to a healthy quality of life, and both the Government and community shall have the duty to defend and preserve it for present and future generations.

Notwithstanding this position in federal law, Brazilian law has adopted some features of the Rights of Nature movement through local ordinances and recent case law.

##### **(a) Local Ordinances**

Three municipalities, Paudalho,<sup>222</sup> Bonito<sup>223</sup> and Florianópolis,<sup>224</sup> have included Rights of Nature provisions in their organic laws. Using identical language, the organic laws of Paudalho and Bonito "recognize the right of nature to exist, thrive and evolve," and place an obligation on the municipal governments to take steps to secure that right.<sup>225</sup> Paudalho, in its turn, has used the recent Rights of Nature provision to approve the designation of the mineral spring of São Severino do Ramos as a natural heritage site, prohibiting any activity that might be harmful to the water sources within a 100 meter radius.<sup>226</sup> The organic law of Florianópolis requires the municipal government to "promote public policies and environmental monitoring instruments so that nature acquires rights."<sup>227</sup>

## (b) The Deforestation Case

In the 2011 decision *Recurso Especial* No. 1.145083–MG (“*Deforestation Case*”), the appellant was found to be responsible for the deforestation of native vegetation and required to restore the environment to its initial condition, as per article 14 of the National Environment Policy Statute.<sup>228</sup> The appellant challenged the imposition of liability and financial remedies on the basis that it amounted to being punished twice for the same offense: That is, the statute would have required him to restore the environment to its initial state, and pay compensation (“indenização”).

The Superior Court of Justice found that the statute clearly provided for a single action to trigger responsibility for both environmental restoration and additional costs.<sup>229</sup> Furthermore, the court clarified that:<sup>230</sup>

... environmental compensation and recovery duties are not “punishment,” but that reimbursement measures of a civil nature that seek, simultaneously and complementarity, the restoration of the *status quo ante* of the affected biota and the reversion to the collective of all economic benefits from individual appropriation and use (privatization) of a collective asset, protected and characterized, under the terms of article 225 of the Constitution, as “in common use by the people.”

The court determined that environmental damages would not only harm human beings, but also injure nature and ecological processes themselves. This was a sufficient basis on which to impose compensation damages.<sup>231</sup>

[T]he possibility of technical and future *in natura* restoration (prospective judgment) is not always sufficient to, in the field of tort liability, revert or fully rehabilitate the various dimensions of the environmental degradation caused, especially the so-called pure ecological damage, characterized by afflicting nature itself, as it is an asset that is not appropriated or subject to appropriation.

[...]

It is worth remembering that environmental damage is multifaceted—in ethical, temporal, ecological and patrimonial dimensions, but also regarding the diversity of the vast universe of victims, ranging from the isolated individual to the collectivity, to future generations and to the actual ecological processes themselves.

Finally, the court found that another basis for awarding two forms of damages for one action was the distinction between reversible and irreversible injury. Reversible injury can be repaired by reforestation; but irreversible damages give rise to an obligation to compensate. The court established the theory of collective moral damages:<sup>232</sup>

... when part of the damage is irreparable through performance obligations, reparation will only be feasible through compensation [...being also] susceptible to accumulation of obligations to perform with respect to the *in natura* reparation of the degraded environmental good in addition to compensation for collective moral damages or extra-patrimonial damages.

Although the *Deforestation Case* did not explicitly recognize the legal Rights of Nature, it is significant for its finding that damage to nature—independent of any consequential impacts of human beings—can give rise to remedial orders and damages awards. This approach signaled the Superior Court’s openness to consider claims based on Rights of Nature jurisprudence. The precedent of “collective moral damages” would be applied in future cases.

## (c) The Asbestos Case

In *Recurso Especial* No.1.367.923–RJ, decided by the Superior Court in 2017, the appellant challenged the imposition of collective moral damages.<sup>233</sup> Following precedent from the *Deforestation Case*, the lower court had imposed a damages award against the appellant for the improper storage of asbestos, despite the absence of any concrete environmental harm or human injury.

The Superior Court affirmed the lower court’s decision on the basis that asbestos poses a serious threat to society. The court concluded that moral injury was sufficient to give rise to collective moral damages, even in the absence of injury to human beings.

As with the *Deforestation Case*, the *Asbestos Case* demonstrates an important shift toward recognizing injury to nature as capable of sustaining a cause of action, without further proof of harm to human beings.

## (d) The Wild Parrot Case

In 2019, the Superior Court issued a landmark ruling with important implications for the Rights of Nature movement.<sup>234</sup> The decision involved an appeal brought against a release order and fines imposed for the capture and maltreatment of a wild parrot which had been kept illegally for 23 years.

The court rejected what it described as the “Kantian, anthropocentric and individualistic concept of human dignity,” and instead recognized that “nonhuman animals as well as life in general” is deserving of rights recognition.<sup>235</sup> The court called for the adoption of a biocentric or ecocentric “jurisprudential matrix.”<sup>236</sup>

Making direct reference to the Ecuadorian and Bolivian constitutions and legislation, as well as the Colombian *Atrato River* case,<sup>237</sup> the court found that:<sup>238</sup>

... it is necessary to ... develop the discussion about the recognition of dignity to non-human animals, and, consequently, the recognition of rights and shift the way that people relate to each other and to other living beings.

The philosophical basis for the decision clearly indicates a shift in Brazilian jurisprudential values toward nature. The perception that nature has rights independent of its use for human beings is a reflection of how society and the law are evolving, and may act as a prelude to future decisions. The court found that:<sup>239</sup>

... it is necessary for us to be able to confront “new ecological values that feed contemporary social relations and that demand a new ethical conception, or, perhaps more correctly, the rediscovery of an ethical respect for life.”

Thus “[...] the prohibition of any practice of ‘objectification’ or ‘commodification’ (i.e., treatment as a simple ‘means’) should not, in principle, be limited only to human life, but to have its spectrum expanded to contemplate also other forms of life.”

It is always necessary “to [...] uphold the dignity of one’s own life generally speaking, even more so at a time when recognition of the protection of the environment as a fundamental ethical-legal value indicates that it is no longer only human life at issue, but also the preservation of all natural resources, including all forms of life on the planet, although it can be argued that such protection of life in general constitutes, ultimately, a requirement of human life and, above all, of human life with dignity.”

**“It is necessary to develop the discussion about the recognition of dignity to non-human animals, and, consequently, the recognition of rights and shift the way that people relate to each other and to other living beings.”**

Importantly, the court suggested that other fundamental human rights may be limited in order to secure the rights of non-human beings.<sup>240</sup>

Inserted in this thought, the discussion is urgent: “[...] mainly in relation to non-human animals, the concept of dignity, aiming at the recognition of an end in itself, that is, of a value given to non-human sentient beings, who would have recognized the moral status and share with the human being the same moral community.” In other words, one can also talk about limitations to the fundamental rights of human beings based on the recognition of non-human interests.

Having adopted this framework, the court went on to apply its biocentric approach to the task of statutory interpretation. The appeal was allowed in part on the grounds that releasing the parrot into the wild after a long period of domestication could be harmful to the parrot’s welfare.

## (e) Brazil: An Evaluation

The recent decisions of the Superior Court suggest that Brazilian courts are developing a jurisprudence which may recognize Rights of Nature. Environmental rights (and human obligations) have been recognized in the absence of concrete harm to humans, and the court has endorsed an explicitly biocentric approach.

Although the Superior Court’s decision in the *Wild Parrot Case* relates to a narrow set of facts, it has potentially wide-ranging ramifications. The court’s extensive discussion of an underlying biocentric approach signals a possibility that Brazilian courts could follow the lead of other Latin American jurisprudence in recognizing Rights of Nature in a range of contexts. It is telling that the court cited the Rights of Nature jurisprudence from Bolivia, Colombia, and Ecuador. By discussing whether Rights of Nature should prevail over human rights, the court has opened the door to wholesale endorsement of Rights of Nature.

## 4.3.

# North and Central America

Rights of Nature have gained traction in Costa Rica and Mexico, with Rights of Nature legislation passed at the state (Mexico) and national (Costa Rica) level. In the United States, however, several attempts to enshrine Rights of Nature in municipal legislation have foundered in the courts. There has been greater success in Native American law, with several nations enacting Rights of Nature protections.

## 2.1 The United States

In 1972, Justice William O. Douglas suggested the possibility of Rights of Nature in a dissenting Supreme Court decision.<sup>241</sup> This suggestion, however, has failed to gain traction at the national level. Rights of Nature developments have come primarily at the state and local level, and through the legislation of Native American tribes.

Many of the municipal ordinances enacted in the United States are near-identical, and have been drafted on the advice of the Community Environmental Legal Defense Fund (CELDF).<sup>242</sup> The movement has encountered significant resistance in the courts, with several ordinances being blocked by judicial decisions.

### (a) Native American Tribal Legislation

**All creation, from Mother Earth and Father Sky to the animals, those who live in water, those who fly and plant life have their own laws and have rights and freedoms to exist.”**

At least six Native American tribal jurisdictions have enacted Rights of Nature.<sup>243</sup> The Navajo Nation Code 2003 Title I § 295 provides that:

... All creation, from Mother Earth and Father Sky to the animals, those who live in water, those who fly and plant life have their own laws and have rights and freedoms to exist.<sup>244</sup>

The provision is located within the “Natural Law” section of the Tribal Code, meaning that it applies as an aid to statutory interpretation<sup>245</sup> and can be raised at any point during proceedings.<sup>246</sup> The Navajo Code further places an all-of-government responsibility on its executive agencies, providing that:

... all persons and entities, including agencies, departments, enterprises and other instrumentalities of the Navajo Nation itself and agencies of other governments, can and do affect the environment, and that it is the policy of the Navajo Nation to use all practicable means to create conditions under which humankind and nature can exist [sic] in productive harmony.<sup>247</sup>

The Ho-Chunk nation has also enacted similar legislation.

In 2019, the Yurok Tribal Council recognized the legal personhood of the Klamath River in the northwest of the United States. The resolution was passed in response to decreasing salmon runs in the river.<sup>248</sup> The Tribal Council declared that the river had the right to:

... exist, flourish, and naturally evolve; have a clean and healthy environment free from pollutants; to have a stable climate free from human-caused climate impacts; and to be free from contamination by genetically engineered organisms.<sup>249</sup>

The tribe intends to enact an ordinance to give effect to the resolution, giving the river rights of standing as well as regulations necessary to maintain the river’s welfare and personhood.

Most recently, in 2020, the Nez Perce General Council passed a resolution recognizing the rights of the Snake River. It establishes:

that the Snake River and all the life it supports possess the following fundamental rights, at minimum: the right to exist, the right to flourish, the right to evolve, the right to flow, the right to regenerate, and the right to restoration.<sup>250</sup>

The resolution also calls for the development of a legal guardianship body to represent the rights and interests of the Snake River and requests the Tribe’s Executive Committee to act in accordance with the resolution.

### (b) Tamaqua Borough, Pennsylvania

In 2006, the council of Tamaqua Borough, located in a coal mining region of Pennsylvania, adopted Ordinance No. 612 recognizing Rights of Nature.<sup>251</sup> Like many municipal Rights of Nature ordinances in the United States, the Tamaqua ordinance was designed to prevent the practice of fracking. The ordinance, drafted with the assistance of CELDF was passed in response to the practice by some residents of leasing out former coal pits on their property for the dumping of sewage sludge.<sup>252</sup> The ordinance sought to:

... protect the health and safety and general welfare of the citizens and environment of Tamaqua Borough by banning corporations from engaging in the land application of sewage sludge, by banning persons from using corporations to engage in land application of sewage sludge, by providing for the

testing of sewage sludge prior to land application in the borough, by recognizing and enforcing the rights of residents to defend natural communities and ecosystems.<sup>253</sup>

Significantly, Section 7.6 of the ordinance provides that “[b]orough residents, natural communities, and ecosystems shall be considered to be ‘persons’ for purposes of the civil rights of those residents, natural communities, and ecosystems.”<sup>254</sup> In enacting the ordinance, Tamaqua Borough became the first municipal jurisdiction within the United States to enact Rights of Nature.

### **(c) Other Municipal Legislation**

In 2008, residents of Nottingham, New Hampshire worked with CELDF to draft a Rights of Nature ordinance in response to attempts by the USA Springs Corporation to draw water from the Lamprey River Watershed.<sup>255</sup> Although the efficacy of the ordinance was never tested in court, it formed part of a wider campaign of public pressure which drove USA Springs to halt its bottling operations and declare bankruptcy.<sup>256</sup>

The Tamaqua Borough and Nottingham ordinances spurred similar developments in approximately three dozen other United States towns.<sup>257</sup> In 2010, the City of Pittsburgh enacted an ordinance providing that:

Rights of Natural Communities. Natural communities and ecosystems, including, but not limited to, wetlands, streams, rivers, aquifers, and other water systems, possess inalienable and fundamental rights to exist and flourish within the City of Pittsburgh. Residents of the City shall possess legal standing to enforce those rights on behalf of those natural communities and ecosystems.<sup>258</sup>

Similarly, the Municipal Code of Santa Monica, California, provides that:

Natural communities and ecosystems possess fundamental and inalienable rights to exist and flourish in the City of Santa Monica. To effectuate those rights on behalf of the environment, residents of the City may bring actions to protect groundwater aquifers, atmospheric systems, marine waters, and native species within the boundaries of the City.<sup>259</sup>

As with the Tamaqua ordinance, the Pittsburgh and Santa Monica ordinances frame the Rights of Nature as rights of standing in civil litigation, allowing

residents to bring actions in order to defend the natural environment. Given the complicated rules pertaining to standing and civil procedure in the United States, the liberalization of environmental standing is potentially significant.<sup>260</sup>

Another ordinance was passed in Lafayette, Colorado in 2017.<sup>261</sup> The ordinance declares that nature itself has the right to a healthy climate. Accordingly, the Lafayette ordinance bans oil and gas extraction as a violation of that right.

One significant difference between the Santa Monica ordinance and many of the other local laws is that the Santa Monica code does not purport to strip corporations of rights. The Tamaqua and Pittsburgh laws each contain provisions which prohibit recognition of corporate legal personhood and ban specific activities (such as fracking). The Santa Monica law, by contrast, integrates Rights of Nature into a broader sustainability plan without directly removing corporate rights. Thus, the Tamaqua, Pittsburgh and Lafayette ordinances appear to provide stronger environmental provisions than the Santa Monica ordinance. However, because the rights of corporations have been recognized in United States federal law, these ordinances are highly vulnerable to legal challenges. The Santa Monica approach, although seemingly weaker, is likely less vulnerable to legal challenges and thus arguably more effective in practice.

### **(d) Grant Township Ordinance and Subsequent Litigation**

#### **THE ORDINANCE**

One local ordinance has attracted particular attention and spurred extensive litigation.<sup>262</sup> Grant Township, located in Indiana County, Pennsylvania, enacted a Rights of Nature ordinance in June 2014, largely in response to fracking in the region. The ordinance was primarily directed toward wastewater injection wells and other methods of depositing resource extraction waste. It prohibited corporations and government departments from “the depositing of waste from oil and gas extraction,” and purported to invalidate existing permits and licenses,<sup>263</sup> and stripped certain corporations of legal personhood.<sup>264</sup>

The ordinance established a cause of action based on Rights of Nature, allowing any town resident to bring suit “to enforce or defend the natural rights of ecosystems or natural communities.”<sup>265</sup> The ordinance

provided that actions could be brought in the name of the ecosystem or natural community, with damages paid to the township for the cost of restoration.<sup>266</sup> The ordinance was drafted with assistance from CELDF, which also provided representation to the township throughout subsequent proceedings.<sup>267</sup>

## COURT PROCEEDINGS

The Grant Township ordinance was challenged by Pennsylvania General Electric (PGE) in a Federal District Court.<sup>268</sup> The court ruled that the ordinance violated several provisions of the United States Constitution and exceeded the township's legislative authority.<sup>269</sup> Significantly, an intervening application brought by "The Little Mahoning Watershed" (represented by the CELDF) was denied.<sup>270</sup> The denial of the motion to intervene was upheld by the Federal Court of Appeals for the Third Circuit, which found that representation of the watershed did not meet the requisite test of providing representation that was not already provided for by existing parties to the litigation, and that the local ordinance did not override the usual rules of civil procedure.<sup>271</sup> Although it was not a question on appeal, the Third Circuit also expressed doubt that "natural communities and ecosystems" could ever have "capacity to sue or be sued."<sup>272</sup> CELDF narrowly avoided having sanctions imposed for the motion to intervene.<sup>273</sup> Ultimately, Grant Township was left owing PGE approximately \$100,000 in attorneys' fees and costs, although the parties settled for a lesser amount in exchange for dropping all appeals. The township did have success, however, when in 2020 the Pennsylvania Department of Environmental Protection (DEP) revoked a previously-granted injection well permit (on the basis of a separate Home Rule Charter enacted after the invalidation of the town's Rights of Nature ordinance).<sup>274</sup> The Home Rule Charter contains Rights of Nature provisions similar to the ordinance and remains in effect, and in revoking the permit, the DEP recognized the charter as applicable law.

## ADDENDUM: HIGHLAND TOWNSHIP ORDINANCE

Another case also arose in Pennsylvania, relating to an almost identical ordinance enacted by Highland Township (also advised by CELDF). The Third Circuit Court of Appeals upheld a ruling denying the Crystal Springs ecosystem a right to intervene, primarily on procedural grounds of mootness.<sup>275</sup> As in the Grant Township case, the Third Circuit avoided setting definitive precedent as to whether any ecosystems or natural communities could ever have standing to

intervene.<sup>276</sup> Ultimately, the ordinance was successfully challenged and found to be unconstitutional.<sup>277</sup>

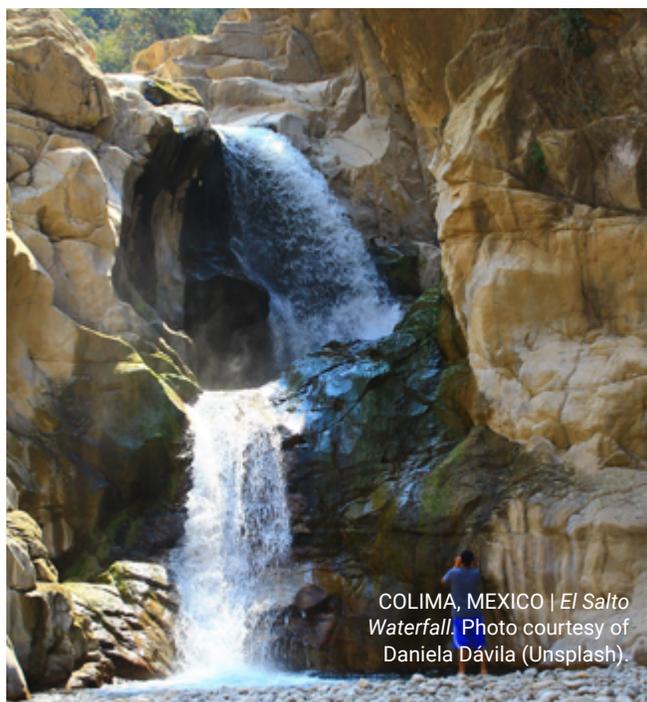
## (e) Lake Erie Bill of Rights

In response to a toxic algal bloom, in 2014 a group of residents petitioned the city of Toledo, Ohio to enact a "Lake Erie Bill of Rights."<sup>278</sup> The petition, supported by CELDF, called for Lake Erie (and its watershed) to "have the right to exist, flourish, and naturally evolve," and to declare that the City of Toledo "possess[es] the right to a clean and healthy environment, which shall include the right to a clean and healthy Lake Erie and Lake Erie Ecosystem." The draft Bill of Rights provided that it would be unlawful for any corporation or government to violate the lake's rights, and that the City of Toledo would enforce those rights.

The petition progressed to a referendum, which passed as a ballot measure in February 2019.<sup>279</sup> Subsequent state legislation, however, has precluded rights of standing for any "nature or ecosystem," essentially nullifying the effect of the city ordinance.<sup>280</sup> Furthermore, the ordinance has been challenged in federal court as unconstitutionally vague, and a violation of the rights to petition for redress, equal protection and due process (among other grounds).<sup>281</sup> In those proceedings, an application to intervene by the Lake Erie ecosystem was tersely dismissed by a District Court as "meritless."<sup>282</sup>

## (f) United States: An Evaluation

Thus far, Rights of Nature provisions in the United State—normally framed as rights of standing—have had little impact. No body of nature has successfully asserted its right to sue. However, it should be noted that rights are gaining traction in Native American law, and the Third Circuit Court of Appeals has not completely ruled out the future assertion of rights in federal court. Because Native American law has greater sovereignty than local government ordinances, Native American statutes may have a stronger chance of withstanding lawsuits by extraction corporations. Furthermore, the example of Nottingham, New Hampshire suggests that Rights of Nature may have moral and political force as part of a wider campaign. Weaker Rights of Nature laws, such as Santa Monica's sustainability ordinance, are also important: They contain fewer environmental protections, but are more



likely to withstand lawsuits and could drive changes in legal culture over time. Finally, state constitutions protecting environmental rights other than Rights of Nature appear to have been more effective.<sup>283</sup>

## 4.3.2 Mexico

Rights of Nature developments in Mexico have come primarily at the state level, with two states encoding Rights of Nature in their constitutions.

### (a) Colima State Constitution

In 2019, the State of Colima amended its constitution to include Rights of Nature. Article 2(IX) of the Colima State Constitution provides that:

Article 2 – Everyone has the right:

[...]

IX. To live in a healthy and safe environment for their development and well-being:

a) Nature, consisting of all its ecosystems and species as a collective entity subject to rights [sujeito de derechos], must be respected in its existence, in its restoration, and in the regeneration of its natural cycles, as well as the conservation of its structure

and ecological functions, in the terms that the law establishes;

b) Biodiversity, natural ecosystems, genetic heritage and native species are common and public interest goods, so their use will be in the terms indicated by law; protection, preservation and recovery is the joint responsibility of the public, private and social sectors; and

c) The State will promote the right to use and access eco-technologies applied to ensure the use of natural resources in a clean way and with the goal of meeting human needs by minimizing their environmental impact. Environmental damage and deterioration will generate responsibility for whoever causes it, as provided for by law.<sup>284</sup>

### (b) Constitution of Mexico City

In a similar initiative, the newly-created unit of México City enacted its Constitution in January 2017, following a public participation process.<sup>285</sup> Article 13 of the México City Constitution includes a guarantee that “the rights to the preservation and protection of nature will be guaranteed by the authorities of México City,” and recognizes nature as comprising “all its ecosystems and species as a collective entity subject to rights.”<sup>286</sup>

The inclusion of these Rights of Nature in México City’s 2017 Constitution is in line with a 2013 decree issued by the previous México City governing entity, which enshrined Rights of Nature and recognized Earth as a living being.<sup>287</sup> The 2014 Constitution of the State of Guerrero also contains a provision to “guarantee and protect the rights of nature.”<sup>288</sup>

## 4.3.3 Costa Rica

In 2016, Costa Rica issued Executive Decree No. 39659, which established April 22 of each year as National Mother Earth Day.<sup>289</sup> The Decree mandates that the ministers of Culture and Youth, Public Education, and the Environment and Energy work together to determine plans, programs and activities through which the day is commemorated.<sup>290</sup> Although the Decree does not recognize or confer legal personhood on nature, it represents a move toward adopting the United Nations Harmony with Nature Framework, a framework closely tied to the Rights of Nature movement.

## 4.4.

# Asia

South Asia received significant attention from the Rights of Nature movement after two landmark decisions by the High Court of Uttarakhand in 2014. Both decisions, however, were later stayed by the Supreme Court of India. Attention has instead shifted to Bangladesh, where a 2019 ruling recognized the legal personhood of all rivers in that country. These substantive developments have been accompanied by procedural Rights of Nature developments in Bhutan and the Philippines.



BANGLADESH | *Two boats float on the Dharla River.*  
Photo courtesy of Asif Rahman (Unsplash).

## 4.4.1 India

As in Colombia, recognition of the Rights of Nature in India has been driven primarily by the judiciary. Over time, Indian appellate courts have developed a body of jurisprudence recognizing the legal rights of sentient animals,<sup>291</sup> going so far as to declare them to have independent legal personae and imposing human guardianship duties.<sup>292</sup> More recently, the High Court of Uttarakhand has ventured further in recognizing legal personality in the Yamuna and Ganges rivers, as well as the Himalayan ecosystem. Both decisions, however, have been stayed by India's Supreme Court.

### (a) The Yamuna and Ganges Rivers Case

In 2014, a private citizen, Mohammed Salim, brought a claim against the state of Uttarakhand, the Federal Indian Government, and several private landowners, seeking an order to prevent the widespread pollution of the Yamuna and Ganges rivers.<sup>293</sup> Specifically, Mr. Salim's claim challenged the failure of federal and state governments to take measures provided for by statute (such as the eviction of illegal occupiers) to protect the Yamuna and Ganges rivers, following the reorganization of several Indian states.<sup>294</sup>

Most of the High Court of Uttarakhand's discussion concerned issues of the relationship between the federal and state governments. At the conclusion of the decision, the court ordered that illegal settlers be removed, that river management bodies be created, that the Uttarakhand state government be appropriately represented on these bodies, and that mining in the Ganges River ecosystem be halted.<sup>295</sup>

Several months after its initial decision, the court was not satisfied that the state government of Uttarakhand had taken adequate steps to implement the decision.<sup>296</sup> The court issued further orders requiring compliance with its earlier decision.<sup>297</sup>

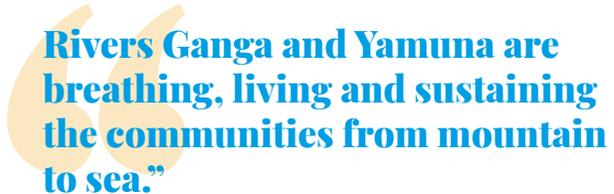
In the course of this enforcement decision, the court embarked on a wide-ranging discussion of the legal status of the Yamuna and Ganges rivers. The court began from the starting point that the rivers held an important place in Hindu belief systems, observing the Ganges's power to "wash away all the sins."<sup>298</sup> The court thus analogized the status of the rivers to earlier Supreme Court decisions which had determined that Hindu idols could hold legal personality in the same

way as trusts and corporations: capable of bringing suit, holding property, and being taxed (via their human guardians).<sup>299</sup> The court concluded that these precedents held that non-natural persons should be recognized as legal persons where doing so would serve a useful societal purpose.<sup>300</sup>

In the present case, the court found that recognizing the legal personhood of the Yamuna and Ganges rivers would "protect the recognition and faith of society."<sup>301</sup> The court elaborated that:

All the Hindus have deep Astha [faith] in rivers Ganga<sup>302</sup> and Yamuna and they collectively connect with these rivers. Rivers Ganga and Yamuna are central to the existence of half of [the] Indian population and their health and well being. The rivers have provided both physical and spiritual sustenance to all of us from time immemorial. River Ganga and Yamuna have spiritual and physical sustenance. They support and assist both the life and natural resources and health and well-being of the entire community. Rivers Ganga and Yamuna are breathing, living and sustaining the communities from mountain to sea."<sup>303</sup>

Significantly, the court utilized this recognition of legal personhood as the basis for its further remedial orders. Analogizing to family law and acting with its *parens patriae* jurisdiction,<sup>304</sup> the court declared three state government officials to be acting in "loco parentis, as the human face to protect, conserve and preserve the Rivers Ganga and Yamuna and their tributaries."<sup>305</sup> These officials were instructed to "uphold the status of the Rivers Ganges and Yamuna and also to promote the health and well being of these Rivers," and to "represent at all legal proceedings to protect the interest of the Rivers Ganges and Yamuna."<sup>306</sup>



**Rivers Ganga and Yamuna are breathing, living and sustaining the communities from mountain to sea."**

### (b) The Himalayan Ecosystem Case

Several days after recognizing the legal personhood of the Yamuna and Ganges rivers, the High Court of Uttarakhand adjudicated a similar petition which sought protection of the Himalayan ecosystem of glaciers, streams and forests.<sup>307</sup> The petitioner, another private citizen, explicitly sought relief via the *parens patriae* jurisdiction. The court made an unusual allowance to

keep open the mandamus remedy issued in its earlier decision and extended the same order made in respect of the rivers to the Himalayan ecosystem.<sup>308</sup>

Specifically, the plaintiff, Lalit Miglani, sought an order to prevent the further recession of the Gangotri and Yamuntori Glaciers (the mountain sources of the Ganges and Yamuna rivers), as well as an order to protect nearby forests.<sup>309</sup> The court accepted that these natural features were at significant risk as a result of anthropogenic climate change and deforestation.

The court surveyed a range of sources attesting to the environmental and spiritual importance of the Himalayan ecosystem.<sup>310</sup> The court also assessed India's international commitments, including those under the 1968 Stockholm Declaration and 1992 Rio Declaration.<sup>311</sup> Finally, the court considered the history of local environmental and spiritual social movements which had fought to protect the Himalayas.<sup>312</sup>

Following this survey, the court concluded that the environmental and spiritual importance of the Himalayan ecosystem, together with India's international commitments and history of environmental activism, demanded that "[t]rees and wild animals have natural fundamental rights."<sup>313</sup> Citing the Aotearoa/New Zealand Te Urewera Act of 2014 in support, the court concluded that "[i]t is the fundamental duties [sic] of all the citizens to preserve and conserve the nature in its pristine glory. There is a grave threat to the very existence of Glaciers, Air, Rivers, rivulets, streams, Water Bodies including Meadows and Dales. ... The Courts are duty bound to protect the environmental ecology under the New Environment Justice Jurisprudence and also under the principles of *parens patriae*."<sup>314</sup> The court also invoked natural law, remarking that "[b]esides our constitutional and legal duties, it is our moral duty to protect the environment and ecology."<sup>315</sup>

The judgment concluded with an emphatic set of holdings:

Rivers and Lakes have [the] intrinsic right not to be polluted. Polluting and damaging the rivers, forests, lakes, water bodies, air and glaciers will be legally equivalent to harming, hurting and causing injury to [a] person.

Rivers, Forests, Lakes, Water Bodies, Air, Glaciers and Springs have a right to exist, persist, maintain, sustain and regenerate their own vital ecology system. The rivers are not just water bodies. They are scientifically and biologically living.

The rivers, forests, lakes, water bodies, air, glaciers, human life are unified and are [an] indivisible whole. The integrity of the rivers is required to be maintained from Glaciers to Ocean.

However, we would hasten to observe that local inhabitants living on the banks of rivers, lakes, and whose lives are linked with rivers and lakes must have their voice too.

...

A juristic person, like any other natural person is in law also conferred with rights and obligations and is dealt with in accordance with law. In other words, the entity acts like a natural person but only through a designated person. For a bigger thrust of socio-political-scientific development, evolution of a fictional personality to be a juristic person becomes inevitable. This may be any entity, living [or] inanimate, objects or things. It may be a religious institution or any such useful unit which may impel the courts to recognize it. This recognition is for subserving the needs and faith of the society. All the persons have a constitutional and moral responsibility to endeavor to avoid damage or injury to nature (in *damno vitando*). Any person causing any injury ... is liable to be proceeded against ... Thus, the Himalayan Mountain Ranges, Glaciers, rivers, streams, rivulets, lakes, jungles, air, forests, meadows, dales, wetlands, grasslands and springs are required to be declared as the legal entity/ legal person/juristic person/juridical person/moral person/artificial person for their survival, safety, sustenance and resurgence.<sup>316</sup>

Acting under its *parens patriae* jurisdiction, the court formally declared that the Himalayan ecosystem was a full legal person with rights equivalent to those of human beings; that appointed officers from the state government, judicial and local bar would act in *loco parentis*; and that there must be mandated governance representation from local villages. It also issued a direction for strict compliance with its earlier judgments.<sup>317</sup>

**“Rivers and Lakes have [the] intrinsic right not to be polluted. Polluting and damaging the rivers, forests, lakes, water bodies, air and glaciers will be legally equivalent to harming, hurting and causing injury to [a] person.”**



MIRSHARAI, BANGLADESH | *Napittachora Waterfalls*.  
Photo courtesy of Niloy Palit (Unsplash).

### (c) Stay by the Supreme Court of India

The two decisions of the High Court of Uttarakhand were stayed by the Supreme Court of India in mid-2017.<sup>318</sup> Although the Supreme Court did not give reasons for its decision, the Uttarakhand State government had sought the stay on the basis that it left uncertainty as to who would be liable in the event of damage caused by flooding,<sup>319</sup> and that the decisions failed to account for issues of federalism (given that the Ganges and Yamuna rivers cross state borders).<sup>320</sup> These arguments reflect a jurisprudential approach which transfers traditional human doctrines to the natural environment, rather than the transformative “ecocentric” approach as suggested by Colombian courts (whereby nature takes on the status of “subject of rights”, rather than “legal personhood.”<sup>321</sup>

### (d) India: An Evaluation

The stay granted by the Indian Supreme Court appears to have put a pause on Rights of Nature jurisprudence in India. It is clear, however, that at least one Indian court considers the Rights of Nature to be a logical extension of existing Indian legal doctrines (such as the recognition of companies’ legal personhood and the exercise of *parens patriae*), as well as a necessary corollary of Indian history and spirituality.

It should be noted that there is a difference in the approach between the two decisions of the High Court of Uttarakhand. The *Ganges and Yamuna Rivers* case is heavily couched in Hindu spirituality and religious attachment to the rivers, while the *Himalayan ecosystem* case is couched in more secular and universal language. Much of the holding in the *Himalayan ecosystem* case, such as the indivisible nature of the Himalayan ecosystem and the need for guardianship representation from the local community, bears strong coherence with legislative and judicial developments in Aotearoa/New Zealand and Colombia.

Some concerns have been expressed about the practicality of the approach taken by the High Court of Uttarakhand. The allegedly unworkable breadth of the decisions was the basis for the Supreme Court challenge, and it may be the case that more refined orders will be necessary in order to render the Rights of Nature to be more practical—for example, by restricting the legal fiction of personhood in tort cases involving flood damage, and providing for some coordinating mechanism with neighboring states (or even countries). Furthermore, concern has been expressed at the heavy reliance on Hindu spirituality in the High Court’s *Yamuna and Ganges Rivers* decision, particularly in the context of rising Hindu nationalist rhetoric in Indian politics. One commentator has expressed concern that “the premise of such protection is troubling for the future of minority rights and India’s democratic secular consensus.”<sup>322</sup>

## 4.4.2 Bangladesh

In a 2009 ruling, the Bangladeshi Supreme Court ordered the creation of a Bangladeshi National River Protection Commission (NRPC).<sup>323</sup> Such a commission was established in the National River Protection Commission Act of 2013.

### (a) The Turag River Case

Ten years later, in 2019, the High Court of Bangladesh—Bangladesh’s highest non-appellate court—issued a landmark decision finding all rivers in Bangladesh to have legal personhood.<sup>324</sup> The case was brought by the NGO Human Rights and Peace in Bangladesh, which challenged encroachments of individuals, businesses and government entities on the Turag River. These encroachments included sand dredging, construction, and large-scale industrial pollution. In February 2019, the High Court recognized the legal personhood of the Turag River, as well as the legal personhood of all rivers in Bangladesh.

The court recognized all rivers as “living entities” and appointed the NRPC as their guardian. According to news reports, the High Court also ordered that: all encroachments be removed within six months of the verdict; the government compile a list of all encroachers (subsequently published on the NRPC website); such encroachers be barred from running in elections or receiving certain bank loans; “river grabbing” be criminalized; the government amend relevant legislation within six months to prescribe punishment and fines for encroachment; all industrial workplaces and academic institutions offer compulsory education on rivers; and the NRPC strengthen its independence and enforcement powers.<sup>325</sup> The 2019 decision was upheld by the Supreme Appellate Division of Bangladesh in February 2020 (Bangladesh’s highest court).<sup>326</sup>

### (b) Bangladesh: An Evaluation

The Bangladeshi case could potentially become one of the most significant Rights of Nature developments in the world. It amounts to the first instance of a national apex court recognizing the rights of *all* rivers within a jurisdiction.

Although Rights of Nature were recognized in Bangladesh only in 2019, subsequent developments

have been significant. Bangladeshi government agencies have complied with at least some of the judicial directives. Between January and July 2019, over 4,000 illegal structures were demolished, and 190 acres of land recovered.<sup>327</sup> Furthermore, there appears to be ongoing judicial supervision of Rights of Nature. In January 2020, the High Court ordered the closure of 231 unauthorized factories on the Buriganga River.<sup>328</sup>

## 4.4.3 Bhutan and The Philippines

Bhutan and the Philippines have both liberalized procedural rules of standing and evidence to allow individuals to bring environmental claims on nature’s behalf. These rules are motivated in large part by considerations similar to Rights of Nature.

### (a) The Bhutan Green Bench Book

In 2018, the Royal Court of Justice of Bhutan created a “Green Bench,” which has jurisdiction over environmental cases. The creation of the Bench was accompanied by the development of a “Bench Book” issued by Bhutan’s Chief Justice.<sup>329</sup> Significantly, the Bench Book allows for environmental cases to be brought by any person as a “trustee” of nature, and provides that the usual rules of evidence need not apply in such cases. The Bench Book was motivated in part by a recognition of human obligations to the environment, and in particular (reflecting Article 5 of the Bhutanese Constitution), that “every person would have a duty to protect the environment.”

### (b) Philippines Supreme Court Rules of Procedure 2010

The Supreme Court of the Philippines has developed its own innovative rules for litigating environmental cases, which incorporate rules of standing derived from Rights of Nature. The Supreme Court Rules of Procedure 2010 include a standing provision which states that “any Filipino citizen in representation of others, including minors or generations yet unborn, may file an action to enforce rights or obligations under environmental laws.” This brings Filipino laws of procedure in line with the Rights of Nature approach adopted by Christopher Stone and incorporated into many of the United States ordinances.

## 4.5.

# Africa

The only formal codification that we are aware of within Africa is in Ugandan legislation. After an extensive campaign by civil society groups (including Advocates for Natural Resources & Development (ANARDE)) in 2019, Uganda enacted environmental legislation that explicitly enshrines Rights of Nature.<sup>330</sup>

## 4.5.1 Uganda

Section 4 of the National Environment Act 2019 provides:

### 4. RIGHTS OF NATURE

(1) Nature has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution.

(2) A person has a right to bring an action before a competent court for any infringement of rights of nature under this Act.

(3) Government shall apply precaution and restriction measures in all activities that can lead to the extinction of species, the destruction of the ecosystems or the permanent alteration of natural cycles.

(4) The Minister shall, by regulations, prescribe the conservation areas for which the rights in subsection (1) apply.<sup>331</sup>

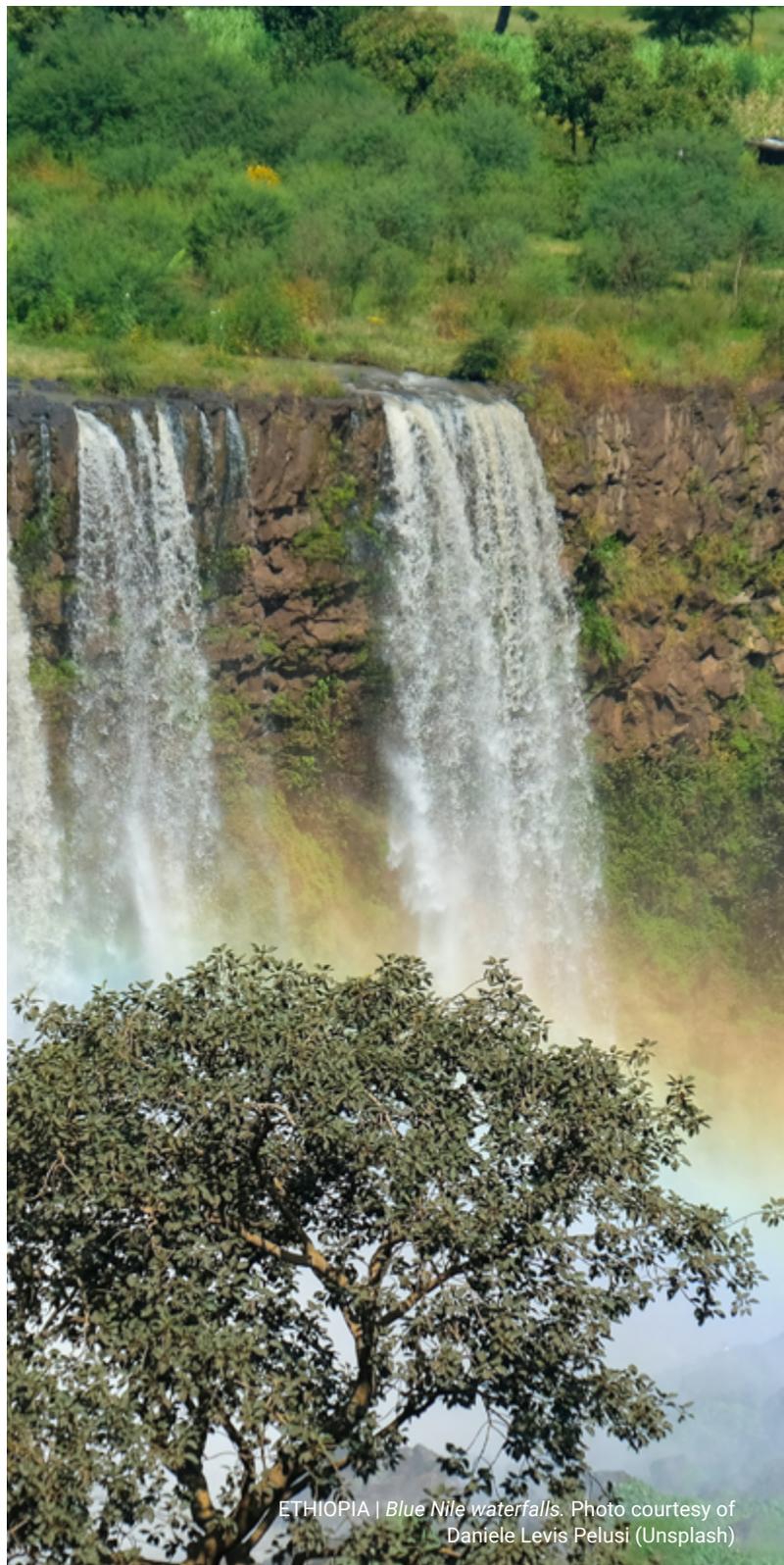
Reporting on the draft bill, the Committee on Natural Resources of the Parliament of Uganda commented that:

For a very long time, laws have only been permitting hence treating nature as property. For the right to a clean and healthy environment to be guaranteed, the environment should be recognized as a right holding entity. Although the 1995 Constitution and the National Environment Act 1995 provides that every Ugandan has a right to a clean and healthy environment, and the Constitution further commands the state to protect important natural resources including water, wetlands, minerals, oils, fauna and flora on behalf of the people of Uganda. The above legal position does not provide for nature to hold, enjoy and enforce its rights. This means giving universal rights to both humans and nature to enjoy a clean and healthy environment. The legal right focuses on the idea of legal standing (often described as the ability to sue and be sued), which enables “nature” to go to court to protect its rights.

Legal rights are not the same as human rights, and so a “legal person” does not necessarily have to be a human being. Corporations, for example, are also treated in law as “legal persons”, as a way to endow companies with particular legal rights, and to treat the company as legally distinct from its managers

and shareholders. Therefore, the same practice should apply to nature.<sup>332</sup>

The Committee cited Rights of Nature developments in India and Aotearoa/New Zealand.



ETHIOPIA | Blue Nile waterfalls. Photo courtesy of Daniele Lewis Pelusi (Unsplash)

# ENDNOTES

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10. Tickner et al, *Bending the Curve of Global Freshwater Biodiversity Loss: An Emergency Recovery Plan*, 70(4) *BioScience* 330 (2020).
11. I.e., rights which are held by humans, rather than nature itself. Human rights, such as the "right to a healthy environment," may relate to nature, even if they are not held by nature.
12. See e.g. the recent assessment of Associate Professor David Boyd, United Nations Special Rapporteur on Human Rights and the Environment: "The precise meaning and effects of recognizing the rights of nature will be worked out through community conversations, scholarly dialogue, public and political debates, negotiation, and, where necessary, litigation, just as all novel legal concepts evolve." David R. Boyd, *Recognizing the Rights of Nature: Lofty Rhetoric or Legal Revolution?*, 32 *Nat. Resources & Env.* 13, 17 (2018).
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14. See further Cameron La Follette, *Living in a World Where Nature Has Rights*, *Earth Law Center* (July 16, 2019), <https://www.earthlawcenter.org/blog-entries/2019/7/living-in-a-world-where-nature-has-rights>.
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18. See e.g. International Center for the Rights of Nature, *Rights of Nature: Overview*, *supra* note 9.
19. *Id.*
20. See further Lidia Cano Pecharroman, *Rights of Nature: Rivers That Can Stand in Court*, 7 *Resources* 13 (2018).
21. See e.g. Kiana Herold, *Rights of Nature: Indigenous Philosophies Reframing Law*, *Intercontinental Cry Magazine* (Jan. 6, 2017), <https://intercontinentalcry.org/rights-nature-indigenous-philosophies-reframing-law/>.
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27. Herold, *supra* note 21.
28. Christopher D. Stone, *Should Trees Have Standing? – Toward Legal Rights for Natural Objects*, 45 *S. Cal. L. Rev.* 450 (1972).
29. *Id.* at 452.
30. *Id.* at 482-85.
31. *Id.* at 485-86.
32. *Id.* at 458.
33. *Id.* at 464-65; 475-80.
34. 405 U.S. 727 (1972).

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36. *Id.* at 4-9.
37. See *Programme Harmony with Nature*, United Nations (accessed Feb. 19, 2020), <http://www.harmonywithnatureun.org/>; H. Leimbacher, *Gender and Nature in Comparative Legal Cultures*, in D. Nelken (ed.), *Comparing Legal Cultures*, 146 (2016); Pecharroman, *supra* note 20.
38. Klaus Bosselmann, *Im Namen der Natur: Der Weg zum ökologischen Rechtsstaat*, (Scherz, 1992). See further Klaus Bosselmann, *The Principle of Sustainability* (2nd. ed, 2016).
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72. Bolivia Mother Earth Law 071 of 2010, Article 3. Original Spanish: "La Madre Tierra es el sistema viviente dinámico conformado por la comunidad indivisible de todos los sistemas de vida y los seres vivos, interrelacionados, interdependientes y complementarios, que comparten un destino común. La Madre Tierra es considerada sagrada, desde las cosmovisiones de las naciones y pueblos indígena originario campesinos."
73. *Id.* article 7. In the original Spanish, the rights are those of "vida," "diversidad de la vida," "agua," "aire limpio," "equilibrio," "restauración," and "vivir libre de contaminación."
74. *Id.* article 5. Original Spanish: "Para efectos de la protección y tutela de sus derechos, la Madre Tierra adopta el carácter de sujeto colectivo de interés público. La Madre Tierra y todos sus componentes incluyendo las comunidades humanas son titulares de todos los derechos inherentes reconocidos en esta Ley. La aplicación de los derechos de la Madre Tierra tomará en cuenta las especificidades y particularidades de sus diversos componentes. Los derechos establecidos en la presente Ley, no limitan la existencia de otros derechos de la Madre Tierra."
75. *Id.* article 6. Original Spanish: "Todas las bolivianas y bolivianos, al formar parte de la comunidad de seres que componen la Madre Tierra, ejercen los derechos establecidos en la presente Ley, de forma compatible con sus derechos individuales y colectivos. El ejercicio de los derechos individuales están limitados por el ejercicio de los derechos colectivos en los sistemas de vida de la Madre Tierra, cualquier conflicto entre derechos debe resolverse de manera que no se afecte irreversiblemente la funcionalidad de los sistemas de vida."
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77. Original Spanish: La Ley Marco de la Madre Tierra y Desarrollo Integral para Vivir Bien. Available at Gaceta Oficial del Estado Plurinacional de Bolivia, Ley No. 300 del 15 de octubre de 2012. [http://web.madretierra.gob.bo/sites/default/files/2018-01/ley\\_nro\\_300.pdf](http://web.madretierra.gob.bo/sites/default/files/2018-01/ley_nro_300.pdf).
78. *Id.* article 1. Full text in Spanish: "La presente Ley tiene por objeto establecer la visión y los fundamentos del desarrollo integral en armonía y equilibrio con la Madre Tierra para Vivir Bien, garantizando la continuidad de la capacidad de regeneración de los componentes y sistemas de vida de la Madre Tierra, recuperando y fortaleciendo los saberes locales y conocimientos ancestrales, en el marco de la complementariedad de derechos, obligaciones y deberes; así como los objetivos del desarrollo integral como medio para lograr el Vivir Bien, las bases para la planificación, gestión pública e inversiones y el marco institucional estratégico para su implementación."
79. *Id.* article 5.5. Original Spanish: "Es el horizonte civilizatorio y cultural alternativo al capitalismo y a la modernidad que nace en las cosmovisiones de las naciones y pueblos indígena originario campesinos, y las comunidades interculturales y afrobolivianas, y es concebido en el contexto de la interculturalidad. Se alcanza de forma colectiva, complementaria y solidaria integrando en su realización práctica, entre otras dimensiones, las sociales, las culturales, las políticas, las económicas, las ecológicas, y las afectivas, para permitir el encuentro armonioso entre el conjunto de seres, componentes y recursos de la Madre Tierra. Significa vivir en complementariedad, en armonía y equilibrio con la Madre Tierra y las sociedades, en equidad y solidaridad y eliminando las desigualdades y los mecanismos de dominación. Es Vivir Bien entre nosotros, Vivir Bien con lo que nos rodea y Vivir Bien consigo mismo."
80. See e.g. David Humphreys, *Rights of Pachamama: The emergence of an earth jurisprudence in the Americas*, 20 J. Int. Relat. Dev. 459 (2017).
81. John Vidal, *Bolivia enshrines natural world's rights with equal status for Mother Earth*, *The Guardian*, (Apr. 10, 2011), <https://www.theguardian.com/environment/2011/apr/10/bolivia-enshrines-natural-worlds-rights>.
82. See Paola Villavicencio Calzadilla & Louis J. Kotze, *Living in Harmony with Nature? A Critical Appraisal of the Rights of Mother Earth in Bolivia*, 7 *Transnational Env. L.* 397 (2018); Pablo Solon, *The Rights of Mother Earth*, in Vishwas Satgar (ed.), *The Climate Crisis: South African and Global Democratic Eco-Socialist Alternatives* (2018).
83. Pecharroman, *supra* note 20, at 10.
84. See articles 8, 11, 13 and 79 of the Constitution of Colombia.
85. Colombia Constitutional Court Ruling T-622 of 2016, Expediente T-5.016.242, para 2.1 (Nov. 10, 2016), <http://www.corteconstitucional.gov.co/relatoria/2016/t-622-16.htm>.
86. Tribunal Superior de Bogotá, Sala Civil de Decisión

- Especializada en Restitución de Tierras Ruling No. 11001220300020180031900 (Feb. 12, 2018).
87. Colombia Constitutional Court Ruling T-622 of 2016, *supra* note 85, at 13.
  88. *Id.* at para. 9.20. Original Spanish: “los derechos a la vida, a la dignidad humana, a la salud, al agua, a la seguridad alimentaria, al medio ambiente sano, a la cultura y al territorio de las comunidades étnicas que habitan la cuenca del río Atrato.” In finding a fundamental right to water, the court cited a range of national and international authorities. International sources included (at paras 5.42-5.45): General Assembly Resolution 10967; CESCR General Comment 15; Declaration of Mar del Plata (1977); Dublin Declaration (1992); Declaration of Rio De Janeiro (1992); Program of Action of the United Nations International Conference on Population Development (1994); New Agenda for Sustainable Development (2015); as well as several decisions of the Inter-American Court of Human Rights.
  89. *Id.* at para. 9.27. Original Spanish: “no puede dejar de observarse que el derecho al agua es un requisito sine qua non para el ejercicio de otros derechos.”
  90. *Id.* at paras. 4.1-4.17. The court made reference to these principles under the framework of the Colombian Estado social de derecho (ESD).
  91. *Id.* at para. 5.9.
  92. *Id.* at paras. 5.7-5.9.
  93. *Id.* Namely, Article 8 (obligation on the state to protect natural assets) and Article 79 (right to a healthy environment and duty of the state to preserve the “diversity and integrity of the environment”).
  94. *Id.* at para. 5.1. Original Spanish: “íntegra, de forma esencial, el espíritu que informa a toda la Constitución Política.”
  95. *Id.* at para. 5.9. Original Spanish: “parte de una premisa básica según la cual la tierra no pertenece al hombre y, por el contrario, asume que el hombre es quien pertenece a la tierra, como cualquier otra especie[86]. De acuerdo con esta interpretación, la especie humana es solo un evento más dentro de una larga cadena evolutiva que ha perdurado por miles de millones de años y por tanto de ninguna manera es la dueña de las demás especies, de la biodiversidad ni de los recursos naturales como tampoco del destino del planeta. En consecuencia, esta teoría concibe a la naturaleza como un auténtico sujeto de derechos que deben ser reconocidos por los Estados y ejercidos bajo la tutela de sus representantes legales, verbigracia, por las comunidades que la habitan o que tienen una especial relación con ella.” See also para. 9.30.
  96. *Id.* at para. 5.10. Original Spanish: “solo a partir de una actitud de profundo respeto y humildad con la naturaleza, sus integrantes y su cultura es posible entrar a relacionarse con ellos en términos justos y equitativos, dejando de lado todo concepto que se limite a lo simplemente utilitario, económico o eficientista.” The court concluded its discussion of the ecocentric paradigm with the following analysis (at para 5.10): “In other words: nature and the environment are a transversal element of the Colombian constitutional order. Its importance lies, of course, in attention to the human beings that inhabit it and the need to have a healthy environment to live a dignified life and in welfare conditions, but also in relation to the other living organisms with whom the planet is shared, understood as stocks worthy of protection in themselves. It is about being aware of the interdependence that connects us to all living beings on earth; that is, recognizing ourselves as integral parts of the global ecosystem -biosphere, rather than from normative categories of domination, simple exploitation or utility. Position that is particularly relevant in Colombian constitutionalism, taking into account the principle of cultural and ethnic pluralism that supports it, as well as the knowledge, customs and ancestral customs bequeathed by Indigenous and tribal peoples.”
  97. *Id.* at paras. 7.35-7.41.
  98. *Id.* at para. 9.27.
  99. *Id.* at para. 5.17.
  100. *Id.* at para. 5.17. Original Spanish: “relación de profunda unidad entre naturaleza y especie humana.” At para. 5.19, the court cited a range of international authorities in support of this approach, including: the ILO Convention 169 on Indigenous and Tribal Peoples (1989); the Convention on Biological Diversity (1992); the United Nations Declaration on the Rights of Indigenous Peoples (2007); American Declaration on the Rights of Indigenous Peoples (2016); UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003).
  101. *Id.* at paras. 9.1-9.19, 9.26.
  102. *Id.* at para. 9.19. Original Spanish: “Las autoridades estatales demandadas son responsables de la vulneración de los derechos fundamentales a la vida, a la salud, al agua, a la seguridad alimentaria, al medio ambiente sano, a la cultura y al territorio de las comunidades étnicas demandantes por su conducta omisiva al no realizar acciones efectivas para detener el desarrollo de actividades mineras ilegales.”
  103. *Id.* at para. 9.31.
  104. *Id.* at para. V.3.
  105. *Id.* at para. 9.31.
  106. *Id.* at para. 9.32. Original Spanish: “Las autoridades estatales demandadas son responsables de la vulneración de los derechos fundamentales a la vida, a la salud, al agua, a la seguridad alimentaria, al medio ambiente sano, a la cultura y al territorio de las comunidades étnicas demandantes por su conducta omisiva al no realizar acciones efectivas para detener el desarrollo de actividades mineras ilegales.”
  107. *Id.* at para. 9.32.
  108. *Id.* at paras. 9.32-9.34, 10.2.1.
  109. *Id.* at paras. 9.32-9.34, 10.2.1.
  110. Res. 907/18, mayo 22, 2018, Diario Oficial [D.O.] (Colom.).

111. *Minambiente oficializa Comisión de Guardianes para el río Atrato*, Ministerio de Ambiente y Desarrollo Sostenible (May 28, 2018), <http://www.minambiente.gov.co/index.php/noticias/3902-minambiente-oficializa-comision-de-guardianes-para-el-rio-atrato>.
112. Regine Roncucci, *Rights of Nature and the pursuit of environmental justice in the Atrato case*, Wageningen University (July 2019), <https://edepot.wur.nl/504758>.
113. *Minambiente oficializa Comisión de Guardianes para el río Atrato*, *supra* note 111.
114. *Id.*
115. Supreme Court of Colombia, STC4360-2018, radicación no. 11001-22-03-000-2018-00319-01 (Apr. 5, 2018), <http://www.cortesuprema.gov.co/corte/index.php/2018/04/05/corte-suprema-ordena-proteccion-inmediata-de-la-amazonia-colombiana/>. [*Amazon Rainforest Case*]
116. *Id.* at para. 2.1.
117. *Id.* at para. 2.2. The claimants specifically cited the Paris Climate Agreement, as incorporated into Colombian law by Law 1844 of 2017, and the National Development Plan 2014-2018, issued under Law 1753 of 2015.
118. *Id.* at 11-14.
119. *Id.* at 14.
120. *Id.* at 14.
121. *Id.* at 17, footnote 7.
122. *Id.* at 18-20.
123. *Id.* at 20.
124. *Id.* These included the International Covenant on Economic Social and Cultural Rights Article 12; the Convention on the Prohibition of Using Techniques of Environmental Modification for Military Purposes or Other Hostile Purposes (1976); the Additional Protocol I to the Geneva Conventions on the Protection of Victims of International Armed Conflicts (articles 35.3 and 55, prohibiting unjustified attacks on nature); the 1972 Stockholm Declaration; the 1992 Rio Declaration; and the 2015 Paris Accord.
125. *Id.* at 26-29, citing in particular articles 79-80.
126. *Id.* at 35-39.
127. *Id.* at 45. Original Spanish: “*sujeto de derechos*’, titular de la protección, de la conservación, mantenimiento y restauración a cargo del Estado y las entidades territoriales que la integran.”
128. *Id.* at 48-50.
129. Natalie Arenas, *Land Hoarding: What Colombia’s new administration has inherited*, Mongabay (Sept. 10, 2018), <https://news.mongabay.com/2018/09/land-hoarding-what-colombias-new-administration-has-inherited/>.
130. *Un pacto por la vida de la Amazonia*, Dejusticia (Apr. 27, 2018), <https://www.dejusticia.org/ayudanos-a-construir-el-pacto-intergeneracional-por-la-amazonia/>.
131. See Santiago Ardila Sierra, *The Colombian government has failed to fulfill the Supreme Court’s landmark order to protect the Amazon*, Dejusticia (April 5, 2019), <https://www.dejusticia.org/en/the-colombian-government-has-failed-to-fulfill-the-supreme-courts-landmark-order-to-protect-the-amazon/>.
132. Departamento de Nariño, Decreto No. 348 of 2019.
133. *Id.*, arts. 1-3. The decree is predicted to affect 39 discrete ecosystems, comprising 11% of the land area of the Nariño province.
134. *Id.* These included the Bolivian and Ecuadorian constitutions, as well as legislation in Australia (Yarra River Protection (Wilip-gin Birrarung murrn) Act 2017) and Aotearoa/New Zealand (Te Awa Tupua/Whanganui River Claims Settlement Act 2017).
135. In addition to those discussed here, see: Case 15238-3333-002 (Aug. 9, 2018) of the Administrative Court of Boyacá, <http://files.harmonywithnatureun.org/uploads/upload731.pdf> (a tutela decision recognizing the rights of the Pisba Highlands); and Case 13001-31-04-001 (Nov. 26, 2018) of the First Criminal Court of the Circuit of Cartagena, available at <http://files.harmonywithnatureun.org/uploads/upload746.pdf> (ordering that the state of Colombia protect and preserve bees as pollinating agents).
136. Ochoa v. Ministry of the Environment, Tribunal Superior Medellín, Case 05001-31-03-004-2019-00071 (June 17, 2019), <http://files.harmonywithnatureun.org/uploads/upload837.pdf>. [*Cauca River Case*].
137. *Id.* at 4. Original Spanish: “Refieren que el 6 de Febrero de 2019, ocurrió una crisis sin precedentes en el Proyecto, generando daños enormes en el caudal del río Cauca. Dentro de las intervenciones de orden infraestructural dentro de la presa, la dirrección del proyecto tomó la determinación de cerrar la compuerta 1 de la casa de máquinas de la represa, por lo cual el caudal se disminuyó dramáticamente, afectándose considerablemente todo el ecosistema de fauna y flora que depende directamente del buen estado del río.”
138. *Id.* at 5.
139. *Id.* at 19-20.
140. *Id.* at 20-23, citing Article 86 of the Colombian Constitution.
141. *Id.* at 25.
142. The Stockholm Declaration is the outcome document from the United Nations Conference on the Human Environment that took place in Stockholm, Sweden, in 1972. The Stockholm Declaration is known as the first international environmental law document that recognizes the right to a healthy environment.
143. *Id.* at 25-29. The Charter of the United Nations is an outcome document from the United Nations Conference on International Organization that took place in San Francisco, USA, in 1945. The UN Charter includes provisions relating to human rights, human dignity, and international security.
144. *Id.* at 37.

145. *Id.* at 40-41. Original Spanish: “(i) Que las generaciones futuras son sujetos de derechos de especialísima protección, (ii) que tienen derechos fundamentales a la dignidad, al agua, a la seguridad alimentaria y al medio ambiente sano, y (iii) que el río Cauca es sujeto de derecho, que implica, al igual que se hizo con el río Atrato, su protección, conservación, mantenimiento y restauración, a cargo del Ente Público Municipal y del Estado.”
146. The Ombudsman is the authority that receives complaints and represents the public's interest within a government agency or organization.
147. *Id.* at 42-43.
148. Rama Judicial Consejo Superior de la Judicatura, Juzgado Primero Penal del Circuito con Funciones de Conocimiento Neiva–Huila, Case no. 41001-3109-001-2019-00066-00, (Oct. 24, 2019), <http://files.harmonywithnatureun.org/uploads/upload869.pdf>. [*Magdalena River Case*]
149. *Id.* at 29-30.
150. *Id.* at 31.
151. *Id.* at 33. Original Spanish: “En consecuencia, se destaca el precedente jurisprudencial a través de la Sentencia T-622 de 2016 por medio de la cual se dio protección especial al Río Atrato como fuente de alimento medio ambiente y diversidad y la importancia del derecho al agua como fuente hídrica de conservar su valor futuro, reconociendo la protección de la riqueza natural y el concepto de la constitución verde o ecológica, propiciando así la categorización como sujeto de derechos al río como elemento indispensable de conservación en la naturaleza. Algo similar ocurrió en el department of Antioquia a través del Tribunal Superior de Medellín, quien en Sentencia de Segunda Instancia No. 38 del 17 de junio de 2019, revocó la sentencia emitida por el Juzgado Cuarto Civil del Circuito de Oralidad de Medellín y en consecuencia concedió los derechos de las futuras generaciones como sujetos de derecho de especial protección y a su vez reconoció el Río Cauca, su Cuenca y afluentes como entidad sujeto de derechos. [...] Por tal motivo, la responsabilidad atribuida al Estado en cabeza del Ministerio de Medio Ambiente y Desarrollo Sostenible, la Autoridad Nacional de Licencias Ambientales – ANLA, la Corporación Autónoma Regional del Río Grande de la Magdalena, la Gobernación del Departamento del Huila, la Corporación Autónoma Regional del Río Magdalena, Enel-Emgesa y a la comunidad en general, están llamados a proteger y evitar la posible vulneración de los derechos fundamentales de las futuras generaciones, ya sea a su vida, agua y medio ambiente sano, desde una perspectiva garantista, que permita el pleno goce y ejercicio en relación con los recursos naturales y ecosistemas que integran en conjunto la fuente fluvial más grande de Colombia, como lo es el Río Magdalena. Con base en los pronunciamientos anteriores se otorgará el reconocimiento como sujeto de derechos a las generaciones futuras y en consecuencia se les concederá el amparo de los derechos fundamentales al agua, vida Digna y medio ambiente sano; por consiguiente se dará pleno reconocimiento al Río Magdalena, su Cuenca y afluentes como una entidad sujeta de derechos, cuya protección, conservación, mantenimiento y restauración estará a cargo del Estado, Enel-Emgesa y la comunidad.”
152. Sentencia de Tutela No. 31 de julio 12, 2019, Juez Tercero de Ejecución de Penas y Medidas de Seguridad del Cali (July 12, 2019).
153. As per Article 88 of the Colombia Constitution together with Law 472 of 1998, a popular action is one which allows for the protection of collective rights and interests. Law 472 includes the “enjoyment of a healthy environment, in accordance with the provisions of the Constitution, law and regulatory provisions” (“El goce de un ambiente sano, de conformidad con lo establecido en la Constitución, la ley y las disposiciones reglamentarias”).
154. Tribunal Administrativo Del Tolima, Radicado 73001-23-00-000-2011-00611-00, Personería Municipal de Ibagué contra Nación – Ministerio de Medio Ambiente y Otros (May 30, 2019), <http://files.harmonywithnatureun.org/uploads/upload836.pdf>.
155. *Id.* at 40.
156. *Id.* at 46.
157. *Id.* at 46-54. See e.g. the citation of Article 1 of Decree 3570 of September 27, 2011, cited at 53.
158. *Id.* at 64-66.
159. *Id.* at 66-89. The court cited, *inter alia*, General Comment No. 15 of the Committee on Economic, Social and Cultural Rights; the Constitutional Court of Colombia (T-578 of 1992; T-140 of 1994; T-207 of 1995); Article 93 of the Colombian Constitution; United Nations General Assembly Resolution 64/292, adopted July 28, 2010; the Declaration of Mar del Plata 1977; The 1992 Rio Declaration; various reports of the United Nations Development Program; Article 4 of the American Convention of Human Rights (as part of the right to life); Article 11 of the Protocol of San Salvador (as part of the right to a healthy environment); the Third Geneva Convention, Articles 20, 26, 29, 89, and 127; constitutions and judicial decisions in Belgium, France, Italy, South Africa, Costa Rica, Argentina, Bolivia, Ecuador and Peru.
160. *Id.* from 89.
161. *Id.* at 89-92, citing the CESCR's General Comments 12, 14 and 15.
162. *Id.* at 91: “realice acciones positivas con el fin de facilitar, proporcionar y promover la plena efectividad del derecho.”
163. *Id.* at 91.
164. *Id.* at 91-115.
165. Proportionality analysis is a legal technique of balancing interests which includes weighing the perceived benefits of government measures against the restrictions on legally protected rights.
166. *Id.* at 118.
167. *Id.* at 124-25.
168. *Id.* at 124-25.
169. *Id.* at 125-38.

170. *Id.* at 138.
171. *Id.* at 140-41.
172. *Id.* at 141.
173. Juzgado Unico Civil Municipal La Plata–Huila, Case no. 41-396-40-03-001-2019-00114-00 (Mar. 19, 2019), <http://files.harmonywithnatureun.org/uploads/upload823.pdf>.
174. *Id.* at 11 and 16. Original Spanish: “la jurisprudencia constitucional ha reivindicado que el valor intrínseco de la naturaleza trasciende de la perspectiva antropocéntrica y “(...) se enfoca en [un] criterio “ecocéntrico – antrópico”, el cual sitúa al ser humano a la par del entorno ecosistémico, cuya finalidad es evitar el trato prepotente, displicente e irresponsable del recurso ambiental, y de todo su contexto, para satisfacer fines materialistas, sin ningún respeto proteccionista o conservacionista”. No se trata de truncar el desarrollo sino de entender que existe un “mejor desarrollo”, que permita la satisfacción de las necesidades de las generaciones presentes y futuras en armonía con la naturaleza, impidiendo que por la interdependencia, el uso irracional de los recursos perjudique a la humanidad hasta el punto de llevarla a la extinción. [...] Así las cosas, para este estricto caso, este estado judicial con profundo respeto por la naturaleza y siguiendo lo adocetrinado por la jurisprudencia ambiental, reconocerá al “Río la Plata” como sujeto de derechos, evaluará los hechos denunciados que afectaron a ese recurso hídrico en razón de esa condición y adoptará las medidas de protección que considere necesarias, una vez se examine lo propio frente a los derechos de los tutelantes.”
175. *Id.*, citing C. Alfonso, *Progreso al Siglo XX. “El Progreso y sus Paradojas”* 114 (1976).
176. *Id.* at 27. Original Spanish: “Finalmente, resáltese, de conformidad con los valores y principios que inspiran el orden ecológico mundial, los instrumentos especializados que han sido citados y el marco normativo interno, lo aquí decidido más allá de resolver un conflicto en particular, constituye, por sobre todo, el firme propósito de la justicia ambiental de reconocer que sólo a partir de la armonía que debe existir entre los seres humanos y la naturaleza y el profundo respeto que se debe tener frente a esta, es posible satisfacer las necesidades de la generación presente y construir un mejor futuro para las venideras, con ello “la defensa de nuestro entorno máspreciado, nuestra casa común, El Planeta.”
177. Citing remarks by Luis Almargo, the Secretary-General of the Organization of American States, at the close of the Inter-American Judicial Training Program on Environmental Law, Peru, October 2018.
178. *Acuerdo de creación de una Jurisdicción Especial para la Paz* (Sept. 23, 2015), <https://prensarural.org/spip/spip.php?article17782>.
179. “3. Regarding the justice component, we have agreed to create a Special Jurisdiction for Peace, which will have Chambers of Justice and a Court for Peace. The Chambers and the court will be made up mainly of Colombian magistrates, and will have a minority participation of foreigners who meet the highest requirements. The essential function of the Chambers and the Tribunal for Peace is to end impunity, obtain truth, contribute to the reparation of victims, and judge and impose sanctions on those responsible for the serious crimes committed during the armed conflict, particularly the most serious and representative ones, guaranteeing non-repetition.”
180. Article 14 of Law No. 1820/2016, “granting amnesties or pardons or any special, symmetrical, simultaneous, balanced and equitable treatment does not exempt from the duty to contribute individually or collectively to clarify the truth or the fulfillment of repairing obligations that are imposed by the Jurisdicción Especial para la Paz [JEP].”
181. Case no. 2/2018, República de Colombia Jurisdicción Especial para La Paz Salas de Justicia, para. 102(iii) (Nov. 12, 2019), [https://relatoria.jep.gov.co/documentos/providencias/1/1/Auto\\_SRVR-079\\_12-noviembre-2019.docx](https://relatoria.jep.gov.co/documentos/providencias/1/1/Auto_SRVR-079_12-noviembre-2019.docx).
182. *Id.* at para. 54.
183. *Id.* at para. 68.
184. *Id.* at para. 94.
185. *Id.* at para. 57.
186. *Id.* at para. 95, citing articles 3, 8, 29 and 45 of Decree-Law No. 4633/2011.
187. *Id.* at para. 102(v).
188. *Id.* at para. 87.
189. Constitution of Colombia, Article 330: “In accordance with the Constitution and the statutes, the indigenous territories shall be governed by the councils formed and regulated according to the uses and customs of their communities and shall exercise the following functions: 1.Oversee the application of the legal regulations concerning the uses of the land and settlement of their territories. 2.Design the policies, plans and programs of economic and social development within their territory, in accordance with the National Development Plan. 3.Promote public investments in their territories and oversee their appropriate implementation. 4.Collect and distribute their funds. 5.Oversee the conservation of natural resources. 6.Coordinate the programs and projects promoted by the different communities in their territory. 7.Cooperate with the maintenance of the public order within their territory in accordance with the instructions and provisions of the national government. 8.Represent the territories before the national government and the other entities in which they are integrated; and 9.Other matters stipulated by the Constitution and statute.” *Constitution of Colombia 1991 (rev. 2015)*, Constitute Project (accessed Feb. 19, 2020). Original Spanish available at *Constitucion Política de Colombia 1991*, Georgetown University Political Database of the Americas (accessed Sept. 2, 2020), <https://pdba.georgetown.edu/Constitutions/Colombia/colombia91.pdf>.

190. See further Francisca Pou Giménez, *The Rights of Rivers and Forests and Apex Court Dynamics in Colombia: On Natural and Institutional Environments*, Int'l J. Const. L. Blog, (Jun. 13, 2018, accessed Feb. 19, 2020), <http://www.iconnectblog.com/2018/06/the-rights-of-rivers-and-forests-and-apex-court-dynamics-in-colombia-on-natural-and-institutional-environments-i-connect-column/>. "Incidental" here means that it is not directly related to the specific Rights of Nature arguments.
191. *Constitution of Ecuador 2008 (rev. 2015)*, Constitute Project (accessed Feb. 19, 2020), [https://www.constituteproject.org/constitution/Ecuador\\_2015?lang=en](https://www.constituteproject.org/constitution/Ecuador_2015?lang=en). Original Spanish available version at República del Ecuador Constituciones de 2008, Georgetown University Political Database of the Americas (Jul. 11, 2011), <http://pdba.georgetown.edu/Constitutions/Ecuador/ecuador08.html>.
192. Louis J. Kotzé and Paola Villavicencio Calzadilla, *Somewhere between Rhetoric and Reality: Environmental Constitutionalism and the Rights of Nature in Ecuador*, 6 Transnational Env. L. 401, 415-17 (2017).
193. *Id.* at 418.
194. *Ecuador Draft Constitution Passed*, BBC News (Jul. 25, 2008; accessed Feb. 19, 2020), <http://news.bbc.co.uk/2/hi/americas/7524680.stm>.
195. International Center for the Rights of Nature, *Champion the Rights of Nature*, Community Environmental Legal Defense Fund (Feb. 5, 2020), <https://celdf.org/rights/rights-of-nature/>. The CELDF has also been instrumental in drafting many local "rights of nature" ordinances in the United States—see 4.3.1.
196. Richard Fredrick Wheeler v. Procuraduría General del Estado en Loja, No. 11121-2011-0010 of 2011, (Ecu)—see: <http://blogs.law.widener.edu/envirolawblog/files/2011/07/proteccion-derechosnatura-loja-11-1.pdf>; <http://blogs.law.widener.edu/envirolawblog/files/2011/07/proteccion-derechosnatura-loja-11-2.pdf>; <http://blogs.law.widener.edu/envirolawblog/files/2011/07/proteccion-derechosnatura-loja-11-3.pdf>; <http://blogs.law.widener.edu/envirolawblog/files/2011/07/proteccion-derechosnatura-loja-11-4.pdf>; <http://blogs.law.widener.edu/envirolawblog/files/2011/07/proteccion-derechosnatura-loja-11-5.pdf>; <http://blogs.law.widener.edu/envirolawblog/files/2011/07/proteccion-derechosnatura-loja-11-6.pdf>.
197. Erin Daly, *The Ecuadorian Exemplar: The First Ever Vindications of Constitutional Rights of Nature*, 21 The Rev. of Euro. Comm. & Int'l Env. L. 63, 63 (2012).
198. Pecharroman, *supra* note 20.
199. Wheeler, *supra* note 196. The court cited at length the comments of Albert Acosta, the President of the Ecuadorian Constituent Assembly. Albert Acosta, Publicado en la pagine de la Asamblea Nacional Constituyente del Ecuador (Feb. 29, 2008): "Man can not survive at the margins of nature... The human being is a part of nature, and can not treat nature as if it were a ceremony to which he is a spectator. Whatever legal system tied to popular sentiment, sensitive to natural disasters that we, in our day, are familiar with, applying modern scientific knowledge—or the ancient knowledge of original cultures—about how the universe works, must prohibit human beings from bringing about the extinction of other species or destroying the functioning of natural ecosystems." Translation from Erin Daly, *Ecuadorian Court Recognizes Constitutional Right to Nature*, Widener Environmental Law Center: The Blog (Jul. 12, 2011), <https://blogs.law.widener.edu/envirolawblog/2011/07/12/ecuadorian-court-recognizes-constitutional-right-to-nature/>.
200. *Id.* citing Ecuadorian Constitution art. 397(1). The court also justified this approach on the basis that the defendant is more likely to have detailed knowledge of the potential environmental impacts.
201. Daly, *supra* note 197, at 64.
202. Wheeler, *supra* note 196.
203. Daly, *supra* note 197, at 64-65.
204. See Sofia Suarez, *Defending Nature: Challenges and obstacles in defending the rights of nature*, The FES Energia e Clima (Aug. 2013), <http://library.fes.de/pdf-files/bueros/quito/10386.pdf>.
205. Constitutional Court of Ecuador, Case no. 0032-12-IS, 2018, (Ecu).
206. *Id.* at 2.
207. See generally Daly, *supra* note 197, at 64-65. The analysis presented here draws heavily on Daly's analysis, who in turn credits Professor John Bonnie for providing information about the case. See also Craig Kauffman and Pam Martin, *Testing Ecuador's Rights of Nature: Why Some Lawsuits Succeed and Others Fail*, Presented at the International Studies Association Annual Convention, Atlanta, GA (Mar. 18, 2016), <http://files.harmonywithnatureun.org/uploads/upload471.pdf>.
208. República del Ecuador Asamblea Nacional, Comisión de la Biodiversidad y Recursos Naturales, Acta de Sesión No. 66 (15 Junio 2011) ('República del Ecuador Asamblea Nacional').
209. Daly, *supra* note 197 at 65.
210. *Id.*
211. For a general overview of constitutions and the environment, see James R. May and Erin Daly, *Environmental Constitutionalism*, Elgar Research Reviews in Constitutional Law (2016).
212. Constitution of Ecuador art. 11(6).
213. Constitution of Ecuador art. 81. See further Kotze and Calzadilla, *supra* note 192, at 423-24.
214. Constitution of Ecuador Article 425.
215. See further Rosalind Dixon, *Constitutional Rights as Bribes*, 50 Conn. L. Rev. 767 (2018).
216. See Dixon, *supra* note 215 at 794, citing Marc Becker, *The Stormy Relations between Rafael Correa and Social Movements in Ecuador*, 40 Latin Am. Perspectives 43 (2013); Louis J. Kotzé & Paolo Villavicencio Calzadilla, *supra* note 192; Mary Elizabeth Whittemore, *The Problems of Enforcing Nature's Rights Under Ecuador's Constitution: Why the 2008 Environmental Amendments Have No Bite*, 20 Pac. Rim L. & Pol'y J. 659 (2011).

217. See Kauffman and Martin, *supra* note 207.
218. Boyd, *supra* note 12, at 15.
219. *Id.*
220. See Kaufmann & Martin, *supra* note 207.
221. Constitution of Brazil Article 225. An official English translation is available at *Constitution of the Federative Republic of Brazil 1988*, Federal Senate of Brazil (2013), [https://www2.senado.leg.br/bdsf/bitstream/handle/id/243334/Constitution\\_2013.pdf?sequence=11&isAllowed=y](https://www2.senado.leg.br/bdsf/bitstream/handle/id/243334/Constitution_2013.pdf?sequence=11&isAllowed=y). Paragraph 1. In order to ensure the effectiveness of this right, it is incumbent upon the Government to: I – preserve and restore the essential ecological processes and provide for the ecological treatment of species and ecosystems; II – preserve the diversity and integrity of the genetic patrimony of the country and to control entities engaged in research and manipulation of genetic material; III – define, in all units of the Federation, territorial spaces and their components which are to receive special protection, any alterations and suppressions being allowed only by means of law, and any use which may harm the integrity of the attributes which justify their protection being forbidden; IV – demand, in the manner prescribed by law, for the installation of works and activities which may potentially cause significant degradation of the environment, a prior environmental impact study, which shall be made public; V – control the production, sale and use of techniques, methods or substances which represent a risk to life, the quality of life and the environment; VI – promote environment education in all school levels and public awareness of the need to preserve the environment; VII – protect the fauna and the flora, with prohibition, in the manner prescribed by law, of all practices which represent a risk to their ecological function, cause the extinction of species or subject animals to cruelty. Paragraph 2. Those who exploit mineral resources shall be required to restore the degraded environment, in accordance with the technical solutions demanded by the competent public agency, as provided by law. Paragraph 3. Procedures and activities considered as harmful to the environment shall subject the infractors, be they individuals or legal entities, to penal and administrative sanctions, without prejudice to the obligation to repair the damages caused. Paragraph 4. The Brazilian Amazonian Forest, the Atlantic Forest, the Serra do Mar, the Pantanal Mato-Grossense and the coastal zone are part of the national patrimony, and they shall be used, as provided by law, under conditions which ensure the preservation of the environment, therein included the use of mineral resources. Paragraph 5. The unoccupied lands or lands seized by the states through discriminatory actions which are necessary to protect the natural ecosystems are inalienable. Paragraph 6. Power plants operated by nuclear reactor shall have their location defined in federal law and may not otherwise be installed. The original Portuguese text is available at *Constituição da República Federativa do Brasil de 1988*, Presidência da República Casa Civil Subchefia para Assuntos Jurídicos (2020), [http://www.planalto.gov.br/ccivil\\_03/Constituicao/Constituicao.htm](http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm).
222. Estado de Pernambuco Município de Paudalho, Câmara Municipal de Vereadores Emenda a lei Orgânica No 03/2018, Altera o art. 181, Caput e seu Paragrafo Unico da Lei Organica do Municipio do Paudalho/PE (Jan. 5, 2018), <http://files.harmonywithnatureun.org/uploads/upload720.pdf>. “The Municipality recognizes the right of nature to exist, thrive and evolve, and should act in order to assure all members of the natural community, human and non-human, of the Municipality of Paudalho, the right to an ecologically healthy and balanced environment and to the maintenance of ecosystemic processes necessary to good quality of life, being the Public Power, as well as the collectivity, in charge of defending and preserving it for the present and future generations of the members of the earth community. ( . . . ) VIII - promote the amplification of its public policies in environmental, health, educational and economic areas so as to provide conditions for the establishment of a life in harmony with Nature.”
223. Estado de Pernambuco Município de Bonito, Camara Municipal de Vereadores Emenda a lei Orgânica No 01/2017, Altera o art. 236, Caput e seu Paragrafo Unico da Lei Orgânica do Municipio do Bonito/PE (Dec. 21, 2017), <http://files.harmonywithnatureun.org/uploads/upload658.pdf>. English translation by Paulo Gerard Silva: “The Municipality recognizes the right of nature to exist, thrive and evolve, and should act in order to assure all members of the natural community, human and non-human, of the Municipality of Bonito, the right to an ecologically healthy and balanced environment and to the maintenance of ecosystemic processes necessary to good quality of life, being the Public Power, as well as the collectivity, in charge of defending and preserving it for the present and future generations of the members of the earth community. Sole paragraph. In order to ensure this right, the Municipality shall promote the amplification of its public policies in environmental, health, educational and economic areas so as to provide conditions for the establishment of a life in harmony with Nature, and it shall articulate with other state, regional and federal competent bodies, as well as with other municipalities, if it is the case, in order to solve common problems related to the protection of Nature” Original Portuguese available at Associação Municipalista de Pernambuco, *Estado De Pernambuco Município De Bonito Câmara Municipal De Vereadores Emenda À Lei Orgânica N° 01/2017, Altera O Art. 236, Caput E Seu Parágrafo Único, Da Lei*, Jusbrasil (Dec. 21, 2017), <https://www.jusbrasil.com.br/diarios/180889806/amupe-08-03-2018-pg-6?ref=serp>: “O Município reconhece o direito da natureza de existir, prosperar e evoluir, e deverá atuar no sentido de assegurar a todos os membros da comunidade natural, humanos e não humanos, do Município de Bonito, o direito ao meio ambiente ecologicamente saudável e equilibrado e à manutenção dos

processos ecossistêmicos necessários à qualidade de vida, cabendo ao Poder Público e à coletividade, defendê-lo e preservá-lo, para as gerações presentes e futuras dos membros da comunidade da terra. Parágrafo Único. Para assegurar efetividade a esse direito, o Município deverá promover a ampliação de suas políticas públicas nas áreas de meio ambiente, saúde, educação e economia, a fim de proporcionar condições ao estabelecimento de uma vida em harmonia com a Natureza, bem como articular-se com os órgãos estaduais, regionais e federais competentes, e ainda, quando for o caso, com outros municípios, objetivando a solução de problemas comuns relativos à proteção da Natureza.”

224. *Lei Orgânica do Município de Florianópolis*, Câmara Municipal de Florianópolis Article 133, (June 2020), <http://sistemas.sc.gov.br/cmef/pesquisa/docs/1990/leiorganica.doc>. English translation by authors: “The Municipality is responsible for promoting diversity and harmony with nature and preserving, recovering, restoring and expanding natural ecosystem processes, in order to provide socio-ecological resilience in urban and rural environments, and the planning and management of natural resources should foster the sustainable management of resources in common use and agroecological practices, in order to guarantee the quality of life of human and non-human populations, respect the principles of good living and give nature the right to ownership. Sole paragraph. The Public Power will promote public policies and environmental monitoring instruments so that nature acquires ownership of rights and is considered in municipal budget programs and government projects and actions, and decision-making must be supported by Science, use the principles and nature conservation practices, observe the precautionary principle, and seek to involve the Legislative and Judicial branches, the State and the Union, the other municipalities in the Metropolitan Region and civil society organizations.”

225. See *supra* notes 222-223.

226. Estado de Pernambuco Município de Paudalho, Gabinete do Prefeito LEI no. 878/2018 (Dec. 20, 2018), <http://files.harmonywithnatureun.org/uploads/upload832.pdf>.

227. See *supra* note 224 art. 133.

228. Superior Tribunal de Justiça, *Recurso Especial* No. 1.145083 - MG (2009/0115262-9) (Sept. 27, 2011), [https://ww2.stj.jus.br/processo/revista/documento/mediado/?componente=ITA&sequencial=975073&num\\_registro=200901152629&data=20120904&formato=PDF](https://ww2.stj.jus.br/processo/revista/documento/mediado/?componente=ITA&sequencial=975073&num_registro=200901152629&data=20120904&formato=PDF). The relevant provision under which liability was imposed, Article 14 of the National Environment Policy Statute, provides that: “Without prejudice to the penalties defined by federal, state and municipal legislation, failure to comply with the necessary measures for the preservation or correction of inconveniences and damages caused by the degradation of environmental quality will subject violators to: I - the simple or daily fine, in the amounts corresponding, at least to 10 (ten) and, at most,

to 1,000 (thousand) Readjustable Obligations of the National Treasury units, aggravated in cases of specific recidivism, as provided in the regulation, collection by the Federal Government is prohibited if it has already been applied by the State, Federal District, Territories or Municipalities. II - the loss or restriction of tax incentives and benefits granted by the Government; III - the loss or suspension of participation in lines of credit in official credit institutions; IV - the suspension of its activity. Paragraph 1 - Without prejudice to the application of the penalties provided for in this article, the polluter is obliged, regardless of the existence of negligence, to indemnify or repair the damage caused to the environment and to third parties, affected by his activity. The Federal and State Public Prosecutor’s Office will have the legitimacy to bring civil and criminal liability actions for damages caused to the environment.” Translation by authors. Original Portuguese available at *Da Política Nacional Do Meio Ambiente, lei nº 6.938, de 31 de agosto de 1981*, Presidência da República Casa Civil Subchefia para Assuntos Jurídicos (Sept. 15, 2010), [http://www.planalto.gov.br/ccivil\\_03/LEIS/L6938compilada.htm](http://www.planalto.gov.br/ccivil_03/LEIS/L6938compilada.htm).

229. *Id.* The court cited Article 40: “The National Environment Policy aims to: ( . . . ) VII – impose on the polluter and the predator the obligation to recover and/or indemnify the damages caused, and on the user, the contribution for the use of environmental resources for economic purposes.”

230. *Id.* at 7. Original Portuguese: “Ao analisar o substrato legal acima transcrito, convém, antes de mais nada, frisar que os deveres de indenização e recuperação ambientais não são “pena”, mas providências ressarcitórias de natureza civil que buscam, simultânea e complementarmente, a restauração do status quo ante da biota afetada e a reversão à coletividade de todos os benefícios econômicos auferidos com a apropriação individual e a utilização ilícita (=privatização) de bem de índole coletiva, protegido e caracterizado, nos termos do art. 225 da Constituição, como “de uso comum do povo.”

231. *Id.* at 10.

232. *Id.* at 13.

233. Superior Tribunal de Justiça, *Recurso Especial* No.1.367.923 – RJ (Feb. 15, 2017), [https://ww2.stj.jus.br/processo/revista/documento/mediado/?componente=ITA&sequencial=1571016&num\\_registro=201303895691&data=20170315&formato=HTML](https://ww2.stj.jus.br/processo/revista/documento/mediado/?componente=ITA&sequencial=1571016&num_registro=201303895691&data=20170315&formato=HTML).

234. Superior Tribunal de Justiça, *Recurso Especial* No 1.797.175 – SP (Mar. 21, 2019), <http://files.harmonywithnatureun.org/uploads/upload820.pdf>.

235. *Id.* at 4. Original Portuguese: “Nesse contexto, deve-se refletir sobre o conceito kantiano antropocêntrico e individualista de dignidade humana, ou seja, para incidir também em face dos animais não humanos, bem como de todas as formas de vida em geral, à luz da matriz jusfilosófica biocêntrica (ou ecocêntrica), capaz de reconhecer a teia da vida que permeia as relações entre ser humano e natureza.”

236. *Id.* (“matriz jusfilosófica biocêntrica ou ecocêntrica”).
237. *Id.* at 5-7.
238. *Id.* at 7. Original Portuguese: “Portanto, faz-se necessária uma reflexão no campo interno das legislações infraconstitucionais, na tentativa de apontar caminhos para que se amadureça a discussão acerca do reconhecimento da dignidade aos animais não humanos, e, conseqüentemente, do reconhecimento dos direitos e da mudança da forma como as pessoas se relacionam entre si e com os demais seres vivos.”
239. All internal quotations are to Ingo Sarlet e Tiago Fensterseifer., *Direito Constiucional Ecologico* 91-92 (5th. ed., 2017).
240. *Id.*
241. *Sierra Club v. Morton* 405 U.S. 727 (1972).
242. *Home Page*, Community Environmental Legal Defense Fund (accessed Feb. 19, 2020), <https://celdf.org/>.
243. Boyd, *supra* note 12, at 13. In addition to those discussed in this section, the Ponca Nation, White Earth band of Ojibwe, and Nez Pence General Council have all legislated (or are currently in the process of legislating) Rights of Nature. See *Ponca Nation of Oklahoma to Recognize the Rights of Nature to Ban Fracking*, Global Alliance for the Rights of Nature (Jan. 29, 2018), <https://therightsofnature.org/ponca-rights-of-nature/>; Nicolette Slagel, *White Earth Band Enacts First-of-its-Kind Rights of Nature Law*, CELDF (Feb. 6, 2019), <https://celdf.org/2019/02/press-release-white-earth-band-enacts-first-of-its-kind-rights-of-nature/>; Michelle Wells, *Resolution Recognizes Rights of Snake River*, Lewiston Tribune (June 20, 2020). [https://lmtribune.com/northwest/resolution-recognizes-rights-of-snake-river/article\\_508d6e05-fb04-5b74-a828-0b1a6ceaecaf.html](https://lmtribune.com/northwest/resolution-recognizes-rights-of-snake-river/article_508d6e05-fb04-5b74-a828-0b1a6ceaecaf.html).
244. Navajo Tribal Council, Navajo Nation Code, 2003, Title I § 205.
245. See *Tso v. Navajo Housing Authority*, No. SC-CV-10-02, slip op. at 5-6 (Nav. Sup. Ct. August 26, 2004).
246. *Judy v. White*, No. SC-CV-35-02, slip op. at 17 (Nav. Sup. Ct. August 2, 2004).
247. *Id.* at § 901.
248. *Tribe Gives Personhood to Klamath River*, NPR (Sept. 29, 2019), <https://www.npr.org/2019/09/29/765480451/tribe-gives-personhood-to-klamath-river>.
249. *Id.*
250. Resolution SPGC20-02, Nez Perce General Council (June 20, 2020), [https://static1.squarespace.com/static/55914fd1e4b01fb0b851a814/t/5f1b2a0e68120923df3a2338/1595615758752/Rights+of+the+Snake+River\\_Resolution.pdf](https://static1.squarespace.com/static/55914fd1e4b01fb0b851a814/t/5f1b2a0e68120923df3a2338/1595615758752/Rights+of+the+Snake+River_Resolution.pdf).
251. Com Tamaqua Borough, Schuylkill County, Pennsylvania, Ordinance No. 612 of 2006.
252. *Tamaqua Borough, Pennsylvania*, Community Environmental Legal Defense Fund (Aug. 31, 2015), <https://celdf.org/2015/08/tamaqua-borough/>.
253. Com Tamaqua Borough, Schuylkill County, Pennsylvania, Ordinance No. 612 of 2006, preamble.
254. *Id.*, Article 7.6.
255. *Show your Support: Water Protectors in Nottingham, NH*, Community Environmental Legal Defense Fund (accessed Feb. 19, 2020), <https://celdf.org/support/water-protectors-nottingham-nh/>.
256. Boyd, *supra* note 12, at 16.
257. Boyd, *supra* note 12, at 13. See e.g. Halifax Code amend. §30-81-30-150.
258. Pittsburgh Municipal Code § 618.03(d). See further Madeleine Sheehan Perkins, *How Pittsburgh embraced a radical environmental movement popping up in conservative towns across America*, Business Insider, (Jul. 9, 2017), <https://www.businessinsider.com/rights-for-nature-preventing-fracking-pittsburgh-pennsylvania-2017-7>.
259. Santa Monica Municipal Code, ch. 4.75 Sustainability Rights, 4.75.040 (Apr. 9, 2013).
260. See e.g. the discussion in Stone, *supra* note 28.
261. Lafayette City Council, Colo., Climate Bill of Rights and Protections, Ordinance 2017-02 (Mar. 21, 2017).
262. For a succinct summary of the Grant Township litigation, see Boyd, *supra* note 12, at 15.
263. §§ 3(a) and (b).
264. § 5(a).
265. § 4(c).
266. *Id.*
267. Justin Nobel, *How a Small Town is Standing Up to Fracking*, Rolling Stone (May 22, 2017, accessed Feb. 19, 2020), <https://www.rollingstone.com/politics/politics-news/how-a-small-town-is-standing-up-to-fracking-117307/>.
268. The following chronology draws heavily on Boyd, *supra* note 12, at 15-16.
269. *Pennsylvania Gen. Energy (PGE) v. Grant Twp.*, Case No. 1:14-cv-00209-JFM (W.D. Pa., Aug. 8, 2014); *Pennsylvania Gen. Energy (PGE) v. Grant Twp.*, 139 F.Supp.3d 706 (W.D. Pa., Oct. 14 2015). Some of PGE’s challenges remain to be determined. See *Pennsylvania General Energy (PGE) v. Grant Twp.*, 2017 WL 1215444 (W.D. Pa., Mar. 31, 2017), rejecting PGE’s application for summary judgment.
270. See further Nobel, *supra* note 267; Ellen M. Gilber, *Speaking for the trees, lawyer pushes unconventional doctrine*, EnergyWire (Jan. 7, 2015, accessed Feb. 19, 2020), <https://www.eenews.net/stories/1060011209>.
271. *Pennsylvania Gen. Energy (PGE) v. Grant Twp.*, 658 Fed.Appx.37 (3rd Cir., Jul. 27, 2016).
272. *Id.*, note 3, citing Fed. R. Civ. P. 17(b). The decision is criticized by Boyd, *supra* note 12, at 15: “PGE’s lawyers failed to recognize that many of the same arguments they used to attack the watershed’s standing are equally applicable to their own client. A corporation is a legal fiction, lacking consciousness, intelligence, and cognition. It is incapable of doing the things the corporate lawyers suggest an ecosystem ought to be able to do, such as testify in court. PGE’s lawyers described watersheds as “artificial

- constructs,” ignoring the fact that watersheds surely are as “real” as, if not more “real” than, corporations.”
273. *Pennsylvania Gen. Energy (PGE) v. Grant Twp.*, 2018 WL 306679, \*8 (W.D. Pa., Jan. 5, 2018). “Legislative authority” is the power given by the Constitution for a sphere of government to create legislation. In the United States, the Constitution foresees that all powers not granted to the Federal government will be reserved to the states. The states and federal government may delegate their power to local governments by the means of a formal delegation.
274. Jon Hurdle, *DEP revokes permit for rural injection well, citing local home rule charter*, StateImpact Pennsylvania (posted March 27, 2020; accessed June 23, 2020), <https://stateimpact.npr.org/pennsylvania/2020/03/27/dep-revokes-permit-for-rural-injection-well-citing-local-home-rule-charter/>.
275. *Seneca Resources Corporation v. Highland Twp.*, 863 F.3d 245 (3rd Cir., Jul. 17, 2017).
276. *Id.* at note 4.
277. *Seneca Resources Corp. v. Highland Twp.*, 2017 U.S. Dist. LEXIS 162629 (W.D. Pa., Sept 29, 2017); *Seneca Resources Corp. v. Highland Twp.*, 2017 U.S. Dist. LEXIS 205840 (W.D. Pa., Dec. 13, 2017).
278. *Petition for Submission of Proposed Amendment to Charter: Lake Erie Bill of Rights* (accessed Feb. 19, 2020), <http://files.harmonywithnatureun.org/uploads/upload763.pdf>.
279. Jason Daley, *Toledo, Ohio, Just Granted Lake Erie the Same Legal Rights as People*, Smithsonian SmartNews (Mar. 1, 2019), <https://www.smithsonianmag.com/smart-news/toledo-ohio-just-granted-lake-erie-same-legal-rights-people-180971603/>.
280. Jeremy Pelzer, *Across-the-board income-tax cut added to Ohio's state budget plan*, Cleveland.com (May 8, 2019), <https://www.cleveland.com/politics/2019/05/across-the-board-state-income-tax-cut-added-to-ohios-state-budget-plan.html>.
281. *Complaint of Drewes Farm Partnership v. City of Toledo*, Case 3:19-cv-00434-JZ, District Court for the Northern District of Ohio, Western Division, Feb. 27 2019, <https://www.courthousenews.com/wp-content/uploads/2019/02/DrewesErie.pdf>.
282. *Drewes Farms P'ship v. City of Toledo*, 2019 U.S. Dist. LEXIS 195199 (N.D. Ohio, May 7, 2019); decision upheld on appeal in *Drewes Farms P'ship v. City of Toledo*, 2019 U.S. App. LEXIS 14844 (6th Cir., May 17, 2019); *Drewes Farms P'ship v. City of Toledo*, 2019 U.S. App. LEXIS 17410, U.S. Ct. App. 6th Cir., June 10, 2019.
283. See e.g. *Robinson Twp. v. Commonwealth of Pennsylvania*, 623 Pa. 564 (2013) concerning environmental rights contained in the State Constitution of Pennsylvania. For further discussion of the rights of nature in Pennsylvania, see Erin West, *Could the Ohio River have rights? A moment to grant rights to the environment tests the power of local control*, Environment Health News (Feb. 4, 2020). <https://www.ehn.org/ohio-river-nature-rights-2645014867.html?rebellitem=4#rebellitem4>.
284. *Constitucion Politica del Estado Libre y Soberano de Colima* [Political Constitution of the Free and Sovereign State of Colima] (Aug. 3, 2019), [https://congresocol.gob.mx/web/Sistema/uploads/LegislacionEstatal/Constitucion/constitucion\\_local\\_reorganizada\\_03Agos2019\\_113.pdf](https://congresocol.gob.mx/web/Sistema/uploads/LegislacionEstatal/Constitucion/constitucion_local_reorganizada_03Agos2019_113.pdf).
285. *Constitución Política De La Ciudad De México* [Political Constitution of the City of Mexico] (Feb. 5 2017), <https://www.congresocdmx.gob.mx/leyes-expedidas/>. See further Jorge Islas, *La Madre Tierra y los Derechos de las Naturaleza*, El Universal (Apr. 23, 2017), <https://www.eluniversal.com.mx/entrada-de-opinion/articulo/jorge-islas/nacion/2017/04/23/la-madre-tierra-y-los-derechos-de-la>.
286. *Constitución Política De La Ciudad De México* [Political Constitution of the City of Mexico] (Feb. 5 2017), <https://www.congresocdmx.gob.mx/leyes-expedidas/>.
287. *Ley de Protección a la Tierra*, Gaceta Oficial del Distrito Federal, Sept. 17, 2013.
288. *Constitución Política del Estado Libre y Soberano de Guerrero* [Political Constitution of the State of Guerrero] art .2 (Nov. 8, 2016), <http://files.harmonywithnatureun.org/uploads/upload665.pdf>.
289. D. 39659/ 16, abril 22, 2016, La Gaceta (Costa Rica).
290. *Id.* at Article 4.
291. See e.g. *Narayan Dutt Bhatt v. Union of India & others*, Writ Petition (PIL) No. 43 of 2014, (High Court of Uttarakhand); *T.N. Godavarman Thirumulpad v. Union of India* (2012), I.A. Nos. 1433 and 1477 of 2995 in Writ Petition No. 202 of 1995, (Supreme Court of India); *Center for Environment Law and WWF-India v. Union of India* (2013), I.A. No. 100 in Writ Petition No. 337 of 1995 (Supreme Court of India).
292. *Bhatt, supra* note 201, at 49-50.
293. *Mohd. Salim v. State of Uttarakhand and Others* (Writ Petition (PIL)No. 126 of 2014 (High Court of Uttarakhand, Dec. 5, 2016).
294. *Id.*, challenging the failure to implement Uttar Pradesh Reorganisation Act 2000 ss 80 & 84 (India), as well as the failure to evict illegal occupants of alluvial land.
295. *Id.* at para. 25.
296. *Id.* at para. 3.
297. *Id.* at paras. 4-9.
298. *Id.* at para. 11.
299. *Id.* at para. 12, citing *Yogendra Nath Naskar v. Commission of Income Tax, Calcutta*, 1969 1 SCC 555, para. 6 (Supreme Court of India). See also *Ram Jankijee Deities v. State of Bihar*, 1999 5 SCC 50 para. 14 (Supreme Court of India); para. 14, citing *Shiromani Gurudwara Prabandhak Committee, Amritsar v. Shri Som Nath Dass*, AIR 2000 SC 1421, paras. 11-15 (Supreme Court of India); para. 15, citing *Moorti Shree Behari ji v. Prem Dass*, AIR 1972 Allahabad 297, para. 6 (High Court of Allahabad).
300. *Id.* at para. 16.
301. *Id.* at para. 16.
302. The court refers to the Ganges River as the “Ganga” throughout the decision.
303. *Id.* at para. 16.

304. *Parens patriae* refers to the power of the state to act in the interest of those who are unable to act on their own behalf.
305. *Id.* at para. 19.
306. *Id.* at para. 19.
307. *Miglani v. State of Uttarakhand*, Writ. Petition PIL No. 140 of 2015 (High Court of Uttarakhand, March 30, 2017).
308. *Id.* at 2. This allowance was made under India's Public Interest Litigation Procedure, which allows for liberalized rules of standing and civil procedure.
309. *Id.* at 5-7.
310. *Id.* at 7-17.
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312. *Id.* at 36-41.
313. *Id.* at 41.
314. *Id.* at 42.
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316. *Id.* at 61-63.
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This report was co-published by The Cyrus R. Vance Center, Earth Law Center, and International Rivers in October 2020.

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Design and layout: Eliza Sherpa  
Copy editor: Sarah Bardeen and Lori Pottinger

## Acknowledgements:

We would like to express our gratitude to the Arcadia Foundation, Gordon and Betty Moore Foundation, Marisa Foundation, and Orchard House Foundation for their generous support and commitment to sustain and protect global biodiversity.



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