

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:





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.¹ 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.² 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.³ Researchers warn that our warming world may be only a few years away from a "point of no return."⁴

This ecological crisis extends beyond climate change. Earth has already crossed more than four of the nine planetary boundaries, or environmental tipping points.⁵ 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.⁶ 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.⁷ 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.⁸

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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.⁹ 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.¹⁰

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 rights¹¹ 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.¹² 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.¹³ 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.

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.



Case Profiles

Whanganui River – Te Awa Tupua Act

For over a century, the local Whanganui iwi (tribes) have challenged the colonial government's impact on the well-being of the Whanganui River, Aotearoa/New Zealand's third longest river, and have fought to have their rights and relationship with the river recognized. This recognition finally emerged out of a treaty settlement between the government and a collective of Whanganui iwi. Negotiations between the government and the Whanganui River Māori Trust Board (representing the iwi) commenced in 2002, and in 2011, a Record of Understanding was reached committing the government to recognition of the Whanganui River's legal personhood. This was followed by a 2012 agreement, which provided the basis for the Te Awa Tupua framework.

"Te Awa Tupua" ("the supernatural river") is a concept that 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."

In 2017, the Aotearoa/New Zealand Parliament enacted the Te Awa Tupua (Whanganui River Claims Settlement) Act. The act declares that, "Te Awa Tupua is a legal person and has all the rights, powers, duties, and liabilities of a legal person." The act creates an entity, Te Pou Tupua, comprising one nominee of the tangata whenua and one government nominee, "to act and speak for and on behalf of Te Awa Tupua." It is guided by Tupua te Kawa, "values that represent the essence of Te Awa Tupua," including 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.

Atrato River – Colombian Constitutional Court

The Constitutional Court of Colombia first recognized Rights of Nature in a case concerning the Atrato River, one of Colombia's largest rivers and home to critical biodiversity and many Indigenous and Afro-American communities. The river has been heavily polluted due to extensive mining in the area.¹⁴ The Atrato River case was brought by a group of nongovernmental organizations seeking protection of constitutional rights. Because the text of the Colombian Constitution does not include Rights of Nature, the claimants argued that the pollution violated constitutional rights to life, equality, and the healthy environment of the nearby communities.¹⁵

After initial dismissal in the lower courts, on appeal, the Constitutional Court found that the pollution threatened rights to "water, food security, a healthy environment, and the culture and the territory of the ethnic communities that inhabit the Atrato River basin."¹⁶

The court went further and found that the rights violated were not only those of local communities, but also of the river itself—recognizing Rights of Nature. In doing so, the court declared a need to move away from an anthropocentric—and towards an ecocentric—approach to constitutional law: "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."¹⁷ The court also recognized the close relationship between Rights of Nature and the rights of local and Indigenous communities, adopting the concept of "biocultural rights" to reflect "the relationship of profound unity between nature and the human species."¹⁸ This relationship rests on diverse cultural practices linked to local ecosystems, the spiritual and cultural meanings of biodiversity, and the understanding that protection of local and Indigenous culture can enhance conservation.¹⁹



GANDHINAGAR, INDIA | *Ripples in water.*
Photo courtesy of Vivek Doshi (Unsplash).

Yamuna and Ganges Rivers – Uttarakhand High Court

Rights of Rivers were recognized in India's legal system in a case concerning the Yamuna and Ganges rivers before the High Court of Uttarakhand.²⁰ The case was brought by a private citizen seeking an order to prevent widespread river pollution. In its decision, the court made orders for river protection, a halt to mining activities, and creation of river management bodies.²¹ Several months later, concerned that the decision had not been properly implemented, the court issued further compliance orders, and in doing so examined the legal status of the Yamuna and Ganges rivers.²² The court emphasized that the rivers held an important place in Hindu belief systems and found that recognizing the legal personhood of the Yamuna and Ganges rivers would “protect the recognition and faith of society.” The court stated that: “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.”²³ Based on the recognition of legal personhood, the court made additional remedial orders, instructing state officials 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.”²⁴

In mid-2017, the Supreme Court of India stayed the decisions of the High Court of Uttarakhand.²⁵ The Uttarakhand State government sought the stay on the basis that it left legal uncertainty and failed to account for issues of federalism surrounding the cross-border rivers. These arguments brought by the state reflect some of the limitations in an anthropocentric approach to ‘legal personhood’ as compared to an ecocentric approach which views the river as a subject of rights.



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

Endnotes

Executive Summary

1. *Climate Change 2007: Synthesis Report of IPCC Fourth Assessment Summary for Policymakers*, Intergovernmental Panel on Climate Change (IPCC) 13-14 (Nov. 2007).
2. *Id.*
3. *Climate Change and Health*, World Health Organization (Feb. 1, 2018), <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health>.
4. See e.g. Matthias Aengenheyster et al., *Risk and the Point of No Return for Climate Action*, *Earth Syst. Dynam.* (2018) (manuscript under review), <https://pdfs.semanticscholar.org/3520/dc9ae7a5599d38a12e587b477dd58c032542.pdf>.
5. *The Nine Planetary Boundaries*, The Stockholm Resilience Centre (Sept. 17, 2009), <https://www.stockholmresilience.org/research/planetary-boundaries/planetary-boundaries/about-the-research/the-nine-planetary-boundaries.html>.
6. Damian Carrington, *Plummeting Insect Numbers 'Threaten Collapse of Nature'*, *The Guardian* (Feb. 10, 2019), <https://www.theguardian.com/environment/2019/feb/10/plummeting-insect-numbers-threaten-collapse-of-nature>.
7. *Climate Change and Health*, *supra* note 3.
8. See generally E.S. Brondizio et al., *Global Assessment Report on Biodiversity and Ecosystem Services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services*, IPBES (May 2019), <https://ipbes.net/global-assessment>.
9. See e.g. International Center for the Rights of Nature, *Rights of Nature: Overview*, Community Environmental Legal Defense Fund (Feb. 5, 2020), <https://celdf.org/rights/rights-of-nature/>.
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).
13. Sumak Kawsay translates literally as "living well" or "good living." It defines a way of life that recognizes harmony between communities, peoples, and nature. See Glossary of Terms for more information.

Case Studies

14. Lidia Cano Pecharroman, *Rights of Nature: Rivers That Can Stand in Court*, 7 *RESOURCES* 13 (2018) at 10.
15. See articles 8, 11, 13 and 79 of the Constitution of Colombia.
16. Colombia Constitutional Court Ruling T-622 of 2016, Expediente T-5.016.242, para 9.20.
17. *Id.* at para. 5.9.
18. *Id.* at para. 5.17.
19. *Id.* at para. 5.17.
20. Mohd. Salim v. State of Uttarakhand and Others (Writ Petition (PIL) No. 126 of 2014 (High Court of Uttarakhand, Dec. 5, 2016).
21. *Id.* at para. 25.
22. *Id.* at paras. 4-9.
23. *Id.* at para. 16.
24. *Id.* at para. 19.
25. Order of the Supreme Court, Special Leave Petition No. 16879/2017, 7 July (India).