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Legal Rights for Nature: How the Idea of Recognizing Nature as a Legal Entity Can Spread and Make a Difference Globally

Kaitlin Sheber*

Abstract

In recent years, a growing number of States have granted legal status to natural entities. First, this paper looks at case studies to determine how this trend has emerged in individual Nations, be it through extensive litigation as seen in New Zealand, a court decision as seen in India, or through the restructuring of a legal system as seen in Ecuador. Next follows a discussion of legal tools that have been used and their accomplishments, especially through lawsuits in Ecuador, as well as legal work that could be accomplished in New Zealand. After, this essay looks at how the idea of nature with rights may gain traction internationally through sharing of ideas, grassroots movements, indigenous movements, and international movements. Finally, this essay concludes by considering how nature with legal rights can make a positive difference. First, it can make a positive environmental difference by allowing more lawsuits into court for natural entities and redressing harms directly to those natural entities. Second, indigenous communities experience a positive impact when their viewpoints and values are codified into law.

I. Introduction

Imagine a world where nature has legal standing to bring lawsuits. In 1972, Professor Christopher Stone did just that when he wrote the article *Should Trees Have Standing?* He raised three distinct issues in his essay: (1) whether a legal system could be arranged so that objects like lakes and forests could have legal status as persons, (2) whether humans *ought* to do so, and (3) if society would then evolve in a better way than a society that did not adopt the rights of nature.¹ To all of those issues, Stone answered a definitive yes.²

Since that article, several nations have recognized nature as having legal standing in various capacities through domestic law. Amidst the

* Thank you to Professor David Tackas, Allyssa Rose, and Jake for all of your support.

1. Christopher D. Stone, *Response to Commentators*, 3 J. HUM. RTS. & ENV'T. 100, 100 (2012).

2. *Id.*

evolution of legal rights for nature, scholars have pointed out that giving nature legal rights can be both more efficient and cost effective because if courts do not recognize injuries to nature itself, but rather as injury to the human plaintiff, then “the true costs of environmental impacts may be underestimated.”³ The UN has found that humans are damaging the environment faster than it can recover.⁴ Perhaps, by shifting the legal view of nature from human property to a legal entity in itself, nations will be better able to protect their natural resources.

Already, countries have begun granting legal status to natural entities. In New Zealand, the Maori people, through over a century of legal struggles, finally were able to gain legal status for the Whanganui River.⁵ In India, a court was influenced in part by the legislation in New Zealand, and issued a decision granting legal status to both the Ganges and Yamuna rivers.⁶ However, this decision was overturned by the Supreme Court of India as the local government had no direction on how it might enforce the initial decision’s mandate.⁷ Finally, I look at Ecuador, the first country to recognize nature as having legal rights in a constitution.⁸

Next, this paper considers environmental accomplishments achieved through legal tools that are available when nature is granted rights and future potential accomplishments. In Ecuador, there have already been numerous lawsuits that elaborate nature’s rights.⁹ For example, a court found that anyone may bring a lawsuit on behalf of a river.¹⁰ Additionally, criminal charges may be brought when nature’s rights are violated, extreme measures can be taken in the name of prevention of degradation to the environment, and a court can recognize nature’s inherent rights even when a plaintiff does not argue for them.¹¹ This essay will also consider potential claims that could arise for New Zealand’s Whanganui River. Though, how

3. Erin O’Donnell & Julia Talbot-Jones, *Creating Legal Rights for Rivers: Lessons from Australia, New Zealand, and India*, 23 *ECOLOGY AND SOCIETY* (2018), <https://perma.cc/Z7DW-QY5H>.

4. Fiona Harvey, *Humans Damaging the Environment Faster Than It Can Recover*, *UN Finds*, *THE GUARDIAN* (May 19, 2016), <https://perma.cc/Q45Z-4ZHY>.

5. O’Donnell & Talbot-Jones, *supra* note 3.

6. Lidia Cano Pecharroman, *Rights of Nature: Rivers That Can Stand in Court*, 7 *EARTH INST.* 1, 7 (2018).

7. *India’s Ganges and Yamuna Rivers Are Not Living Entities*, *BBC NEWS* (July 7, 2017), <https://perma.cc/93MM-37MV> [hereinafter *Ganges and Yamuna Rivers*].

8. Nathalie Rühls & Aled Jones, *The Implementation of Earth Jurisprudence Through Substantive Constitutional Rights of Nature*, 8 *GLOBAL SUSTAINABILITY INST.* 1, 2 (2016), <https://perma.cc/77EQ-AQ6A>.

9. See CRAIG KAUFFMAN & PAMELA MARTIN, *TESTING ECUADOR’S RIGHTS OF NATURE: WHY SOME LAWSUITS SUCCEED AND OTHERS FAIL* 6–8, (2016), <https://perma.cc/E3YR-58Y6>.

10. *See id.* at 6.

11. *See id.* at 6–8.

nations choose to integrate nature's rights into their legal system will affect how effective those rights are in protecting nature.

After, this paper will discuss how the idea of rights for nature can gain global traction. Countries already are looking for ideas on how to better protect their environments.¹² For example, India's High Court drew on New Zealand's new river legal system to improve protection for its own rivers.¹³ In another example, Colombia was inspired by New Zealand's system to appoint guardians to protect the Atrato River.¹⁴ Affording rights to nature has also gained traction from grassroots movements as well as indigenous movements.¹⁵ There are nascent international campaigns as well that are pushing for nature to be given rights, such as one that is supported by Ecuador and Bolivia.¹⁶

Finally, this paper concludes by examining how granting legal rights to nature could make a positive difference. By giving legal rights to nature, more lawsuits for environmental protection could move forward.¹⁷ Courts will also be able to better redress harms to the environment because they can look at harm to natural entities, rather than focusing on how humans surrounding that natural entity are harmed.¹⁸ Additionally, as seen in Ecuador and New Zealand, indigenous groups' values and viewpoints can be better recognized and respected by governments when they are codified in law.¹⁹

II. Background

Under increasing environmental pressure, it is becoming increasingly apparent that legal systems, as they are now, are not equipped to deal with environmental threats.²⁰ In 1972, Professor Christopher Stone published a now-famous essay *Should Trees Have Standing?* in which he considered legal rights for natural objects.²¹ The essay begins by pointing out that there are numerous inanimate right-holders in the legal world, and therefore it is not hard to imagine that nature may become an inanimate right-holder one

12. *Ganges and Yamuna Rivers*, *supra* note 7; Pecharroman, *supra* note 6, at 3; O'Donnell & Talbot-Jones, *supra* note 3.

13. *Ganges and Yamuna Rivers*, *supra* note 7.

14. Pecharroman, *supra* note 6, at 8.

15. David R. Boyd, *Recognizing the Rights of Nature: Lofty Rhetoric or Legal Revolution*, 32 NAT. RESOURCES & ENV'T 13, 16 (2018), <https://perma.cc/A5RH-L86M>.

16. *Id.* at 15-16.

17. KAUFFMAN & MARTIN, *supra* note 9, at 7-8.

18. CHRISTOPHER D. STONE, *SHOULD TREES HAVE STANDING? AND OTHER ESSAYS ON LAW, MORALS AND THE ENVIRONMENT* 25 (1996).

19. O'Donnell & Talbot-Jones, *supra* note 3; Rühls & Jones, *supra* note 8, at 1.

20. Mari Margil, *The Rights of Nature Gaining Ground*, OPEN GLOBAL RTS. (Nov. 14, 2018), <https://perma.cc/M9J9-FBQC>.

21. *See generally* STONE, *supra* note 18.

day as well.²² For example, corporations, municipalities, nation-states, and ships all hold rights.²³ Stone points out that at first giving rights to a new entity may seem laughable, such as when women were first granted legal rights.²⁴ However, it is difficult to value someone or something for itself, rather than merely for property value, until rights are bestowed upon the entity.²⁵

For an entity to hold rights, it must be able to bring legal action on its own behalf, the court must take injury to that entity into account, and the relief granted by the court must benefit that entity.²⁶ Should natural objects acquire legal rights, they would have an operational advantage in the sense that they would have standing to bring law suits on their own behalf.²⁷ While a river or mountain cannot appear physically in court, a model like that used for universities, municipalities, infants, and estates where guardians are appointed to represent the entity in court would function well for natural objects.²⁸ Trends, at least in the U.S., have leaned toward liberalized standing where people have increasingly had the opportunity to bring cases into court for environmental harm.²⁹ But, a guardianship approach would give the environment an effective voice in more situations, and would help prevent the potential flood of cases pouring into courts due to relaxed standards for standing.³⁰

Another benefit to recognizing natural objects as having legal rights is that harm to the environment itself will be considered in its own right.³¹ For example, if there is a polluting mill on a lake, focusing the damages in terms of harm to the lake itself will give a more representative measure of the pollution's true damages.³² While people may be able to sue for harm based on pollution on their land, the damages to the lake itself cannot be addressed in those suits.

Additionally, affording natural objects legal rights will allow a natural object to be a beneficiary in its own right.³³ Doing so will ensure that private litigants do not make a deal that does not actually enforce established rights and will also allow the natural object to receive money

22. *Id.* at 3.

23. *Id.*

24. *Id.* at 5.

25. *Id.* at 6.

26. *Id.* at 8.

27. *Id.*

28. *Id.* at 12.

29. *Id.* at 17.

30. *Id.*

31. *Id.* at 20.

32. *Id.* at 22.

33. *Id.* at 25.

awards.³⁴ For example, if a polluter is damaging a stream by \$10,000 each year and people who bring suit are only affected by \$3,000, a polluter may choose to simply pay the \$3,000 to the people affected and continue polluting.³⁵ As environmental law currently stands, a plaintiff and defendant can come to a deal to settle that does not include the interests of the natural entity in dispute.³⁶ If the stream itself was also a part of the suit, then a settlement would need to include terms that also address the interests of the stream. In this sense, both the true price of the damages and the best overall remedy are skewed.³⁷ Further, the damages that are awarded do not even go to the stream to help repair the damage caused.³⁸ By allowing the natural entity, such as the stream, to be a beneficiary in its own right, a better result for the natural entity can be achieved.³⁹

Finally, if natural objects are afforded legal status, there can be a shift away from the western idea that nature exists only as property for humans.⁴⁰ Again and again, the questions that arise for environmental protection tend to focus on how humans benefit.⁴¹ Preservation of the environment is often framed as protecting species for the sake of their potential use in the future, or preserving nature for the sake of recreational interests.⁴² However, for some indigenous groups, such as the Maori in New Zealand, nature plays a different role.⁴³ The Whanganui River is recognized by the Whanganui Iwi as their ancestor and a living being.⁴⁴ In another example, Ecuador's law was amended to recognize indigenous views of mother nature which holds "Pachamama," or nature, as the "mother of all living creatures."⁴⁵ Giving legal status to nature can help legally support certain indigenous viewpoints while also respecting the intrinsic value of nature.

34. *Id.*

35. *Id.*

36. *Id.* at 11.

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.* at 33.

41. *Id.*

42. *Id.*

43. See generally Elaine C. Hsiao, *Whanganui River Agreement*, 42 ENVTL. POL'Y & L. 371 (2012).

44. *Id.*

45. Joaquim Shiraishi Neto & Rosirene Martins Lima, *Rights of Nature: The Biocentric Spin in the 2008 Constitution of Ecuador*, 13 VEREDAS DO DIREITO 111, 119 (2016), <https://perma.cc/SU8W-9PA3>.

III. Legal Rights for Nature: Case Studies

A. The Whanganui River

In a success story for the indigenous Maori people of New Zealand, the Whanganui River is now recognized “in its entirety as a living being and legal entity.”⁴⁶ The Whanganui River is an essential entity to the Whanganui Iwi because they share two ancestors, Ruatipua and Paerangi.⁴⁷ The ancestor Ruatipua “draws life force from the headwaters of the Whanganui River on Mount Tongariro and its tributaries,” and the river mirrors the extension of Paerangi and Ruatipua’s descendants.⁴⁸ For the Whanganui Iwi, it is impossible to separate people from the river, and to protect the river is to protect the people.⁴⁹

The river’s recognition as a legal entity came through legal battles fought by the Whanganui Iwi for over a century and a half.⁵⁰ The petitions and protests by the Whanganui Iwi to protect the sacred Whanganui River date back as far as 1849, when groups were able to preserve eel fishing rights in specific streams.⁵¹ From that point on, the Whanganui Iwi continued to bring claims, such as in 1895 when they petitioned the Supreme Court of New Zealand for their customary fishing rights.⁵² In 1903, New Zealand passed the 1903 Coal Mines Act, which vested riverbeds in the Crown (the New Zealand Government) after the Whanganui Iwi sought compensation for gravel that was removed from the Whanganui River.⁵³ For example, the Crown passed the Scenic Reserves Act, which it relied on to take riparian lands from the Whanganui Iwi.⁵⁴ From there, the Crown continued this trend of passing legislation that allowed it to continue to infringe on the Whanganui Iwi’s customary rights.⁵⁵

Later, in 1931, the Whanganui Iwi began raising funds to bring legal battles to protect their customary rights against infringement by the Crown.⁵⁶ In 1936, the Whanganui Iwi brought a suit for ownership of the Whanganui River and adjacent lands against the Crown, and that litigation

46. Hsiao, *supra* note 43, at 371.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.* at 372.

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

continued for twenty-four years.⁵⁷ Though the court determined the Crown was the owner of the riverbed, the Whanganui Iwi and Crown engaged in extensive negotiations regarding compensation for the removed gravel from the riverbed.⁵⁸ In 1988, the Whanganui River Maori Trust Board was created to negotiate customary rights claims for the Whanganui Iwi.⁵⁹ At the same time, the Whanganui Iwi in both 1959 and 1962 battled a scheme by the government to construct hydro-electric dams and objected to the diversion of Whanganui headwaters.⁶⁰ The Whanganui Iwi refused to cede to the Crown's efforts to infringe on their rights.

After more litigation and protests, the Whanganui River Maori Trust Board finally brought a case to the Waitangi Tribunal regarding both their customary and treaty rights. The treaty rights were established under the 1840 Treaty of Waitangi, which guaranteed Maori rights in exchange for the grant of governmental authority from the Maori to the British Crown.⁶¹ After eight years of negotiation, the Te Awa Tupua ("Whanganui River Claims Settlement") Act 2017 was finally passed as a settlement agreement to the Treaty of Waitangi dispute.⁶² This arrangement recognizes the river as a "living whole that stretches from the mountains to the sea, including both its physical and metaphysical elements."⁶³ The Whanganui River is now a legal entity, called Te Awa Tupua, that can sue and can also be sued, and the rights to ownership of the riverbed are vested in Te Awa Tupua.⁶⁴

Under the Whanganui River Claims Settlement, both an advisory group and strategy group are established.⁶⁵ The strategy group consists of key stakeholders, including local and central government representatives, the Iwi people, tourism, recreation, wild game and conservation interests, and the operator of the Tongariro Power Scheme, which diverts headwaters of the Whanganui River for hydropower.⁶⁶ The role of the group will be to "develop and approve, review, and monitor the implementation of a strategy document."⁶⁷ Legislation will also follow with an institutional framework that supports the implementation of the Whanganui River's newfound rights.⁶⁸ Additionally, Te Awa Tupua will be represented by a guardian that consists of two persons—one appointed by the Whanganui

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. O'Donnell & Talbot-Jones, *supra* note 3.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

Iwi and the other appointed by the Crown—who act as one.⁶⁹ The overall framework of the strategy group is intended to be inclusive and to create community governance that can operate within a broader legal framework.⁷⁰

B. The Ganges and Yamuna Rivers

In another example of rivers granted legal status through litigation, the Ganges and Yamuna rivers were granted legal status when the High Court of Uttarakhand declared on March 20, 2017, that “the Rivers Ganga and Yamuna, all their tributaries, streams, every natural water flowing with flow continuously or intermittently of these rivers, are declared as juristic/legal persons/living entities having the status of a legal person with all corresponding rights, duties, and liabilities of a living person.”⁷¹ Officials brought the case initially because they claimed that the states Uttarakhand and Uttar Pradesh “were not cooperating with the federal government to set up a panel to protect river Ganges.”⁷² The Court arrived at its decision for different reasons than in the New Zealand example.⁷³ The Court based its decision on the fact that the rivers are “sacred and revered” and “central to the existence of half the Indian population.”⁷⁴ The Court also considered that environmental degradation was “causing the rivers to lose ‘their very existence,’” and therefore extraordinary measures needed to be taken to protect the rivers.⁷⁵ It is also noteworthy that the court mentioned in their decision New Zealand’s recognition of the Whanganui River as an ancestor, indicating that they were inspired by New Zealand’s precedent.⁷⁶ Ultimately, the court drew upon jurisprudence from the Supreme Court that Hindu deities are juridical persons and are “managed by those entrusted with the possession of their property.”⁷⁷

However, here, unlike the court in New Zealand, India’s Supreme Court did not elaborate upon the implications of granting the rivers legal status.⁷⁸ A further hurdle to India effectively granting rights to nature occurred on July 7, 2017, when the Supreme Court of India decided to hear an appeal against the ruling that granted status to the rivers.⁷⁹ The

69. *Id.*

70. *Id.*

71. *Id.*

72. Pecharroman, *supra* note 6, at 7–8.

73. O’Donnell & Talbot-Jones, *supra* note 3.

74. *Id.*

75. *Id.*

76. Pecharroman, *supra* note 6, at 8.

77. *Id.*

78. *Id.*

79. O’Donnell & Talbot-Jones, *supra* note 3.

government of Uttarakhand argued that their “responsibilities as guardians of the rivers” were not clear because the rivers extend beyond Uttarakhand.⁸⁰ In 2017, the same court had also ruled that certain glaciers were legal persons, only to have those rulings overturned. Unfortunately, the rivers Ganges and Yamuna’s status as legal entities was short-lived as the Supreme Court of India overturned the decision.⁸¹

C. Ecuador

In 2008, Ecuador amended its constitution to become the first country in the world to constitutionally recognize the “Rights of Nature.”⁸² Central to this amendment was powerful lobbying by indigenous people and a time of political change.⁸³ Ecuadorian advocates for the rights of nature movement collaborated with the Center for Environmental Legal Defense after reading about citizens in Tamaqua, Pennsylvania who enacted the world’s first local ordinance for the rights of nature.⁸⁴ Between 1967 and 2008, there were several coup d’états in Ecuador from military groups, which resulted in constitutional reforms that strengthened executive power.⁸⁵ It was in this context that finally, in 2007, the new President, Rafael Correa, came forward based on a platform of establishing a new constitutional framework.⁸⁶

In creating the new constitutional framework, President Correa stressed the importance of individual rights and the concept of a “universal citizen.”⁸⁷ Yet, indigenous people wanted “collective control over natural resources and land” and recognition of the “plurinational character of Ecuador.”⁸⁸ They felt that Correa’s focus on the individual excluded indigenous people because their societies were communally-based.⁸⁹ The resulting 2008 constitution was a result of a referendum of the people after an “uprising of indigenous communities against worsening economic and environmental conditions” in addition to “lobbying by CONAIE [“Confederation of Indigenous Nationalities of Ecuador”], the largest federation of indigenous movements.”⁹⁰ The constitution was a part of the Ecuadorian government’s efforts to be more inclusive by incorporating

80. *Id.*

81. *Ganges and Yamuna Rivers*, *supra* note 7.

82. Rühls & Jones, *supra* note 8, at 9.

83. *Id.* at 9–10.

84. KAUFFMAN & MARTIN, *supra* note 9, at 3.

85. Rühls & Jones, *supra* note 8, at 10.

86. *Id.*

87. *Id.*

88. *Id.*

89. Marc Becker, *Correa, Indigenous Movements, and the Writing of a New Constitution in Ecuador*, 38 *LATIN AM. PERSP.* 47, 48 (2011), <https://perma.cc/5979-JFM>.

90. Rühls & Jones, *supra* note 8, at 10.

concerns of those who previously lacked representation such as indigenous peoples and Afro-Ecuadorians.⁹¹ The indigenous leaders' goals in the new constitution included recognition of the fourteen indigenous nationalities present in Ecuador in addition to their "systems of life, education, and economy" that were "different from those of the dominant society."⁹² In terms of ecology, the constitution included the Indian cosmovision of nature in the form of "Pachamama."⁹³ This allowed both traditional knowledge and scientific knowledge to have a place in Ecuador's law.⁹⁴

Article 71 of Ecuador's new constitution is dedicated to the substantive rights of nature.⁹⁵ Civil society's goal in amending Ecuador's constitution was to establish a model of development based on indigenous philosophy, rather than the Western neoliberal model.⁹⁶ The main goal of this model is harmony among humans and nonhumans, and it is called the "Well-being Development Model," or "Buen Vivir."⁹⁷ The "Buen Vivir" model focuses on individuals in both the environmental and social context of their community.⁹⁸ The quality of the natural environment is a measure of "Buen Vivir," and the philosophy behind it entails that human beings compromise on certain goals when those goals compete with nature.⁹⁹

However, there is a significant textual issue in the constitution because there is no definition of "nature" provided in the legislation.¹⁰⁰ While it is common for constitutional drafting to allow for broad interpretation of words over time, here, there are no specific entities protected, explicitly stated principles, or indications for how far the protection should be extended.¹⁰¹ Additionally, Ecuador lacks a standing doctrine for this issue, so it is unclear who can bring an action on behalf of nature's rights in court.¹⁰² This leads to uncertainty whether claims brought under the constitution's articles 71 through 74 are justiciable, and whether there are rights, remedies, or both that can result from the constitutional amendments.¹⁰³ Currently, the justiciability of lawsuits brought on behalf of nature's rights is at the discretion of judges, which means that the

91. Becker, *supra* note 89, at 48.

92. *Id.* at 51–52.

93. Neto & Lima, *supra* note 45, at 119.

94. *Id.* at 120.

95. Rühls & Jones, *supra* note 8, at 9.

96. *Id.* at 11.

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

constitutional provisions are not self-executing.¹⁰⁴ As such, ultimately, these issues will need to be sorted out as jurisprudence develops and will likely need further legislation to be more enforceable and effective.¹⁰⁵

IV. Legal Work that Could Be Accomplished

Already, there are stories of victories in countries that have adopted some form of rights for nature. Primarily through lawsuits, rights for nature expanded in Ecuador after the first successful lawsuit brought for the Vilcabamba River.¹⁰⁶ While there has not been litigation yet that incorporates the Whanganui River as a legal entity, future lawsuits will shed light on the extent of the river's rights.¹⁰⁷

The lawsuit brought on behalf of the Vilcabamba River in Ecuador was a success story.¹⁰⁸ A contractor used heavy machinery and dynamite to build a road along the river and deposited rocks and other waste materials along the river banks.¹⁰⁹ The materials accumulated there, and as a result, caused pollution and floods along the river.¹¹⁰ An American couple affected by the pollution brought a case on behalf of the Vilcabamba River, and the Ecuadorian Court admitted the river's right to stand in court.¹¹¹ Ultimately, the judge ruled that nature's right "to exist, to be maintained and to the regeneration of its vital cycles, structures and functions" had been violated by the contractor's actions.¹¹² Though, construction of the road along the river did not halt, the court ruled that the contractor should follow recommendations and a set of guidelines that the Ministry of the Environment had previously issued.¹¹³ The court's ruling on March 30, 2011 was revolutionary because it was the first time that a court recognized the rights of nature.¹¹⁴ Further, the court recognized that plaintiffs had a right to sue based on the constitution because the constitution established that every citizen and every nation had a right to demand compliance with the rights of nature.¹¹⁵ The court also recognized that the rights of nature are a constitutional right that any person can defend if those rights are being

104. *Id.*

105. *Id.*

106. Pecharroman, *supra* note 6, at 7.

107. *See* Hsiao, *supra* note 43, at 375.

108. Pecharroman, *supra* note 6, at 7.

109. *Id.*

110. *Id.*

111. Pecharroman, *supra* note 6, at 7; Mihnea Tanasescu, *Rivers Get Human Rights: They Can Sue to Protect Themselves*, SCI. AM. (Jun. 19, 2017), <https://perma.cc/7SGW-454D>.

112. Pecharroman, *supra* note 6, at 7.

113. *Id.*

114. *Id.*

115. *Id.*

violated.¹¹⁶ Thus, this ruling expanded the ability to bring lawsuits on behalf of natural entities in Ecuador.¹¹⁷

However, there are some ambiguities in the court's ruling for the Vilcabamba River.¹¹⁸ Unfortunately, the court did not determine whether nature should actually hold locus standi per se, or standing.¹¹⁹ So, in the future, there could be a case where the court decides that nature does not have standing. In reaching its conclusion, the court applied the precautionary principle by deciding to only halt construction of the road until determination could be made that there was no likelihood or danger of environmental damage.¹²⁰ The government argued that to respect the rights of nature would violate the human rights of the local population to development.¹²¹ In this case, the court found that the two rights were not in conflict because the road could still be constructed in a way that respected both nature's rights and the human right to development.¹²² In the future, there may be a case where these rights are in conflict and a court may not find that nature has standing because the court did not decide this issue.¹²³ However, it is yet to be seen how a court would navigate that situation.¹²⁴

A further challenge in the Vilcabamba River ruling was enforcement difficulty due to a lack of precedent and compliance mechanisms.¹²⁵ While the court's ruling held that the government must submit a remediation plan to the Ministry of Environment within thirty days, the plan was not submitted for approval until months later.¹²⁶ Additionally, the plaintiffs complained that they accrued expenses paying for extra measures to protect their properties because the local government only partially complied with the ruling.¹²⁷

Since incorporating the rights of nature into its constitution, Ecuador has further incorporated the concept into dozens of policies and laws.¹²⁸ For example, criminal charges were brought on behalf of nature when in July 2011, the Coast Guard found 357 sharks were fished in the Galapagos

116. *Id.*
117. *Id.*
118. *Id.*
119. *Id.*
120. *Id.*
121. *Id.*
122. *Id.*
123. *Id.*
124. *Id.*
125. *Id.*
126. *Id.*
127. *Id.*
128. Boyd, *supra* note 15, at 15.

Marine Reserve where shark fishing is prohibited.¹²⁹ A case was brought against the captain of the fishing boat and eleven of the crew members.¹³⁰ This case represented the first time that the rights of sharks were upheld.¹³¹ The court sentenced the captain to two years in prison and each crewmember received a sentence of one year.¹³² In this case, people were actually held criminally liable for harms against nature, which may serve as a deterrent in the future against environmental violations.

In another case brought in Ecuador in 2011, extreme measures were taken to prevent environmental degradation.¹³³ The Ministry of Interior argued that mining activities were violating the rights of nature and requested an order from the court declaring such violations.¹³⁴ Various universities had issued reports that showed extreme environmental degradation from mining including water contamination from heavy metals and toxins from mining activities.¹³⁵ In response, the court approved the Ministry's request and issued an order for government agencies and the Armed Forces to control illegal mining to protect the rights of nature.¹³⁶ After an Executive Decree from President Correa ordering a military operation in the area at issue, more than 200 pieces of mining equipment were seized and destroyed by almost 600 soldiers.¹³⁷ Because nature's rights were recognized in this case, the government was able to take precautionary measures to protect those rights.¹³⁸

Another significant case took place in Ecuador in 2009 when the Constitutional Court heard a case from citizens who complained about air, water, and soil contamination produced by a large-scale pork processing plant since 2003.¹³⁹ The claimants based their argument on their constitutional rights to health and a safe and clean environment.¹⁴⁰ Although the claimants' argument did not specifically mention the rights of nature, the court still acknowledged that nature's rights needed to be protected, and ordered the creation of a new commission to monitor and audit the plant's activities.¹⁴¹ Incorporating nature's rights into the constitution helped Ecuadorians because the court had an additional basis

129. KAUFFMAN & MARTIN, *supra* note 9, at 6.

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

to issue a decision that protected both nature and the health of the citizens.¹⁴²

While there are many stories of success in Ecuador since the recognition of the rights of nature, the system is still a work in progress. Controversial projects are still taking place in Ecuador that cause environmental damage because the country is heavily dependent upon gas, oil, and mining industries.¹⁴³ Courts have handed down legally favorable decisions for the environment, but the country still needs to work on enforcement and compliance mechanisms to fully enforce the court's decisions.

How environmental successes are accomplished in the future depends on countries' methods of incorporating the rights of nature into law. For example, as seen in Ecuador and echoed in Bolivia, many lawsuits can be brought broadly across the country because all of nature has rights in the law.¹⁴⁴ In contrast, in places like New Zealand and Colombia, lawsuits can only be brought for a specific river, and potentially other specific natural entities that may be awarded legal status in the future.¹⁴⁵ Additionally, under all of the frameworks examined above, legal recourse is still limited by human wants and needs. While it is a positive step to be able to frame environmental harm in light of damage to the natural entity rather than humans affected by the damage, natural entities are still dependent on humans and organizations to bring lawsuits on their behalf.¹⁴⁶ In Ecuador, environmental harms can continue to take place across the country until a person or organization recognizes what is happening and steps in. If there is no community or organization that observes environmental damage, harm to natural entities could easily continue without opposition. Though, under New Zealand's model, this may be less of an issue because the river has appointed guardians and is localized within a community that can watch activities around it carefully.

It is not hard to imagine that, like the cases in Ecuador and the Atrato River, more litigation can be brought in the future. While no cases have emerged yet for New Zealand's Whanganui River, it will be interesting to see what claims will come in the future.¹⁴⁷ Theoretically, in the future, the river could bring claims against the Crown and other private entities for damages not only to the river's physical wellbeing, but also the river's spiritual wellbeing.¹⁴⁸ The damages resulting from such a case would also not likely be redressed by monetary compensation given that money is

142. *Id.*

143. Boyd, *supra* note 15 at 15.

144. *See generally* KAUFFMAN & MARTIN, *supra* note 9.

145. *See generally* Hsiao, *supra* note 43, at 372.

146. *See generally* KAUFFMAN & MARTIN, *supra* note 9.

147. Hsiao, *supra* note 43, at 375.

148. *Id.*

worthless to a river.¹⁴⁹ Rather, it is likely that compensation for harms to the river would need to be redressed by ecological restitution and restoration.¹⁵⁰ In this sense, framing a remedy directly to a natural entity that is damaged can better mitigate harms to the environment.

V. How Might Legal Rights for Nature Gain Traction?

It seems possible and even likely that nature with rights will gain traction in more countries across the globe. In the future, countries can look to existing legal frameworks as they continue to develop and incorporate a space for nature as a legal entity in their own systems.¹⁵¹ In fact, countries have already taken inspiration from other countries to develop their own systems.¹⁵² Additionally, grassroots movements and indigenous movements can help push countries to afford nature legal rights.¹⁵³ There are also growing international movements pushing for recognition of Mother Earth that could gain traction.¹⁵⁴

Already, the idea of granting nature legal rights is spreading through courts and legislatures across the globe, and it will likely gain more traction in the future.¹⁵⁵ In India, although the Supreme Court ultimately reversed the High Court's decision to grant legal status to the Yamuna and Ganges rivers, the High Court specifically referred to New Zealand's recognition of the Whanganui River as an ancestor.¹⁵⁶ This shows that the court was looking to other countries, like New Zealand, for inspiration on how to solve local issues.¹⁵⁷ Additionally, the court in Colombia looked to New Zealand as an example in arriving at its decision.¹⁵⁸ Though, in the end, the Indian Supreme Court overruled the legal status of the Ganges and Yamuna rivers because of the risk of complicated legal situations and practical issues.¹⁵⁹ When considering complex environmental issues, courts and governments often look to other governments for possible solutions.

In New Zealand, however, the government is still working with the Maori people to further implement and enact legislation for how the

149. *Id.*

150. *Id.*

151. O'Donnell & Talbot-Jones, *supra* note 3.

152. *See Ganges and Yamuna Rivers*, *supra* note 7; O'Donnell & Talbot-Jones, *supra* note 3; Pecharroman, *supra* note 6, at 7.

153. Boyd, *supra* note 15, at 16.

154. *Id.*

155. *See KAUFFMAN & MARTIN*, *supra* note 9, at 1.

156. *See Ganges and Yamuna Rivers*, *supra* note 7; O'Donnell & Talbot-Jones, *supra* note 3; Pecharroman, *supra* note 6, at 7.

157. *See Ganges and Yamuna Rivers*, *supra* note 7; O'Donnell & Talbot-Jones, *supra* note 3; Pecharroman, *supra* note 6, at 7.

158. Boyd, *supra* note 15, at 16.

159. *See Ganges and Yamuna Rivers*, *supra* note 7.

Whanganui River's rights will work in practice.¹⁶⁰ Theoretically, once further legislation emerges in New Zealand, other countries, such as India, may be able to look at New Zealand's model to help adopt their own. While the Supreme Court overturned the High Court's ruling in India due to practical issues, in the future it may be easier for countries to find a way to put legal rights for natural entities into practice once there are more examples and models to follow, such as the model developing in New Zealand.

In another example illustrating the spread of legal rights for nature, in December 2010, Bolivia passed the Law on the Rights of Mother Earth, following the footsteps of Ecuador.¹⁶¹ Then, in 2012, Bolivia passed the Framework Law of Mother Earth and Holistic Development for Living Well, Law No. 300.¹⁶² The Law of Mother Earth redefines Bolivia's "mineral deposits as 'blessings,'" and was expected to "lead to radical new conservation and social measures to reduce pollution and control industry."¹⁶³ This law developed following a change to the constitution in 2009 and was a part of a restructuring of the Bolivian legal system.¹⁶⁴ The law was influenced, like in Ecuador, by a "resurgent indigenous Andean spiritual world view which places the environment and the earth deity known as the Pachamama at the cent[er] of all life."¹⁶⁵ Bolivia has experienced a long history of environmental problems, and this new law came about in the hope that it would "make industry more transparent" and help prevent climate change.¹⁶⁶ While Bolivia followed Ecuador in granting nature legal rights, the process was also facilitated through advocacy by indigenous groups.¹⁶⁷ In both Bolivia and Ecuador, a strong indigenous respect for the Pachamama, and indigenous efforts, coupled with inspiration from Ecuador, helped codify the concept into law.¹⁶⁸

In another groundbreaking case, in Colombia the court took note from New Zealand's decision for the Whanganui River and granted the Atrato River, its tributaries, and its basin the rights to be protected, preserved, and restored by the State and communities in November 2016.¹⁶⁹ The court granted these rights in response to a suit that was brought because of illegal mining activities near the river that were found to cause a "serious violation

160. Hsiao, *supra* note 43, at 374.

161. Boyd, *supra* note 15, at 15.

162. *Id.*

163. John Vidal, *Bolivia Enshrines Natural World's Rights with Equal Status for Mother Earth*, THE GUARDIAN (Apr. 10, 2011), <https://perma.cc/56EF-L73W>.

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. Pecharroman, *supra* note 6, at 8.

of the fundamental rights to life, health, water, food security, the healthy environment, the culture and the territory of the ethnic communities that inhabit the Atrato River basin and its tributaries.”¹⁷⁰ Ultimately, the court based its decision on “the relationship of profound unity between nature and humans.”¹⁷¹

In the ruling for the Atrato River, the court ordered the creation of a “Commission of Guardians of the Atrato River” within three months of the ruling.¹⁷² This commission has two guardians and an advising team comprised of members from organizations that had prior experience with protecting rivers in Colombia.¹⁷³ Though, it was only in October 2017 that the panel was formed.¹⁷⁴ Since the initial ruling in 2016, the court has attempted to elaborate on rules to facilitate enforcement for the Atrato River.¹⁷⁵ For example, court decisions have defined the institutions responsible for ensuring compliance with the court’s rulings.¹⁷⁶ Unlike the ruling in India for the Ganges and Yamuna rivers, the ruling for the Atrato River actually stuck, in part because the court provided more direction, borrowing from New Zealand’s model, as to how legal rights for the river would operate, especially given the instruction for formation of the Commission of Guardians.¹⁷⁷

Although the concept of legal rights for nature seems to be gaining momentum through courts and legislation, grassroots initiatives still have a role in spreading the movement.¹⁷⁸ For example, in New Zealand, Ecuador, and Colombia, indigenous movements were essential in acquiring rights for nature.¹⁷⁹ It was advocacy from groups like the Maori and CONAIE that pushed for a shift in the view of nature from anthropocentric to ecocentric.¹⁸⁰ Though all indigenous communities are widely varied, often times indigenous peoples are the first to protect the environment they are in, and they are assumed to be the obvious defenders of nature.¹⁸¹ But, it is important to keep in mind that indigenous peoples worldwide are not a homogenous group and do not always inherently care for nature. Indigenous communities that push for natural rights do not exist in every

170. *Id.* at 8.

171. Boyd, *supra* note 15, at 17.

172. Pecharroman, *supra* note 6, at 9.

173. *Id.*

174. *Id.*

175. *Id.* at 10.

176. *Id.*

177. Pecharroman, *supra* note 6, at 9.

178. *See* Boyd, *supra* note 15, at 16.

179. Hsiao, *supra* note 43, at 372; Neto & Lima, *supra* note 45, at 120.

180. Hsiao, *supra* note 43, at 371; Rühls & Jones, *supra* note 8, at 10.

181. Tanasescu, *supra* note 111.

country.¹⁸² Though, in Ecuador and New Zealand, indigenous groups played a pivotal role in creating the framework through which nature gained rights, and so the power that indigenous communities hold should not be underestimated.¹⁸³

There are also more grassroots initiatives that may help spread legal rights for nature.¹⁸⁴ For example, a citizen's initiative was launched in the European Union in 2017 that is seeking one million signatures in an effort to require the European Commission to create a draft legislative proposal regarding the rights of nature.¹⁸⁵ Additionally, France's Research Institute for Development is leading an effort to create an international treaty to recognize and define the rights of the Pacific Ocean.¹⁸⁶ The rights of nature are now also a fundamental element for action, planning, and assessment in all levels for decisions made on behalf of the International Union for the Conservation of Nature's plans, projects, and programs.¹⁸⁷

How countries incorporate the concept of legal rights for nature within their legal system is essential for whether or not the framework has any staying power. For example, in India, the Supreme Court ultimately overturned the High Court's decision because there was no practical way to put the decision into effect immediately.¹⁸⁸ By contrast, in Colombia, the court's decision regarding the Atrato River was not overruled.¹⁸⁹ This was in part because the court elaborated on how it wanted the river's rights to be enforced.¹⁹⁰ Ecuador used a different method to grant nature legal status through amending its constitution. From there, courts and the legislature have continued to elaborate on the concept of nature with rights through both legislation and judicial opinions. New Zealand, by contrast to the example in India, perhaps has the best success story of all because it has set up systems that will continue to develop and will foster conversations and cooperation within the overall legal framework.¹⁹¹ The decision in India unfortunately could not be integrated into the existing legal framework, which ultimately led to its defeat by the Indian Supreme Court.¹⁹²

Depending on a country's needs, a state may look to places like Ecuador or Bolivia for inspiration on incorporating legal rights for nature

182. *Id.*

183. Neto & Lima, *supra* note 45, at 120.

184. Boyd, *supra* note 15, at 16.

185. *Id.*

186. *Id.*

187. *Id.*

188. O'Donnell & Talbot-Jones, *supra* note 3.

189. *See* Pecharroman, *supra* note 6, at 9.

190. *Id.*

191. O'Donnell & Talbot-Jones, *supra* note 3.

192. *Id.*

into a constitution. For countries that are more interested in protecting a specific natural entity, New Zealand may serve as a better example. Additionally, governments can look to decisions like Colombia's for the Atrato River for an example of granting rights to nature through a court decision.¹⁹³

Further, as the concept of rights for nature spreads, international organizations may gain traction in pushing for change globally. Already, both Ecuador and Bolivia are a part of a group of nations that is calling for a Universal Declaration for the Rights of Mother Earth.¹⁹⁴ Whether this will have any force internationally is yet to be seen, but already "the United Nations has hosted annual dialogue sessions to explore this proposal."¹⁹⁵

Ultimately, countries like Ecuador and New Zealand that have incorporated the rights of nature into their legal systems have served as examples for countries that want to grant rights to nature, and can continue to do so in the future. Like how Ecuador looked to Pennsylvania to help develop its constitution, other countries will be able to do the same, and as nature gains rights in more places there will be even more examples from which to gain inspiration. Additionally, indigenous groups that care for their environmental surroundings can also look to indigenous groups in New Zealand and Ecuador for effective ways to push for changes to recognize nature as a legal entity. As nature with rights becomes more common, international movements may also gain traction globally.

VI. Why Can Legal Rights for Nature Make a Difference?

In the end, granting legal rights to nature can help protect the environment in a greater capacity by allowing more lawsuits to be brought to protect the earth and redressing damage to natural entities themselves, rather than attenuated human harms.¹⁹⁶ Indigenous communities have also had more input in their surroundings and respect for their views because granting legal rights to natural entities has not only provided a further basis to bring lawsuits, but has also given more weight to indigenous views of nature in the legal system.¹⁹⁷

As seen with the Vilcabamba case, two Americans obtained standing to bring a lawsuit on behalf of a river that they could not have brought before.¹⁹⁸ Had the Americans never brought the suit, it is quite possible that the river would have remained unprotected. While the project

193. Pecharroman, *supra* note 6, at 9.

194. Boyd, *supra* note 15, at 16.

195. *Id.*

196. *See generally* STONE, *supra* note 18.

197. *See* O'Donnell & Talbot-Jones, *supra* note 3; Rühls & Jones, *supra* note 8, at 9–10.

198. Pecharroman, *supra* note 6, at 7; Tanasescu, *supra* note 111.

ultimately continued, it continued with consideration to the environment and the river itself. The court ordered that the contractor must follow environmental guidelines.¹⁹⁹ In the future, plaintiffs can have more opportunities to bring suits, and fewer cases like this would fall through the cracks due to lack of standing.²⁰⁰

There are limitations for how much of a difference a framework granting legal status to natural entities can help. An issue in the Vilcabamba case was that few enforcement mechanisms existed to execute the court's decision.²⁰¹ Further, natural entities still depend on humans and organizations to bring law suits on their behalf. On the other hand, at least granting rights to natural entities is a step in the right direction to obtaining a favorable decision from a court. In the future, countries can continue to develop frameworks to address environmental harms, including granting legal status to natural entities, and borrow ideas to ensure compliance.

Recognizing nature as more than property provides a human benefit for indigenous peoples. Through providing legal rights to natural entities, indigenous groups may be able to gain more agency in the environments that they live. As seen with the Maori people in New Zealand, the Iwi and government's worldviews were bridged by granting the Whanganui River legal status.²⁰² In this sense, recognition of the Maori's beliefs in New Zealand's legal system gives respect to the Maori's view of the world that was lacking in the past.²⁰³ Likewise, in Ecuador, the addition of Pachamama into the constitution codifies the nation's recognition and respect for indigenous beliefs.²⁰⁴ By codifying indigenous values into law, nations afford more respect to indigenous beliefs and rights.²⁰⁵

VII. Conclusion

All things considered, the emergence of legal rights for nature can be a helpful tool for environmental efforts worldwide. Through granting rights to nature, indigenous and local communities' beliefs are better recognized, and the environment has an added layer of protection because more lawsuits can be brought on its behalf and courts can grant relief that better addresses harms to the environment.²⁰⁶ As Stone recognized, if nature could have legal status as a person, then it can be valued for itself,

199. Pecharroman, *supra* note 6, at 7.

200. *Id.*

201. *Id.*

202. O'Donnell & Talbot-Jones, *supra* note 3.

203. *See* Hsiao, *supra* note 43, at 372.

204. *See* Rühls & Jones *supra* note 8, at 10.

205. *See id.*; Hsiao, *supra* note 43, at 372.

206. O'Donnell & Talbot-Jones, *supra* note 3.

rather than being valued merely as property.²⁰⁷ When nature has legal standing, lawsuits can be based on a less attenuated harm because, rather than focusing on the injury to humans from the environmental injury, lawsuits can simply be based on the injury to the environment itself.²⁰⁸ Further, any legal battles on behalf of natural entities will be more efficient and cost effective because the “true costs of environmental impacts” will not be underestimated.²⁰⁹

Through the above case studies, I have outlined how nations have been able to effectively, and perhaps less effectively, implement legal status for nature.²¹⁰ It is possible that nature will continue to be granted legal status in more nations as nations borrow ideas from each other.²¹¹ The idea can also gain traction through grassroots and indigenous movements and, potentially in the future, through international movements.²¹² Ultimately, affording nature legal status could make a positive difference because not only would it allow more natural entities their day in court, but it would also help indigenous communities gain more agency in nations by codifying their values and viewpoints in the law.²¹³

207. Stone, *supra* note 1, at 100.

208. O'Donnell & Talbot-Jones, *supra* note 3.

209. *Id.*

210. See *Ganges and Yamuna Rivers*, *supra* note 7; O'Donnell & Talbot-Jones, *supra* note 3; Pecharroman, *supra* note 6, at 7.

211. See *Ganges and Yamuna Rivers*, *supra* note 7; O'Donnell & Talbot-Jones, *supra* note 3; Pecharroman, *supra* note 6, at 7.

212. See Boyd, *supra* note 15, at 16.

213. See O'Donnell & Talbot-Jones, *supra* note 3; Rühls & Jones, *supra* note 8, at 9–10.
