

EXPLORING THE INTERSECTION OF HUMAN RIGHTS AND THE RIGHTS OF NATURE AS INSEPARABLE DIMENSIONS IN ENVIRONMENTAL JURISPRUDENCE

By
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Abstract

The argument that human rights and the rights of nature are compatible ways to safeguard environmental sustainability and preserve life is made at the intersection of these two concepts. Traditionally anthropocentric, human rights aim to protect humans' freedoms, well-being, and dignity as individuals and as groups. Meanwhile, ecosystems and species have intrinsic rights that are protected under the rights of nature, an ecocentric legal theory, regardless of how useful they are to humans. This article made the case that both frameworks are just two sides of the same coin rather than being in conflict. Ecosystems and the human populations that depend on them are both targets of environmental degradation. By addressing the underlying causes of environmental harm, acknowledging the rights of nature ensures a sustainable future for all species on Earth, complementing the rights of humans. Examples of the legal convergence between both frameworks are the Whanganui River's legal personhood granted by New Zealand and Ecuador's constitutional recognition of nature's rights. This article makes the case for an all-encompassing approach to law and policy that incorporates the rights of nature as well as human rights, highlighting the necessity of environmental preservation for the fulfilment of human rights and vice versa.

Keywords: *Human Rights, Rights of Nature, Environmental Jurisprudence.*

1.0 Introduction

Despite their apparent differences, human rights and the Rights of Nature are fundamentally similar. The goal of protecting, preserving, and sustaining life on Earth, human or non-human, drives both paradigms.¹ This article examines how the rights of nature and human rights overlap and how they might be construed as two sides of the same coin. Using legal viewpoints, the historical development of both notions and ecocentric and anthropocentric discourses, this article aims to evaluate the increasing convergence between these two legal and philosophical fields. Increasingly creating an atmosphere where both concepts can co-exist and thrive, could be the silver bullet to solve the age-long sustainability debate for both Human rights and the Rights of Nature.

2.0 Human Rights: An Overview

Human rights have evolved over the years, evolving as an essential framework for assuring the protection of individual freedoms, dignity, and equality.² Following the horrible consequences of World War II, the Universal Declaration of Human Rights (UDHR) was adopted in 1948, solidifying the

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¹ F Biermann, 'The Future of 'Environmental' Policy in the Anthropocene: Time for A Paradigm Shift' in *Trajectories in Environmental Politics* (Routledge 2022) 58-77.

² G Brown, *The Universal Declaration of Human Rights in the 21st century: A Living Document in a Changing World* (Open Book Publishers 2016) 14.

contemporary understanding of human rights.³ Human rights, with a focus on civil, political, and later economic, social, and cultural rights, were largely created to shield people from oppression, violence, and other injustices.⁴ Nonetheless, the foundation of the human rights framework is often grounded in the belief that humans are superior to or distinct from the natural environment.⁵ As a consequence of this division, it is argued that it was no longer acknowledged that the enjoyment of basic human rights, such as the right to health, water, and life itself, is directly impacted by environmental degradation.⁶ This restriction has led to requests in recent decades for the inclusion of environmental issues in the discussion of human rights.⁷

2.1 Rights of Nature (RoN): A Growing Movement

The concept of the Rights of Nature (RoN) contradicts the anthropocentric perspective by contending that, regardless of its value to humans, nature possesses inherent rights. The 2008 Ecuadorian Constitution, the first in the world to acknowledge the legal rights of nature, gave the modern Rights of Nature (RoN) campaign widespread prominence.⁸ According to this ecocentric perspective, natural resources like rivers, forests, and wildlife are legal objects with the right to be protected for their own sake.⁹ This development was an essential component of a larger trend that acknowledged the interdependence of all species on Earth. Proponents of the Rights of Nature contend that, in the same way that human rights protect individuals from harm, the Rights of Nature must be developed to protect ecosystems from overexploitation and devastation.¹⁰

2.2 Human Rights and Rights of Nature: The Overlap

There is growing evidence that rights of nature and human rights are intertwined. In recent times, most people agree that protecting the right to a healthy environment is essential to upholding human rights. For example, the human right to nature acknowledges that the full enjoyment of fundamental human rights requires a clean, safe, healthy and sustainable environment.¹¹ International organisations like the United Nations (UN) Commission on Human Rights and the Human Rights Council Resolutions have acknowledged that vulnerable communities are disproportionately affected by environmental devastation, which exacerbates inequality and violates their right to life, health, and livelihood.¹²

³ Universal Declaration of Human Rights (UNDR 1948), Preamble.

⁴ SC Agbakwa, 'Reclaiming Humanity: Economic, Social and Cultural Rights as the Cornerstone of African Human Rights' *Yale Human Rights & Development Law Journal* (2002) 5 177.

⁵ L Pizza and D Kelemen 'Are Humans Part of the Natural World? US Children's and Adults' Concept of Nature and Its Relationship to Environmental Concern' *Topics in Cognitive Science* (2023) 15 (3) 453.

⁶ ML Slaymaker, 'Should Nature Have Standing?' *Indiana Journal of Global Legal Studies* (2024) 31(1) 203-226.

⁷ J Nickel and E Adam, 'Human Rights' in NZ Edward & N Uri (eds.) *The Stanford Encyclopedia of Philosophy* (2024 Edition),

⁸ C Espinosa, 'Interpretive Affinities: The Constitutionalisation of Rights of Nature, Pacha Mama, in Ecuador' *Journal of Environmental Policy & Planning* (2019) 21 (5) 608.

⁹ S Bandopadhyay and S Pandey, 'The Rights of Nature: Taking an Ecocentric Approach for Mother Earth' *Rupkatha Journal on Interdisciplinary Studies in Humanities* (2020) 12 (4) 1-3.

¹⁰ DR Boyd, *The Rights of Nature: A Legal Revolution that Could Save the World* (ECW Press 2017); A Huneus, 'The Legal Struggle for Rights of Nature in the United States' *Wisconsin Law Review* (2022) 133; CD Stone, 'Should Trees Have Standing? Toward Legal Rights for Natural Objects in *Environmental Rights* (Routledge 2017) 283-334.

¹¹ A Rocha and H Oliveira, 'Human Rights and Fundamental Rights' *A Treatise on Environmental Law: Environmental Law and Other Legal Fields* (2024) 3 (1) 24.

¹² MI Gwangndi, YA Muhammad and SM Tagi, 'The Impact of Environmental Degradation on Human Health and Its Relevance to The Right to Health Under International Law' *European Scientific Journal* 12 (10) 488.

Furthermore, the Inter-American Court of Human Rights held in rulings like its 2018 Advisory Opinion that the enjoyment of certain human rights is contingent upon a safe and healthy environment.¹³

2.3 Ecocentrism and the Rights of Nature

The Rights of Nature movement is based on ecocentrism, a philosophy that accords intrinsic value to all living forms. According to the concept of ecocentrism, ecosystems, species, and even geological features have intrinsic value that goes beyond what humans can benefit from them.¹⁴ It is argued, therefore, that humans are not distinct from, but rather a part of, the natural world. This development has important legal ramifications. If nature is recognized as a legal subject with enforceable rights, it would necessitate a radical rethinking of how legal regimes manage environmental protection.¹⁵ If a river, for instance, had legal standing, it may, through legal counsel, "sue" for repair if it is contaminated.¹⁶

2.4 Anthropocentrism and Human Rights

Anthropocentrism is a viewpoint that puts human needs and interests first. It is the foundation of the human rights framework. It sees nature mainly as a resource for human use, one that needs to be properly managed to guarantee that people will always have access to food, clean water, and air.¹⁷ This framework includes the human right to a safe and healthy environment, which protects environmental factors that have a direct bearing on human health. Although environmental issues have been included in human rights legislation, the law still functions primarily from the premise that nature exists to serve human interests.¹⁸ This anthropocentric approach can occasionally result in environmental regulations that, although advantageous to people, fall short of sufficiently safeguarding ecosystem integrity.

The understanding that ecological health and human well-being are interdependent leads to philosophical and ethical arguments that link human rights to the rights of nature. According to the concept of Rights of Nature, ecosystems and species are moral beings with inherent rights that should be respected and protected, much like human rights.¹⁹ Ecocentrism, which highlights the intrinsic worth of all living creatures and their moral position above human utility, is consistent with the rights of nature perspective.²⁰ Human rights including food, water, and health are seriously threatened by environmental deterioration, which is addressed by acknowledging the rights of nature, according to ethical

¹³ M Feria-Tinta, 'Inter-American Court of Human Rights' in *The Environment Through the Lens of International Courts and Tribunals* (The Hague: TMC Asser Press 2022) 249-287.

¹⁴ C Batavia and MP Nelson, 'For Goodness Sake! What Is Intrinsic Value and Why Should We Care?' *Biological Conservation* (2017) 209 369.

¹⁵ J Gilbert and Others, 'The Rights of Nature as a Legal Response to the Global Environmental Crisis? A Critical Review of International Law's 'Greening' Agenda' in JD Dam-de and F Amtenbrink, (eds) *Netherlands Yearbook of International Law 2021* Vol 52 (T.M.C. Asser Press, The Hague 2023); DR Boyd, *The Rights of Nature: A Legal Revolution That Could Save The World* (ECW Press 2017).

¹⁶ PL Cano, 'Rights of Nature: Rivers That Can Stand in Court' *Resources* (2018) 7 (1) 13.

¹⁷ H Koprina and Others, 'Anthropocentrism: More Than Just a Misunderstood Problem' *Journal of Agricultural and Environmental Ethics* (2018) 31 (1) 109-27.

¹⁸ ES Kassaye, 'In Defence of Relational Anthropocentrism: Towards A Total Field Image Of The Environment' *Diálogos* (2024) 227-249. See Jonah Gbemre's case and the African Charter on Human People's rights article....

¹⁹ RF Nash, *The Rights of Nature: A History of Environmental Ethics* (University of Wisconsin Press 1989).

²⁰ J Gray, I Whyte and P Curry, 'Ecocentrism: What it Means and What it Implies' *The Ecological Citizen* (2018) 1 (2) 131.

considerations.²¹ Advocates argue for a moral duty to protect ecosystems by conceiving nature as a legal subject, which reflects the philosophical idea that rights originate from the interconnection of life.²² In terms of philosophy, this method opposes anthropocentrism by arguing that acknowledging the rights of nature is consistent with the moral precepts that support human rights, promoting an all-encompassing perspective that honours ecological and human systems as components of a common ethical framework.²³

3.0 The Legal Convergence of Human Rights and Rights of Nature

The growing understanding of the connection between ecological health and human well-being is reflected in the legal convergence of the rights of nature and human rights. The human rights concept, which emphasises defending both individual and collective human dignity, is analogous to the rights of nature framework, which pushes for ecosystems to be acknowledged as legal subjects with inherent rights.²⁴ This convergence results from a common concern for preserving the environment since it is becoming more widely accepted that a healthy environment is necessary for achieving fundamental human rights like the right to life and health. But when human rights collide with the rights of nature, as they do when it comes to resource exploitation or land use, conflicts can arise. Despite these obstacles, the increasing fusion of the two concepts provides a comprehensive method for sustainability, in which preserving ecosystems helps achieve human rights over the long run and vice versa.²⁵

Instead of concentrating only on governments or the environment, a human rights perspective interprets environmental challenges in terms of their direct impact on individual life, health, private life, and property.²⁶ By holding governments responsible for reducing pollution and other environmental problems, especially those that impact people's health and personal lives, this strategy motivates them to fulfil stricter environmental standards. Additionally, it encourages access to knowledge, fairness, and public involvement in environmental decision-making. Additionally, human rights considerations highlight the environment as part of the public interest and uphold accountability, especially corporate accountability, which strengthens the rule of law.²⁷

The growing recognition of the link between human well-being and a healthy environment is reflected in the numerous international treaties and agreements that span the domains of environmental protection and human rights. Key examples include:

²¹ D Shelton, 'Human Rights, Environmental Rights, and the Right to Environment' in *Environmental Rights* (Routledge 2017) 509-544.

²² CD Stone, *Should Trees have Standing? Law, Morality, and the Environment* (Oxford University Press 2010).

²³ M Tănăsescu, 'Rights of Nature, Legal Personality, And Indigenous Philosophies' *Transnational Environmental Law* (2020) 9 (3) 429-453.

²⁴ EF Beckhauser, 'The Synergies Between Human Rights and the Rights of Nature: An Ecological Dimension from the Latin American Climate Litigation' *Netherlands Quarterly of Human Rights* (2024) 42 (1) 12-34.

²⁵ J Gilbert, 'Human Rights & the Rights of Nature: Friends or Foes?' *Fordham International Law Journal* (2024) 47 (4) 447.

²⁶ F Alves and Others, 'The Rights of Nature and the Human Right to Nature: An Overview of the European Legal System and Challenges for the Ecological Transition' (*Frontiers in Environmental Science*) (2023) 11 1175143.

²⁷ B Boer and A Boyle, 'Human Rights and the Environment' 13th Informal ASEM Seminar on Human Rights 21-23 October 2013 Copenhagen, Denmark.

The United Nations Conference on the Human Environment, convened in Stockholm in 1972, represented the inaugural international initiative to tackle environmental issues. It signified a pivotal moment in worldwide environmental governance by acknowledging the necessity of sustainable development and environmental conservation as global imperatives. The meeting produced the Stockholm Declaration, which delineated 26 principles intended to reconcile environmental and economic interests and also facilitated the creation of the United Nations Environment Programme (UNEP) to oversee international environmental initiatives.²⁸ Since 1972, the Stockholm Conference has catalysed numerous significant environmental achievements.²⁹ The 1987 Brundtland Report elaborated on its concepts by delineating sustainable development.³⁰ Subsequent conferences, including the Earth Summit in 1992 (Rio de Janeiro), adopted frameworks like Agenda 21 and treaties on biodiversity and climate change.³¹ The conference's impact was solidified in the 2000s with the Millennium Development Goals (MDGs) and subsequently, the Sustainable Development Goals (SDGs), which integrate economic, social, and environmental objectives.³² The 50th anniversary of the conference in 2022 (Stockholm+50) underscored persistent concerns such as climate change, biodiversity decline, and unsustainable consumption, reinforcing the Stockholm principles as essential for modern environmental strategies.³³ Despite notable advancements in policy frameworks and awareness, there are still implementation gaps that call for increased international collaboration.³⁴

The Vienna Convention for the Protection of the Ozone Layer. This environmental accord was adopted in 1985 to protect the ozone layer. It creates a framework for global collaboration, enabling nations to coordinate policies and share information, and research to minimize the ozone layer's thinning due to human activity. Although the Convention does not establish explicit legal requirements for lowering ozone-depleting compounds, it does establish the framework for later accords like the Montreal Protocol, which deals with regulatory actions. This was first global agreement to combat ozone depletion and was ratified in 1985.³⁵ Without making legally binding commitments to reduce ozone-depleting chemicals (ODS), the convention created a framework for global collaboration in scientific research and ozone depletion monitoring. It did, however, pave the way for the 1987 Montreal Protocol, which established legally binding goals to phase out ODS such as chlorofluorocarbons (CFCs). The Convention and its Protocol have been quite effective since they were first established. Over 99% of

²⁸ United Nations Conference on the Human Environment, 5-16 June 1972, Stockholm <https://www.un.org/en/conferences/environment/stockholm1972> accessed 2 December 2024.

²⁹ N Oral, 'A Stocktake of Ocean Governance Fifty Years after Stockholm: New Challenges for International Law' *The International Journal of Marine and Coastal Law* (2024) 39 (3) 419-428.

³⁰ M Hajian and SJ Kashani, 'Evolution of the Concept of Sustainability: From Brundtland Report to Sustainable Development Goals' in *Sustainable Resource Management* (Elsevier 2021) 1-24.

³¹ J Vaillancourt, 'Earth Summits of 1992 in Rio' *Society & Natural Resources* (1993) 6 (1) 81-88.

³² JH Knox and E Morgera, *Human Rights and the Environment: The Interdependence of Human Rights and a Healthy Environment in the Context of National Legislation on Natural Resources* (Food & Agriculture Org. 2022) 68.

³³ C Hecht and J Steffek, 'Salient Discourses in International Society: When and how have United Nations Global Conferences Acted as Catalysts?' *Journal of International Relations and Development* (2024) 7 283.

³⁴ N Bryner, 'A Constitutional Human Right to a Healthy Environment' in *Research Handbook On Fundamental Concepts of Environmental Law* (Edward Elgar Publishing 2022) 141-159.

³⁵ O Yoshida, 'The 1985 Vienna Convention for the Protection of the Ozone Layer and Principles of Modern International Environmental Law' in *The International Legal Regime for the Protection of the Stratospheric Ozone Layer* (Brill Nijhoff 2018) 51-96.

the world's ODS use has been cut, and the ozone layer is beginning to recover.³⁶ If compliance is maintained, it is predicted that the ozone layer will fully recover by the middle of the century. Through the reduction of greenhouse gases, it has also helped to mitigate climate change.³⁷ Its scope has been expanded to include hydrofluorocarbons (HFCs) by frequent updates and revisions, such as the Kigali Amendment in 2016, which further addresses the effects of climate change. The Convention continues to serve as a model for multilateral environmental agreements, demonstrating the value of international collaboration and science-based policymaking. It highlights the possibilities of group effort in addressing global environmental crises despite obstacles.

The Convention on Biological Diversity: By acknowledging that environmental degradation jeopardises basic human rights like the right to food, water, and health, the Convention on Biological Diversity (CBD) connects biodiversity conservation with human rights. Protecting biodiversity is crucial to defending the rights of Indigenous Peoples and other communities who depend on natural ecosystems for their livelihoods, according to recent demands like those made by the UN Special Rapporteurs.³⁸ It is believed that protecting biodiversity while upholding human rights is essential to attaining social justice and environmental sustainability. During the 1992 Rio de Janeiro Earth Summit, the Convention on Biological Diversity (CBD) was opened for signature. It came into effect on December 29, 1993. It is a comprehensive international legal framework designed to preserve biological variety, encourage the sustainable use of its constituent parts, and guarantee the just and equitable distribution of advantages resulting from the use of genetic resources.³⁹ Through several strategies, such as the adoption of agreements like the Cartagena Protocol on Biosafety (2000) and the Nagoya Protocol on Access and Benefit-Sharing (2010), the CBD has supported the conservation of biodiversity worldwide since its founding.⁴⁰ These tools seek to address certain biodiversity-related issues, like managing genetically modified species safely and guaranteeing resource equity. The CBD's objectives have been attempted to be operationalised through international initiatives including the Kunming-Montreal Global Biodiversity Framework (2022) and the Aichi Biodiversity Targets (2011–2020).⁴¹ However, because of operational flaws and a lack of international collaboration, biodiversity loss continues to be a serious problem.⁴² Although there has been success in raising awareness and expanding protected areas, immediate effort is still required to stop ecosystem deterioration and produce sustainable biodiversity outcomes.

³⁶ MW Roberts, 'Finishing the Job: The Montreal Protocol Moves to Phase Down Hydrofluorocarbons' *Review of European, Comparative & International Environmental Law* (2017) 26 (3) 220-230.

³⁷ F Albrecht and CF Parker, 'Healing the Ozone Layer' in *Great Policy Successes* (Oxford University Press Oxford 2019) 304-322.

³⁸ L Parks and E Tsioumani, *Transforming Biodiversity Governance? Indigenous Peoples' Contributions to the Convention on Biological Diversity* (Biological Conservation 2023) 280.

³⁹ JH Knox, Report of the special rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: biodiversity report. United Nations Human Rights Council, A/HRC/34/49, Wake Forest Univ. Legal Studies Paper. 2017.

⁴⁰ B Eggers and R Mackenzie, 'The Cartagena Protocol on Biosafety' *Journal of International Economic Law* (2000) 3 (3) 525-543.

⁴¹ I Lehmann, 'Inspiration from the Kunming-Montreal Global Biodiversity Framework for SDG 15' *International Environmental Agreements: Politics, Law and Economics* (2023) 23 (2) 207-214.

⁴² *Ibid.*

United Nations Framework Convention on Climate Change (UNFCCC): At the 1992 Rio de Janeiro Earth Summit, the United Nations Framework Convention on Climate Change (UNFCCC) was ratified to combat global warming and stop harmful human meddling with the climate system. With 198 parties, the treaty had almost universal approval and went into effect on March 21, 1994.⁴³ By creating a framework for global collaboration in the fight against climate change, the UNFCCC paved the way for accords such as the Paris Agreement (2015) and the Kyoto Protocol (1997).⁴⁴ This is one important international agreement to combat climate change, which aims to stabilise greenhouse gas concentrations to stop harmful human interference with the climate system.⁴⁵ The UNFCCC framework's incorporation of human rights emphasises how vulnerable groups are disproportionately impacted by climate change, endangering their rights to life, health, and livelihood. To guarantee that climate action addresses these socioeconomic implications while respecting the rights and dignity of impacted populations, a rights-based approach is advised. While the Paris Agreement concentrated on keeping the increase in global temperatures to far below 2°C over pre-industrial levels, with efforts to keep it to 1.5°C, the Kyoto Protocol established legally binding emission reduction targets for industrialised nations.⁴⁶ Negotiations and implementation plans have been assisted over the years by the UNFCCC's annual Conferences of the Parties (COPs). Notwithstanding advancements, there are still issues to be resolved, such as funding climate adaptation and mitigation and guaranteeing fairness in tackling the effects of climate change, especially for developing countries.

The Aarhus Convention (1998) upholds the rights of individuals and communities to the environment by enforcing access to information, public participation in environmental decision-making, and access to justice.⁴⁷ Adopted in Aarhus, Denmark, on June 25, 1998, the Aarhus Convention is officially known as the UNECE Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters.⁴⁸ On October 30, 2001, it came into effect. By guaranteeing access to environmental information, public involvement in decision-making, and access to justice in environmental matters, the Convention seeks to improve public rights in environmental governance. The Aarhus Convention has improved the role of NGOs and civil society in environmental governance and decision-making since it was ratified.⁴⁹ It offers a legislative framework for accountability, transparency, and environmental democracy and has been widely adopted throughout Europe and beyond. There are still issues, nevertheless, such as inconsistent state-by-state implementation and restricted efficacy in some areas.

⁴³ N Tripathy, 'Climate Change and Its Impact on the Environment' *Indian Journal of Law & Legal Research* (2022) 4 (2) 1.

⁴⁴ MM Naser and P Pearce, 'Evolution of the International Climate Change Policy and Processes: UNFCCC to Paris Agreement' in *Oxford Research Encyclopedia of Environmental Science* (Oxford University Press 2022).

⁴⁵ *Ibid.*

⁴⁶ S Mor and Others, 'Kyoto Protocol and Paris Agreement: Transition from Bindings to Pledges—A Review' *Millennial Asia* (2023) 15 (4) 690-711.

⁴⁷ BJ Preston, 'The Right to a Clean, Healthy and Sustainable Environment: How to Make it Operational and Effective' *Journal of Energy & Natural Resources Law* (2024) 42 (1) 27-49.

⁴⁸ M Lee, 'The Aarhus Convention 1998 and the Environment Act 2021: Eroding Public Participation' *Modern Law Review* (2023) 86 (3) 756.

⁴⁹ C Scissa, 'Young People and EU Environmental Justice: The 1998 Aarhus Convention' in *Youth Political Participation* (Council of Europe and European Commission 2023) 53.

The 2015 Paris Agreement: Despite its emphasis on climate change, this agreement also recognises how vulnerable communities are affected by environmental degradation, linking climate action with the defence of human rights.⁵⁰ Adopted on December 12, 2015, at COP21 in Paris, the Paris Agreement is a historic international agreement under the UNFCCC to address climate change. On November 4, 2016, it became operative. Given the serious risks associated with increased warming, its main objective is to keep the increase in global temperature to far below 2°C over pre-industrial levels, with efforts to keep it to 1.5°C. All parties are required by the Agreement to submit nationally determined contributions (NDCs) and to update them every five years to increase ambition.⁵¹ It also establishes a framework for climate finance, capacity-building, and technology transfer to assist developing nations, and it incorporates a global stocktake every five years to evaluate collective progress.⁵² The Agreement has been ratified by almost everyone since it was adopted, and it has sparked important pledges including net-zero targets by the middle of the century. To close the gap between aspiration and action, there are still issues, such as the suitability of NDCs and the execution of climate finance commitments.⁵³

By guaranteeing that preserving ecosystems promotes the fulfilment of fundamental human rights, these treaties demonstrate the growing convergence of environmental issues with the larger human rights agenda.

4.0 Case Studies: Ecuador and New Zealand

According to the UN Harmony with Nature initiative, approximately thirty countries have so far enacted laws protecting the rights of nature, whether through national laws, judicial rulings, or constitutional or statutory provisions.⁵⁴

Two notable instances of legal regimes that have acknowledged the rights of nature are Ecuador and New Zealand. The 2008 Ecuadorian Constitution explicitly accords rights to nature, enabling any person or group to bring legal action on behalf of ecosystems.⁵⁵ This constitutional recognition has contributed to multiple judicial victories for nature, including verdicts that halted environmentally harmful mining operations.⁵⁶ In a similar vein, legislation recognising the Whanganui River as a distinct legal entity with rights and interests was passed in New Zealand in 2017. The significant spiritual connection that the local Māori people have to the river is reflected in the legislation that was developed in conjunction with them. The river is given protected status by the law since it is acknowledged as a matter of law.⁵⁷

⁵⁰ P Toussaint and AM Blanco, 'A Human Rights-Based Approach to Loss and Damage Under The Climate Change Regime' *Climate Policy* (2020) 20 (6) 743-757.

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ TD Abi and Others, 'Envisioning Environmental Equity: Climate Change, Health, and Racial Justice' *The Lancet* (2023) 402 (10395) 64-78.

⁵⁴ UN Harmony with Nature 2023: Rights of Nature Law and Policy <http://www.harmonywithnatureun.org/rightsofnature/> accessed 27 February 2023.

⁵⁵ LJ Kotzé and PV Calzadilla, 'Somewhere Between Rhetoric And Reality: Environmental Constitutionalism and the Rights of Nature in Ecuador' *Transnational Environmental Law* (2017) 6 (3) 401-33.

⁵⁶ M Tănăsescu and Others, 'Rights of Nature and Rivers in Ecuador's Constitutional Court' *The International Journal of Human Rights* (2024) 1-23.

⁵⁷ J Talbot-Jones and J Bennett, 'Implementing Bottom-Up Governance through Granting Legal Rights to Rivers: A Case Study of the Whanganui River, Aotearoa New Zealand' *Australasian Journal of Environmental Management*. 2022 Jan 2;29(1):64-80.

Several cases demonstrate the intersection between human rights and the rights of nature, illustrating the rising acknowledgement of environmental harm as a violation of fundamental human rights.

Oposa et al v Fulgencio S. Factoran Jr. et al.⁵⁸ In this case, Fulgencio Factoran Jr., the Philippine Secretary of the Department of Environment and Natural Resources (DENR), was the target of a class action lawsuit filed by a group of Filipino minors, represented by their parents. In their request to have wood license agreements revoked, the plaintiffs claimed that the licenses endangered deforestation and infringed upon Filipinos' fundamental right to a "balanced and healthful ecology." In agreeing with the plaintiffs, the Philippine Supreme Court held that the right to a healthy and balanced environment was basic and enforceable and acknowledged the legal standing of children to bring the lawsuit on behalf of future generations. This historic ruling established environmental intergenerational justice as the foundation for environmental rights in the Philippines and established environmental protection as a fundamental state responsibility. The court emphasized the right to a healthy environment as essential for future generations, aligning environmental protection with human rights.⁵⁹

Urgenda Foundation v State of the Netherlands:⁶⁰ In this 2015 case, the Dutch government was sued by the Urgenda Foundation and 900 Dutch citizens, who demanded more robust climate change mitigation measures. According to Urgenda, the government's failure to reduce greenhouse gas emissions breached human rights since it disregarded its obligation to safeguard its inhabitants from the negative effects of climate change, particularly by failing to fulfil minimum carbon dioxide emission reduction objectives. After ruling in favour of Urgenda in 2015, the Hague District Court mandated that the government reduce emissions by at least 25% from 1990 levels by 2020. The Dutch Supreme Court upheld this ruling, which established a global precedent for climate lawsuits and confirmed that governments are legally required to safeguard their citizens from climate risks under human rights law.⁶¹

Portillo Cáceres and Others v Paraguay:⁶² In this landmark human rights case before the UN Human Rights Committee, a farming family in Paraguay claimed they suffered grave injuries because of local agribusinesses' usage of agrochemicals. Under the leadership of Norma Portillo Cáceres, the family alleged that huge soybean farms' overuse of pesticides poisoned their crops, water, and air, causing serious health effects and Mr. Portillo Cáceres' death from symptoms of agrochemical poisoning. The Committee stressed the state's responsibility to control environmental effects on human health when it found that Paraguay had breached the family's rights to life, privacy, family, and home.⁶³ This historic ruling reaffirmed the state's duty under international human rights law to protect people from

⁵⁸ (1993) G.R. No. 101083 224 SCRA July 30, 792.

⁵⁹ JD Quising. Beyond OPOSA: Courts Reinforcing Intergenerational Equity as Customary International Law. *European Law Journal* (2023) 29 (3-6) 422-44; RS Puno and DB Gatmaytan. Environmental Activism by the Philippine Supreme Court: Initiatives and Impediments' *Asia Pacific Journal of Environmental Law* (2024) 27 (1) 10-35.

⁶⁰ ECLI:NL:RBDHA:2015:7145.

⁶¹ EC Cordella. *Amicus Curiae: The State Obligations to Protect Human Rights In The Face Of The Climate And Ecological Crisis: Bases And Special Cases* (Doctoral dissertation, Universidad de Chile 2023).

⁶² *Portillo Cáceres and Others v. Paraguay* CCPR/C/126/D/2751/2016, Communication 2751/2016

⁶³ The Inter-American Court of Human Rights declared that the rights of indigenous peoples to a healthy environment and well health had been infringed by environmental deterioration resulting from large-scale agriculture.

environmental harm, especially where actions endanger fundamental health and life conditions.⁶⁴ The importance of the relationship between environmental preservation and the rights of marginalised populations was highlighted by this ruling. These instances demonstrate the growing trend of courts treating environmental harm as a human rights violation.

5.0 International Law and the Rights of Nature

A growing campaign to recognise nature's rights is currently taking place on a global scale. The Universal Declaration of the Rights of Mother Earth, which advocates for the universal recognition of nature's inherent rights, was championed by Bolivia in 2010.⁶⁵ This proclamation has advanced the global conversation on environmental protection and the legal status of nature, even if it is not legally binding. International legal frameworks that aim to address global environmental concerns, such as climate change and biodiversity loss, also represent the intersection of human rights and the rights of nature.⁶⁶ The imperative of preserving ecosystems for the benefit of humans and the environment is implicitly recognised by international agreements like the Convention on Biological Diversity and the Paris Agreement.

6.0 Challenges and Criticisms of the Rights of Nature

6.1 Criticisms of the Rights of Nature

Many critics oppose the fight for the Rights of Nature.⁶⁷ The evolving debate between the objectives of environmental conservation and pragmatic legal issues is reflected in the conversation on the Rights of Nature.⁶⁸ The main contention of opponents of the Rights of Nature movement is that giving nature legal rights raises difficult legal and practical problems. By acknowledging nature as an inherent right-holder, proponents contend that giving legal rights to natural entities such as rivers and ecosystems, strengthens environmental protection.⁶⁹ However, as nature cannot directly represent itself in court, critics expressed fears that such legal changes would upset long-standing legal conventions, lead to legal disputes, and provide practical difficulties in enforcement.⁷⁰ In other words, rights of nature make the legal system more complex by generating conflicts between human and non-human rights, which

⁶⁴ S Varvastian, 'The Advent of International Human Rights Law in Climate Change Litigation' *Wisconsin International Law Journal* (2020) 38 369; KO Kila, *Corporate Regulation for Climate Change Mitigation in Africa: A Case for* (dilute interventionism. Routledge; 2022).

⁶⁵ G Chapron, Y Epstein, JV López-Bao, 'A Rights Revolution for Nature' *Science* (2019) 363,1392-1393.

⁶⁶ Gilbert J and Others 'The Rights of Nature as a Legal Response to the Global Environmental Crisis? A critical review of international law's 'greening' agenda.' *Netherlands Yearbook of International Law 2021: A Greener International Law International Legal Responses to the Global Environmental Crisis* (2023) 28:47-74.

⁶⁷ CR Sunstein, 'Rights and their Critics' *Notre Dame Law Review* (1994) 70 727; DG Ritchie, *Natural Rights: A Criticism of Some Political and Ethical Conceptions* (Routledge 2014); Julien Betaille, 'Rights of Nature: Why it Might Not Save the Entire World' *Journal for European Environmental and Planning Law* (2019) 16 (1) 35 - 64

⁶⁸ N Sachs, 'A Wrong Turn with the Rights of Nature Movement' *The Georgetown Environmental Law Review* (2023) 36 (39) 39; J Waldron, 'A Right-Based Critique of Constitutional Rights' *Oxford Journal of Legal Studies* (1993) 13 (1) 18-51; CR Sunstein, 'Rights and their Critics' *Notre Dame L. Rev* (1994) 70 727; PS Elder, 'Legal Rights for Nature-The Wrong Answer to the Right (s) Question' *Osgoode Hall LJ* (1984) 22 285; GH Smith, 'Criticisms of Natural Rights' <https://www.libertarianism.org/columns/criticisms-natural-rights> accessed 31 October 2024.

⁶⁹ G Ronca, 'The Rights of the Ecosystem and Future Generations as Tools for Implementing Environmental Law' in *Global Climate Justice: Theory and Practice* (E-International Relations 2023).

⁷⁰ Stone (n 22) 4.

makes it harder to execute the law and leaves non-human entities with ambiguous legal status.⁷¹ Furthermore, critics wonder if these rights are token gestures that ineffectively address fundamental environmental issues or if they offer protections.⁷²

Some contend, however, that giving nature legal rights can result in ambiguities and difficulties down the legal path.⁷³ If a river were a legal person, for instance, how would courts strike a balance between its rights and the demands of the human population that depends on it for industry, agriculture, and domestic use such as drinking?⁷⁴ Furthermore, there are worries that strong interests may appropriate the rights of nature. Critics caution that, especially in areas where populations are already economically challenged, governments or businesses may exploit the rights of nature as a weapon to thwart sustainable development initiatives.⁷⁵ Other Critics further contend that considering nature as a possessor of rights may be at odds with human values, particularly when resources are required for social and economic advancement. Because enforcement mechanisms are still in their infancy and policymakers frequently ignore local socioeconomic requirements, some opponents believe that the rights of nature do not provide adequate legal protection or observable environmental advantages.⁷⁶

7.0 Limitations of the Human Rights Approach

The human rights approach to environmental protection is sometimes criticised for having a too limited focus on human concerns. Critics contend that by defining environmental issues in terms of human rights, we risk ignoring the broader ecological implications of environmental deterioration. For instance, pollution can have disastrous consequences on ecosystems and wildlife even when it does not directly affect human populations. Furthermore, the root causes of environmental harm such as excessive consumerism, economic inequality, and corporate exploitation of natural resources are frequently ignored by the human rights framework. The right to a safe and healthy environment is a positive beginning, but it might not be sufficient to guarantee the earth's long-term sustainability.

8.0 Challenges and Opportunities in Enforcing the Rights of Nature

There are many chances and challenges in upholding nature's rights. The legal conflict between traditional property rights and the rights of nature is one of the main obstacles. Many nations' legal systems place a higher priority on economic interests and property ownership, which can make it more difficult to enforce the rights of nature. Furthermore, it is challenging for courts to apply these rights uniformly due to their ambiguous and imprecise definition.⁷⁷ Since there aren't any precise limits or bounds, this could result in arbitrary legal outcomes. Nevertheless, the growing international

⁷¹ CR Giraldo, 'Does Nature Have Rights? Successes and Challenges in Implementing the Rights of Nature in Ecuador' (2013) <https://constitutionnet.org/news/does-nature-have-rights-successes-and-challengesimplementing-rights-nature-ecuador> accessed 4 December 2020.

⁷² *Ibid.*

⁷³ C McDonough, 'Will the River Ever Get a Chance to Speak? Standing Up for the Legal Rights of Nature' *Villanova Environmental Law Journal* (2020) 31(1) 143, 161.

⁷⁴ VAJ Kurki, 'Can Nature Hold Rights? It's Not as Easy as You Think' *Transnational Environmental Law* 2022) 11 (3) 525–552.

⁷⁵ A Parr, *Hijacking Sustainability* (Mit Press; 2012); P Collier, *The Plundered Planet: Why we must--and how we can--Manage Nature for Global Prosperity* (Oxford University Press 2010).

⁷⁶ CT Brown, 'Combating Environmental Degradation in Nigeria through the Recognition of the Rights of Nature' <https://blogs.uwe.ac.uk/bristol-law-school/combating-environmental-degradation-in-nigeria-through-the-recognition-of-the-rights-of-nature/> accessed 02 December 2024.

⁷⁷ Giraldo (n 71).

recognition of nature's rights inside legal frameworks presents some opportunities. Ecosystems are now able to defend themselves in court thanks to the effective integration of these rights into the constitutions of several nations, including Ecuador and New Zealand.⁷⁸ This creates opportunities for more thorough environmental protection, especially using ecosystems as plaintiffs in criminal law and constitutional lawsuits.⁷⁹ As a result, although enforcement is challenging because of contradictory legal frameworks and imprecise definitions, the rights of nature could change environmental law and strengthen safeguards for ecosystems.

9.0 The practical implications of considering nature as a rights-bearing entity.

There are various useful ramifications for legal systems, environmental management, and society governance when nature is viewed as a rights-bearing entity. *First*, ecosystems like rivers, woods, and species are given legal personality, which gives them the ability to file lawsuits to protect their rights through guardians or representatives. This, as demonstrated in nations like Ecuador and New Zealand, radically alters the paradigm of considering nature as property to acknowledging it as a subject of law.⁸⁰ *Second*, by requiring businesses and governments to behave in the best interests of the environment, this framework encourages better environmental stewardship. Destructive actions, such as pollution or deforestation, could be contested in court because they violate the rights of nature. Achieving a balance between the rights of nature, economic development, and human rights is a real difficulty.⁸¹ Conflicts may arise between the requirements of local communities and the preservation of ecosystems. Furthermore, it might be legally challenging to uphold nature's rights in different jurisdictions and to harmonise them with current legislation. It is argued therefore that acknowledging nature as a being with rights promotes ecological sustainability, yet, for successful implementation, extensive legal frameworks and global collaboration are needed.⁸²

10.0 Conclusion: Two Sides of the Same Coin?

In many respects, human rights and the rights of nature are the same thing, although they are sometimes presented as separate or even opposing concepts. Both endeavour to safeguard life from harm, whether it be human or non-human, and attempt to address the serious and increasing challenges posed by environmental deterioration. Nevertheless, to solve the global environmental crisis, humanity can no longer limit themselves to pitting human rights against the rights of nature. It is imperative to adopt a more comprehensive approach that acknowledges the interdependence of all species and the significance of preserving ecosystems for both present and future generations. The path forward evidently calls for keeping both frameworks integrated. Considering the urgent concerns of pollution, biodiversity loss, and climate change, it is evident that the human rights paradigm and the rights of nature by themselves will not be adequate. Human beings cannot hope to build a fair and sustainable future for all species on Earth unless they embrace both concepts.

⁷⁸ CM Kauffman and PL Martin, Constructing Rights of Nature Norms in the US, Ecuador, and New Zealand' *Global Environmental Politics* (2018) 18 (4) 43-62.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ H Harden-Davies and Others, 'Rights of Nature: Perspectives for Global Ocean Stewardship' *Marine Policy* (2020) 122 104059.

⁸² S Knauß, 'Conceptualizing Human Stewardship in the Anthropocene: The Rights of Nature in Ecuador, New Zealand and India' *Journal of Agricultural and Environmental Ethics* (2018) 31 (6) 703-722.