The Rights of Nature

Developments and implications for the governance of nature markets

December 2022

NATURE FINANCE

Taskforce on Nature Markets

KNOWLEDGE PRODUCT

About Taskforce on Nature Markets

The Taskforce on Nature Markets' core objective is to shape a new generation of purposeful nature markets that deliver nature positive and equitable outcomes. It seeks to achieve this by:

- Landscaping, analysing, and socialising **existing and emerging approaches**
- Building awareness of **opportunities and risks** across policy, business, and civil society
- Building the basis for a **community of practitioners** with a shared vision and narrative
- Encouraging synergies between **innovations and innovative people/platforms**
- Recommending and advancing **standards of practices** and enabling principles and supportive governance arrangements
- Initiating and supporting **pathfinder initiatives** to scale the implementation of recommended approaches and actions.

The Taskforce is an initiative of, and hosted by, NatureFinance (previously the Finance for Biodiversity Initiative - F4B). It benefits from the broader portfolio of NatureFinance's work and the extensive knowledge of its partners and networks. The Taskforce is supported by the MAVA Foundation.

Find out more about the Taskforce on Nature Markets, its members, partners, work programme and how to get involved at www.naturemarkets.net

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About this Report

The Taskforce on Nature Markets was established in March 2022 in response to a rise in markets that explicitly monetise and trade nature ('nature markets'). The broad contours of this development were set out in the Taskforce's formative white paper, 'The Future of Nature Markets'.[1] Building on the white paper, this paper is part of the learnings and findings of the second phase of work, and explores the developments in environmental law and their implications for the governance of nature markets.

This knowledge product is part of the Taskforce's knowledge ecosystem which aims to support the Taskforce in delivering its mandate: ensuring the global economy interfaces with nature in ways that deliver nature positive, equitable, and net zero outcomes.

The report was prepared by Matthew Doncel.

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The views expressed in this paper are those of the authors alone. Any errors are our own.

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New Tools for a Green Economy?

Given the importance that legal frameworks, precedents, and measures play in the governance of nature markets, this report will cover three serious emerging environmental rights which sit at the intersection of nature, law, and human rights. The Rights of Nature, the right to a healthy environment, and ecocide are three developments that shift our thinking on the relationship between nature and humans away from one of object and owner. Such a shift on a global or national level by societies will surely have an impact on nature markets, indeed may even guide and reinforce them.

These three were selected due to their prominence in international environmental law in recent years, either through national adoption, landmark cases, or influential public campaigns. What they all have in common is a move from the idea of humans having dominion directly over the environment, a mindset responsible for the current biodiversity and climate crisis, to a more 'biocentric' way of thinking.

This report will take a look at environmental rights, first take an overview of the right to a healthy environment and ecocide, and then delve deeper into the emergent rights of nature. Finally, we will analyze the implications for nature markets and how they could be shaped by these rights. It is important to consider the impact of environmental rights on the world and this paper aims to landscape the legal precedents, policies, and gaps as they relate to nature and the potential that legal measures have in reshaping nature markets.

The Right to a Healthy Environment

Principle 1 of the Stockholm Declaration recognised the link between the health of an environment that an individual finds themselves in and the degree to which their human rights are fulfilled. In other words, a polluted environment can lead to violated human rights, such as the right to health, to life, or to privacy. In 1992, the Rio Declaration on Environment and Development (Rio Declaration) reiterated the above, that "Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature."[2] The concept of sustainable development, a way to meet humanity's needs whilst balancing them against renewable resources and ensuring these are not depleted, is additionally linked.

The intervening half-century between the Stockholm Declaration and the UNHRC's recognition of the right to a healthy environment was not a period of quiet contemplation on what such a right could be but rather an industrious period of innovation. Despite the lack of international legal recognition of the right, it sprung up and spread throughout the legal systems around the world and has been making a positive appearance in both domestic and international courts.

The following decades saw little movement in securing the adoption of a substantive right to a healthy environment. However, the period did see an explosion in cases concerning the intersection between environmental and human rights law. Without such a right to rely on, both plaintiffs and judiciaries took creative approaches to define the link and importance between a healthy environment and previously established substantive fundamental human rights. A body of procedural rights concerning environmental protection was developed in this time, most notably stemming from the United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus) in 1998 and more recently the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (ECLAC) in 2018.

The 2010s saw a flurry of activity regarding a path toward a universal right to a healthy environment. Most notable was the appointment of John Knox, an Independent Expert on Human Rights and the Environment by the Human Rights Council in 2012. In his first report, Knox noted that environmental rights "are late arrivals to the body of human rights law."[3] Having considered developments in environmental law, he recognized two approaches: "efforts to recognize a single, overarching right to a healthy environment and efforts to "green" existing human rights by identifying their environmental implications."

Subsequent reports from the Independent Expert included a Mapping Report which constituted a broad study of environmental rights globally and which concluded that human rights law includes obligations relating to the environment.[4] A third report focused on good practices worldwide which implement the obligations identified in the Mapping Report.[5] These reports, followed by the extension of the position by a further three years and subsequent conversion into a Special Rapporteur, were positive indications of the respect environmental rights were garnering.

Other notable developments in recognising a right to a healthy environment during the last decade include a draft International Covenant on the Human Right to the Environment published by the International Centre of Comparative Environmental Law in 2017.[6] Additionally, a Global Pact for the Environment was drafted and championed by France which affirmed a human right to a healthy environment.[7] In May 2018 the UN General Assembly adopted resolution 72/277 titled "Towards a Global Pact for the Environment".[8]

With no universal right to a healthy environment to build from, the pattern of development of environmental rights in international environmental law has been of a ground-up approach. Using both substantive and procedural rights, the shape, scope, and obligations of a right to a healthy environment have been teased out by judiciaries worldwide. It is important to recognise that, despite the overlap between them, human rights and environmental protection remain distinct areas of law, a fact that ignores the reliance human rights have on a healthy environment.

Substantive rights are those rights whose enjoyment is particularly vulnerable to environmental degradation. Here the right to life, health, property, family life, and privacy have all been invoked and a 'green' element linking environmental degradation has been repeatedly found in different regional human rights systems. Procedural rights are those whose exercise supports better environmental policymaking. Here the right to information, to public participation, and to judicial redress are utilised to protect the environment.

Interestingly, while substantive rights would generally be invoked after an environmental issue has affected people, procedural rights are much more forward-looking, and their effective use would utilise local people's views to ensure the risk of an environmental disaster is identified and mitigated before it could happen. Therefore, the evolution of environmental rights has led to a two-pronged approach to protecting the environment today: attempting to mitigate environmental degradation through procedural rights and correcting violations of human rights by environmental degradation through substantive rights. The Special Rapporteur recognised that a right to a healthy environment would constitute both substantive and procedural right.

Procedural rights have seen the strongest implementation at the international level. Regional treaties like the Aarhus Convention and the ECLAC Agreement have secured these rights for over a billion people worldwide. The nature of these has resulted in their being seen as a form of 'green democracy', allowing citizens to have a say on large-scale development projects that could have an impact on the environment in their locality. They establish a link between state and civil society by fostering transparency and participation in environmental decision-making. These rights also provide an avenue to redress for victims of environmental degradation.

There are some issues with using a human rights framework to skirt the absence of a right to a healthy environment. It has resulted in a piecemeal and fragmented approach in which specific rights must be infringed upon and, also relies on the judiciary in cases to be persuaded to see the environmental dimension to the infringed established rights. If a link between environmental damage and infringed rights cannot convincingly be established, the claim will fail. The vertical dimension of human rights, between state and subject, means that where there is transboundary environmental damage, the reach of human rights becomes rather limited.

In some places, the right to a healthy environment was introduced constitutionally, like in Brazil and South Africa, or through a regional treaty like the African Charter, which states that "All peoples shall have the right to a general satisfactory environment favourable to their development" in

Article 24.[9] This right was successfully invoked in a case involving Nigeria and a community adversely affected by multiple oil spills caused by a joint venture between the military government of Nigeria and Royal Dutch Shell.[10] In other regions, the right has been split between its substantive content and a procedural one. In Europe and the Americas, the substantive side of the right are invoked and secured through a 'greening' of human rights, such as the right to life, privacy, the family home, and bodily integrity. To date there are over 100 countries whose constitutions include a right to a healthy environment in some form or another.

The procedural side, requiring less legal imagination, has been more easily accepted by Western nations and forms the basis for two fundamentally important treaties, the United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus) in 1998, and more recently the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (ECLAC) in 2018. Here the right to information, to public participation, and to judicial redress create an intersection of the democratic process, human rights, and environmental law which mutually benefits all areas.

Whilst a right to a healthy environment has been criticised as anthropocentric in nature, it would secure and protect the environment and all living beings within it through its operation. This would cover those instances where human rights are being violated due to some form of environmental degradation, not protecting the environment in its entirety if the damage is far removed from any link to a person. The emerging legal concept of a right of nature, which is ecocentric, could work in a complementary fashion to protect the environment in cases where a right to a healthy environment would not be able to.

Following the adoption of a resolution by the UN HRC recognising the right to a healthy environment in 2021, the U.N. General Assembly adopted a resolution in July 2022 recognizing "the right to a clean, healthy and sustainable environment as a human right" giving considerable political capital to the right. The recognition of the right in international law would conclude the path it is stridently taking towards universal recognition

Ecocide

There is a campaign underway to include ecocide in the Rome Statute. Were it to be adopted by the International Criminal Court (ICC) Assembly, made up of all 123 ratified parties to the Statute, it would put ecocide on equal footing with the four crimes against peace:

- Genocide
- Crimes Against Humanity
- War Crimes
- Crimes of Aggression

Ecocide is defined as constituting: "Unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts." [11]

The adoption of ecocide would be creating another nudge to the shift in which humans have begun to consider their relationship with nature in recent years driven by the global climate, biodiversity, and pollution crisis. It would bolster other concepts such as ecosystem services, making it a criminal offence to damage natural infrastructure.

Making ecocide a crime creates an *arrestable offence*. It would extend liability to individuals who are responsible for acts or decisions that lead to severe environmental harm. The individuals could face criminal prosecution. The creation of a new criminal liability would act as additional incentive for Boards of Directors to ensure all decisions are net zero and nature-positive.

Considering the development of the Rights of Nature and the right to a healthy environment, it may be an option to consider campaigns to introduce ecocide at national level or regional levels building on any recognition of ecocide at the ICC or supporting it recognition if it has not yet occurred. In late 2022 Belgium included ecocide in its new criminal code. A landscaping of the best potential for introducing ecocide below the international level could be a useful tool.

A climate activism group has filed a request for an International Criminal Court (ICC) investigation into whether the environmental policies of former Brazilian President Jair Bolsonaro and his administration constitute crimes against humanity. It cites "the ongoing widespread attack on the Brazilian Legal Amazon and on its Environmental Dependents and Defenders contrary to Article 7 and Article 25(3)(c) of the Rome Statute."

It would not be difficult to imagine further requests to be filed due to other environmental disasters, such as the impact of the war in Ukraine or the destruction of the Great Barrier Reef.

Rights of Nature

Rights of Nature (RoN) encompasses a range of legal mechanisms giving nature a right to have its interests be argued before the law and found in favour of by courts, as though it were a human litigant. It has been adopted in countries globally over the last decade and a half. The Rights of Nature is a term encompassing two related things: (1) a legal philosophy, and (2) legal provisions that codify this philosophy by recognizing ecosystems as subjects with rights[12]. The widespread and quick rate of national adoption of this idea, particularly in emerging and nature-rich countries warrants an exploration of how it would impact nascent nature markets.

Though all RoN laws and frameworks were created through independent processes unique to their legal and socio-political environment, they do share common features. Two ideal models for structuring RoN laws have been identified, The Nature's Rights Model and the Legal Personhood Model[13].

Environmental, or legal, personhood is a component of RoN, and serves as the conceptual piece which enables nature to interact with the legal system.[14] Just as corporations use legal fiction to engage with the legal system, legal personhood can be invoked so that nature, specific ecosystems, or individual animals can enforce their rights before the law.

The question of who has the right to represent nature again also depends on how the legal concept was implemented. Some laws extend standing to take a case to any citizen while others vest that power in specific communities. Here, there is a guardian or trustee relationship rather than one of ownership.

What is considered to be nature depends on the jurisdiction. It can be nature at large, the amorphous all-encompassing environment, or a specifically named ecosystem or natural feature. In Latin America an individual animal may successfully enforce its rights and the very next litigant in Court may be an entire rainforest ecosystem.

	Nature	Standing (Representation Right)	Where Adopted?
Nature Rights Model	Nature at large, the amorphous all-encompassing environment	Right to take a case on behalf of nature open to all citizens.	Ecuador Bolivia Panama United States Uganda
Legal Personhood Model	A specifically named and geographically located ecosystem or natural feature	Only specifically named communities/government agencies may take cases on behalf of the natural feature.	India New Zealand Colombia Bangladesh

A set of key common substantive rights have emerged, either explicitly mentioned as in Latin America and Uganda, or hinted at existing in other jurisdictions. An exploration of these rights individually in detail is needed. Nature has the following core rights:

- Right to exist
- Right to continue existing
- Right to be restored

Development Timeline

In the early 1970s Christopher Stone, law professor at the University of Southern California published an article (later turned into a book) entitled: "Should trees have standing?". He argued that there is no reason to exclude natural resources or ecosystems from those with recognized rights that are defensible in court, and set off decades of debate which led to the current range of laws in the United States recognizing the "legal personality" of non-human subjects, allowing advocates to make a case for the defence of these new right holders in courts of law.

Over sixteen years of adoption and development in a diverse set of jurisdictions have taken place and a modest jurisprudence has built up since 2006 when Tamaqua Borough in Pennsylvania, U.S., became the very first place in the world to recognise the Rights of Nature in law. Since then, the Rights of Nature have been recognised in a variety of legal forms, including constitutional, through legislation, and by the courts.

Ecuador became the first country in the world to recognise the Rights of Nature in 2008, adopting them in their new Constitution. In 2010 Bolivia's Legislative Assembly passed the Law of the Rights of Mother Earth. That same year the World People's Conference on Climate Change and the Rights of Mother Earth took place in Bolivia, where the *Universal Declaration on the Rights of Mother Earth* was issued.

Though initially concentrated in Latin America, examples of RoN began appearing worldwide. In 2014 the New Zealand Parliament passed the *Te Urewera Act*, finalizing a settlement between the Tūhoe people and the government over a land sovereignty dispute. The Act recognizes the Te Urewera – a former national park, of more than 2,000 square kilometres – as having "legal recognition in its own right." The first of two such acts, this was a major moment in solidifying environmental personhood as a useable form of protecting the environment. Later, the New Zealand Parliament finalized the *Te Awa Tupua Act*, granting the Whanganui River legal personhood status as an ecosystem in 2017.

That same year, the High Court of Uttarakhand in India issued rulings in two cases recognizing the Ganga and Yamuna Rivers, glaciers, and other ecosystems as legal persons with certain rights. In 2019, the Bangladesh Supreme Court's High Court Division recognised the legal rights of the river Turag and then extended these rights to all rivers in the country.

The Rights of Nature in the 2020's

In 2020, the movement began to gain momentum again in the U.S. when, for the first time in U.S. history, the rights of a specific ecosystem were argued in federal court in defence of the Lake Erie Bill of Rights. In another first in U.S. history, a state was successfully pressured to enforce a local Rights of Nature law, in Grant Township, Indiana County, Pennsylvania.

The lack of recognition of RoN at a federal level leaves these municipal laws weak to challenges. Both Lake Erie's and Grant Township have been overturned. Opponents of these laws are proactively blocking the enactment of RoN laws. Some State legislatures, such as Florida's, have begun to pre-emptively ban local governments from adopting Rights of Nature laws.

In 2021, the Constitutional Court of Ecuador upheld the rights of the Los Cedros Forest in a landmark decision that is explicit in the language of upholding the Rights of Nature and demonstrates what it looks like in legal language to uphold the rights of a forest over a corporate project. The decision delivered a ban on mining in the Los Cedros National Rainforest and was brought by local communities.

A separate landmark case in Ecuador in 2022 concerned a Woolly monkey named Estrellita who was taken from her owner to live in a zoo and subsequently died. The monkey was taken from the wild at one month old and kept as a pet for 18 years. Owning wild animals is illegal in Ecuador so the pet was seized by authorities in 2019.

Her owner filed a habeas corpus petition - a legal mechanism to determine if the detention of an individual is valid. In December 2021, the court ruled in favour of the owner but also added that the animal's rights had been violated when it was originally removed from its natural habitat. For the first time an individual animal's rights were recognised and raised to the constitutional level in Ecuador by a single decision.

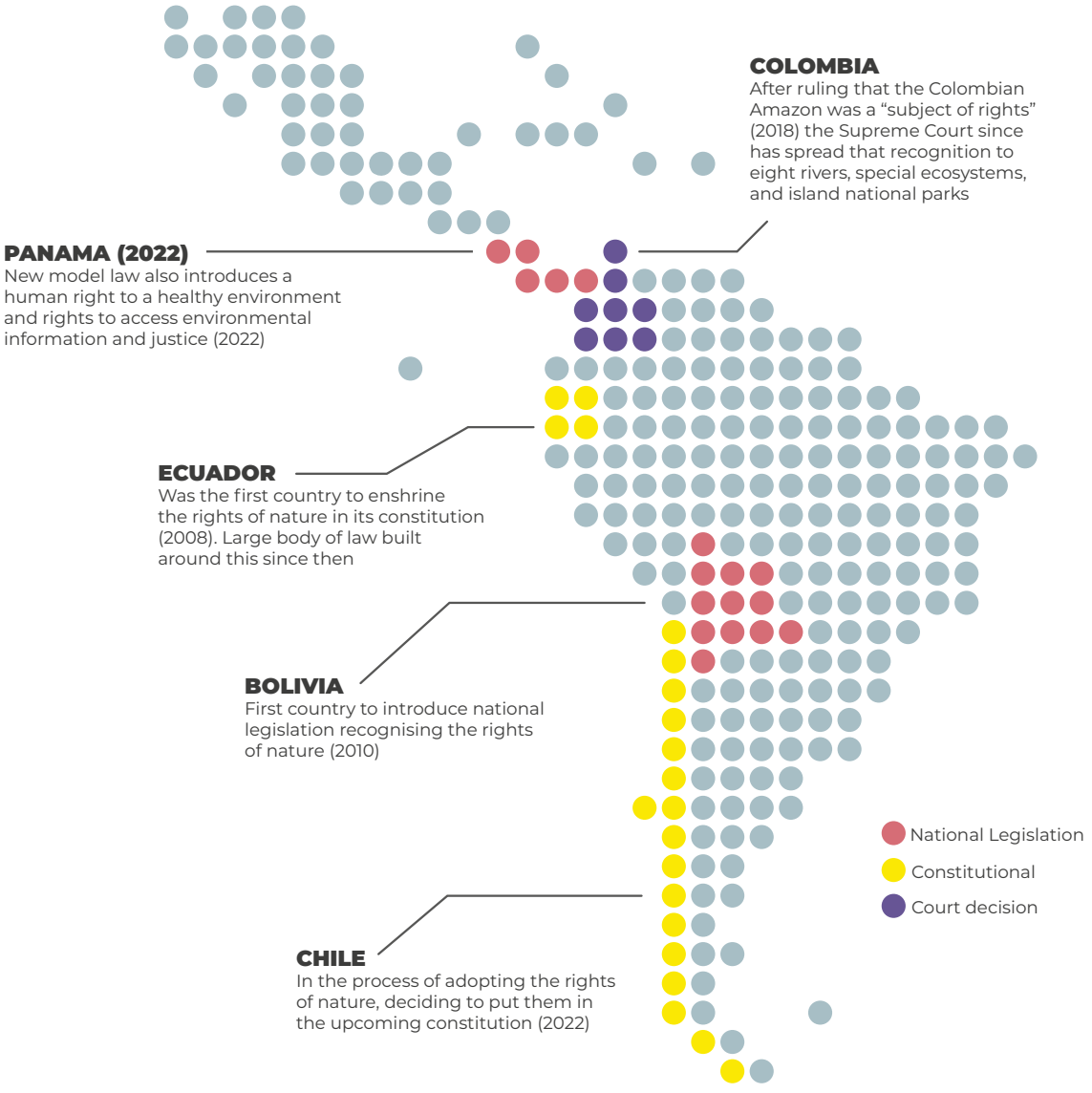
In February 2023, Panama will become the latest country to adopt the Rights of Nature, with a new law introducing "Nature's right to exist, persist, and regenerate its life cycles," which means all actions taken by people, companies, and governments must enable the "timely and effective restoration" and the "preservation of [nature's] water cycles." Anyone will be able to work as a nature defender, i.e., have standing to represent nature in court.

South America

> *"We, peoples and Nations of the Earth: considering that we are all of the Mother Earth, an indivisible living community of interrelated and interdependent beings with a common destiny."*
>
> *- Universal Declaration on the Mother Earth Rights, Cochabamba (Bolivia), 2010*

South America has seen the most comprehensive development of the Rights of Nature. It has been introduced in constitutional, legislative, and judicial forms. Multiple cases have been taken and successfully won using the Rights of Nature. A range of natural entities have been recognised and protected, from rivers to forests to individual animals.

Figure 1 The Developments of the Legal Rights of Nature in South America



Latin America has seen the most comprehensive development of the Rights of Nature – it has the right to exist, persist, and be restored. It has been introduced in constitutional, legislative, and judicial forms and multiple cases have been taken and successfully won using the Legal Rights of Nature.

Ecuador began the Latin American wave of adoption of the Rights of Nature when in 2008 the people of Ecuador amended their Constitution to recognize the inherent Rights of Nature, or Pachamama. The ideas of indigenous people are strongly tied to the Latin American use of the Rights of Nature. In 2014, the Global Alliance for the Rights of Nature (GARN), a civil society initiative sponsored the first Rights of Nature Tribunal in Ecuador. While not holding legal authority to decide cases the RoN Tribunals act to spread awareness and understanding of RoN aiding in their development.

It is not just private companies or individuals who could face the Rights of Nature in court but the government itself can be held to account. The first successful case utilising the Rights of Nature, which here concerned the Vilcabamba river, came in 2011.[15] The case was taken against the Provincial Government of Loja for the damage caused to the river by a road widening project. It is not just local government which is constrained by the Rights of Nature; in 2021, Ecuador's Constitutional Court ruled in favor of the Rights of Nature on an article that could allow logging and extractive use of mangroves, which was declared unconstitutional.

The 2021 decision in *Los Cedros* put a stop to plans to mine for copper and gold in the protected cloud forest in Los Cedros, which would harm the biodiversity and violate the Rights of Nature, and would have been unconstitutional.

Bolivia introduced the Rights of Nature through legislation when in 2010 Bolivia's Legislature passed the *Law of the Rights of Mother Earth* and expanded on this broad outline of nature's rights with the 2012 *Law of Mother Earth and Integral Development for Living Well*. Bolivia had a role to play in the early consolidation around what the Rights of Nature meant when they hosted the *World People's Conference on Climate Change and the Rights of Mother Earth* and had a guiding hand in the drafting of the *Universal Declaration on the Rights of Mother Earth*.

Colombia, despite there being no constitutional or legislative basis to do so, is a clear leader in recognizing legal standing for nature. Here a particularly green court has seen a series of landmark decisions utilising Rights of Nature, at times being introduced into cases by judges themselves.

In 2016 Colombia's Constitutional Court ruled that the Rio Atrato possesses rights to "protection, conservation, maintenance, and restoration," and established joint guardianship for the river shared by indigenous people and the national government. In 2018 The Colombian Supreme Court recognized the Colombian Amazon as a "subject of rights." and since has spread that recognition to eight rivers, special ecosystems, and island national parks. Years of jurisprudence have built up in Colombia. The Colombian jurisprudence on the Rights of Nature will come to serve as a guide for judges and help policymakers design good law in jurisdictions introducing such rights in the future.

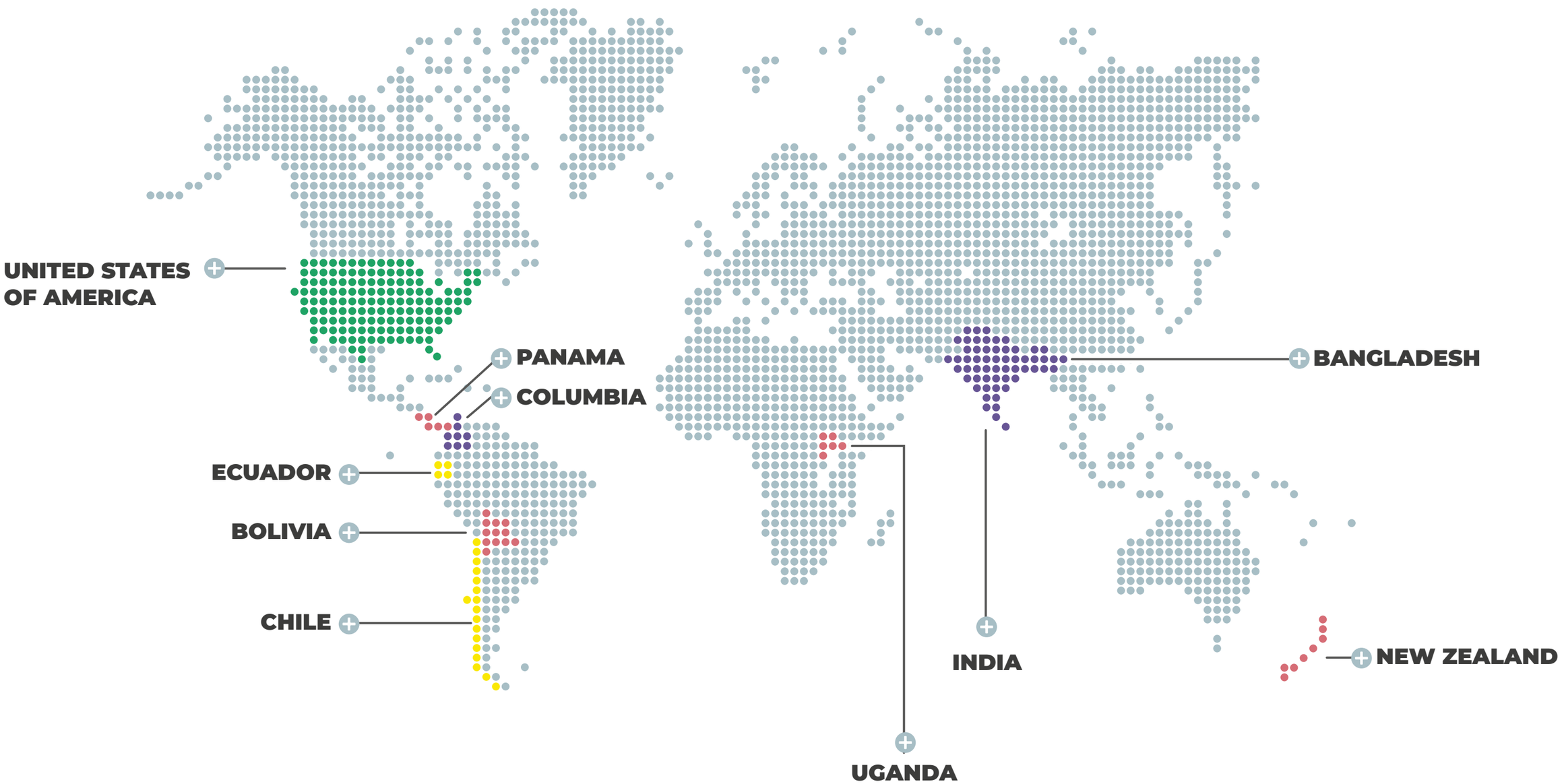
Again, there is an element of giving power to local communities over the use of and protection of their direct environment in the nature of the decisions coming from Colombian courts. A quirk of the Rights of Nature is that they are considered applying to an all-encompassing amorphous environment but are at their most powerful when focused on the specific, either that of a specific ecosystem or of a specific communities reliance on their environment.

Rest of the World

Outside of Latin America, the adoption of the Rights of Nature has been at a lower legal level, like the wave of municipality laws in the U.S. or sporadic isolated examples like in India or New Zealand which focus on specific named natural features rather than the environment at large.

The Developments of the Legal Rights of Nature Across the Globe

Figure 2 The Developments of the Legal Rights of Nature Across the Globe



Since the Tamaqua Borough law, dozens of communities in ten states in the **United States** have enacted Rights of Nature laws. These municipality-level ordinances do not fare well once they are appealed to higher courts. Many of these laws were brought in as a response by communities that faced resource extraction in their locality, particularly fracking. Pittsburgh became the first large U.S. city to enact a local law recognizing the Rights of Nature in 2010, specifically addressing fracking.

In recent years, state legislatures have begun pre-emptively banning Rights of Nature laws from being adopted, setting up potential legal battles in the higher courts. For the moment the Rights of Nature in the US are stymied by the lack of federal adoption or even adoption at the state level, and so they lack real heft and respect. Judges are also unfamiliar with these new laws and require training to understand their use and scope.

In **New Zealand**, two legislative acts gave legal personhood to two distinct natural features, those being the Te Urewera National Park and the Whanganui River. Standing to bring a case on behalf of these new legal entities is vested in the local Maori communities who have a deep connection and understanding of these ecosystems. Interestingly, these developments were not made with the specific goal of introducing environmental personhood, but rather were settlement treaties with two separate Maori communities.

This recognition of diverse legal concepts regarding the valuing of nature led to New Zealand's common law system, similar to that of the UK, Ireland, Canada, and Australia, adopting a law recognising the inherent value of nature and extending it legal personhood. From these two acts we can see one idea of how representation or standing could work, here being connected to locality. Any cases utilising these Acts, which have not been taken to date, will provide potential for future research in effective or best-in-practice use of Environmental Personhood.

In **India**, two separate cases have granted legal personhood to natural features. First to two revered rivers, the Yamuna and the Ganges, and subsequently to the respective rivers' source glaciers. Activist judges created this themselves with no legislative basis to draw upon. The Courts ruled in the *Ganges and Yamuna* and the *Glaciers* cases that the Ganges and Yamuna rivers, the Gangotri and Yamunotri glaciers, as well as other natural objects in the state of Uttarakhand enjoy legal rights.

The Court used a feature of the Indian legal system known as a juristic person. As the Court states in the glaciers case, "a juristic person can be any subject matter other than a human being to which the law attributes personality for good and sufficient reasons"[16]. A comparison can be drawn to how companies are their own legal person in legal matters and enjoy the benefits of legal personhood such as entering contracts and suing others for damages to the company.

There is a constant evolution, thanks to decisions from outward-looking national courts, each learning from how RoN have been implemented and developed in other jurisdictions. The Latin American courts certainly observe and adopt decisions coming out of Colombia, Ecuador, and Bolivia. The decision in India recognising the Yamuna and Ganges Rivers draws from earlier decisions made in Latin America, and the *Te Urewera Act* in New Zealand.

Through a process of international policy diffusion, the Rights of Nature have been travelling to diverse places. The most instrumental organizations in diffusing rights for nature laws have been the Global Alliance for the Rights of Nature (GARN), Centre for Democratic and Environmental Rights (CDER), Community Environmental Legal Defense Fund (CELDF), the Earth Law Center, and the UN Harmony with Nature Knowledge Network.

The Rights of Nature have enjoyed a substantial and global decade and a half of initial development. Enough precedence has been built to understand the usefulness of this new legal tool, which offers a new form of interpreting nature-based solutions. Their uptake by countries worldwide show no sign of slowing, and their substantive diversity continues to evolve. In recent years, Bangladesh have recognised the rights of all rivers in the country, Uganda has extended rights to specific declared areas, and in 2022 the Mar Menor wetland on the Iberian Peninsula became the first ecosystem in Europe and the EU to have its own nationally recognised rights.

The recognition of the rights of Mar Menor is an example of the speed with which these initiatives can become law. In July 2020, the Municipality of Los Alcázares, in Murcia, adopted the Iniciativa Legislativa Popular (ILP) to recognize the largest saltwater lagoon in Europe, as a subject of rights. By April 2022, the ILP was approved by Spain's Congress of Deputies initiating the adoption on national legislation. In Sept 2022 the Parliament adopted Law 19/2022, recognizing the legal personhood of Mar Menor and his basin.

What Does This Mean for Nature Markets?

The recent embrace of indigenous concepts and ideas shows the openness of the field of environmental law to pull in ideas from everywhere to shape a fluid and versatile body of law capable of handling the issues of the Anthropocene. One of the most influential norms introduced by indigenous ideas is that of the Rights of Nature, which has been successfully implemented as a legal right in various jurisdictions globally, such as Colombia, Ecuador, New Zealand, and India.

These RoN afford rights and 'voice' to nature in markets, in legal settings and beyond: it has been used to give natural features legal personhood, protecting nature's right to exist, to continue existing, and to be restored. Additionally, the concept of ecosystem services has intersected with environmental law in recent years, originally coming from the world of economic and scientific academia. Here, the economic value of the services nature provides, and which benefit humans are being taken seriously, and effective legal frameworks to incentivise their protection and punish their destruction have been introduced. This economic metric is backed up by the advanced scientific study of ecosystems. It seems that development in one field helps spur progress in others in a symbiotic manner and as De Chazournes notes "in the field of environmental protection, law, science, and social sciences are interrelated."[17] It is time to intertwine these with economic markets to ensure environmental protection at scale.

What these legal developments indicate is a paradigmatic shift in the understanding of humans' relationship with nature. More than this, what the legal rights of nature do that conservation and environmental law alone has not, is create active and responsive boundaries in markets. They embed voice in markets by empowering all citizens to speak on behalf of natural entities and to demand legal action when transgressions occur. While nature markets continue to valorise nature and its services, these RoN restrict the parts of nature that cannot be economically valued and traded, even in principle, even in secondary markets.

While currently the cases of RoN are bound by national and constitutional law, an adoption or recognition by ICC would make them enforceable across jurisdictions. However, even without this, much in the same way as corporate personhood legislation differs from country to country, yet most recognise the notion of a corporation as a juridical as separate from the legal rights and responsibilities enjoyed by natural persons, so too does the RoN have the same potential to scale across markets and jurisdictions. These rights are generally limited to the natural person rights to hold property, enter into contracts, and to sue or be sued, with varying degrees of responsibilities across jurisdictions. While this corporate law developed over time, it was a response to an increasingly intertwined global economy which has long necessitated the inter-jurisdictional interaction of these national laws. Yet, corporate law still remains contested in the extent to which rights can be extended to corporate entities both nationally and internationally.

In the same way, many natural entities are not merely confined to national borders, and the actions of those across a border can greatly affect the health of a natural entity elsewhere, as the Amazon basin or any other body of water, including oceans, are exemplary of. In a broader context, the impacts of climate change across natural entities is a case in point, as many island nations have pointed out. The RoN provide an opportunity to enforce the rights of nature across borders and across markets, much in the same way as corporate personhood developed in practice.

The benefits from ecosystem services are transboundary in nature, so their recognition in international law will once again limit the sovereignty enjoyed by States towards the environment within their borders. It would also increase State responsibility to stakeholders beyond their borders, and so too increases their duty to care for the environment that lies within their borders and strengthens the Rights of Nature by respecting the ecosystem services it provides.

More than being indicative of a paradigm shift, the increasing application of RoN across the globe also indicates that markets that value and trade nature need clear market boundaries and restrictions for sustainable and nature-positive functioning. **Legal frameworks can provide those restrictions and boundaries, by embedding the rights and thus 'voice' of nature and its stewards within market design as well as the legal implications for transgressions, namely criminal liability**. RoN has undoubtedly changed the landscape for companies operating in countries with these rights, particularly in extractive industries and those financing them, and those interacting with Indigenous populations and nature stewards. For these reasons, **it could become an essential governance tool for nature markets**.

Conclusions and recommendations

From the context of developmental history, nature has mostly been seen as an infinite property to be extracted rather than a regenerative life source to be protected. The emerging perspective, known as 'biocentrism', moves nature from an object of protection to a subject with fundamental rights, such as the rights to exist, to survive, and to persist and regenerate vital cycles. The implication of this recognition is that human beings have the legal authority and responsibility to enforce these rights on behalf of nature in that Rights of Nature become an essential element for the sustainability and the survivability of human societies.[18]

It is in this context that equity measures must ensure that historical injustices are not revisited within the fast-developing nature markets. Thus, equitable market outcomes both locally and globally should address these potential market failures and injustices by embedding protections for nature and ensuring equitable distributions of its rewards.

One way to achieve this would be through environmental rights, such as bestowing rights to critical and life-essential natural features such as rivers, glaciers, and other natural areas. This creates clear boundaries for nascent markets – to incentivise their protection and punish their destruction, while enabling the true pricing of nature-based solutions and ecosystem services. Nature markets will have to carefully consider their impact and dependencies on nature and balance them with the Rights of Nature in the areas they directly interact.

The human right to a healthy environment continues to develop and spread to jurisdictions globally. Nature markets will need to ensure local communities who may be impacted by their operations are consulted in a respectful, democratic, and timely manner. Human rights are increasingly tied to the economy, and a wave of new legislation have made them central to the expected operating activity of companies and the financial sector.

Similarly, the current campaign to ensure "the extensive destruction, damage to, or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the inhabitants of that territory has been severely diminished"[19], or ecocide, is recognised internationally across jurisdictions, included in the Rome Statute, and adopted by the ICC Assembly continues. The development of the other two environmental rights point to national and regional adoption as a route to the wider existence of ecocide.

The triple crises of climate change, biodiversity loss, and pollution have created novel and potential problems calling for innovation, both technological and legal. These solutions come in the shape of norms and principles once siloed off from environmental law but now being given new life in innovative ways and used and endorsed by a plethora of actors, from states to corporations to individual citizens, all with the express aim of securing a thriving and healthy environment.

ENDNOTES

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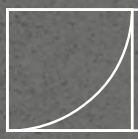

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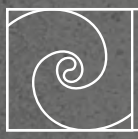

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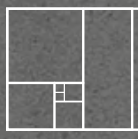

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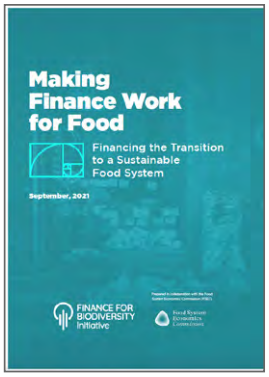

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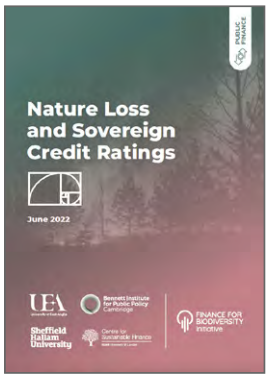

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