

# Changing the legal status of nature: recent developments and future possibilities

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In early 2017, New Zealand made international news for several innovative legal developments. For the first time in that country's history, a river and a forest were recognised as having 'legal personhood' rights. Shortly afterwards, a court in India and a court in Colombia also recognised the legal rights of rivers and other ecosystems. However, these were not the first laws in the 21<sup>st</sup> century to transform the legal status of nature from being human property, or objects in the eyes of the law, to being rights-bearing subjects of the law. As an emerging legal framework, Rights of Nature laws face many challenges – both conceptually and in their implementation.

However, for a growing number of academics, activists and law makers, it offers a new paradigm within which to challenge, re-think and improve environmental laws.

## 'Rights of Nature laws' in Ecuador, Bolivia and the USA

### *Ecuador and Bolivia*

The concept of 'Rights of Nature' came to international attention in 2008 when Ecuador became the first country to recognise the legal rights of nature in its Constitution. In 2010, Bolivia passed a national law defining Mother Earth as 'a collective subject of public interest' and as a title holder of inherent rights specified in the law. The legislation also provided for creation of a special ombudsman's office for the rights of Mother Earth, similar to that which exists for human rights. These countries' approaches grant positive rights to nature and also grant broad legal standing, enabling anyone to speak on behalf of nature and defend nature's rights.

While Bolivia has had little traction with its Rights of Nature laws, Ecuador has had a dozen cases and around half have been successful. One of the most well known cases was also the first one ever heard: the Vilcabamba River Case. In 2011, a municipal council was challenged for dumping debris from road works in the river. Plaintiffs brought the case not on grounds of damage to private property, but on behalf of nature, and argued the damage violated the rights of nature by increasing the river flow and provoking a risk of disasters during the winter rains. The court ruled in favour of the river, held the provincial government liable and granted a constitutional injunction. Interestingly, nature's rights were said

## Snapshot

- Changing the legal status of nature from an object, or human property, to a rights-bearing subject in law is an emerging legal movement that is gaining interest among grassroots communities and progressive politicians in Australia.
- Rights of nature laws exist in the USA, Ecuador and Bolivia.
- Legal personhood for ecosystems has been recognised in legislation and court decisions in New Zealand, India and Colombia.

to be primary and the onus of proof was reversed, so the defendants were required to prove their actions were *not* harming the rights of nature ([earthlaws.org.au/wp-content/uploads/2016/07/RON\\_Vilcabamba-Ecuador-Case-complete.pdf](http://earthlaws.org.au/wp-content/uploads/2016/07/RON_Vilcabamba-Ecuador-Case-complete.pdf)).

### USA

Two years before Ecuador's Constitutional provisions were in the news, local US communities passed the first Rights of Nature ordinances in the world, and there are now more than 30 local ordinances that recognise the legal rights of nature and local communities. The development of such local ordinances in the USA is particularly relevant to Australia, because the approach

being used in several US jurisdictions is gaining increasing attention from communities in Australia.

The innovative approach of using local municipal law-making to pass Rights of Nature and community rights laws has been led by the Community Environmental Legal Defense Fund ('CELDF'), a public interest law firm. As an example of how these local laws work, in 2006, Tamaqua Borough, Schuylkill County, Pennsylvania, was the first community to enact local Rights of Nature laws. Their local ordinance asserted the rights of nature and the local community, including their right to stop unwanted developments, such as the toxic waste sludge that a major corporation was threatening to dump on land in the Borough.

This legal approach is innovative because in the USA, as in Australia, local laws made by Boroughs or other local municipalities can be pre-empted, or over-ruled, by State and Federal legislation and more often than not, such local laws cannot legally stop unwanted developments by corporations who have legal approvals from the government. According to CELDF and the local communities involved, the act of passing a local law asserting community and nature's rights aims to achieve several transformative changes: (i) to create a movement of citizens demanding community and nature's rights, (ii) to challenge and transform existing power structures within the US legal system and (iii) to strip corporations of their rights in the relevant local communities, and stop them from destroying local communities and their ecosystems.

## Legal personhood for nature

In contrast to the Rights of Nature laws in Ecuador, Bolivia and USA, the developments in New Zealand, India and Colombia represent a different approach to changing the legal status of nature.

### New Zealand

The legal developments in New Zealand in 2017 captured the world's imagination, as the Whanganui River, Urewera Forest and Mount Taranaki were all recognised as having 'legal personhood'. While referred to as Rights of Nature laws, they have very different origins and potentially different outcomes from such laws in other jurisdictions, as they have emerged from New Zealand's specific colonial legal structures.

Each of the legal personhood laws emerged from settlement agreements under the *Treaty of Waitangi*, which involved many years of negotiations between the government and Maori tribes. In each instance, when agreement was reached, a Record of Understanding documented the agreement, and legislation was enacted that articulated the new legal status and management arrangements for each separate ecosystem.

In contrast to the broad standing allowed under the Rights of Nature laws in Ecuador, Bolivia and the USA, the arrangements in NZ are narrower, as each of the ecosystems with 'legal personhood' have explicitly defined guardians who are allowed to speak (and stand) for the ecosystem. Each of the new Acts also recognise the cultural connection and responsibility the Maori tribes have to those ecosystems. As an example, in the case of the Urewera Forest, the national park land was vested in a new legal body governed by Crown and Ngai Tahu appointees, and chaired by a Ngai Tahu nominee. The Forest is a legal entity which will 'effectively own itself, in perpetuity' as an 'innovative alternative to Crown ownership' (*Tē Urewera Act 2014*).

It has been suggested that the creation of legal personhood for these ecosystems has been a pragmatic way to alter ownership arrangements without causing too much disruption to existing management structures (O'Donnell, E. L., and J. Talbot-Jones. 2018. Creating legal rights for rivers: lessons from Australia, New Zealand, and India. *Ecology and Society* 23(1):7).

### India and Columbia

Court decisions in India and Colombia in 2017 also received international attention because these jurisdictions, despite not having any legislation in place recognising the legal rights of nature, declared that specific ecosystems had the same rights as a person.

In March 2017, the High Court of the State of Uttarakhand declared that 'the Rivers Ganga and Yamuna ... 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 in order to preserve and conserve ...'. The decision was quite contentious and was appealed on several grounds in an effort to clarify the ramifications of the decision, including the reference to the 'liabilities' of the ecosystems.

In 2017, the Atrato River was declared to be a legal entity by the Colombian Constitutional Court. The river's rights are to protection, conservation, maintenance and restoration by the state and local communities. The Court made a number of orders to implement its decision, including that the rights of the river be represented by a guardian, and it explicitly referenced the Whanganui River model from New Zealand. Earlier this year, legal rights were also recognised for the entire Amazon region in Colombia.

### What about Australia?

As can be seen from this outline of the developments across more than six jurisdictions, laws recognising the legal rights of nature are appearing in different forms, in different places. While there are significant differences in the approaches to articulating what the rights of nature are, who can stand to defend those rights and how the new legal entities will be managed, there are also similarities in all of these emerging laws. By changing the legal status of nature, these laws are questioning, challenging and broadening our human-centred notions of what 'nature' is, and what human beings can 'do' to nature. By linking rights of nature and legal personhood laws to community rights and responsibilities, the 'movement' is stimulating an important conversation about where legal power lies and about the importance of local environmental decision-making.

In Australia, Rights of Nature and legal personhood concepts are appearing in various ways. In an August 2017 report by the Australian Panel of Experts on Environmental Law ('APEEL'), *Blueprint for the Next Generation of Australian Environmental Law*, recommendations were made about the 'next generation' of Federal environmental laws in Australia, and Recommendation 8.4 in Technical Report No. 8 recommends that Rights of Nature and legal personhood for nature, should be explored by law makers. Rights of Nature and community rights concepts are also being used as a communication and advocacy approach for grassroots groups. On 20 March this year, the indigenous and non-indigenous communities of Margaret River held a rally for the river, demanding it have its own voice and special protections (Jane Gleeson White, *Guardian*, 1 April 2017). Communities in Hobart also used 'rights of the mountain' framing for various rallies for Mount Wellington this year. Other communities are actively exploring whether advocating for Rights of Nature and local community rights will help them protect their precious local ecosystems from unwanted developments. Finally, on 21 August this year, Senator Mahreen Faruqi called for Rights of Nature laws in Australia. This was the first time a politician has referred to, or called for, Rights of Nature in this country and confirms that this is definitely a legal space worth watching. **LSJ**



Hear more at the **Rights of Nature Australia 2018** symposium in Brisbane, on 25-26 October. Speakers include Hon. Justice Brian Preston, Chief Judge of the NSW Land and Environment Court, and Professor Klaus Bosselmann, University of Auckland.



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