

RETHINKING NATURE'S RIGHTS

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The emergence of constitutional provisions, legislative initiatives, and judicial decisions recognizing natural entities such as rivers, forests, and parks as subjects of rights seemingly marks a shift in the legal paradigm. The rights of nature movement has garnered considerable global attention as it purportedly seeks to reorient the anthropocentric character of the law and protect natural entities through a different conception of the natural world, often inspired by Indigenous philosophy and thought. In practice, the development of nature's rights has had a paradoxical effect. While its emergence ostensibly vindicates the demands of Indigenous communities to respect nature, the implementation of nature's rights remedies has at times had negative implications on Indigenous land tenure, consultation, and public participation. At the same time, the nature's rights "movement" has been critiqued for instrumentalizing Indigenous philosophy in pursuit of its own agenda.

This Article examines the broader implications of implementing nature's rights jurisprudence and other legal strategies across the Americas. The Article first explores the rights of nature phenomenon, focusing on developments in Ecuador, the United States, Colombia, Peru, and the Inter-American System of Human Rights. The Article then undertakes a mapping of the doctrinal and policy challenges that arise within nature's rights jurisprudence. This analysis contends that while judicial reliance on nature's rights as a legal theory seemingly offers a powerful framework to rethink human-centric legal regimes, the absence of clear operationalization and implementation guidelines can obscure legal analysis and standing requirements in judicial decision-making. This lack of clarity can, by extension, lead to ambiguity in governmental obligations towards specific ecosystems and the communities reliant upon them. Last, this Article proposes a three-pronged approach involving legislative, judicial, and expert guidance to strengthen nature's rights frameworks and overcome criticisms of nature's rights as symbolic window dressing, overtly vague, and anti-democratic.

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INTRODUCTION

In 2025, the Inter-American Court of Human Rights—the regional human rights court in the Americas—became the first international tribunal to recognize the rights of nature.¹ The Court's advisory opinion on climate change devoted an entire section to nature's rights, explaining how nature's rights

1. See The Climate Emergency and Human Rights (Interpretation and scope of Articles 1(1), 2, 4(1), 5(1), 8, 11(2), 13, 17(1), 19, 21, 22, 23, 25 and 26 of the American Convention on Human Rights; 1, 2, 3, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador," and I, II, IV, V, VI, VII, VIII, XI, XII, XIII, XIV, XVI, XVIII, XX, XXIII, and XXVII, of the American Declaration of the Rights and Duties of Man), Advisory Opinion OC-32/25, Inter-Am. Ct. H.R. (ser. A) No. 32 (May 29, 2025) [hereinafter Advisory Opinion OC-32/25].

frameworks are compatible with international environmental legal principles.² For many, the Court had finally vindicated the claims of numerous Indigenous communities and social movements who, for decades if not centuries, have rejected the notion that nature or the environment exist separately from humans, reaffirming nature's intrinsic value.³

The Court's decision is not particularly surprising given the regional context in the Americas, where environmental advocates have pursued nature's rights frameworks as another tool to protect ecosystems and further environmental protection.⁴ While legal theories conceiving of "nature" or the "environment" as a distinct legal entity with rights are not new,⁵ the last two decades have seen the emergence of nature's rights-based advocacy strategies.⁶ Across the world, an increasing number of state, tribal, and national constitutions have been amended to recognize nature's rights, while legislative bodies have adopted resolutions to recognize or grant legal personhood to natural entities.⁷ Ecuador and Bolivia, for example, have received global praise for recognizing the rights of nature in their constitutional regimes and law, respectively.⁸ The trend has implicated not

2. See *id.* ¶¶ 270–86.

3. *Id.* ¶ 280 (observing that nature's rights "empowers local communities and Indigenous peoples, who have historically been the guardians of ecosystems and possess deep traditional knowledge about their functioning"); see, e.g., Aitana Rosas Linhard, *In Landmark Opinion, Inter-American Court of Human Rights Recognizes Rights of Nature*, EARTH L. CTR. (Aug. 4, 2025), <https://perma.cc/KY9Q-QDEW>; see also Geneva E. B. Thompson, *Codifying the Rights of Nature: the Growing Indigenous Movement*, 59 JUDGES' J. 12–15 (Spring 2020); Hannah White, *Indigenous Peoples, the International Trend Toward Legal Personhood for Nature, and the United States*, 43 AM. INDIAN L. REV. 129, 140–64 (2018). While the theological foundations of nature's rights are beyond the scope of this paper, the movement has relied on both secular and non-secular understandings of nature, including in John Muir, Henry David Thoreau, Aldo Leopold, and Thomas Berry's work. See MIHNEA TĂNĂSESCU, UNDERSTANDING THE RIGHTS OF NATURE: A CRITICAL INTRODUCTION 28 (2022); see also Cormac Cullinan, *If Nature Had Rights What Would We Need to Give Up?*, in EXPLORING WILD LAW: THE PHILOSOPHY OF EARTH JURISPRUDENCE (Peter Burdon ed., 2011); William Cronon, *The Trouble with Wilderness: Or, Getting Back to the Wrong Nature*, 1 ENV'T HISTORY 7 (1996).

4. See *infra* Part II; see, e.g., Alexander Ramdass, *The Escazu Agreement and the Rights of Nature in the LAC Region*, LEWIS & CLARK L. SCH.: ENV'T, NAT. RES. & ENERGY L. BLOG (Jan. 20, 2023), <https://perma.cc/A4US-PQQP>.

5. See generally Christopher D. Stone, *Should Trees Have Standing?—Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450, 453 (1972).

6. To search by type of jurisprudence, country, or legal provision, see the ECO JURISPRUDENCE MONITOR TOOLKIT, <https://perma.cc/9GQF-E39V>.

7. See Pamela L. Martin & Craig Kauffman, *Courts Are Developing River Rights Jurisprudence: Comparing Guardianship in New Zealand, Colombia, and India*, 20 VT. J. OF ENV'T L. 260, 261 (2019); Antonia Zimmermann, *Right to 'Exist': The Campaign to Give Nature a Legal Status*, POLITICO (June 2, 2023), <https://perma.cc/H5ZT-WPK5>.

8. CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR 2008, art. 71 [hereinafter CONSTITUTION OF ECUADOR]; Ley Marco De La Madre Tierra y Desarrollo Integral Para Vivir Bien [The Framework Law on Mother Earth and Integral Development to Live Well], Ley 300 (2012)

only countries in the Global South, but also those in the Global North.⁹ In the United States, a number of states and municipalities, including the municipality of Tamaqua in Pennsylvania, have sought to adopt local ordinances recognizing nature's rights.¹⁰ New Zealand also received international attention after granting legal personhood to the Whanganui River in 2017 through a treaty with the Māori people.¹¹

(Bol.) [hereinafter Framework Law on Mother Earth]; CONSTITUTION OF THE PLURINATIONAL STATE OF BOLIVIA 2009, pmbl. ("In ancient times mountains arose, rivers moved, and lakes were formed. Our Amazonia, our swamps, our highlands, and our plains and valleys were covered with greenery and flowers. We populated this sacred Mother Earth with different faces, and since that time we have understood the plurality that exists in all things and in our diversity as human beings and cultures.") (Bol.); *id.* Art. 33 ("Everyone has the right to a healthy, protected, and balanced environment. The exercise of this right must be granted to individuals and collectives of present and future generations, as well as to other living things, so they may develop in a normal and permanent way."). Bolivia is seen as a leader in the development of nature's rights, successfully proposing April 22 as "International Mother Earth Day." See Cullinan, *supra* note 3, at 24–25. On this history, see also DAVID R. BOYD, *THE RIGHTS OF NATURE: A LEGAL REVOLUTION THAT COULD SAVE THE WORLD* 163–64 (2017). The rights of nature have also been discussed in connection to deep ecology as well as Indigenous worldviews. See, e.g., U.N. Secretary-General, *Harmony with Nature: Rep. of the Secretary-General*, ¶¶ 13–24, U.N. Doc. A/79/253 (July 29, 2024) [hereinafter *Harmony with Nature*].

9. Some scholars observe that nature's rights have had the "greatest legal impact" in Global South countries due to a greater appetite for opportunities and incentives for legal development. Yaffa Epstein et al., *Science and the Legal Rights of Nature*, 380 SCI. 1, 1 (2023).
10. Global Atlas of Environmental Justice, *In Wake of Toxic Dumping, Tamaqua Borough Passes Rights of Nature Ordinance, USA*, EJ ATLAS (May 2, 2022), <https://perma.cc/P8DB-Q5RD>. For a more detailed history of this municipal ordinance, see TĂNĂȘESCU, *supra* note 3, at 48.
11. The 2014 Te Urewera Act actually preceded the river's recognition. Te Urewera Act, 2014 (Pub. Act 2014 No. 51) (N.Z.). Tănăsescu describes the Te Urewera Act as "radical in the way in which it departs from rights orthodoxy in practice, and the way in which it builds a hybrid legal order with consistent [and] decisive Tūhoe participation." TĂNĂȘESCU, *supra* note 3, at 74. Accordingly, the Act illustrates how rights of nature do not automatically have to be about "the environment." *Id.* at 87. For a detailed account of this history, see *id.* at 73–80. Significantly, the developments in New Zealand had a different genealogy than those described in this Article, in part because they followed extended negotiations between Indigenous people and the government as part of the Treaty of Waitangi process. The Te Urewera Act of 2014 declared Te Urewera (the part of the North Island that is home to the Tūhoe, a Māori group) as a legal entity with "all the rights, powers, duties, and liabilities of a legal person" and designated the Te Urewera Board as the legal representative. Te Urewera Act, 2014 § 3.11(1) (Pub. Act 2014 No. 51) (N.Z.). See generally Katherine Sanders, 'Beyond Human Ownership'? Property, Power and Legal Personality for Nature in Aotearoa New Zealand, 30 J. ENV'T L. 207 (2018); Miriama Cribb, et al., *Beyond Legal Personhood for the Whanganui River: Collaboration and Pluralism in Implementing the Te Awa Tupua Act*, INT'L J. HUM. RTS. 1 (2024) (arguing that the Whanganui experience should be understood primarily as about recognition of Indigenous rights as opposed to nature's rights). Since then, additional developments in New Zealand have expanded protections to Mount Taranaki Maunga. The Associated Press, *A New Zealand Mountain Has Been Granted Personhood. Here's Why That Matters*, CNN (Jan. 30, 2025), <https://perma.cc/4R65-9JTA>.

Advocates have generally rallied in favor of nature's rights under the assumption that additional legal frameworks will deliver better outcomes for ecosystems and communities.¹² By having subnational or national legal systems recognize nature's rights, the argument goes, communities have a new set of tools to demand environmental protection.¹³ Proponents also argue that recognition of nature's rights marks a turning point in law by recognizing that nature holds "inalienable rights, such as the right to exist, persist, maintain, regenerate, or flourish."¹⁴ Nature's rights frameworks attempt to counter the anthropocentric character of the law, as rights-based theories have traditionally developed around the individual or collective rights of human beings, while treating the natural world as an "object" instead of a "subject."¹⁵ Advocates have similarly welcomed an alternative to traditional Western legal systems,¹⁶ particularly against the background of the intersecting crises of climate change and biodiversity loss.¹⁷

Indigenous Pacific leaders similarly recognized whales as legal persons in a separate treaty. He Whakaputanga Moana [Whale Protection and Legal Personhood Declaration] (2024) (Hinemoni Halo), <https://perma.cc/N5R6-TQW3>.

12. BOYD, *supra* note 8, at 27 (arguing that nature's rights have the potential to reduce animal suffering, stop human-caused extinction, and protect the planet's life support systems).
13. Martin & Kauffman, *supra* note 7, at 265 (observing that "rulings do not merely parrot global discourse regarding [rights of nature] but instead interpret emerging global norms within the context of domestic law and culture, thus creating unique institutional expressions . . . [the] cases [surveyed] demonstrate how normative underpinnings at the local and global levels converge to develop new legal tools and governance structures"); see, e.g., Erin Ryan et al., *Environmental Rights for the 21st Century: A Comprehensive Analysis of the Public Trust Doctrine and Rights of Nature Movement*, 42 CARDOZO L. REV. 2447, 2451 (2021).
14. See, e.g., Caitlin Skurky, *Toward a Decolonized Non-Anthropocentric Legal System: Why the Rights of Nature Movement Should Codify Indigenous Customary Laws and Look to the Indigenous Bagungu People for Best Practice*, 34 GEO. ENV'T L. REV. 351, 353 (2022).
15. Human rights law has increasingly focused on the intersection between human rights and the environment but continues to focus on the rights of individuals as right-holders. Jérémie Gilbert, *Human Rights & the Rights of Nature: Friends or Foes?* 47 FORDHAM INT'L L. J. 447, 456 (2024) (arguing "that despite the anthropocentric nature of human rights, there are some strong alignments developing around the evolution of the right to a healthy environment."). TĂNĂSESCU, *supra* note 3, at 130–32 complicates this focus at length by explaining how nature's rights replicate some of the same failures and critiques of the human rights movement. On the latter, see generally SAMUEL MOYN, *THE LAST UTOPIA: HUMAN RIGHTS IN HISTORY* 213 (2012) (discussing the evolution of human rights as supposedly neutral); SAMUEL MOYN, *NOT ENOUGH: HUMAN RIGHTS IN AN UNEQUAL WORLD* (2018) (broadly arguing that the human rights movement and human rights systems have failed to challenge wealth inequality).
16. See Christiana Ochoa, *Nature's Rights*, 11 MICH. J. ENV'T & ADMIN. L. 39, 46 (2021) ("[A] more earnest consideration of alternative conceptions of nature may provide Western legal systems with additional creative options for protecting ecological systems.").
17. See Hans-Otto Pörtner et al., *Overcoming the Coupled Climate and Biodiversity Crises and Their Societal Impacts*, 380 SCI. 1, 1 (2023); see generally KAREN BRADSHAW, *WILDLIFE AS PROPERTY OWNERS* (2021) (proposing a new conception of animal rights whereby animals hold property rights to address shrinking habitats and biodiversity loss).

However, nature's rights decrees, laws, and judicial decisions have faced significant challenges from their conception to their enforcement.¹⁸ Critics of nature's rights frameworks have argued that nature's rights are merely symbolic, performative, and unenforceable at best, and undemocratic and oppressive at worst.¹⁹ Given the origins of nature's rights jurisprudence as partly rooted in Indigenous worldviews²⁰—particularly, although not exclusively, from the Andes²¹—the paradoxical character of the development and implementation of nature's rights deserves further examination. At times, nature's rights “in practice” have undermined Indigenous rights through processes that exclude Indigenous groups from implementation,²² or by leveraging “general” Indigenous thought to justify the adoption of nature's rights,²³ sometimes to

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18. See, e.g., Julien Bétaille, *Rights of Nature: Why It Might Not Save the Entire World*, 16 J. FOR EUR. ENV'T & PLAN. L. 35, 36 (2019).
 19. Nature's rights have been described as “an ornamental legal framework that doesn't dismantle the private law ‘legal arrangements’ that provide stability and fluidity to extractive projects and interests that still take precedence over human and non-human rights.” María Ximena González-Serrano, *Rights of Nature, an Ornamental Legal Framework: Water Extractivism and Backbone Rivers with Rights in Colombia*, 52 J. PEASANT STUD. 322, 324 (2025). González-Serrano further explains that the judicial resolutions granting some Colombian rivers rights “do not adopt any type of measure to address the conflicts that exist in the river basins provoked by extractive economies.” *Id.* at 332; see *infra* Parts II(C), III(C).
 20. Erin O'Donnell et al., *Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature*, 9 TRANSNAT'L ENV'T L. 403, 411 (2020) (arguing that framing nature's rights as a “new way of engaging with the environment obscures the contribution made through the specific laws of Indigenous people.”).
 21. See BOYD, *supra* note 8, at 10, on the role of Indigenous peoples leading and shaping the development of nature's rights in New Zealand; see also O'Donnell et al., *supra* note 20, at 403 (arguing that “the most transformative cases of rights of Nature have been consistently influenced and often actually led by Indigenous peoples” and tracing the multiple ontological origins for nature's rights). Significantly, the authors acknowledge that rights of nature are not “universally supported by Indigenous peoples.” *Id.* at 405 n.8; see also Kristina Lyons, *Rights of the Amazon in Cosmopolitical Worlds*, in THE PROMISE OF MULTISPECIES JUSTICE 62 (Sophie Chao et al. eds., 2022) (arguing that the lack of recognition of ancestral knowledge and practices is one of the core problems in nature's rights jurisprudence).
 22. See *infra* Part II(C) (Colombia); see also Kristina Lyons, “Nature” and Territories as Victims: Decolonizing Colombia's Transitional Justice Process, 125 AM. ANTHROPOLOGIST 63, 68 (2023) (explaining that “[rights of nature] decisions have been critiqued for failing to acknowledge their philosophical indebtedness to the ancestral knowledges and justice systems of Indigenous people, or even worse, . . . excluding local communities from foundational roles in the same rulings involving the protection of beings/territories with whom they are intimately connected.”).
 23. See *infra* Part II(A) (on Ecuador and accompanying notes on Bolivia); see Matthias Petel, *The Illusion of Harmony: Power, Politics, and Distributive Implications of Rights of Nature*, 13 TRANSNAT'L ENV'T L. 12, 21 (2024) (describing how rights of nature can be exclusionary and have regressive outcomes since the movement is dominated by a “transnational lobbying network located primarily in the Global North leveraging ‘western holism and jurisprudence’”) (citing Ariel Rawson & Becky Mansfield, *Producing Juridical Knowledge:*

serve economic interests²⁴ or without meaningful recognition of Indigenous rights or ontologies.²⁵ Drawing from several examples of nature's rights recognition in the Americas, this Article contends that while judicial reliance on nature's rights as a rights-based theory offers a powerful framework, the absence of clear operationalization and implementation guidelines can obscure legal analysis in judicial decision-making. This lack of clarity can, by extension, lead to ambiguity in governmental obligations towards specific ecosystems and the communities reliant upon them. This Article further undertakes a mapping of the doctrinal and policy challenges that arise within nature's rights jurisprudence, aiming to contribute to a more robust and implementable framework for these emerging legal protections.

This Article proceeds in four Parts. Part I develops a normative conceptual framework for nature's rights, examining the main features of nature's rights jurisprudence and its development. Part II discusses specific landmark examples of laws and cases recognizing nature's rights across the Americas, namely in Ecuador, the United States, Colombia, Peru, and the Inter-American System of Human Rights. Part III discusses some of the definitional, doctrinal, and policy challenges that have emerged in the development and aftermath of nature's rights frameworks. These challenges are closely related to the difficulty of conceptualizing nature's rights, navigating the procedural implications of this framework (e.g., standing requirements), and grappling with the challenges of operationalizing and implementing remedies. Finally, Part IV presents a potential roadmap to address some of the shortcomings that have emerged with the expansion and implementation of nature's rights, offering a path forward for proponents who seek to leverage this powerful and perhaps transformative model.

"Rights of Nature" or the Naturalization of Rights?, 1 ENV'T & PLAN. E: NATURE & SPACE 99, 99–119 (2018)).

24. See, e.g., Unai Villalba-Eguiluz & César Carranza-Barona, *Sustainability as Buen Vivir Within a Community-Territory and the Rights of Nature: Biocentric Standpoints, Relational Perspectives and Onto-Epistemic Diversity*, 10 CURRENT RSCH. IN ENV'T SUSTAINABILITY 1, 8 (2025) (discussing how progressive governments have appropriated and co-opted Buen Vivir ideologies).
25. This is what O'Donnell and others call "weak legal pluralism" in which there is a superficial attempt to integrate Indigenous values into colonial legal frameworks. O'Donnell, *supra* note 20, at 426; see also Virginia Marshall, *Removing the Veil from the "Rights of Nature": The Dichotomy Between First Nations Customary Rights and Environmental Legal Personhood*, 45 AUSTL. FEMINIST L. J. 233, 233 (2019) (arguing that rights of nature approaches "creat[e] a new tool of colonization which would decouple Indigenous ontological relationships and laws and the inherent obligations to manage and care for the environment"); Petel, *supra* note 23, at 30.

I. THE EMERGENCE OF NATURE'S RIGHTS FRAMEWORKS

Nature's rights have emerged throughout the globe in the context of "rights expansion and intensification of human pressure on the environment"²⁶ as evidenced by the climate, biodiversity, and marine crises. Of course, the nature's rights movement is not monolithic, and it spans across jurisdictions and legal systems. Although the dominant discourse groups together different examples from across the world as part of the nature's rights movement, these rights and surrounding legal frameworks are distinct, diverse, context dependent,²⁷ and—perhaps because of these features—full of tensions and contradictions.²⁸ At times, nature's rights appear to protect a single natural entity, while at other times, they target "Nature" as a whole.²⁹ Some developments focus on the interest of specific ecosystems or communities, while others use more general rhetoric around a shared natural environment. Legal developments on nature's rights have been led by both grassroots and elite interests, taken multiple forms, and been inherently distinct.³⁰

Dozens of subnational and national governments in the Americas have proposed or outright recognized these rights.³¹ Local governments have adopted ordinances or decrees declaring that specific ecosystems in their jurisdictions (such as rivers, lakes, or forests) are subjects of rights.³² Legislative bodies at the national and subnational levels have introduced legislative proposals and

26. TĂNĂȘESCU, *supra* note 3, at 11.

27. Macarena Montes Franceschini & Kristen Stilt, *Naturalized Rights of Animals, Animalized Rights of Nature*, 44 STAN. ENV'T L. J. 1, 46 (2024) (discussing how rights of nature initiatives vary greatly, ranging from efforts to protect a community's connection to nature to a last option to protect a specific ecosystem).

28. *Id.* at 10.

29. Compare CONSTITUTION OF ECUADOR, *supra* note 8, and Framework Law on Mother Earth, *supra* note 8 (recognizing nature's rights), with Colombian cases discussed *infra* II(C), Te Urewera Act 2014 (N.Z.), *supra* note 11, and the Marañón case discussed *infra* II(D) (recognizing the rights of specific rivers or ecosystems).

30. TĂNĂȘESCU, *supra* note 3, at 16.

31. See, e.g., Framework Law on Mother Earth, *supra* note 8; Mexico City Environmental Responsibility Law, *Gaceta Oficial de la Ciudad de México*, June 18, 2024 (Mex.); Law No. 287, *Gaceta Oficial*, Feb. 28, 2022 (Pan.). For a more detailed list of proposals and adoptions, see *Rights of Nature Law and Policy*, UNITED NATIONS HARMONY WITH NATURE, <https://perma.cc/XS4W-TV5H>; see also Daniel Bonilla Maldonado, *Global Legal Pluralism and Rights of Nature*, in LEGAL HETERODOXY IN THE GLOBAL SOUTH (Kevin E. Davis and Mariana Pargendler eds., 2025) (summarizing initiatives across the world, including Peru, Argentina, and Panama). In Canada, the Assembly of First Nations of Quebec-Labrador recognized the rights of the St. Lawrence River. See *Harmony with Nature*, *supra* note 8, ¶ 26. In Spain, a saltwater lagoon was also recognized as having rights in 2022. Nell Lewis, *This Saltwater Lagoon is Legally a Person. Here's Why That Could Help It Survive*, CNN (Apr. 29, 2024), <https://perma.cc/S52H-R2NG>.

32. See *infra* Part II(B–D).

adopted laws to recognize nature's rights.³³ Constitutional assemblies have debated and, at times, amended national constitutions to integrate nature's rights into their respective constitutional frameworks.³⁴ In parallel, litigants have employed nature's rights-based claims as central or supplementary arguments in environmental litigation, requesting that specific ecosystems be granted legal personhood.³⁵ In response, numerous administrative and constitutional courts have issued landmark rulings recognizing either nature's rights broadly or that specific natural entities are subjects of rights and thus deserving of special protection under their legal regimes.³⁶

The concept of nature's rights is generally thought to entail (1) legal personhood for natural entities (including standing to bring an action on behalf of a natural entity), and (2) substantive rights (e.g., right to exist, flourish, or regenerate).³⁷ The movement has used "legal person," "legal entity," "subject of rights," and other formulations to highlight distinct moral or legal implications, although it is not always clear how these differ from each other.³⁸ In cases where natural entities are granted "legal personhood," there is a greater focus on an entity's rights and duties.³⁹ By granting or recognizing a natural entity as having

33. See *infra* Part II(C).

34. See *infra* Part II(A); *supra* note 8 on Bolivia; *infra* note 104 on Colorado.

35. See, e.g., Linhard, *supra* note 3.

36. See *infra* Part II(A), (C), (D).

37. Elizabeth Kronk Warner & Jensen Lillquist, *Laboratories of the Future: Tribes and Rights of Nature*, 111 CAL. L. REV. 325, 326 (2023); TĂNĂȘESCU, *supra* note 3, at 26 (describing the differences between these terms). This dichotomy is not comprehensive, and other scholars have proposed other typologies or categories of rights of nature.

38. TĂNĂȘESCU, *supra* note 3, at 26 (describing the differences between these terms). In Colombia, the courts have referred to "subject of rights," "entity subject of rights," "special subject of rights," "living entity," and "subject of constitutional protection," among others. See, e.g., Tribunal Superior de Medellín [Appellate Court] June 17, 2019, Sentencia No. 38 (Juan Luis Castro Córdoba y Diego Hernán David Ochoa c. Ministerio de Ambiente y Desarrollo Sostenible, EPM, Hidroeléctrica Ituango S.A. E.S.P. y otros) (using "subject of rights") (Colom.); cf. Tribunal Administrativo de Boyacá [Administrative Court], Aug. 9, 2018 (Juan Carlos Alvarado Rodríguez y otros c. Ministerio de Medio Ambiente y otros) (using "subject of constitutional protection") (Colom.).

39. JOSEPH RAZ, *THE MORALITY OF FREEDOM* 166 (1986); see generally Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 26 YALE L. J. 710 (1919) (providing a foundational account of legal personhood). Most discourse about nature's rights focuses on nature's *interests* as the basis for the recognition of nature as a subject of rights or a legal person. TĂNĂȘESCU, *supra* note 3, at 37–38. Weis and Mullins have a slightly different formulation: the "rights" model creates new rights (implying that nature is a legal person that can bear rights), while the legal personhood model creates a new legal person (and therefore imbues nature with rights-bearing capacity). Lael K. Weis & Robert Mullins, *Does Nature Need Rights?*, 45 OXFORD J. LEGAL STUD. 839, 849 (2025). They also admit that it is hard to reconcile rights of nature with "will" or "choice" theories, which emphasize that rights-bearers have control over the duties of others. *Id.* at 853. For an in-depth discussion of legal personhood, its origins, and various theories, see generally VISA A.J. KURKI, *A THEORY OF LEGAL PERSONHOOD* (2019).

legal personhood, the entity can theoretically now access the legal system (for example, through a representative or guardian) and thus, ultimately, a set of legal remedies (e.g., injunctions to cease damaging activity or to restore the ecological integrity of an ecosystem). In the broader conception of nature's rights, natural entities have specific rights to be protected and restored, but it is not always clear whether the rights create a cause of action in the way legal personhood does or the exact remedies that can be granted by a court.⁴⁰

Given the variety of jurisdictions that have legal frameworks for nature's rights, the result has been a multi-faceted phenomenon without a uniform definition. The broad appeal of the concept has resulted in parallel yet distinct evolutionary paths. For example, in Bolivia and Ecuador, proponents first introduced constitutional and legislative amendments recognizing nature's rights, arguably in response to social movement demands to align legal and constitutional frameworks with Indigenous worldviews honoring the *Pacha Mama*.⁴¹ In Colombia and more recently in Peru, where there is no explicit mention of rights of nature in the constitution,⁴² courts have drawn from precedent in other

40. O'Donnell et al., *supra* note 20, at 408.

41. See Ley de Derechos de la Madre Tierra [Law of the Rights of Mother Earth], Law No. 071, Dec. 21, 2010 (Bol.). Of course, the evolution of nature's rights is long and complex, drawing from multiple intellectual histories within and outside of Western thought. I include a brief history of the role of Indigenous philosophy in expanding this concept in the Americas, "[b]ut exactly how indigenous philosophies interact with rights for nature is a matter for careful analysis, precisely so as to safeguard the radical potential of such philosophies against the hegemonic drive that rights are steeped in." TĂNĂSESCU, *supra* note 3, at 40. Tănăsescu goes as far as to say that "[t]here is nothing within the various histories [he has] so far surveyed that would warrant" the claim that rights of nature are related to Indigenous philosophy and instead, sees this trend as a result of "ignorance of indigenous philosophies, an unreflexive colonial inheritance, and enthusiastic belief in the power of rights discourse." *Id.* at 42. Tănăsescu describes the gendered notion of *Pacha Mama* as a cliché that is "nothing but the obsession with totality dressed up as indigeneity," which is part of a broader problem where personhood and rights fit nicely into dominant modes of social and political organization. *Id.* at 44 n.21, 45. Tănăsescu further explains how the term *Pacha Mama* is a "touristification of Andean thinking" and reflects a problematic amalgamation of diverse groups. *Id.* at 66. See also Elizabeth Macpherson, *Ecosystem Rights and the Anthropocene in Australia and Aotearoa New Zealand*, in ENVIRONMENTAL CONSTITUTIONALISM IN THE ANTHROPOCENE: VALUES, PRINCIPLES, ACTIONS 168, 171 (Domenico Amirante & Silvia Bagni eds., 2021) (describing Indigenous philosophies as primarily "relational").

42. Although there is no explicit provision, Colombian and Peruvian courts are consistently drawing on principles of constitutional interpretation supporting the reading of nature's rights into these constitutional frameworks. See, e.g., Katie Surma, *Landmark Peruvian Court Ruling Says the Marañón River Has Legal Rights to Exist, Flow and Be Free from Pollution*, INSIDE CLIMATE NEWS (Mar. 20, 2024), <https://perma.cc/DTP6-HVYU>.

jurisdictions or prior decisions to crystallize the formulation of nature's rights. Generally, these rulings have declared that the specific ecosystem in question has the right to be "respected, protected, conserved, and maintained."⁴³ While nature's rights has been the thread connecting decrees, ordinances, laws, and judicial decisions, the actual formulation of these rights and therefore claims has varied across contexts. Each jurisdiction (and at times each governmental organ or court) has conceived of nature's rights differently, without an established consensus as to what subset of rights or obligations flow from such recognition.⁴⁴

Recognizing the complexity of this emerging field, scholars have sought to make sense of the rights of nature phenomenon as a political and legal tool.⁴⁵ A segment of the scholarship has celebrated nature's rights as a significant development that seeks to disrupt traditional legal theories by centering the rights of nature rather than those of individual people or corporations.⁴⁶ These scholars argue that the turn towards nature's rights is meaningfully shaping legal doctrine and is significant in itself.⁴⁷ Through a social movement lens, scholars have documented how communities that hold unique relationships with the natural environment have leveraged nature's rights to assert their claims.⁴⁸ Undoubtedly, advocates have utilized their discursive character to build broader narratives about the importance of protecting specific ecosystems.⁴⁹ Environmental advocates have generally welcomed nature's rights as a

43. See *infra* Part III.

44. Mauricio Guim & Michael A. Livermore, *Where Nature's Rights Go Wrong*, 107 VA. L. REV. 1347 (2021); Laura Spitz & Eduardo M. Peñalver, *Nature's Personhood and Property's Virtues*, 45 HARV. ENV'T L. REV. 67 (2021). One of the challenges arises from quantifying or delimiting the boundaries of specific ecosystems. Cristy Clark et al., *Can You Hear the Rivers Sing? Legal Personhood, Ontology, and the Nitty-Gritty of Governance*, 45 ECOLOGY L.Q. 787 (2018).

45. See, e.g., LOS DERECHOS DE LA NATURALEZA: DIÁLOGOS ENTRE EL DERECHO Y LAS ARTES (Daniel Bonilla, Ralf Michaels, & Patricia Zalamea eds., 2022); Sam Bookman, *The Puzzling Persistence of Nature's Rights*, 2025 UTAH L. REV. 165 (2025).

46. Ochoa, *supra* note 16, at 43; see also Ximena Sierra Camargo, *The Ecocentric Turn of Environmental Justice in Colombia*, 30 KING'S L.J. 224, 231 (2019). Tănăsescu describes some supporters as adhering to what he calls "rights of nature orthodoxy," a view of these rights as inherently positive constructions (or, at worst, benign) that are going to save "the environment" from rapacious 'humans.'" TĂNĂSESCU, *supra* note 3, at 15.

47. See generally Camargo, *supra* note 46 (arguing that nature's rights cases mark an ecocentric turn in Colombia).

48. Elizabeth Macpherson, Julia Torres, & Felipe Clavijo, *Constitutional Law, Ecosystems, and Indigenous Peoples in Colombia: Biocultural Rights and Legal Subjects*, 9 TRANSNAT'L ENV'T L. 521, 522 (2020) (noting that "[t]hese communities hold distinctive relationships with nature or the environment which may be more reflective of ecocentric philosophical approaches than their western counterparts.").

49. See, e.g., Bookman, *supra* note 45, at 165 (discussing how rights of nature have been leveraged by social movements opposing development projects or offering alternative paradigms for environmental governance); América Paz Durán et al., *Bringing the Nature Futures Framework to Life: Creating a Set of Illustrative Narratives of Nature Futures*, SUSTAINABILITY SCI. (2023) at 1.

challenge to the traditional instrumentalist view of the natural world, in which the value of ecosystems and other natural entities depends solely on their economic or aesthetic value to human beings.⁵⁰ By recognizing nature's inherent value and granting it legal personhood, nature's rights purportedly represent a paradigm shift in how legal doctrine engages the non-human world.⁵¹ Proponents of recognizing or granting rights to natural entities point to the historical evolution of legal personhood, arguing this concept has shifted as social norms evolve—women, children, and people of color, for example, were not considered full citizens in a number of jurisdictions until the mid-twentieth century.⁵² Some point to the phenomenon's growth as a sign of its success, citing dozens of laws, court decisions, conferences, and projects on this subject.⁵³

Nature's rights have also developed alongside environmental laws.⁵⁴ Specifically, conservation statutes and environmental assessment requirements have been integrated across legal regimes. Following the adoption of the National Environmental Policy Act (NEPA) in the United States, many countries adopted similar procedural requirements for environmental permitting and licensing.⁵⁵ Against the critique that procedural laws such as NEPA create only checklist obligations that do not guarantee better environmental outcomes or center

50. See, e.g., Ramdass, *supra* note 4. Nature's rights are often understood as part of a subfield of environmental law known as Earth Law, which seeks to protect and recognize the interdependency of Earth's life and life-support systems. BOYD, *supra* note 8, at 22. For a sample of organizations interested in Earth Law approaches, see also EARTH LAW CTR., *About Us*, <https://perma.cc/S6MV-2QM3>; *More Than Human Life (MOTH) Program*, NYU LAW, <https://perma.cc/4TUG-X2EB>; Soc'Y FOR EARTH LAW, *About*, <https://perma.cc/EP2V-HUJS>.

51. BOYD, *supra* note 8, at *xix* (2017); David Boyd, *Recognizing the Rights of Nature: Lofty Rhetoric or Legal Revolution?* 32 NAT. RES. & ENV'T 13, 17 (2018); Lilian Rose Lemos Rocha, *The Environmental Emergency Room: Protection of Nature's Rights in Latin America*, 10 BRAZ. J. PUB. POL'Y 166, 166 (2020); Susana Borràs, *New Transitions from Human Rights to the Environment to the Rights of Nature*, 5 TRANSNAT'L ENV'T L. 113, 134 (2016).

52. Stone, *supra* note 5, at 455 (“[u]ntil the rightless thing receives its rights, we cannot see it as anything but a *thing* for the use of ‘us’—those who are holding rights at the time . . . Throughout legal history, each successive extension of rights to some new entity has been, therefore, a bit unthinkable.”); Jennifer Nedelsky, *Reconceiving Rights as Relationship*, REV. CONST. STUD. 1, 2–3 (Apr. 1993); Matthias Kramm, *When a River Becomes a Person*, 21 J. HUM. DEV. & CAPABILITIES 1307, 307 (Aug. 2020). TĂNĂSESCU, *supra* note 3, at 39, summarizes this line of thought:

All rights struggles are supposed to be part of the same great circle, so women's rights, abolitionism, animal rights and now the rights of nature are all part of the same story, made to cohere by the idea of moral evolution itself, which relies on a stark distinction between thing (and therefore rightless) and subject (and therefore worthy of rights).

53. See *Harmony with Nature*, *supra* note 8, ¶ 79.

54. Lyons, *Rights of the Amazon in Cosmopolitical Worlds*, *supra* note 21, at 59–60 (discussing environmental law's focus on a “regime of permits and licenses” in contrast to Earth Law).

55. DAN ELLIOT & DAN ESTY, *ADVANCED INTRODUCTION TO U.S. ENVIRONMENTAL LAW* 13, 159 (2021).

nature's inherent value, nature's rights frameworks have attracted interest.⁵⁶ Crucially, then, nature's rights frameworks combine procedural and *substantive* legal protections to further environmental protection.⁵⁷

But nature's rights have also stirred controversy and generated critiques. First, some scholars argue that recognizing nature's rights raises significant conceptual difficulties, partly because the concept transforms the traditional understanding of standing by extending it to non-humans and lacks the clarity necessary to render it useful and enforceable.⁵⁸ Legal personhood has traditionally attached to individuals, organizations, and corporations,⁵⁹ while standing requirements are intended to restrict who may initiate a legal action.⁶⁰ Other scholars worry about the vagueness of nature's rights, the lack of limiting principles, and the fear that the concept is a too-radical departure from established law.⁶¹ They contend that ecosystems and their non-human components cannot exercise rights or be subject to duties in the same fashion that individuals, nation states, or other legal entities can.⁶²

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56. See ROBERT E. GOODIN, *GREEN POLITICAL THEORY* 168 (1992) ("To advocate democracy is to advocate procedures, to advocate environmentalism is to advocate substantive outcomes; what guarantees can we have that the former procedures will lead to the latter sort of outcomes?"); cf. John Ruple & Mark Capone, *NEPA—Substantive Effectiveness Under a Procedural Mandate: Assessment of Oil and Gas EISs in the Mountain West*, 7 GEO. WASH. J. ENERGY & ENV'T L. 39, 39 (2016).
 57. National Environmental Policy Act, 42 U.S.C. § 4321; Bookman, *supra* note 45; see, e.g., SHANNON BIGGS, TOM B.K. GOLDTOOTH, & OSPREY ORIELLE LAKE, *RIGHTS OF NATURE & MOTHER EARTH, RIGHTS-BASED LAW FOR SYSTEMIC CHANGE* 3 (Nov. 2017), <https://perma.cc/KL2U-RSYL>; see also Noah M. Sachs, *Anti-Democratic Rights of Nature*, 37 GEO. ENV'T L. REV. 95, 109 (2024) ("RoN [rights of nature] is not mere environmental impact review. Instead, the RoN project is meant to have substantive consequences by halting human endeavors that violate nature's rights.").
 58. Guim & Livermore, *supra* note 44, at 1352; see also Markie Miller & Crystal Jankowski, Letter to the Editor, *Personhood Will Not Protect the Environment*, THE GUARDIAN (Nov. 22, 2019), <https://perma.cc/S9MR-WN4P>.
 59. Guim & Livermore, *supra* note 44, at 1348.
 60. See *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 576–77 (1992). But note that in some jurisdictions standing and legal personhood are actually part of the same "package." TĂNĂSESCU, *supra* note 3, at 22.
 61. Guim & Livermore, *supra* note 44, at 1416; Noah M. Sachs, *A Wrong Turn with the Rights of Nature Movement*, 36 GEO. ENV'T L. REV. 39 55–58, 67–70 (2023) (arguing that these nebulous rights cannot adequately protect nature).
 62. Human rights law recognizes that governments or private corporations are "duty bearers" responsible for protecting, respecting, and fulfilling human rights. See, e.g., U.N. Guiding Principles on Business and Human Rights, U.N. Doc. A/HRC/17/31 (June 16, 2011); *Human Rights Based Approach*, European Commission, <https://perma.cc/7TB2-3A82>. On the point of duties, Houck reminds us that even though some humans are not able to fulfill "duties" in the traditional sense, they are afforded rights. Oliver A. Houck, *Noah's Second Voyage: The Rights of Nature As Law*, 31 TUL. ENV'T L. J. 1, 31–32 (2017). This has been evidenced by the development of nature's rights in India, where the Supreme Court overruled a lower court, declaring that the Ganges and Yamuna rivers were not living entities and rejected the

Second, some scholars reject the premise that recognizing nature's rights can change substantive outcomes in terms of environmental protection.⁶³ This critique posits that, as long as individuals or organizations can bring legal actions on behalf of or for the benefit of ecosystems or other non-human life, there is no need to grant legal personhood to natural entities or develop a new cause of action altogether. Because jurisdictions across the Americas have causes of action grounded in human rights,⁶⁴ constitutional law, property law, or environmental law, nature's rights may be duplicative or redundant.⁶⁵ Several countries already recognize the human right to a healthy environment, which is also widely recognized as a distinct human right under international law.⁶⁶ In the United States, states such as Montana,⁶⁷ Pennsylvania,⁶⁸ New York,⁶⁹ and Hawaii⁷⁰ have adopted some form of a "green amendment" establishing the right to a healthy environment under their state constitutions.⁷¹ Potential incompatibilities between nature's rights and international law also seem to loom as the

nature's rights proposal put forth by the lower court. *State of Uttarakhand v. Salim*, Special Leave to Appeal (C) No. 016879/2017 (June 7, 2017) (India).

63. Guim & Livermore, *supra* note 44, at 1352 ("[m]oving from the theoretical to the practical, experience with rights for nature has shown that their conceptual deficiencies have led to confusion, inefficiency, and arbitrariness—without any obvious environmental benefit"); *see, e.g.*, JAMES MAY & ERIN DALY, *GLOBAL ENVIRONMENTAL CONSTITUTIONALISM* 59 (2015); T. HAYWARD, *CONSTITUTIONAL ENVIRONMENTAL RIGHTS* 74–75 (2004).
64. On the common features between human rights and nature's rights, Tănăsescu argues that nature's rights "postulate[] Nature as the origin of a set of fundamental rights," which results in an extremely general set of rights. TĂNĂSESCU, *supra* note 3, at 34.
65. *Id.*; Sachs, *A Wrong Turn with the Rights of Nature Movement*, *supra* note 61, at 53.
66. Daniel C. Esty, *Should Humanity Have Standing? Securing Environmental Rights in the United States*, 95 S. CAL. L. REV. 1345 (2022) (undertaking a comparative review of national case law on environmental rights); DAVID R. BOYD, *THE ENVIRONMENTAL RIGHTS REVOLUTION: A GLOBAL STUDY OF CONSTITUTIONS, HUMAN RIGHTS, AND THE ENVIRONMENT* 78 (2011); G.A. Res. 76/300, U.N. Doc. A/RES/76/300 (July 28, 2022); *see also* Human Rights Council, *The Human Right to a Clean, Healthy and Sustainable Environment*, U.N. Doc. A/HRC/RES/48/13, ¶¶ 1–2 (Oct. 28, 2021). There are extensive discussions about the relationship between rights of nature and the right to a healthy environment, with some commentators arguing that they may even be in tension since the latter (unlike the former) may perpetuate views of nature as a resource. Weis & Mullins, *supra* note 39, at 847.
67. MONT. CONST. art. II, § 3.
68. PA. CONST. art. I, § 27.
69. N.Y. CONST. art. I, § 19.
70. HAW. CONST. art. 11, § 9.
71. *Legal & Advocacy Successes*, GREEN AMENDMENTS FOR THE GENERATIONS, <https://perma.cc/SHH2-LSWB> (summarizing legal victories in states with green amendments); *Held v. Montana*, No. CDV-2020-307, 2023 Mont. Dist. LEXIS 2, at *126 (Mont. 1st Jud. Dist. Ct. Aug. 14, 2023).

project unfolds.⁷² Against this background, there are some doubts that creating additional protections for ecosystems would make much difference in practice.⁷³

Beyond conceptual or theoretical difficulties, there are doctrinal and policy concerns stemming from recognizing nature as an autonomous subject of rights. How should courts proceed in nature's rights cases when there is a legislative lacuna on this matter? Should courts develop this framework *sua sponte*, as has been done by "activist judges"?⁷⁴ And in cases where there is legislative recognition, but no additional details on the elements or contours of this doctrine, how far can courts go when interpreting nature's rights ordinances or statutes? The following section will explore how different jurisdictions have answered these questions and navigated challenges when adopting nature's rights remedies.⁷⁵ Through the following case studies, it will become clear that "what ultimately gives the rights of nature practical purchase is the political process that leads up to them," which in turn may "make[] or break[] their implementation."⁷⁶

II. NATURE'S RIGHTS IN THE AMERICAS

A. Ecuador

Ecuador is a pioneer in the nature's rights movement.⁷⁷ Ecuador was one of the first countries to recognize nature as a subject of rights in its national

72. Jérémie Gilbert, *Creating Synergies Between International Law and Rights of Nature*, 12 TRANSNAT'L ENV'T L. 671, 671 (2023) (discussing how rights of nature remain mostly absent from international law due to "profound incompatibilities between international law and [rights of nature], including the fact that most international treaties approach nature as a resource to be owned, exploited or protected for the sake of humans."); see also Daniel Bonilla Maldonado, *The Globalization of Rights of Nature. Global Legal Pluralism and the Rights of Nature*, in GLOBAL LEGAL PLURALISM AND RIGHTS OF NATURE, 26–30 (eds. Daniel Bonilla Maldonado & Ralf Michaels) (2026) (discussing the influence of rights of nature approaches on the development of international law).

73. Guim & Livermore, *supra* note 44, at 1353 (concluding that "[c]oncrete rights for the people and organizations that seek to promote a healthy relationship with the environment are more likely to lead to results than guarantees to abstract non-human entities").

74. This has happened in various cases across Colombia. See *infra* Part II(C). In the case of India, the Supreme Court made clear that the recognition of legal personhood requires a legislative authorization. See *State of Uttarakhand v. Salim*, Special Leave to Appeal (C), *supra* note 62.

75. See generally Epstein et al., *supra* note 9.

76. TĂNĂSESCU, *supra* note 3, at 17.

77. CONSTITUTION OF ECUADOR, *supra* note 8, Art. 71 (2008) ("Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes. All persons, communities, people and nations can call upon public authorities to enforce the rights of Nature."); see also Corte Constitucional del Ecuador [Constitutional Court of Ecuador], Judgment No. 22-18IN/21 of September 8, 2021, ¶ 1 (Ecuador); Corte Constitucional del Ecuador, Judgment No. 1149-19-JP/21 of Nov. 10, 2021, ¶ 347;

constitution, quickly gaining international prominence.⁷⁸ In 2008, the constitution was revised, and the new constitution reflected social demands for the legal recognition of *Buen Vivir* or *Sumak Kawsay*⁷⁹ as a way to center ancestral roots and “redirect the focus [away from] traditional western values.”⁸⁰ Over 60% of voters approved the proposal presented by the constitutional assembly in a national referendum.⁸¹

Articles 71–74 of the Constitution describe the rights of nature, place responsibilities on the State to restore and protect nature,⁸² and allow any person or community to enforce nature’s rights in court, reducing any standing-related challenges.⁸³ In 2011, a group of plaintiffs suing over the pollution of the Vilcabamba River, which affected their property by causing erosion and flooding,

Corte Constitucional del Ecuador, Judgment No. 2167-21-EP/22 of January 19, 2022; see generally 1 COMPARATIVE ENVIRONMENTAL LAW & REGULATION § 41:57 (ELIZABETH BURLESON, NICHOLAS A. ROBINSON, LIN-HENG LYE, & KIRK W. JUNKER, eds.) (observing the need to further develop rights of nature through an environmental code or case law).

78. Maria Akchurin, *Constructing the Rights of Nature: Constitutional Reform, Mobilization, and Environmental Protection in Ecuador*, 40 L. & SOC. INQUIRY 937, 942 (2015). For a detailed account of the history, see Mihnea Tănăsescu, *The Rights of Nature in Ecuador: The Making of an Idea*, 70 INT’L J. OF ENV’T STUD. 846 (2013); TĂNĂSESCU, *supra* note 3, at 52–56. Tănăsescu draws a direct connection between the U.S. and Ecuadorian developments, highlighting the role of an “elite” network of actors comprised of NGOs and governmental officials. *Id.* at 56; see also O’Donnell et al., *supra* note 20, at 413–15 (tracing the Indigenous origins of the Ecuadorian efforts and arguing that Indigenous influence is illustrated by equating Nature with *Pacha Mama*).
79. Some scholars critique the way in which this and other Indigenous concepts were reframed as part of a political project, arguing the Ecuadorian government co-opted the concept “to justify anthropocentric Western development rooted in the extraction and consumption of Nature.” Caitlin Skurky, *Toward A Decolonized Non-Anthropocentric Legal System: Why the Rights of Nature Movement Should Codify Indigenous Customary Laws and Look to the Indigenous Bagungu People for Best Practice*, 34 GEO. ENV’T L. REV. 351, 355 (2022) (citing Craig M. Kauffman & Pamela L. Martin, *Can Rights of Nature Make Development More Sustainable? Why Some Ecuadorian Lawsuits Succeed and Others Fail*, 92 WORLD DEV. 130, 139–40 n.3 (2017)); see also Mihnea Tănăsescu, *Rights of Nature, Legal Personality, and Indigenous Philosophies*, 9 TRANSNAT’L ENV’T L. 429, 430–31 (2020).
80. Maria Antonia Tigre, *Historical Development of Environmental Constitutional Provisions—2008 Constitution of the Republic of Ecuador*, 1 COMPARATIVE ENVIRONMENTAL LAW & REGULATION, *supra* note 77, § 41:38 (citing CONSTITUTION OF ECUADOR, arts. 74, 14). Explaining the concept of *Sumak Kawsay*, an Indigenous leader stated: “To truly recognize the Rights of Nature, we must recognize the beings of the forest as persons, not objects or resources. The beings of the forest relate to one another, and we Indigenous peoples coexist with them.” Riki Cevallos, *Ecuador: Rights of Nature on Paper—The Case of Sarayaku*, ESPERANZA PROJECT (May 26, 2025), <https://perma.cc/X8YB-7388>.
81. *15 Years of the Rights of Nature in Ecuador*, GLOBAL ALLIANCE FOR THE RIGHTS OF NATURE (Sep. 28, 2023), <https://perma.cc/32YE-3PVV> [hereinafter *15 Years*].
82. The concept of restoration introduces some challenges, including the question of what baseline ought to be used and the imposition of a “standard that is fixed by human observation of an environment at a particular time.” TĂNĂSESCU, *supra* note 3, at 50.
83. CONSTITUTION OF ECUADOR, arts. 71–74 see also TĂNĂSESCU, *supra* note 3, at 55.

invoked nature's rights for the first time in a legal action.⁸⁴ The court declared the river's rights had been violated, holding that "Nature has the right to have its existence fully respected, as well as the maintenance and regeneration of its life cycles, structure, functions, and evolutionary processes."⁸⁵ The Court also ordered the defendants to conduct a cleanup, repair the harm, and issue a public apology for initiating the construction of a road without an environmental permit.⁸⁶ However, the plaintiffs returned to court in 2018, alleging a lack of enforcement.⁸⁷ Today, more than seventy cases⁸⁸ involving nature's rights have been filed on behalf of wildlife,⁸⁹ forests,⁹⁰ rivers,⁹¹ and other natural areas

84. See Richard F. Wheeler et. al. v. Director de la Procuraduría General del Estado en Loja et. al., Case No. 11121-2011-0010, Sentencia Corte Provincial de Loja, 1 (Mar. 30, 2011), <https://perma.cc/F6VU-4YRH> (Ecuador). Interestingly, the Court stated that "[a]lthough there was no conflict between constitutional rights . . . if there were, the rights of Nature would prevail given that a healthy environment is more important and affects more people." *Id.*; see also Tigre, *supra* note 80, § 41:40. For a summary of the case, see White, *supra* note 3, at 140–43 (2018); Kauffman & Martin, *Can Rights of Nature Make Development More Sustainable?*, *supra* note 79, at 136 (stating this case was "the world's first successful [rights of nature] lawsuit."). Tănăsescu describes the Ecuadorian Constitution as "so enamored with rights that it recognizes a plethora of them, impossible to uphold simultaneously, but together working to entrench the ultimately arbitrary power of the state." TĂNĂSESCU, *supra* note 3, at 41.

85. Wheeler, *supra* note 84, at 5.

86. *Id.* at 5–6.

87. See Constitutional Court of Ecuador, Sentence No. 012-18-SIS-CC, 1 (Mar. 28, 2018), <https://perma.cc/WQE2-2VUS>. For a more detailed discussion, see TĂNĂSESCU, *supra* note 3, at 123–24 (discussing the Vilcabamba case, particularly how the ruling created a hierarchy between different kinds of human rights, namely the right to a better road and the right to a healthy environment); Boyd, *supra* note 8, at 143 (discussing the case and delays complying with the order).

88. See 15 Years, *supra* note 81. One of the most prominent cases lauded by rights of nature supporters is the *Los Cedros* case. Constitutional Court of Ecuador, November 10, 2021, Judgment No. 1149-19-JP/21, 13 [hereinafter *Los Cedros* case]. See generally *The Impact of the Rights of Nature – Assessing the Implementation of the Los Cedros Ruling in Ecuador*, NYU MOTH Project (June 2024), <https://perma.cc/G39V-RW85> (providing an extensive analysis of the ruling's implementation).

89. *The National Court Accepted an Appeal for a Crime Against Wildlife in the Galapagos*, FISCALÍA GENERAL DEL ESTADO (May 21, 2019), <https://perma.cc/98AR-8TAZ>; see also Montes Franceschini & Stilt, *supra* note 27, at 47–55 (discussing the case of Estrellita, a monkey).

90. Sala Multicompetente De La Corte Provincial De Imbabura, 25 July 2019, Sentence 10332-2018-00640, 49 (Ecuador); *Los Cedros Court Win*, RAINFOREST ACTION GROUP (June 19, 2019), <https://perma.cc/27NT-ZMY9> (describing how "judges in the Imbabura province ruled in favour to protect Los Cedros, the iconic cloud forest reserve in Ecuador's Western Andes, which is under concession for copper and gold mining to Canadian company Cornerstone and Australian BHP").

91. *Ecuador: Corte Constitucional ordena la protección de los derechos de la naturaleza para controlar contaminación por empresas avícolas, porcinas y agrícolas al río Alpayacu, Pastaza*, BUS. & HUM. RTS. RES. CTR. (Oct. 1, 2020), <https://perma.cc/HDT3-P2X3>; Corte Constitucional del Ecuador [Constitutional Court of Ecuador], Jan. 19, 2022, Sentencia 2167-21-EP/22 (*The Monjas River Case*), at 48.

affected by mining, with varying degrees of success.⁹² Commentators have observed contradictions between the constitutional recognition and the adoption of mining laws favoring extractive industries, allowing their operation in natural reserves like the Yasuni Park and harming the health of local communities.⁹³

Since the adoption of the 2008 constitutional amendment, the domestic landscape has evolved, and some sectors have rallied against nature's rights.⁹⁴ In 2025, the government organized a national referendum to decide whether to hold a constitutional assembly.⁹⁵ Environmentalists feared that the current right-wing administration would eliminate nature's rights from the constitution due to mining and other extractive interests, which have at times been slowed down using nature's rights and free, prior, and informed consent protections.⁹⁶ The popular referendum ultimately rejected a new constitutional assembly.⁹⁷ Perhaps, opposition to nature's rights is unsurprising given Ecuador's mixed record on

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92. See Corte Constitucional del Ecuador [Constitutional Court of Ecuador], July 9, 2015, Sentencia 218-15-SEP-CC, <https://perma.cc/Y687-FJXX>; see also Antonio José Paz Cardona, *Ecuador's Indigenous Cofán Hail Court-ordered End to Mining on Their Land*, MONGABAY (Feb. 11, 2019), <https://perma.cc/3U4P-X2PM>. Judges have wrestled with interpreting nature's rights. See generally Alexandra Huneus, *The Three Faces of Non-Human Rights*, in OXFORD HANDBOOK ON COMPARATIVE HUMAN RIGHTS LAW (Neha Jain & Mila Versteeg eds., 2025) (discussing nature's rights cases in Ecuador, where judges struggled to recognize rights to "nature," an all-encompassing concept); Kauffman & Martin, *Can Rights of Nature Make Development More Sustainable?*, *supra* note 79 (discussing thirteen Ecuadorian cases, including institutional pathways and enforcement mechanisms); Gabriela Espinoza, *Ecuador – The Nature of the Rights of Nature*, in GLOBAL LEGAL PLURALISM AND RIGHTS OF NATURE (Daniel Bonilla Maldonado & Ralf Michaels eds., 2025) (discussing the development of Constitutional Court rulings solidifying the content of nature's rights).
 93. See BOYD, *supra* note 8, at 155–56. Boyd notes that although the Ecuadorian government amended criminal and environmental codes to include crimes against *Pacha Mama*, there were reports that former President Correa had circulated an internal memo warning judges not to undermine economic interests. *Id.* at 157.
 94. See, e.g., Selena Trujillo, *Daniel Noboa Insiste en Crear una Nueva Constitución*, LA PRENSA (Apr. 8, 2025), <https://perma.cc/KU53-X7ZP>; see also *Ecuador: Reducción Estatal, Vulneración de Derechos y Desprotección de la Naturaleza; los Costos Reales de los Préstamos del FMI y de la Mal Entendida Eficacia*, AMAZON FRONTLINES (July 25, 2025), <https://perma.cc/ND7B-C72Z> (summarizing recent executive orders, including the dissolution of the Ministry of Environment, Water, and Ecological Transition).
 95. See Andrés Martínez-Moscoso, *The People's Verdict: Why Did Ecuador's Constitutional Referendum Fail?*, CONSTITUTIONNET (Dec. 2, 2025), <https://perma.cc/MR8Z-KVRX>.
 96. Ana Cristina Alvarado, *Ecuador Enfrenta Consulta Popular Para Convocar Asamblea Constituyente que Preocupa a Expertos Ambientales*, MONGABAY (Nov. 1, 2025), <https://perma.cc/FQ3Y-VF3H>.
 97. *Resumen y Resultados del Referendum y Consulta Popular de Ecuador 2025*, CNN LATINOAMÉRICA (Nov. 17, 2025), <https://perma.cc/5GM2-S425>.

climate and environmental matters in recent years. An extractive model, fossil fuel exploration, and deforestation have characterized policymaking in the country, often at the expense of Indigenous peoples.⁹⁸ Nonetheless, a number of rights of nature cases continue to advance before the Constitutional Court.⁹⁹

B. United States

The United States' record on nature's rights is riddled with contradictions. There have been no cases where plaintiffs seeking to invoke or enforce nature's rights claims have resulted in favorable decisions for the plaintiffs.¹⁰⁰ Substantial obstacles such as vagueness, preemption, and potential sanctions have prevented rights of nature frameworks from being successful causes of action in litigation.¹⁰¹ In Colorado, for example, the state attorney general's office at one point threatened to sanction the attorney representing the Colorado River if he did not voluntarily withdraw the complaint alleging that the river had rights.¹⁰² Despite this landscape, environmental advocates have adopted nature's rights as a discursive tool to promote environmental protection and

98. See, e.g., Guillermo D. Olmo, *Por Qué Ecuador Sigue Explotando Petróleo en el Parque Yasuní un Año Después del Histórico Referendo en el que Se Votó a Favor de Prohibirlo*, BBC NEWS MUNDO (Sep. 26, 2024), <https://perma.cc/TG8J-JTJU> (explaining why oil extraction continues in the largest national park despite a referendum where 59% of voters voted against it); Cevallos, *supra* note 80 (describing the struggle of the Sarayaku people to protect their home against a long history of extractive industries, including through litigation before domestic and regional human rights courts); see also Diego Cazar Baquero, *Desafíos Ambientales de Ecuador en el 2023: Frenar la Minería Ilegal y Más Garantías Para los Defensores Ambientales*, MONGABAY (Jan. 11, 2023), <https://perma.cc/25ZM-BNUW> (discussing the lack of implementation of environmental laws). Tănăsescu notes that “[t]his is very ironic, especially if we consider that all of the legal documents surveyed in this chapter frame the rights of nature as intrinsically opposed to resource exploitation It remains the case, empirically, that both Ecuador and Bolivia have expanded their extractive industries considerably since passing rights of nature laws” (internal citations omitted). TĂNĂSESCU, *supra* note 3, at 66; BOYD, *supra* note 8, at 171–72 (discussing how the Bolivian experience around nature's rights has been characterized by “minor progress offset by major failures,” in part because of the creation of mining laws without adequate consultation of Indigenous communities and proposals to construct a major highway through a national park and Indigenous lands).

99. See *Harmony with Nature*, *supra* note 8, ¶ 42.

100. See Bookman, *supra* note 45, at 171.

101. See Warner & Lillquist, *supra* note 37, at 362; see Bookman, *supra* note 45, at 181.

102. Lindsay Fendt, *Colorado River 'Personhood' Case Pulled by Proponents*, ASPEN JOURNALISM (Dec. 5, 2017), <https://perma.cc/P2ZB-ZWC6>; see also FED. R. CIV. P. 11(b)–(c) (noting that frivolous claims are subject to sanctions).

raise awareness about the degradation or destruction of certain ecosystems.¹⁰³ Numerous local ordinances recognize nature as a subject of rights, including in Colorado, New York, California, Ohio, Pennsylvania, New Hampshire, New Mexico, Maryland, Virginia, and New Jersey.¹⁰⁴ Many of these localities have encompassed Indigenous territory such as those belonging to the Nez Perce tribe, the Menominee tribe, and the Yurok tribe, among others.¹⁰⁵ Ordinance proposals emerged after a 2004 Ninth Circuit decision, which observed that Congress and other legislative bodies *could* allow animals to have standing if they satisfied Article III requirements.¹⁰⁶ These ordinances usually have similar content, stating nature has the rights to “exist, flourish, and naturally evolve,” and are designed to be self-executing, (i.e., not requiring additional legislation to become operational or binding).¹⁰⁷ Although the few ordinances challenged in court have been ruled unenforceable or illegal,¹⁰⁸ and no federal or state law

103. Bookman, *supra* note 45, at 196 (referring to the “puzzling” persistence of nature’s rights discourse across social movements); Alexandra Huneeus, *The Legal Struggle for Rights of Nature in the United States*, 2022 WIS. L. REV. 133, 134 (2022) (discussing the “quixotic” persistence of non-human rights in the United States).

104. *See* Bookman, *supra* note 45, at 196; *see also Rights of Nature Law and Policy*, *supra* note 31. For a detailed case study of Pennsylvania and Colorado, *see* White, *supra* note 3, at 155–64; *see also Ecocentric Communities: Rights of Nature Toolkit*, EARTH L. CTR., <https://perma.cc/3W9N-M4TC>.

105. *Rights of Nature Law and Policy*, *supra* note 31. For a more detailed discussion of U.S. tribes and rights of nature, *see* Warner & Lillquist, *supra* note 37, at 362–84. For a critical approach to the idea of humans being “in harmony” with nature, *see* TĂNĂSESCU, *supra* note 3, at 57–59.

106. *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1175 (9th Cir. 2004) (“A suit brought by a plaintiff without Article III standing is not a ‘case or controversy,’ and an Article III federal court therefore lacks subject matter jurisdiction over the suit.”). The court observed: “It is obvious that an animal cannot function as a plaintiff in the same manner as a juridically competent human being. But we see no reason why Article III prevents Congress from authorizing a suit in the name of an animal, any more than it prevents suits brought in the name of artificial persons such as corporations, partnerships or trusts, and even ships, or of juridically incompetent persons such as infants, juveniles, and mental incompetents.” *Id.* at 1176. In the aftermath of the decision, “judges are not evaluating whether nature has standing but what rights legislative bodies have codified for nature and what remedies to order; not only to make nature ‘whole,’ but to apply the enactments of the legislative body.” Thompson, *supra* note 3, at 13.

107. Bookman, *supra* note 45, at 178.

108. Bradley Park, *Shaping Actionable Rights of Nature: Contemporary Rights of Nature Jurisprudence and the Role of Environmental Lawyers*, 49 J. LEGAL PROF. 59, 61–67 (2024) (discussing examples of municipal efforts to establish rights of nature and challenges in court); *see also* Kate Beale, *Rights for Nature: In PA’s Coal Region, a Radical Approach to Conservation Takes Root*, HUFFINGTON POST (Feb. 2, 2009), <https://perma.cc/87KF-UWLR>.

recognizes nature's rights,¹⁰⁹ this framework has persisted as a discursive and legal tool.¹¹⁰

C. Colombia

Colombia has been at the forefront of a “new type of constitutionalism for nature,”¹¹¹ where judicial decisions are leading to what some scholars have deemed a “rights revolution.”¹¹² Given the emergence of nature's rights jurisprudence across high and lower courts, Colombia is an important jurisdiction to survey. The 1991 Colombian Constitution recognized many of the demands of social movements seeking to assert a pluralist view of the Colombian state and protect the rights of historically marginalized groups, including women, Indigenous people, and Afro-descendant communities.¹¹³ However, the Colombian Constitution did not recognize nature's rights like in Ecuador, nor has it been amended to do so. Instead, the Constitution enshrined collective rights

109. *See, e.g.*, *Drewes Farms P'ship v. City of Toledo*, No. 3:19 CV 434, 2019 WL 5420587, at *3 (N.D. Ohio May 7, 2019) (citing to Justice Douglas's dissent in *Sierra Club v. Morton*, 405 U.S. 727, 741–42 (1972) and observing that “a district court[—]bound by Congress and higher courts[—]is not the appropriate body to take that leap”); *Pinkney v. Ohio Env't Prot. Agency*, 375 F. Supp. 305, 311 (N.D. Ohio 1974) (concluding “that plaintiffs have not alleged in their complaint facts which show a deprivation of protected rights of the nature”); *SWEPI, LP v. Mora Cnty.*, 81 F. Supp.3d 1075, 1212 (D.N.M. 2015) (invalidating ordinance that, among other things, had sought to amend the New Mexico constitution to recognize the rights of nature as enforceable). Other cases have found existing environmental law to preempt nature's rights. *See, e.g.*, *Order Granting Defs.' Mots. to Dismiss at 16, Wilde Cypress Branch v. Beachline S. Residents*, No. 2021-CA-003444-O (Fla. Cir. Ct. Mar. 24, 2022) (invalidating local charter for being preempted by the Florida Environmental Protection Act of 1971).

110. Karen Bradshaw, *Identifying Contemporary Rights of Nature in the United States*, 95 S. CAL. L. REV. 1439, 1441 (2022) (arguing that rights of nature are “widespread and can be found in many contemporary U.S. laws not conventionally understood as affording legal rights to natural objects”). The social movement behind rights of nature is not monolithic, nor does it “speak with one voice,” yet it has continued to use nature's rights as “tools and resources” in its broader strategies. Bookman, *supra* note 45, at 188–89.

111. Macpherson et al., *supra* note 48, at 539. Rights of nature have also been discussed as part of environmental constitutionalism, which can be both anthropocentric and non-anthropocentric in its orientation.

112. *Id.*

113. *See generally* JULIETA LEMAITRE, *EL DERECHO COMO CONJURO: FETICHISMO LEGAL, VIOLENCIA Y MOVIMIENTOS SOCIALES* (2009) (describing the diverse social movements surrounding the constitutional assembly).

and environmental protection¹¹⁴ and contains several provisions concerning sustainable development.¹¹⁵

Since 2016, Colombian courts have issued more than a dozen judicial decisions recognizing ecosystems and rivers as subjects of rights, signaling an emerging jurisprudence.¹¹⁶ In the landmark *Atrato* case, the Constitutional Court recognized the rights of the Atrato River, marking a jurisprudential shift that garnered significant international attention.¹¹⁷ Residents from the department of Chocó brought the suit, seeking to protect their rights to life, health, water, food, a healthy environment, culture, and territorial integrity from the impacts of illegal mining and mercury pollution in the region.¹¹⁸ The decision recognized that the river, its basin, and tributaries were entitled to protection.¹¹⁹ While the decision was noteworthy for recognizing ethnic communities' biocultural rights to manage their territory and resources according to their own cultural practices, it signaled another jurisprudential shift, seemingly adopting a biocentric approach to constitutional law by recognizing the river as a subject of rights.¹²⁰ The ruling

114. See Corte Constitucional [Constitutional Court], Sala Sexta de Revisión, Nov. 10, 2016, Sentencia T-622, §§ 5.3–5.10 (describing the higher interest of the environment in the so-called “Ecological Constitution”) (Colom.); OSCAR AMAYA NAVAS, *LA CONSTITUCIÓN ECOLÓGICA DE COLOMBIA: ANÁLISIS COMPARATIVO CON EL SISTEMA CONSTITUCIONAL LATINOAMERICANO* 149–279 (2022) (discussing the ecological features of the Constitution).

115. Sierra Camargo, *supra* note 46, at 226. The provisions contained seek to “(1) protect[] the environment in an integral manner, and (2) guarantee[] a model of sustainable development.” CONSTITUTION OF COLOMBIA, art. 79. Specifically, Article 79 establishes that “every individual has the right to enjoy a healthy environment. The law will guarantee the community’s participation in the decisions that may affect it. It is the duty of the State to protect the diversity and integrity of the environment, conserve areas of special ecological importance and promote education to achieve these goals.” *Id.*

116. Lyons, “*Nature*” and Territories as Victims, *supra* note 22, at 67 (noting that these rulings “directly clash” with an economic model based on extractive processes).

117. Sentencia T-622 (2016), *supra* note 114, at 167 (declaring the river as an entity subject of rights); see also Philipp Wesche, *Rights of Nature in Practice: A Case Study on the Impacts of the Colombian Atrato River Decision*, 33 J. ENV’T L. 531, 533 (2021). For an in-depth discussion of this emergence of this jurisprudence in Colombia, see generally Camila Bustos & Whitney Richardson, *Nature’s Rights in Colombia*, in *EARTH LAW: A PRACTITIONER’S GUIDE* (Tony Zelle & Herman Greene eds.) (2020). Although jurisprudence of the Constitutional Court had previously referred to nature as a “subject of legal rights,” the Atrato decision was the first time a designated ecosystem was recognized as a legal subject of rights in Colombia. Paola Villavicencio Calzadilla, *Case Note: A Paradigm Shift in Courts’ View on Nature: The Atrato River and Amazon Basin Cases in Colombia*, 15 L., ENV’T & DEV. J. 51, 51–56 (2019). Tănăsescu notes that the Court built off the precedent of the Whanganui in New Zealand, but lost some of the nuance around the distinction between “legal representatives” and “guardians.” TĂNĂSESCU, *supra* note 3, at 103.

118. Sentencia T-622 (2016), *supra* note 114, at 1.

119. Camargo, *supra* note 46, at 225.

120. The opinion embraces both “biocentric” and “ecocentric” theoretical frameworks when interpreting the Constitution, while also recognizing biocultural rights. Sentencia T-622 (2016), *supra* note 114, at 33–34.

underscored the Atrato's importance to the community, which viewed the river as a spiritual entity or an ancestor rather than merely a natural resource.¹²¹ The Court issued a set of orders to clean up the riverine ecosystem, tackle illegal mining in the region, conduct toxicological and epidemiological studies, and oversee the implementation of the decision. To ensure the defendants' compliance with the Court's orders, the decision directed the creation of two specific bodies to oversee the implementation: (1) a commission of guardians (Guardians of the River) comprised of the Ministry of Environment, community members (including Indigenous people), and non-governmental organizations, as well as (2) an expert panel.¹²² The implementation of the decision, however, has been limited.¹²³

Since the *Atrato* decision, several other decisions have followed in what some commentators have called a "promising ripple effect."¹²⁴ In 2018, the Colombian Supreme Court built on the *Atrato* decision by recognizing the Amazon as a subject of rights.¹²⁵ A group of youth plaintiffs from across Colombia sued the national government for its failure to stop deforestation in the Amazon Rainforest and meet prior pledges to reduce deforestation to net zero by 2020. The plaintiffs alleged that the government's inaction on climate change and high deforestation rates in the country violated their constitutional rights to life, health, water, food, and a healthy environment.¹²⁶ The Supreme Court agreed

121. Macpherson et al., *supra* note 48, at 522. The Court did not seem to be concerned about a conflict between the potentially competing biocentric and cultural interests of the river, opting to emphasize "biocultural" rights instead. Sentencia T-622 (2016), *supra* note 114, at 145.

122. Some scholars observe that while there have not been substantial changes since the decision, the process itself has facilitated community engagement. Wesche, *supra* note 117, at 546.

123. Huneeus, *The Legal Struggle for Rights of Nature in the United States*, *supra* note 103, at 526; see also Julián Suárez Bohórquez, *Performativity in the Atrato River Rights of Nature Judgement Orders*, J. INTEGRATED GLOB. STEM 2026 1 (2026).

124. See, e.g., Luisa Gómez-Betancur, *The Rights of Nature in the Colombian Amazon: Examining Challenges and Opportunities in a Transitional Justice Setting*, 25 UCLA J. INT'L L. & FOR. AFF. 41, 74 (2020); BOYD, *supra* note 8 (arguing nature's rights have the potential to "save the world"); see generally César Rodríguez-Garavito, *More-Than-Human Rights: Law, Science, and Storytelling Beyond Anthropocentrism*, in MORE THAN HUMAN RIGHTS: AN ECOLOGY OF LAW, THOUGHT AND NARRATIVE FOR EARTHLY FLOURISHING, 36 (2024) (arguing that more-than-human rights initiatives are promising).

125. Corte Suprema de Justicia [Supreme Court], Apr. 5, 2018, Sentencia 4360-2018 (Colom.). As a former researcher at the Center for the Study of Law, Justice, and Society (Dejusticia) in Colombia, the author was one of the researchers and plaintiffs in the case. For a summary of the case, see Camila Bustos, Valentina Rozo-Ángel & Gabriela Eslava-Bejarano, *Protecting the Rights of Future Generations Through Climate Litigation: Lessons from the Struggle Against Deforestation in the Colombian Amazon*, in STANDING FOR A SUSTAINABLE WORLD (Claude Henry, Johan Rockström & Nicholas Stern eds.) (2020).

126. See Complaint at 2, available at <https://perma.cc/37NS-TLQG>. At the time the lawsuit was filed, 36% of Colombia's greenhouse gas emissions came from deforestation and land use changes. See Institute of Hydrology, Meteorology and Environmental Studies (IDEAM) and United Nations Development Programme, *National and Departmental Greenhouse Gas Inventory – Colombia: Third National Communication to the United Nations*

that the defendants were violating the plaintiffs' constitutional rights and ordered the defendants to take swift action to formulate and implement action plans to address deforestation in the Amazon within less than a year.¹²⁷ The Court ordered the government to create and implement an action plan to reduce deforestation, create an intergenerational pact between different stakeholders, and integrate climate change in local land use plans.¹²⁸ The Court recognized the Amazon basin as an "entity [that is] a subject of rights," concluding the ecosystem is entitled to "protection, conservation, maintenance, and restoration."¹²⁹ The court built on the *Atrato* precedent and explicitly embraced a move away from an anthropocentric and utilitarian perspective by describing nature as its own autonomous being. Interestingly, the plaintiffs had not requested this specific relief from the Court.¹³⁰

The implementation of the decision has been mixed at best.¹³¹ It is far from clear that recognizing the Amazon's rights has helped reduce deforestation rates, which have seen a slight reduction but may be increasing.¹³² The decision has

Convention on Climate Change (UNFCCC) (2016), <https://perma.cc/A8MT-8SXX> at 17. The IDEAM produces early warnings on deforestation every three months, identifying regional deforestation hotspots. See IDEAM *Boletines de Alertas Tempranas de Deforestación*, <https://perma.cc/37NS-TLGQ>.

127. Corte Suprema de Justicia [Supreme Court], Apr. 5, 2018, Sentencia 4360-2018 (Colom.).
128. For a more detailed analysis of the decision and the mixed implementation record, see generally Camila Bustos, *Implementing Climate Remedies*, VANDERBILT L. REV. (forthcoming, 2026); Diana Guzmán, *Introducción in SENTENCIA DE LA AMAZONIA 7 AÑOS DESPUÉS. DIÁLOGOS DE SU IMPLEMENTACIÓN MÁS ALLÁ DE LA PERSPECTIVA INSTITUCIONAL 9* (DEJUSTICIA) (forthcoming).
129. Opinion at 45, available at <https://perma.cc/FA3V-RKA4> (recognizing the Amazon as a "subject of rights" and issuing orders to protect, conserve, maintain, and restore the ecosystem). An unofficial translation of some of the excerpts in the opinion can be found at Sabin Center for Climate Change, *Future Generations v. Ministry of the Environment and Others "Demanda Generaciones Futuras v. Minambiente,"* <https://perma.cc/2UPY-J427>.
130. See Complaint at 4–5, available at <https://perma.cc/2UPY-J427>. Notably, the complaint invoked the precautionary principle, intergenerational equity, and the solidarity principle to argue that the government should protect the plaintiffs' rights. *Id.* at 4.
131. See Dejusticia, *The Colombian Government has Failed to Fulfill the Supreme Court's Landmark Order to Protect the Amazon* (2019), <https://perma.cc/2686-6KTX>.
132. See Srinivas Mazumdar, *Colombia Deforestation Surges 43%, Amazon Region Worst Hit*, DW (Aug. 1, 2025), <https://perma.cc/3PY5-UJAM>; Pilar Puentes, *Colombia: Disminuyó la Deforestación en el 2023, Pero Va en Aumento en el 2024*, MONGABAY (Apr. 12, 2024) <https://perma.cc/V9LM-E9XJ> (citing government figures finding a 40% increase in deforestation during the first months of 2024 because of illegal armed groups and El Niño phenomenon); see also Global Forest Review, *Tropical Forest Loss Drops Steeply in Brazil and Colombia, but High Rates Persist Overall*, WORLD RES. INST. (Apr. 4, 2024), <https://perma.cc/865C-ZY3J> (finding that "[b]etween 2022 and 2023, Brazil and Colombia experienced a remarkable 36% and 49% decrease in primary forest loss, respectively. Yet despite these dramatic reductions, the rate of tropical primary forest loss in 2023 remained stubbornly consistent with recent years").

been critiqued through a participation-focused lens,¹³³ since it has not meaningfully engaged all relevant communities. For example, the decision failed to mention Indigenous people and land tenure issues, which disregards not only Indigenous rights but the practical reality that Indigenous lands cover over half the Amazon Rainforest.¹³⁴ *Campesinos*, or small-scale farmers, have also been mostly left out of the implementation process.¹³⁵

Since the *Atrato* and *Amazon* decisions, more than a dozen judicial decisions have built on this precedent to recognize the rights of nature and of specific ecosystems or rivers.¹³⁶

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133. See Bustos et al., *supra* note 125, at 168 (“On several occasions, the Colombian government and the Attorney General’s Office have invoked the ruling in order to crack down on small peasants, as opposed to large landowners, cattle ranchers, large-scale loggers and the other powerful actors who are the main drivers of deforestation. Although the government has failed to meaningfully engage with plaintiffs, it has neglected even more local communities in the Amazon region, including Indigenous peoples’ communities and organizations, who bear the direct impact of deforestation. This is a particularly salient omission in a country that is undergoing a challenging post-conflict process that, albeit putting an end to a five-decade-old armed conflict, has also created new vulnerabilities for the Amazon’s inhabitants and ecosystem[.]”). For a more detailed analysis of the role of environmental litigation in the context of armed conflict, see generally Gómez-Betancur, *supra* note 124. Another relevant consideration in the Colombian context is the increase in prior consultation processes in the last few decades, where prior to the development of infrastructure projects (e.g., dams or hydroelectric operations) or extractive processes (e.g., fossil fuel extraction or mining), ethnic communities must be consulted. See generally César Rodríguez-Garavito & Carlos Andres Baquero Díaz, *The Right to Free, Prior, and Informed Consultation in Colombia: Advances and Setbacks*, <https://perma.cc/M5KX-278L> (describing the development of the right to free, prior, and informed consultation in Colombia).
134. Macpherson et al., *supra* note 48, at 536 (“The *Amazon* case also failed to mention Indigenous land tenure, despite the fact that Indigenous territories (*resguardos*) cover 54.18% of the Colombian Amazon extension; nor did it refer to the idea of biocultural rights or appoint guardians.”).
135. See *infra* III(C)(1); see also Erin Daly, *The Ecuadorian Exemplar: The First Ever Vindications of Constitutional Rights of Nature*, 21 REV. EUR. COMP. & INT’L ENV’T 63 (2012) (noting that in Ecuador, nature’s rights have been used to evict small-scale artisanal miners); Lyons, *Rights of the Amazon in Cosmopolitical Worlds*, *supra* note 21, at 68; TĂNĂȘESCU, *supra* note 3, at 119; Lyons, *Rights of the Amazon in Cosmopolitical Worlds*, *supra* note 21, at 64 (summarizing how repressive conservation strategies have failed to offer viable economic alternatives to communities dependent on deforestation).
136. The list is based on the compilation available at *Rights of Nature Law and Policy*, *supra* note 31. The cases include:
1. The Atrato River Basin (2016, Constitutional Court).
 2. The Colombian Amazon (2018, Supreme Court).
 3. Páramo de Pisba (2018, Administrative Court of Boyacá).
 4. The Plata River (2019, Colombian Municipal Civil Court of La Plata).
 5. Otún River (2019, Fourth Court of Enforcement of Sentences and Security Measures of Pereira).
 6. The Coello, Combeima, and Cocora rivers (2019, Administrative Tribunal Court of Tolima).
 7. The Cauca River Basin (2019, Superior Court of Medellín).
 8. The Pance River Basin (2019, Third Court of Enforcement of Sentences and Security Measures of Cali).

Unlike cases in Ecuador, the Colombian wave of judicial decisions did not draw on specific constitutional provisions or statutes expressly recognizing nature's rights. Instead, judges have interpreted constitutional principles and integrated evolving social and scientific understandings to push the boundaries of law and recognize the rights of nature.¹³⁷ Under the civil law system in Colombia, judicial decisions are not binding precedent in the way they are in common law jurisdictions, yet they remain authoritative guidance for lower courts.¹³⁸ Nonetheless, these decisions have been in dialogue with each other as they move towards the recognition of ecosystems as rights-bearing subjects.¹³⁹ For example, the *Atrato* decision has been deemed the foundation for subsequent decisions recognizing the rights of other rivers.¹⁴⁰ Interestingly, the *Atrato*

9. The Quindío River (2019, Administrative Court of Quindío).

10. Magdalena River (2019, First Criminal Court of Neiva).

11. Lake Tota (2020, First Civil Court of Sogamoso).

12. Natural National Park of Complejo de Páramos Las Hermosas (2020, Superior Tribunal of Ibagué).

13. Isla de Salamanca National Park (2020, Supreme Court of Justice).

14. Fortalecillas River (2021, First Criminal Circuit Court with Knowledge Functions of Neiva).

15. Páramo de Santurbán (2025, Santander Administrative Tribunal).

For a discussion of the *Pisba* case, see Camargo, *supra* note 46, at 230. The decision recognizes that the *Pisba páramo* is a subject of rights and ordered the protection of this ecosystem and the rights of communities affected by its degradation. The court also explained that the recognition of the *páramo* granted a type of “self-executing” status, meaning no additional laws need to be adopted to secure its legal protection.

In the *Cauca* case, the court also established a governance structure similar to the guardian structure in the *Atrato* case, comprised of government officials, community representatives, and an expert panel. In 2024, the Colombian Senate approved a bill to declare the River Magdalena a subject of rights. Proyecto de Ley No. 038 de 2023 (Colom.); Jose V. Zapata, Maria Camila Aponte & María Paulina Rendón, *Aprobado el Proyecto de Ley que Declara el Río Magdalena en Colombia como Sujeto de Derechos*, HOLLAND & KNIGHT (Apr. 10, 2024), <https://perma.cc/HL8Z-VS4Q>; see also Daniela Bueno, *Santurbán es sujeto de derechos: hay aplausos, pero también disgustos*, EL ESPECTADOR (July 31, 2025), <https://perma.cc/CK4G-MV9L>.

137. Wesche, *supra* note 117, at 538. Professor Luis Felipe Guzmán Jiménez argues that the *Atrato* ruling fails to engage with the Constitutional Court's jurisprudence regarding a right to a healthy environment. Luis Felipe Guzmán Jiménez, *Análisis de Efectividad de la Sentencia T-622/16 ¿Sentencia Estructural / Dialógica?*, 16 REVISTA DEL INSTITUTO DE CIENCIAS JURÍDICAS DE PUEBLA, MÉXICO 213, 216 (2022).

138. This is evident in lower court rulings following the *Atrato* case, which some have described as a form of “soft-precedent.” See, e.g., *Litigation: Colombia*, GLOBAL ARBITRATION REVIEW (Apr. 14, 2025), <https://perma.cc/Z36Y-L2BX>.

139. Villavicencio Calzadilla, *supra* note 117.

140. For example, the 2018 *Páramo de Pisba* decision mentioned earlier cites to the *Atrato* and the *Amazon* decisions. Tribunal Administrativo de Boyacá [Administrative Court of Boyacá], Aug. 9, 2018, Expediente: 15238 3333 002 2018 00016, 34 (Colom.), <https://perma.cc/99UN-HF9W>.

decision referred numerous times to New Zealand's experience in recognizing the rights of the Whanganui River,¹⁴¹ evidencing the influence of nature's rights elsewhere on the Colombian development.¹⁴²

In addition to judicial developments granting legal personhood to rivers, páramos,¹⁴³ and parks,¹⁴⁴ the department of Nariño has adopted a decree recognizing nature's rights,¹⁴⁵ and legislators have introduced congressional bills to modify Article 79 of the Colombian Constitution to make nature the subject of rights.¹⁴⁶ In 2024, Congress adopted a law recognizing the rights of the Ranchería River.¹⁴⁷

D. Peru

The 1993 Peruvian Constitution, which followed the coup d'état led by Alberto Fujimori in 1992, does not recognize nature's rights, but it has provisions recognizing the State's responsibility to "promote the sustainable use of its natural resources"¹⁴⁸ and "promote the conservation of biological diversity and

141. See *supra* note 11.

142. Sentencia T-622 (2016), *supra* note 114, at 145, n. 315.

143. Páramos are high-altitude ecosystems, primarily in the Andes Mountains in South America. See Nature and Culture International, *Páramo Grasslands*, <https://perma.cc/6QGB-AY4B>.

144. There has been a development of animal law as well, with the judicial recognition of bees and the use of habeas corpus to protect a bear in captivity as a subject of rights. See Juzgado Primero Penal Del Circuito De Cartagena [The First Criminal Court of the Circuit of Cartagena], Nov. 9, 2018, Radicado: 13001-31-04-001-2018-00077-00 (Colom.), <https://perma.cc/9C29-T5F9>; Corte Suprema de Justicia [Supreme Court], July 26, 2017, Radicación No. 17001-22-13-000-2017-00468-02 (Colom.), <https://perma.cc/5ZWH-LFQG>. In addition, in the context of the armed conflict, the Special Jurisdiction for Peace (JEP) has recognized the Kata Su (vast territory of the Awá people) as a subject of rights and a victim of the armed conflict. Jurisdicción Especial Para la Paz [JEP] [Special Jurisdiction for Peace], Nov. 9, 2019, Auto SRVBIT 079/19, Case No. 002-079 (Colom.), <https://perma.cc/QL3J-3AM6>; see also Alexandra Huneeus, *Territory as a Victim of Colombia's War*, EJIL: TALK (May 7, 2020), <https://perma.cc/P4HY-WPZA>. The significance of the JEP is discussed *infra* Part IV(C).

145. Gobernación de Nariño, *Nariño, Primer Departamento que Reconoce los Derechos de la Naturaleza*, YouTube (Aug. 26, 2019), <https://perma.cc/3K67-E6Q8>; El Gobernador del Departamento de Nariño, "Por medio del cual se promueven los derechos de la naturaleza, la protección de los ecosistemas estratégicos del Departamento y se dictan otras disposiciones" [Decree No. 348], (2019), <https://perma.cc/TU2M-Q3CF>.

146. Juan Carlos Lozada Vargas, *Proyecto de Modificación del Artículo 79 de la Constitución* (2019), <https://perma.cc/2D64-7VUC>.

147. Ley No. 2415 de 2024 (Colom.); Jose V. Zapata, Maria Camila Aponte & María Paulina Rendón, *Congreso de Colombia Expide Ley que Declara al Río Ranchería como Sujeto de Derechos*, HOLLAND & KNIGHT (Aug. 23, 2024), <https://perma.cc/8ZVY-QFYW>; see also *infra* Part IV(A).

148. CONSTITUTION OF PERU, Art. 67.

protected natural areas.”¹⁴⁹ Article 2(22) also recognizes the right to a “balanced and appropriate environment.”¹⁵⁰

Following some of the regional developments (including in Colombian jurisprudence), Peru has slowly begun to engage with nature’s rights frameworks. As in other jurisdictions, a dialogue among judges, legislators, and advocates has emerged, particularly regarding the rights of water bodies that are of special significance to Indigenous communities. The seminal case in Peru, the *Marañón River*,¹⁵¹ built on previous efforts to advance nature’s rights, including through litigation, local ordinances, and legislative proposals. For instance, a 2019 lawsuit (which is still pending) before the Superior Court of Lima requested that the court recognize “the Peruvian Amazon[] . . . as an entity subject to the rights of protection, conservation, maintenance, and restoration.”¹⁵² In the same year, three separate municipalities adopted ordinances recognizing the rights of rivers.¹⁵³ Since then, five legislative proposals recognizing nature’s rights have been proposed before Congress.¹⁵⁴ As in other jurisdictions, environmentalists, Indigenous leaders, and other social movements have leveraged nature’s rights as part of a broader campaign to integrate biocentric approaches into existing legal frameworks.¹⁵⁵ Generally, these initiatives have replicated the formulation of the *Atrato* case and at times included the right to “restoration.”¹⁵⁶

In 2021, a group of Indigenous Kukama women filed a lawsuit to protect the Marañón River,¹⁵⁷ which is heavily polluted by nearby mining and oil spills.¹⁵⁸ The Kukama people rely on the river as a source of drinking water as well as for

149. CONSTITUTION OF PERU, Art. 68.

150. CONSTITUTION OF PERU, Art. 2(22) (recognizing the right to a “balanced and appropriate environment for the development of his life.”).

151. Camila Bustos et al., *Environmental Law in Colombia and Peru*, in EARTH LAW: A PRACTITIONER’S GUIDE 20 (Tony Zelle & Herman Greene eds., 2026).

152. Corte Superior de Justicia de Lima [CSJL] [Superior Court of Justice of Lima] 10/12/2019, “*Alvarez et al. c. Peru*”, Complaint at 6. This language clearly mirrors the language discussed in Sentencia T-622 (2016), *supra* note 114, at 5 and Sentencia 4360-2018 (Colom.), *supra* note 127, at 45.

153. Bustos et al., *Colombia and Peru*, *supra* note 151, at 21.

154. *Id.* Some of these initiatives sought to amend the Constitution, while others sought the protection of specific rivers or ecosystems.

155. *Id.*

156. Lyons, *Rights of the Amazon in Cosmopolitical Worlds*, *supra* note 21, at 60 (summarizing nature’s rights cases recognizing entities as subject to rights “for protection, conservation, maintenance, and restoration by the state”).

In late 2025, an ordinance in the municipalities of Satipo and Nauta recognized the rights of stingless bees from the Amazon. Damien Gayle, *Stingless Bees from the Amazon Granted Legal Rights in World First*, THE GUARDIAN (Dec. 29, 2025), <https://perma.cc/YU3W-V8AY>.

157. For an overview of the case, see *Peru Court Case: Rights of the Marañón River*, ECO JURISPRUDENCE MONITOR, <https://perma.cc/F4FP-B2DZ>.

158. Nell Lewis, *This 1,000-Mile River Suffered Decades of Oil Spills. Now It’s a Legal Person, Things Could Change*, CNN (Apr. 21, 2025), <https://perma.cc/5TEH-TFGB>.

food, transportation, and recreation.¹⁵⁹ The river also holds special significance in the Kukama cosmovision.¹⁶⁰ The plaintiffs alleged that the river's pollution violated their constitutional rights and sought recognition of the Marañón River and its tributaries as legal subjects, among other remedies. In the 2024 *Marañón* decision, the Mixed Court of Nauta recognized the river as a rights-bearing subject.¹⁶¹ The court adopted a slightly modified formulation of the *Atrato* and *Amazon* cases, recognizing the river's rights to protection, preservation, conservation, restoration, and regeneration. It also assigned Indigenous organizations and governmental entities as the river's guardians.¹⁶² While recognizing that the Marañón River enjoys substantive rights, the Mixed Court clarified that the Marañón River is not a "subject of law," which would imply that the river also has legal duties.¹⁶³ This decision marks a departure from many Colombian courts, which have recognized natural entities as autonomous.¹⁶⁴ In the aftermath of the case, the city of Loreto declared the Marañón River a subject of rights.¹⁶⁵ Nature's rights proponents have also introduced several other legislative proposals at the national level and local ordinances targeting water bodies in Peru, such as Lake Titicaca and Lake Moronacocha.¹⁶⁶

E. Inter-American System

The Inter-American System, composed of the Inter-American Commission on Human Rights ("the Commission") and the Inter-American Court of Human Rights ("the Court" or "IACtHR")—is the regional human rights system in the Americas.¹⁶⁷ Although the United States, Canada, and some Caribbean countries have not accepted the jurisdiction of the IACtHR,¹⁶⁸ Ecuador, Colombia, Peru, and many other countries in the region are bound by the Court's decisions.¹⁶⁹

159. Carla Ruas, *Indigenous Efforts to Save Peru's Marañón River Could Spell Trouble for Big Oil*, MONGABAY (Apr. 17, 2024), <https://perma.cc/WWR4-VU5G>.

160. See, e.g., Marañón River Complaint at 24 (2024) (describing the relationship between the indigenous groups and the river) (Peru), <https://perma.cc/6QT4-QF85>.

161. Corte Superior de Justicia Loreto, Juzgado Mixto de Nauta [Mixed Court], March 8, 2024, Sentencia Resolución No. 14 (Peru).

162. *Id.*, Opinion at 3.3.

163. Bustos et al., *Colombia and Peru*, *supra* note 151, at 25.

164. Most of these decisions use the formulation "*sujeto de derechos*," or subject of rights, although they mostly focus on the entity's rights to be protected and restored. See *supra* Part II(C).

165. U.N. Doc. A/79/253, ¶ 49 (July 29, 2024).

166. Bustos et al., *Colombia and Peru*, *supra* note 151, at 23.

167. The American Convention on Human Rights is a human rights treaty adopted by many countries in the region, which seeks "to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man." American Convention on Human Rights pmbl., Nov. 22, 1969, 1144 U.N.T.S. 123.

168. The United States has never ratified the American Convention. See *id.* at n.1.

169. *Id.* (Colombia, Ecuador, Honduras, Paraguay, Argentina, Brazil, Mexico, Chile, Uruguay, Bolivia, Guatemala, Nicaragua, Peru, Venezuela, Costa Rica).

In recent years, the IACtHR has issued a number of rulings recognizing both the right to a healthy environment and nature's rights.¹⁷⁰

In its 2025 Advisory Opinion on climate change, the IACtHR outlined the obligations of member states in the context of climate change. Of particular interest to nature's rights advocates, the Court cited numerous United Nations resolutions on the emergence of Earth case law globally,¹⁷¹ as well as judicial decisions and laws across several countries in the Americas.¹⁷² The Court also explained how nature's rights approaches are compatible with existing obligations under international environmental law.¹⁷³ The Court stated:

Recognition of Nature as a subject of rights does not introduce content that is alien to the Inter-American *corpus iuris* but rather represents a contemporary expression of the principle of the interdependence between human rights and the environment [T]he Court underscores that States must not only refrain from acting in a way that causes significant environmental damage, but have the positive obligation to adopt measures to guarantee the protection, restoration and regeneration of ecosystems.¹⁷⁴

The Court observed that nature's rights aligned with Inter-American case law, recognizing the "special relationship that unites Indigenous and tribal peoples with their territories."¹⁷⁵ The decision cited a prior advisory opinion on the environment and human rights (Advisory Opinion 23/17),¹⁷⁶ which elaborated on procedural and substantive components of the right to a healthy environment.¹⁷⁷ The Court stated that the right to a healthy environment

170. The Environment and Human Rights, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶ 57 (Nov. 15, 2017) [hereinafter Advisory Opinion OC-23/17]; Case of the Rama and Kriol Peoples, and the Black Creole Indigenous Community of Bluefields et al. v. Nicaragua, Merits, Reparations and Costs, Judgment of April 1, 2024. Series C No. 522, ¶ 406.

171. Advisory Opinion OC-32/25, *supra* note 1, at n. 529; G.A. Res. 77/169 U.N. Doc. A/RES/77/169 (Dec. 28, 2022); G.A., Res. 79/210, U.N. Doc. A/RES/79/210 (Dec. 23, 2024); U.N. Doc. A/79/253 (July 29, 2024). For a definition of "Earth law," see *supra* note 50.

172. Advisory Opinion OC-32/25, *supra* note 1, at nn. 502-504 (discussing examples from Germany, France, India, Colombia, Brazil, Bolivia, Peru, and Ecuador, among others).

173. *Id.* ¶ 282.

174. *Id.* ¶¶ 282-83.

175. *Id.* n. 519. See generally Kristen A. Carpenter et al., *In Defense of Property*, 118 YALE L.J. 1022 (2009) (arguing that such indigenous cultural properties "are integral to indigenous group identity or peoplehood, and deserve particular legal protection.").

176. Advisory Opinion OC-23/17, *supra* note 170; see also MARIO G. AGUILERA, ENVIRONMENTAL HUMAN RIGHTS – NEW THINKING FROM LATIN AMERICA AND THE CARIBBEAN 93-116 (2023).

177. Advisory Opinion OC-23/17, *supra* note 170, ¶ 64.

“constitutes a universal value,” that it “is a fundamental right for the existence of humankind,” and that

as an autonomous right . . . [it] protects the components of the environment, such as forests, rivers and seas, as legal interests in themselves, even in the absence of the certainty or evidence of a risk to individuals. This means that it protects nature and the environment, not only because of the benefits they provide to humanity . . . but because of their importance to the other living organisms with which we share the planet.¹⁷⁸

Furthermore, in the 2020 case of *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, the IACtHR recognized the rights of nature as an implicit component of the human right to a healthy environment.¹⁷⁹ Similarly, in the 2023 case of *Inhabitants of La Oroya v. Peru*, the Court observed that the right to a healthy environment “protects the components of the environment . . . as legal interests in themselves.”¹⁸⁰

Overall, the Court’s recent jurisprudence has recognized the emergence of nature’s rights approaches across the Americas and has signaled that future cases before the Court will continue to offer guidance on the relationship between the right to a healthy environment and nature’s rights.¹⁸¹ Rights of nature advocates may argue that the advisory opinion construes nature’s rights as implicitly guaranteed by a right to a healthy environment, consolidating nature’s rights within the Inter-American system. While the exact contours are yet to be determined, the Court’s opinion clearly articulates the positive obligation of states to adopt measures to guarantee the protection, restoration, and regeneration of ecosystems.

178. *Id.* ¶ 62.

179. *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association vs. Argentina*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 400, ¶ 203 (Feb. 6, 2020) (citing Advisory Opinion OC-23/17); *see also* Article XIX, American Declaration on the Rights of Indigenous Peoples (referring to the “[r]ight to protection of a healthy environment”); *see also* Committee on Economic, Social and Cultural Rights, General Comment 21, Right of Everyone to Take Part in Cultural Life (art. 15, para. 1(a), of the Covenant), ¶ 36 (“Indigenous peoples’ cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected[.]”). For a more detailed discussion of environment, human rights, and Indigenous people in the Inter-American system, *see* Aguilera, *supra* note 176, at 29–58.

180. *Case of the Inhabitants of La Oroya v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶¶ 28, 118, 153, 178 (Nov. 27, 2023) (citing Advisory Opinion OC-23/17).

181. *But see infra* IV(B) for questions raised by the 2025 advisory opinion.

III. DOCTRINAL AND POLICY CHALLENGES

This Part discusses several definitional, doctrinal, and policy challenges that have emerged in the aftermath of nature's rights legislative initiatives and jurisprudential developments. I have tried to offer a taxonomy of these obstacles, but I should note that some are intertwined and that, therefore, there will be some overlap across these categories. Drawing from examples in the case studies discussed above, I argue that while judicial reliance on nature's rights as a legal theory offers a seemingly novel and powerful framework, the absence of clear operationalization and implementation guidelines can obscure legal analysis in judicial decision-making, and by extension, government obligations to specific ecosystems and communities. The lack of doctrinal clarity regarding nature's rights raises significant concerns, whereby the fragmentation of jurisprudential development can undermine the potential of nature's rights to effect the change proponents hope for. Paradoxically, some decisions have left out Indigenous communities altogether, instrumentalized Indigenous philosophy, or undermined Indigenous rights in the implementation stage.

The expansion of legal frameworks recognizing nature's rights—whether by recognizing natural entities as subjects of rights or granting them legal personhood—has not always led to stronger environmental governance or better outcomes for communities.¹⁸² The momentum behind this emerging jurisprudence and, at times, the “legal fetishism”¹⁸³ that has permeated judicial culture in some jurisdictions necessitates a careful look at the development of nature's rights frameworks. Ultimately, my proposal seeks to develop a more nuanced approach to how legal strategies involving nature's rights are understood, crafted, and implemented, hopefully contributing to stronger environmental and social governance. Future initiatives that seek to protect vital ecosystems should consider the limitations of nature's rights and contemplate diverse ways to overcome what critics have deemed an ornamental, overtly vague, and anti-democratic phenomenon.

182. See, e.g., discussion of *Amazon* or *Atrato* cases *supra* Part II(C) cf. César Rodríguez-Garavito & Melina De Bona, *Are Rights of Nature Working?: The Impact of the Los Cedros Ruling in Ecuador*, VERFASSUNGSBLOG (Aug. 8, 2024), <https://perma.cc/998M-3KJ6> (describing that mining in Los Cedros stopped a month after the ruling, but there has been mixed compliance with other orders).

183. Julieta Lemaitre, *Legal Fetishism: Law, Violence, and Social Movements in Colombia*, 77 REV. JUR. U. P. R. 331 (2008) (describing the theory of legal fetishism as “desiring and enjoying the law not as a means to an end, but rather as an end in itself”); see also Dirk Hanschel, Annette Mehlhorn & Jenny García Ruales, *Introduction – How Magic are Rights of Nature?*, 15 SORTUZ: OÑATI J. OF EMERGENT SOCIO-LEGAL STUD. 313, 316 (2025) (warning against treating statutory enactments as sufficient to alter reality without addressing political economy).

A. Definitional Challenges

There are important conceptual questions surrounding the definition of nature's rights that remain open and unresolved.¹⁸⁴ For example, when we discuss nature's rights, what do we mean by "nature"?¹⁸⁵ Most legislative, executive, and judicial pronouncements have kept the concept somewhat vague, except in the cases of specific ecosystems, such as a particular water body or forest.¹⁸⁶ I focus primarily on nature's rights frameworks as those seeking to elevate the rights of natural entities, such as rivers, for their own intrinsic value.

While there are related questions on the purpose and origins of nature's rights that this Article cannot comprehensively address, these questions are essential to understand this phenomenon, its persistence, and its impacts on the law. Many have welcomed the recognition of nature's rights because of its apparent ecocentric approach, which centers nature rather than humans.¹⁸⁷ Indeed, the emerging jurisprudence calls for a different relationship with the natural world, one that radically differs from the current model.¹⁸⁸ But is the rise of nature's rights approaches in Western legal systems a truly ecocentric approach, given the conceptualization of "rights" as an anthropocentric endeavor,

184. Guim & Livermore, *supra* note 44, at 1381 (discussing the definitional problems that arise in the context of nature's rights).

185. See *supra* note 3 (on Berry and others).

186. For the purpose of this Article, I exclude animal law from my analysis, given the distinct development of the field and the differences between sentient and non-sentient beings. I limit the scope of this article to rights of nature encompassing primarily rivers, forests, and ecosystems. However, animal rights can be seen as part of nature's rights frameworks and further work is needed theorizing these related, yet separate fields. See Kristen Stilt, *Rights of Nature, Rights of Animals*, 134 HARV. L. REV. F. 276, 278 (2021); Montes Franceschini & Stilt, *Naturalized Rights of Animals, Animalized Rights of Nature*, *supra* note 27, at 62 (explaining how rights of nature approaches can benefit from animal rights theory); see generally Karen Bradshaw, *Humans as Animals—Pluralizing Humans*, 2021 UTAH L. REV. 185 (2021); Cass R. Sunstein, *Standing for Animals (With Notes on Animal Rights)*, 47 UCLA L. REV. 1333 (2000); BOYD, *THE RIGHTS OF NATURE*, *supra* note 8, at 27–72.

187. The law has been deemed by many an anthropocentric project, not only in its origins but in its purpose and application. See, e.g., Tom Lininger, *Green Ethics for Lawyers*, 57 B.C. L. REV. 61, 71 (2016) (observing that professional responsibility rules in the U.S. have largely "remained anthropocentric since their passage in 1983"). However, some argue that rights of nature are not anthropocentric just because they are enshrined in legal frameworks. See Houck, *supra* note 62, at 31–33. Tănăsescu argues that Anglo-American environmental ethics, and particularly "ecocentrism," are very much putting forth a "centri[st]" theory that places humans or nature at the center. TĂNĂSESCU, *supra* note 3, at 31. Significantly, the division between ecocentric and anthropocentric approaches has been complicated in numerous works, including *id.* at 99.

188. E.g., Kelsey Leonard et al., *Inherent Relationships Jurisprudence: An Indigenous Environmental Network and Earth Law Center Collaboration*, EARTH L. CTR. (Oct. 10, 2024), <https://perma.cc/2G2J-REP5>.

at least historically?¹⁸⁹ And if legal systems—which are by default designed and operated by human beings—are in charge of upholding nature’s rights, then are we really transforming the law and legal institutions or merely shifting the focus or subject of rights?¹⁹⁰ Other questions may entail metaphysical, ontological, ethical, or epistemological dimensions.¹⁹¹ I raise these questions, which have been debated by moral philosophers, ethicists, and other disciplines,¹⁹² merely to illustrate the complexities arising from the concept of nature as a subject of rights before delving into strictly legal matters. I do not pretend to have answers to such contested debates, but we must entertain these questions as we move through the doctrinal and policy challenges accompanying nature’s rights.¹⁹³ Perhaps because of this complexity, a number of courts and municipalities (particularly those in Colombia and Peru) have opted to recognize specific entities rather than “Nature” as a whole. In this sense, it might be easier to agree that a river or a forest is part of Nature than to try to discern a neat definition of the natural world. To my knowledge, courts have often invoked concepts such as the precautionary principle or *in dubio pro natura*¹⁹⁴ without articulating what they mean by “nature.”

B. Doctrinal Challenges

Some of the doctrinal challenges described below relate to the procedural and substantive aspects of nature’s rights frameworks. Together, they also raise questions about the justiciability of nature’s rights claims.¹⁹⁵

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189. See Jennifer Gribben & Julie M. Fagan, *Anthropocentric Attitudes in Modern Society* (2016) (unpublished manuscript) (on file with Rutgers University), <https://perma.cc/BU6E-6YR2>.
 190. See, e.g., Edward Mussawir & Connal Parsley, *The Law of Persons Today: At the Margins of Jurisprudence*, 11 L. & HUMANS. 44, 44–46 (2017).
 191. For example, (1) what do we mean by a “right”; (2) are there differences between a river and a rock from a moral perspective; (3) how do we know what a specific ecosystem “wants”; (4) can we really disentangle the ecocentric and anthropocentric purpose of nature’s right frameworks; and (5) what happens when there is a conflict or at least tension between two different natural entities that have “rights”?
 192. See, e.g., Jérémie Gilbert et al., *Understanding the Rights of Nature: Working Together Across and Beyond Disciplines*, 51 HUM. ECOLOGY 363, 367 (2023); Marc Brown, *Speaking for Nature: Hobbes, Latour and the Democratic Representation of Non-humans*, 31 SCI. & TECH. STUD. 31 (2017); Seth Epstein et al., *Liberalism and the Rights of Nature: A Comparative Legal and Historical Perspective*, L., 21 CULTURE & THE HUMANS. 3 (2022); Patrik Baard, *Are Rights of Nature Manifesto Rights (And is That a Problem)?*, 29 RES PUBLICA 425 (2023).
 193. I echo the sentiment of scholars who despite a variety of geographic, cultural, social historical, and legal contexts, observe that a nature’s rights analysis grounded in comparative law can be valuable. E.g., Clark, *supra* note 44, at 793.
 194. “When in doubt, in favor of nature.” See AARON X. FELLMETH & MAURICE HORWITZ, *GUIDE TO LATIN IN INTERNATIONAL LAW, in dubio pro natura* (2d ed. 2021).
 195. Justiciability is a familiar debate in the context of human rights litigation. See generally CHRISTINA BINDER ET AL., *RESEARCH HANDBOOK ON INTERNATIONAL LAW AND SOCIAL RIGHTS*, xxi (2020); see also Malcolm Langford, *The Justiciability of Social Rights*:

1. Source of the Right

The type of claim available to litigants largely depends on the available legal mechanisms under the relevant jurisdiction. Claims grounded in constitutional or statutory provisions creating a cause of action might be deemed more legally viable than a claim grounded in a local ordinance, which may merely have a declaratory character and not offer any injunctive relief for potential litigants interested in specific remedies. Because nature's rights frameworks have organically developed across jurisdictions through different processes (e.g., via constitutional amendments, legislative initiatives, local ordinances, and judicial creations), the legal force of these claims is uneven and highly context dependent.

Depending on the jurisdiction, nature's rights may provide a standalone cause of action that plaintiffs can invoke in *any* environmental case or may be reserved for specific cases involving *severe* environmental harm where plaintiffs invoke other rights violations under constitutional or administrative law. The divide identified by Martin and Kauffman¹⁹⁶ illustrates the variety of approaches, ranging from "legal personhood" (e.g., New Zealand) to "nature's rights" (e.g., Colombia, Ecuador, Peru, and Bolivia).¹⁹⁷ In the former, there is a designated guardian that can represent a natural entity before administrative and legal processes, whereas in the latter other citizens beyond the "guardians" may bring claims when there have been rights violations.¹⁹⁸

In many of the cases discussed, the plaintiff invoking nature's rights does so in the context of heavily polluted rivers or endangered ecosystems of significant importance, such as the Amazon.¹⁹⁹ From the cases reviewed, it is unclear whether there is a threshold of harm that plaintiffs must meet (besides showing significant or substantial degradation) or what the parameters are through which courts decide what types of ecosystems merit recognition or should be afforded rights. Can all rivers or forest ecosystems be subjects of rights because of their inherent intrinsic value, or do they also need to provide certain ecosystem services? If the latter is true, then nature's rights remain an anthropocentric project reflecting utilitarian approaches to environmental stewardship. If one

From Practice to Theory, in SOCIAL RIGHTS JURISPRUDENCE: EMERGING TRENDS IN INTERNATIONAL AND COMPARATIVE LAW 3, 30–31 (Malcolm Langford ed., 2009). Justiciability "has been debated especially in the context of economic and social rights, but it is also a more general judicial doctrine describing whether an issue can be decided in a particular legal forum." Milka Sormunen, *Rethinking Effective Remedies to the Climate Crisis: A Vulnerability Theory Approach*, 24 HUM. RTS. REV. 171, 180 (2023) (internal citations omitted).

196. See generally Martin & Kauffman, *Courts Are Developing River Rights Jurisprudence: Comparing Guardianship in New Zealand, Colombia, and India*, *supra* note 7 (discussing the different models in India, New Zealand, and Colombia).

197. Compare *supra* note 11 (on New Zealand) with Parts II(A); II(C)–(D).

198. Compare *supra* note 11 (on New Zealand) with Parts II(A); II(C)–(D). But note that the *Atrato* case in Colombia discussed above also had a group of guardians.

199. See *supra* Part II(C).

agrees there should be a limiting principle insofar as not every natural entity necessitates a judicial or legislative declaration recognizing its rights, should we then only focus on those entities that have suffered substantial harm or have special ecological significance? In the cases of the Atrato and Marañón rivers, the reviewing court recognized that the continuous presence of heavy metals in the water was significant, which seems illustrative of the implicit criteria guiding the application of nature's rights.²⁰⁰ Notably, in both cases, the plaintiffs were members of marginalized ethnic groups (Afro-descendant and Indigenous, respectively). This seems to indicate that when (1) a vulnerable group faces threats to their human rights (i.e., right to a healthy environment, right to water, and so forth), and (2) the level of ecological damage of the river or ecosystem is severe, courts seem more willing to recognize nature's rights.

Because many cases involving nature's rights have relied on more traditional causes of action grounded in constitutional law, such as the right to health or water,²⁰¹ it is somewhat difficult to disaggregate nature's rights claims from more established claims under domestic law.²⁰²

2. Remedial Measures

Given the vague definition and doctrinal contours of nature's rights, it is unclear what types of remedies may be requested or ordered, and, in a favorable decision, what exactly the remedy will entail.²⁰³ For example, is a plaintiff seeking the declaration of nature's rights only allowed to request declaratory relief in a case, or is it possible that, by obtaining a favorable ruling in this regard, other types of remedies become available? Is it possible that the declaratory relief granted when a court declares that a particular ecosystem is the subject of rights can be leveraged in ongoing or future cases, and therefore can be valuable without any injunctive relief attached?²⁰⁴ Nature's rights jurisprudence has encompassed declaratory relief, but also injunctive relief (including restoration orders and damage awards), as well as the creation of special guardian or trustee commissions.²⁰⁵ While the procedural details vary across jurisdictions, there is no cohesive or overarching remedial theory about nature's rights yet.²⁰⁶ It is interesting to note that, at times, such as in the Colombian Amazon case, the court granted rights to the Amazon forest *sua sponte*, even though the plaintiffs

200. See *supra* Part II(D).

201. See *supra* Part II(C) (discussion of *Atrato* and *Amazon* cases).

202. This is particularly true in places like India, Bangladesh, and Colombia, where human rights seemingly underpin rights of nature decisions. Weis & Mullins, *supra* note 39, at 851.

203. Guim & Livermore, *supra* note 44, at 1356.

204. *Declaratory relief*, LEGAL INFORMATION INSTITUTE AT CORNELL LAW SCHOOL, <https://perma.cc/87PN-4KFA> (explaining declaratory relief's value partly in resolving and articulating the rights of all parties involved, which might in turn prevent future conflict).

205. See, e.g., *supra* note 137 (discussion of *Atrato* ruling creating a guardianship body).

206. Guim & Livermore, *supra* note 44, at 1353.

did not seek this relief in their complaint as noted earlier. This is evidence that Colombian courts, perhaps like those in India, have led the way in developing nature's rights approaches before legislatures or constitutional assemblies have.

There are also other questions regarding remedial measures following declaratory relief. If a natural entity is recognized as a subject of rights, what exactly does this entail? Colombian courts have replicated the "protection, conservation, restoration, and maintenance" formulation throughout their jurisprudence, while Peruvian courts have added the right of "regeneration."²⁰⁷ In most cases, courts issuing a declaration of nature's rights have not necessarily explained what the contents of these rights are.²⁰⁸ Another important question is whether this general formulation should be widely or equally applicable to all natural entities, including water bodies, forests, and other ecosystems. Thus far, most judicial decisions mirror the language of prior opinions regardless of the type of entity affected and the types of environmental harm sustained.²⁰⁹

3. *Legal Compatibility and Standing Doctrine*

Given the organic development of nature's rights, there are other doctrinal questions that fall into two categories. First, how do nature's rights claims fit under existing legal regimes? In some jurisdictions, such as the United States, nature's rights claims have not been viable causes of action and, as a result, have not been particularly useful for litigants seeking to bring cases in state or federal court under this approach.²¹⁰ In *Sierra Club v. Morton*, a plurality of the U.S. Supreme Court declined to entertain the notion that a game refuge and forest had legal standing of its own.²¹¹ In his famous dissent citing Christopher Stone's seminal article,²¹² Justice Douglas rejected the majority's simplification

207. See *supra* Part II(D) (discussing the *Marañón* case).

208. Gómez-Betancur, *supra* note 124, at 75 ("The judges do not define these rights, and the communities involved do not always have certainty about the significance of the 'rights of nature.'").

209. See, e.g., decisions granting rights to rivers cited in *supra* note 136.

210. Scholars have distinguished between legal personality (the ability to bear rights and duties) and legal personhood (the right to sue and be sued). See Warner & Lillquist, *supra* note 37, at 335. Regarding standing requirements, supporters of the rights of nature framework believe that extending legal personhood could remove barriers to bringing lawsuits on behalf of injured natural entities. *Id.* at 338.

211. *Sierra Club v. Morton*, 405 U.S. 727, 741–42 (1972).

212. Stone, *supra* note 5. While Stone is one of the first academics credited with developing the concept of nature's rights, Caitlin Skurky has critiqued the failure to mention the Indigenous origins of this concept as "an implicit assertion that Indigenous customary laws and ways of knowing are neither 'academic' nor 'legal.'" Skurky, *supra* note 79, at 357. Besides Stone, thinkers such as Godofredo Stutzin, Thomas Berry, James Lovelock, and others have been credited for contributing to the intellectual history underlying nature's rights. TĂNĂȘESCU, *supra* note 3, at 24–25, 38–39. In many of these works, primarily those rooted in ecotheological history, the fundamental rights of nature are to be *recognized* and not merely granted. Rather

of standing doctrine and reasoned that “[c]ontemporary public concern for protecting nature’s ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their own preservation.”²¹³ Since then, U.S. courts have rejected more recent attempts to invoke nature’s rights.²¹⁴ However, in other jurisdictions where nature’s rights are deemed enforceable and self-executing, there are still gaps in our understanding of how nature’s rights fit into the existing legal frameworks.

Second, in jurisdictions that have taken up nature’s rights claims, there are doctrinal concerns related to standing doctrine. In the United States, standing requirements impose a burden on plaintiffs to prove that they can show (1) injury-in-fact, (2) a causal connection between the alleged injury and the defendant’s actions, and (3) redressability, i.e., that a favorable court decision will redress the injury.²¹⁵ *Sierra Club v. Morton* foreclosed the possibility that natural entities could meet standing requirements on their own. But outside the United States, nature’s rights have emerged seemingly without much concern about how natural entities can have legal personhood, perhaps because across the South American examples, nature’s rights are conceptualized through the “rights” formulation.

Still, what work are nature’s rights doing to meet standing requirements? All of the cases surveyed involved individual plaintiffs alleging violations of their individual or collective rights *in addition* to violations of an ecosystem’s rights. In the *Atrato*, *Amazon*, and *Marañón* cases, the plaintiffs alleged harm to *their* constitutional rights because of environmental degradation. A similar pattern emerged in subsequent cases involving rivers and other natural bodies, where plaintiffs alleged violations to their rights to life, health, and water. Thus, are plaintiffs merely attaching nature’s rights claims to complaints that can be brought on their own for some symbolic or discursive purpose, or are nature’s rights claims doing other work here? Relatedly, in the aftermath of these decisions, can any concerned resident or organization bring a lawsuit alleging injury to a natural entity or a gap in the implementation of injunctive orders, or is this right reserved only for officially recognized guardians or trustees?²¹⁶

than being concerned with legal frameworks such as standing, many of these thinkers posit that nature’s rights are a “moral truth.” TĂNĂSESCU, *supra* note 3, at 24.

213. *Sierra Club*, 405 U.S. at 741–42.

214. *See supra* note 109.

215. *Sierra Club*, 405 U.S. at 741–42; *see also* Hope Babcock, *A Brook with Legal Rights: The Rights of Nature in Court*, 43 *ECOLOGY L. Q.* 1 (2016); S. Schaefer, *The Standing of Nature: The Delineated Natural Ecosystem Proxy*, 9 *GEO. WASH. J. ENERGY & ENV’T L.* 70, 73 (2018).

216. For example, Tănăsescu explains how Colombia and India seem to apply a mixed or hybrid approach to nature’s rights by borrowing from New Zealand’s legal personhood arrangement (which includes guardians) and Bolivia and Ecuador’s nature rights framework. TĂNĂSESCU, *supra* note 3, at 103–14. *See also* O’Donnell et al., *supra* note 20, at 420–21 (explaining that the Indian cases involving rivers embraced Hindu religious beliefs as opposed to Indigenous worldviews).

As this section has shown, there are unanswered questions about the role of nature's rights claims through different stages of judicial proceedings, from the filing of a case to the issuance of a judicial decision containing specific remedies. The contents of these rights, the set of remedies they may trigger, and the ways in which nature's rights support or supplement the work of already recognized constitutional rights are not clear. Upon review, it seems that the plaintiffs in all of these cases could have received a favorable court ruling under existing mechanisms.

C. Policy Challenges

1. Operationalization and Implementation

In the aftermath of nature's rights decisions, litigants have faced substantial implementation obstacles. Some of these challenges are not unique to the nature's rights context. Implementation challenges are common across environmental and human rights litigation.²¹⁷ Environmental protection is complex and implicates local communities, corporate interests, as well as numerous government officials and agencies at the local, regional, and national level, who are expected to coordinate amongst themselves to implement judicial orders.²¹⁸ However, in nature's rights cases, the vagueness of the rights-based claims and remedies have arguably hindered implementation and compliance.

First, nature's rights may conflict with more traditional rights, raising policy questions.²¹⁹ In jurisdictions where there are pressing and competing concerns, such as reducing poverty and unemployment, nature's rights do not offer a clear answer as to how to balance environmental protection and economic growth.²²⁰ In cases where human rights and environmental protection conflict,

217. See, e.g., Malcolm Langford, César Rodríguez-Garavito & Julieta Rossi, *Introduction: From Jurisprudence to Compliance in SOCIAL RIGHTS: JUDGMENTS AND THE POLITICS OF COMPLIANCE - MAKING IT STICK*, 4–5 (Malcolm Langford, César Rodríguez-Garavito & Julieta Rossi eds., 2017); Alexandra Huneeus, *Courts Resisting Courts: Lessons from the Inter-American Court's Struggle to Enforce Human Rights*, 44 CORNELL INT'L L. J. 493, 511 (2011); see generally Bustos, *supra* note 151 (discussing implementation challenges across human rights and climate change cases).

218. Camargo, *supra* note 46, at 232 (“[I]t is not entirely clear how the legal representation will be carried out. National authorities, the environmental and human rights organisations in Colombia and the communities, will all have to face the challenge of thinking about how this representation will be exercised.”).

219. For discussion of how to resolve these tensions, see Robyn Eckersley, *Liberal Democracy and the Rights of Nature: The Struggle for Inclusion*, 4 ENV'T POL. 169, 189 (2007); MICHELLE MALONEY, *Rights of Nature, Earth Democracy, and the Future of Environmental Governance* 24 in REBALANCING RIGHTS: COMMUNITIES, CORPORATIONS & NATURE (2019).

220. See, e.g., Cletus Gregor Barié, *Bolivia - The Rights of Mother Earth: Fifteen Years of Solitude*, in GLOBAL LEGAL PLURALISM AND RIGHTS OF NATURE 276 (Daniel Bonilla Maldonado & Ralf Michaels eds., 2025) (discussing Bolivia's case).

different government entities may see their mandates as in opposition to each other.²²¹ Imagine a case involving a community that supports a mining project and alleges the project will create jobs in the local area and thus is aligned with the community's right to development and livelihood.²²² Meanwhile, other members of the community may be concerned about the quality and integrity of a nearby river that is adjacent to the mining operation. This second group may want to present arguments based on their right to a healthy environment and water, while invoking the river's right to exist. What is the office of the ombudsman, which oversees the protection of human rights, supposed to do? Governments are not monoliths, and real tensions may arise within distinct governmental organs.²²³ This fictional but not-so-far-from-reality example illustrates the potential difficulty of recognizing nature's rights under existing regimes enshrining human rights protections.²²⁴ In response, nature's rights advocates have suggested that courts could use balancing tests to weigh interests against each other as they already do and, thus, nature's rights provide another important consideration, but do not dictate that nature's rights will always prevail against human interests.²²⁵

221. Interestingly, Weis and Mullins argue that rights of nature as an ecocentric project does not *necessarily* require a hierarchy of interests because ecocentrism can be compatible and account for human interests and well-being. Weis & Mullins, *supra* note 39, at 845.

222. Los Cedros is an example of this dynamic, where communities are split in their support. NYU MORE THAN HUMAN LIFE PROJECT & THE EARTH RIGHTS RESEARCH AND ACTION PROGRAM, *THE IMPACT OF THE RIGHTS OF NATURE: ASSESSING THE IMPLEMENTATION OF THE LOS CEDROS RULING IN ECUADOR* (1st ed. 2024); *see also* Ralf Michaels, *A Hybrid of Hybrids*, in *GLOBAL LEGAL PLURALISM AND RIGHTS OF NATURE* 47, 75 (Daniel Bonilla Maldonado and Ralf Michaels eds., 2025) (discussing how the interests of indigenous communities are not always congruent with those of nature). G.A. Res. 41/128 (Dec. 4, 1986); *see* Sachs, *A Wrong Turn with the Rights of Nature Movement*, *supra* note 61, at 78–79 (discussing competing views regarding whether human rights would be balanced with nature's rights or must instead yield to nature's rights); *see also* Sachs, *Anti-Democratic Rights of Nature*, *supra* note 57, at 106 (asking “[t]o serve human needs such as agriculture or housing, could humans lawfully destroy *some* rights-holding organisms or engage in *some* modification of rights-holding ecosystems?”).

223. Eyal Benvenisti, *Exit and Voice in the Age of Globalization*, 98 MICH. L. REV. 167, 169 (1999).

224. There also seems to be tension with visions of nature's rights that continue to see nature as a resource to be managed and enjoyed by humans. This position arguably replicates environmental initiatives rooted in traditionally anthropocentric approaches, and thus undermines the potential of nature's rights to represent a paradigm shift. *See, e.g.*, Skurky, *supra* note 79, at 368, 371 (explaining that nature's rights laws can create “an inherent conflict between Nature's rights and humans' rights, by recognizing the intrinsic value and inalienable rights of Nature while simultaneously recognizing humans' rights to exploit and enjoy Nature.”); *see also* Gilbert, *supra* note 15, at 458 (citing Anna Gear, *Deconstructing Anthropos: A Critical Legal Reflection on 'Anthropocentric' Law and Anthropocene 'Humanity'*, 26 L. & CRITIQUE 225 (2015)).

225. PACE UNIVERSITY, What is Earth Law? (Virtual panel, Feb. 2, 2026) (on file with author).

Second, the cases surveyed do not always discuss potential oversight mechanisms or supervisory structures to monitor compliance with a particular order. While courts can retain supervisory authority in some capacity, the process by which parties or other actors can follow up on the implementation of a judicial decision is not always clear. For example, in the *Amazon* case, the plaintiffs requested hearings and updates on implementation efforts under local practice rules, but the Colombian Supreme Court did not create a specific oversight mechanism as in the *Atrato* case.²²⁶ Although implementation challenges are not unique to these rulings, the lack of monitoring mechanisms makes implementation more difficult by limiting judicial oversight over defendants' compliance. Susan Hansen argues that "perhaps the most critical factor" in ensuring that a lawsuit achieves maximum social change is proper follow-up after the litigation.²²⁷ Without robust follow-up, implementation will suffer.

Third, there are material limitations regarding resources available to comply with a judicial decision. Many of the decisions surveyed above include injunctive relief, requiring defendants to protect, conserve, maintain, and restore the respective ecosystems.²²⁸ However, these decisions cannot or do not allocate funds to implementation efforts, which results in defendants either having to reorient existing budgets to fund compliance plans in the best-case scenario or ignore unfunded mandates in the worst-case scenario.²²⁹ In decisions recognizing the *Páramo de Pisba* (Colombia), a type of high-altitude ecosystem, as a subject of rights, difficulties have arisen over the costs of paying damages to mining communities who depend on coal mining in the area.²³⁰ The Constitutional Court struck down the lower court's decision recognizing the ecosystem's rights after a group of coal miners sought to be included in decisions affecting the ecosystem, given that their livelihoods depended on mining in the *páramo*.²³¹

Fourth, there are implementation challenges arising from the complex socioeconomic backgrounds in which these cases arise.²³² The Amazon Rainforest, for example, is a vast area spanning several countries, where multiple legal regimes overlap.²³³ Even if the focus is "only" one segment of the larger

226. See Bustos, *supra* note 151, at 34–40 (exploring the aftermath of the case in depth).

227. SUSAN HANSEN, ATLANTIC INSIGHTS: STRATEGIC LITIGATION 49 (2018).

228. See *supra* discussion of the *Amazon*, *Atrato*, and *Marañón* cases in Part II(C)–(D).

229. For a full discussion of how this dynamic has played out in the *Atrato* case, see Wesche, *supra* note 117, at 551.

230. Camargo, *supra* note 46, at 232.

231. María José Medellín Cano, *La Deuda Con el Páramo de Pisba*, EL ESPECTADOR (Sep. 27, 2021), <https://perma.cc/C9RR-SUUC> (describing how the environmental and legal communities were surprised that the court did not make reference to the importance of protecting the ecosystem through the nature's rights approach).

232. See, e.g., Lyons, *supra* note 21, at 62 (discussing the socio-economic complexity of the western Amazonian ecosystem).

233. Macpherson et al., *supra* note 48, at 521 (arguing that "the Colombian river cases serve as a caution to courts and legislatures elsewhere to be mindful, in devising ecosystem rights, of

Amazon ecosystem, these cases are unfolding in socially contested areas.²³⁴ The drivers of deforestation themselves illustrate the underlying economic and political dynamics: illegal mining, cattle ranching, and illegal crop cultivation.²³⁵ The practical realities of economies based on extractive models more often than not frustrate environmental governance and protection as economic incentives align with deforestation, pollution, and ecosystem degradation and destruction.²³⁶ In Latin America and the Caribbean, remedial compliance is closely linked to the financial, political, social, and administrative costs of implementing a particular decision.²³⁷ Other key factors include the strength of legal institutions, levels of corruption, and power dynamics between powerful industries and affected communities.²³⁸ In the context of nature's rights

the complex and interrelated rights, interests and tenures of Indigenous peoples and local communities"); *see also infra* Part III(C)(2).

234. *See, e.g., Amazon: Territorial Disputes and Conflicts*, WORLD RAINFOREST MOVEMENT (July 4, 2014), <https://perma.cc/C95Y-EH6H>.

235. Jesica López, *From Canopy to Catastrophe: Understanding the Environmental Crisis in Northern Colombian Amazon* 1, 10 (Oct. 11, 2024) (Ph.D. thesis, Lund University) (on file at Lund University) (finding that "there is a significant expansion of cattle ranching, leading to deforestation and degradation of the Colombian Amazon rainforest. . . economic benefits, such as increased beef production and profitability, serve as primary drivers of agricultural establishment, while social factors, such as land speculation and investments, also contribute to the expanding and alarming footprint of cattle ranching"); *see also* Jesica López, *As Colombia Hosts a UN Biodiversity Summit, Its Own Amazonian Rainforest is in Crisis*, THE CONVERSATION (Oct. 24, 2024), <https://perma.cc/KPU6-3VDG> (observing that the Amazon basin is experiencing an environmental crisis, as "the rainforest is being deforested and turned into pastures for cattle ranchers").

236. *See* Ana Lucía Maya-Aguirre, *Implementing Environmental Constitutionalism in Colombia: Tensions between Public Policy and Decisions of the Constitutional Court*, in CURRENT GLOBAL CHALLENGES, (Erin Daly & James May eds., 2018); *see also* THE RIGHT TO NATURE: SOCIAL MOVEMENTS, ENVIRONMENTAL JUSTICE AND NEOLIBERAL NATURES (Elia Apostolopoulou & Jose A. Cortes-Vazquez eds., 2019); Carolina Valladares & Rutgerd Boelens, *Mining for Mother Earth. Governmentalities, Sacred Waters and Nature's Rights in Ecuador*, 100 GEOFORUM 68, 68 (2019) (concluding that using "[n]ature's [r]ights to promote mega-mining manifests the limitations of social and environmental rights recognition under neoliberal governance, and the tensions inherent in Nature's Rights themselves.").

237. Juan Auz, *The Political Ecology of Climate Remedies in Latin America and the Caribbean: Comparing Compliance between National and Inter-American Litigation*, 16 J. OF HUM. RTS. PRAC. 187, 192 (2024) ("Th[e] complex entanglement between LAC's path dependency with extractivism, the incentives it generates for national elites to maintain the status quo, and the pressure of international investors to keep the business afloat make compliance with judicial decisions that restrict or regulate resource exploitation challenging to achieve as they might be perceived as a threat to economic growth and development aspirations."); *see also* TĂNĂȘESCU, *supra* note 3, at 101 (citing to political ecology literature and explaining that "[t]he underlying problem of environmental destruction is not the lack of ecocentric values . . . but rather the willful persistence of political arrangements that demand a consumptive relationship to the environing world for their own reproduction.").

238. *See* TĂNĂȘESCU, *supra* note 3, at 101.

decisions, the costs of implementing a judicial decision are quite high, given the territorial governance challenges and a diverse set of interests.²³⁹

Fifth, in court decisions designating a group of “guardians” for a specific river, park, or ecosystem, there are important questions and potential tensions in assigning individual organizations or communities a guardianship role in implementing a judicial order. What are the requirements or processes that will govern the selection of these guardians?²⁴⁰ Will they always be residents of the affected area? If other stakeholders, such as public officials or scientists, are also part of the group, what is their role vis-à-vis guardians who are part of the affected or nearby community?²⁴¹ What happens when communities do not ask to be the legal representatives of an ecosystem (e.g., the *Atrato* and *Amazon* cases), yet the court selects them for that role? In nature’s rights cases in both India and Bangladesh, the appointment of guardians was met with appeals from those designated as such or with requests for further legal reform.²⁴² How should courts account for the diversity of interests among communities at the frontlines of extractive processes? Furthermore, as Tănăsescu explains, in the case of the Atrato River,

the stereotypical idea of “native” guardianship is particularly stark, as the court identifies local guardians by ethnic criteria, as if being local

239. As Philipp Wesche observes, “improvements in policymaking” may be more effective in safeguarding human and environmental rights than additional judicial decisions recognizing the rights of nature. Ultimately, “[t]o transform complex ecological crises in weak governance areas, strengthening local state institutions and integral environmental policies are more important than rights of nature.” Wesche also explains that Christopher Stone’s argument to grant nature rights was formulated in a jurisdiction “with strong institutions, strong rule of law and a well-functioning legal system” where private law damages significantly shape how harms are redressed by courts. In contrast, in some of the jurisdictions surveyed, weak governance remains a significant obstacle to the effective implementation of judicial remedies. Wesche, *supra* note 117, at 531. An additional challenge in the Colombian context has been the increase in deforestation rates following the Peace Agreement between the government and the FARC left-wing guerrillas, which experts predicted would result after the FARC no longer controlled the region and left large areas accessible after years of strict control. See Luke Taylor, *A Colombian Warlord Became the Amazon Rainforest’s Most Unlikely Protector. Now He is Cutting It Down*, THE GUARDIAN (Oct. 22, 2024), <https://perma.cc/3NMR-SSV9> (observing that FARC dissidents now control critical areas in the Amazon, which threaten the government’s progress in reducing deforestation); Camila Bustos & Marcela Jaramillo, *What Does Peace in Colombia Have to Do with the Environment?*, THE GUARDIAN (Oct. 24, 2016), <https://perma.cc/2JL8-CRF3>.

240. See generally Clark, *supra* note 44.

241. Tănăsescu articulates the importance of understanding the *how* and the *why* certain individuals or groups are selected as the representatives or guardians of a particular entity. At times, the reasons for the selection are rather opaque. TĂNĂSESCU, *supra* note 3, at 71.

242. See O’Donnell et al., *supra* note 20, at 420 (citing *State of Uttarakhand v. Salim*, Special Leave to Appeal No. 016879/2017 (July 7, 2017) (India) and *Human Rights & Peace for Bangl. v. Gov’t of Bangl.*, Writ Petition No. 13989 of 2016, Judgment (H.C. Div. Feb. 3, 2019) (Bangl.) (M.S. Islam trans.)).

depended on one's genetic makeup or, conversely, being a miner does. At the same time, the central power of the state cannot be sidestepped, and therefore the very state that was sued because of its gross negligence in defending constitutional rights becomes a guardian!²⁴³

Furthermore, what exactly should the role of guardians entail? At the very least, guardians would be able to file legal claims on behalf of an ecosystem and help enforce judicial orders, but it is unclear what other duties related to guardianship should automatically follow. At times, courts have issued orders without providing additional guidance on the guardian arrangement and the role of guardians.²⁴⁴ In the case of the *Atrato*, the Ministry of Environment stated its position regarding this question in a 2018 legal memorandum,²⁴⁵ which differs from an opinion by the expert panel stating “that the river’s legal guardians can become a party in criminal proceedings, which includes the rights to file applications during the trial and receive compensation.”²⁴⁶ This example illustrates some of the complications that arise when deciding the role of guardians after they have been identified. Ultimately, these practical difficulties in enforcing nature’s rights judgments can lead to ambiguity in governmental obligations towards specific ecosystems and the communities reliant upon them.

2. *Legal Pluralism and Indigenous Rights*

In cases involving Indigenous communities and their rights over the land, there is a risk that court decisions recognizing nature’s rights are in tension with Indigenous sovereignty and Indigenous land tenure claims, which raises not only policy but also doctrinal questions.²⁴⁷ While outside the scope of this Article, legal pluralistic arrangements across ecosystems, such as the Amazon, mean that, in practice, there are overlapping legal regimes where multiple legal frameworks meet.²⁴⁸ For example, in the Peruvian or Colombian Amazon, some individuals may assert rights over the land under traditional property claims, Indigenous peoples may claim ownership given their ancestral and collective

243. TĂNĂSESCU, *supra* note 3, at 104; *see also* Petel, *supra* note 23, at 28 (explaining that some guardianship arrangements can reinforce the “ecological noble savage” narrative).

244. *See, e.g.*, Sentencia 4360-2018 (Colom.), *supra* note 125; *cf.* Ley No. 2415 de 2024, *supra* note 147 (offering a detailed overview of the guardian arrangement).

245. Ministerio de Ambiente y Desarrollo Sostenible de Colom., Memorandum OAJ-8140-31-010782 (2018).

246. Wesche, *supra* note 117, at 550.

247. *See* Macpherson et al., *supra* note 48, at 525 (arguing that “courts have failed to engage deeply with the complex nature of Indigenous interests, tenures, and roles in river governance”).

248. *See generally* Pablo Guillermo Peña Alegría, *Property, Community and the Making of an Agricultural Frontier of the Peruvian Amazon* (2025) (Ph.D. thesis, University of Oxford), <https://perma.cc/A7UU-MA3M> (explaining how the concepts of legal pluralism and inter-legality play out in the Peruvian Amazon); *see also* Michaels, *supra* note 222, at 50 nn.12-14 (discussing legal pluralism and inter-legality in the context of rights of nature initiatives).

ties to the land, and Indigenous territory may overlap with publicly protected land, such as a national park.²⁴⁹ These overlapping legal regimes raise complex questions about conflicts of laws and competing legal regimes. Furthermore, when nature's rights emerge as an additional cause of action or legal framework, there are unresolved theoretical but also practical questions about how Indigenous philosophy and nature's rights may align or not.²⁵⁰ While some scholars trace the origins of rights of nature to Indigenous cosmovisions or the concept of *Pacha Mama*,²⁵¹ in the *Amazon* case and others, the decisions have created tension among Indigenous communities who have felt left out of the court rulings and do not necessarily welcome the nature's rights declaration.²⁵² It is also important to mention that Indigenous support for various initiatives, including in Ecuador and Bolivia, eventually decreased.²⁵³ This paradoxically illustrates how the emergence of nature's rights jurisprudence has at times failed to meaningfully integrate Indigenous people, their rights, and the critical role they play in stewarding the environment.

The emergence of nature's rights as a regulatory scheme has thus frustrated the initial goals of proponents to reflect Indigenous worldviews of harmony with nature. However, this also evidences the biases of scholars and advocates who think of indigeneity as homogenous and Indigenous peoples as a monolith.²⁵⁴

249. See, e.g., COLOM. CONST. art. 246, chapter XI; PERU CONST. art. 2, § 19.

250. From a critical perspective, Tănăsescu argues that not only are Indigenous thought and nature's rights not inherently aligned, but actually in tension. TĂNĂSESCU, *supra* note 3, at 135.

251. Tigre, *supra* note 80, § 41:39; see *supra* note 41.

252. See SENTENCIA DE LA AMAZONIA 7 AÑOS DESPUÉS. DIÁLOGOS DE SU IMPLEMENTACIÓN MÁS ALLÁ DE LA PERSPECTIVA INSTITUCIONAL 5–8 (DEJUSTICIA) (forthcoming) (providing an overview of challenges with the decision, including factors related to the decision's contents, underlying dynamics, and issues with the implementation's design); Mariana Camacho-Muñoz y Carlos Olaya, *Azazar al Estado: Los Reclamos Indígenas y Campesinos en el Seguimiento de la Sentencia STC-4360*, in SENTENCIA DE LA AMAZONIA 7 AÑOS DESPUÉS. DIÁLOGOS DE SU IMPLEMENTACIÓN MÁS ALLÁ DE LA PERSPECTIVA INSTITUCIONAL 47 (DEJUSTICIA) (forthcoming) (noting that the monitoring mechanism following the judgment has been insufficient in two ways, first by “completely excluding a portion of the affected populations (the peasants)” and second, “because its own internal dynamics have made the space unproductive for those who have been able to participate (the indigenous people)”). *Id.* at 48.

253. TĂNĂSESCU, *supra* note 3, at 128. Tănăsescu is highly critical of the ways in which nature's rights moralism stems directly from “the moralism of human rights, a phenomenon that really came into its own when rights became tools of the state, even though they were born in opposition to it.” *Id.* at 131.

254. See, e.g., Jonathan Kay, *How Canada's Cult of the Noble Savage Harms Its Indigenous Peoples*, QUILLETTE (Apr. 22, 2018) (discussing some of the simplistic and infantilizing stereotypes around Indigenous peoples in Canada.). On this critique, see O'Donnell et al., *supra* note 20 (describing some of the concerns arising from either ignoring or engaging poorly with the indigenous influence on nature's rights paradigms).

There is a danger that by romanticizing a “single story”²⁵⁵ about the relationship between Indigenous people and nature, proponents of the rights of nature replicate oppressive and patronizing attitudes towards Indigenous people that evoke the figure of the “noble savage.”²⁵⁶

Rights of nature supporters have at times simplified Indigenous worldviews and arguably instrumentalized Indigenous philosophy by aligning it with a rights-based discourse characteristic of liberal democracies with a vested interest in the perpetuation of the nation-state. Tănăsescu is particularly critical, explaining that media and scholarship have perpetuated tropes about Indigenous people and minimized Indigenous thinking to support notions of legal personhood. In parallel, Indigenous groups have had to engage with the language of “rights” to be able to translate themselves and make their existence and ideology more legible in Western eyes. This, in turn, has allowed for a dominant or “orthodoxy of nature’s rights” (primarily focused on legal personhood and rights) that does not ultimately reflect the complexity, diversity, and innovative models grounded in Indigenous philosophy.²⁵⁷

O’Donnell and others posit a related but different critique, arguing that Indigenous views have not been meaningfully accounted for or integrated. According to these scholars, “the partial incorporation by public authorities of discrete elements of Indigenous law in Aotearoa/New Zealand, Colombia, and to a lesser extent India, runs the significant risk of co-opting, appropriating, and ultimately reductively simplifying far more complex Indigenous legal structures.”²⁵⁸ Yet other scholars stress that there is no clear alignment between rights of nature and Indigenous people and that “such absolute assertion would necessarily be unfairly generalizing, considering the heterogeneity of Indigenous groups as well as the diversity of [rights of nature] initiatives.”²⁵⁹

255. See TED, *Chimamanda Ngozi Adichie: The Danger of a Single Story*, YouTube (Oct. 17, 2009), <https://perma.cc/JDX5-4LWZ>.

256. See Tristan Søbye Rapp, *The Myth Of The Noble Savage*, NOEMA (July 9, 2024), <https://perma.cc/TP6Y-LFV3> (describing the frequent claim that “so-called primitive tribes . . . possess a cultural concern for nature not matched in the industrially minded West.”).

257. See TĂNĂSESCU, *supra* note 3, at 135 (“In particular, the constitutional text falls prey to the Western obsession with totality, visible in the rendering of Pachamama as universal Nature, Earth as such, if somewhat animated by Amerindian ‘beliefs’. The Constitution manages to construct nature on the model of the human person, whereas indigenous philosophy, through its multinaturalism, universalizes the interiority of the human experience (everything has a life of its own) and the dynamism and openness of material forms (and everything changes).”). Weis and Mullins similarly reject a rights-based paradigm and argue in favor of centering ecocentric values and duties instead. See Weis & Mullins, *supra* note 39, at 841 (explaining that in rights-based paradigms “ecosystems compete with other legal persons for rights to use or control natural resources”).

258. O’Donnell et al., *supra* note 20, at 415.

259. Petel, *supra* note 23, at 31.

Precisely because these initiatives look so different, one instance could empower Indigenous groups, while another can enhance the power of the state vis-à-vis these communities.²⁶⁰

3. *Separation of Powers and the Role of Courts*

The emergence of nature's rights jurisprudence raises critical questions regarding the role of legislatures vis-à-vis the courts. The development of nature's rights across the Americas has not been linear, with some jurisdictions having courts (at times high courts, at other times district or trial courts) developing the doctrine before the legislative or executive branches have spoken. To U.S. lawyers, this would be unthinkable, since courts adhere to a narrower interpretation of the law adopted by the legislature.²⁶¹ Nonetheless, nature's rights debates raise foundational questions about the role of judges broadly and not only statutory interpretation principles.

In Ecuador, a constitutional recognition unlocked subsequent judicial developments. In Colombia, nature's rights have primarily emerged as a judicial creation, where courts have built on prior precedent to conclude that a particular ecosystem is a subject of rights. In Peru, local ordinances have usually preceded judicial recognition, except in the *Marañón* case. In the United States, action has remained mostly at the local ordinance level, with courts declining to identify a distinct right without a congressional directive. Against this background, an important question is whether and how legislatures should (1) enshrine nature's rights in domestic law or (2) establish future parameters for cases involving nature's rights.

Scholar Wesche notes that the Colombian Constitutional Court is known for its practice of "dialogical judicial activism," which may be perceived to interfere with the legislature and could raise separation of powers issues.²⁶² As some scholars note, the Court has seen itself "as both a creator and enforcer of laws compared with other Latin American countries of the civil law tradition, such as Chile, which see the power to make law as something reserved for the legislature."²⁶³ In the *Atrato* and *Amazon* cases, the plaintiffs did not ask the courts to recognize nature's rights, but the judges deciding these cases "unilaterally invoked [rights of nature] principles and models circulating globally through networks of environmental lawyers and activists."²⁶⁴ In this manner,

260. *Id.*

261. *See, e.g.,* West Virginia v. EPA, 597 U.S. 697, 723 (2022) (requiring "clear congressional authorization" for agencies to take actions on issues that raise "major questions").

262. Wesche, *supra* note 117, at 540 (citing CESAR RODRÍGUEZ-GARAVITO & DIANA RODRÍGUEZ FRANCO, JUICIO A LA EXCLUSIÓN: EL IMPACTO DE LOS TRIBUNALES SOBRE LOS DERECHOS SOCIALES EN EL SUR GLOBAL (2015)).

263. Macpherson et al., *supra* note 48, at 529.

264. Martin & Kauffman, *supra* note 7, at 287; *see also* O'Donnell et al., *supra* note 20, at 415 (explaining how the Atrato river case relied more strongly on the right to a healthy environment).

Colombian judges have strategically interpreted constitutional provisions, legal principles, and other domestic laws to recognize the rights of natural entities. The replicability of this strategy in other jurisdictions, however, is context dependent and entangled in bigger discussions about the role of courts in a democratic system.

4. *Legitimacy and Democratic Implications*

In the long term, the development of nature's rights frameworks solely by the courts can result in a lack of clarity and create the impression that decisions are somehow undemocratic or lack transparency. The concerns raised above, particularly those involving "judicial activism," can have implications beyond the doctrinal or policy sphere. For example, if courts issue decisions recognizing the rights of natural entities, voters or communities affected by those rulings may question whether unelected judges, often ruling from chambers in capital cities, have considered the full economic and social context of complex ecosystems.²⁶⁵ There may also be questions regarding the value or impact of declaratory relief and pushback against decisions where "nature" seems to prevail in a legal dispute. Declarations recognizing the rights of nature may be seen as anti-democratic or at least suffering from a democratic deficit.²⁶⁶

Professor Noah Sachs, for example, has argued that nature's rights principles can actually constrain democratic institutions and therefore be "deeply antagonistic to democratic self-government" by undermining legislative autonomy, human rights, and public participation.²⁶⁷ Implementation of nature's

265. Lyons, *supra* note 21, at 55–56 (describing how some Indigenous elders described never having heard of the Amazon case, which evidenced how court orders "dictated from the country's Andean capital [] obligate already marginalized communities to assume new responsibilities even as environmentally destructive industries intensified activities in the region"); see also Richard Lorren Jolly, *Judges as Politicians: The Enduring Tensions of Judicial Elections in the Twenty-First Century*, 92 NOTRE DAME L. REV. 71, 74 (2017).

266. Bradshaw, *supra* note 110, at 1464 (explaining that guardians or trustees, "unlike agencies, are not responsive to public will and lack democratic legitimacy."); Sachs, *Anti-Democratic Rights of Nature*, *supra* note 57, at 95 (arguing "RoN vision for governance under a system of enforceable rights for all living things would have pernicious effects for democracy and human well-being."). On the relationship between liberal democracy and environmentalism, see Avner de-Shalit, *Is Liberalism Environment-Friendly?*, 21 SOC. THEORY & PRAC. 287, 291 (1995) (liberalism has led to "a flourishing of ecological attitudes."). As an example, Tănăsescu, argues that the *Atrato* decision "propagates stereotypical views of Indigenous and local people and shows its lack of serious commitment to radical solutions in rushing though decisions without any democratic process" by imposing unbelievably short timelines. TĂNĂSESCU, *supra* note 3, at 105.

267. Sachs, *supra* note 57, at 95; see also Mihnea Tănăsescu, *Theoretical Foundations of the Rights of Nature: Origins and Conceptual Characteristics*, in GLOBAL LEGAL PLURALISM AND RIGHTS OF NATURE, 97 (Daniel Bonilla Maldonado & Ralf Michaels eds., 2025) (critiquing the decision in the *Atrato* case because the ruling "arose without extensive prior consultation with local communities"); cf. Lyons, *supra* note 21, at 67 (discussing the dialogic nature of the

rights proposals could constrain legislative authority and disrupt democratic deliberation.²⁶⁸ Professor Sachs also shares some concerns that even if these proposals were fully implemented, there is no guarantee that nature would fare any better.²⁶⁹

Even for those who think nature's rights are democratic because they are responsive to social movement demands, this framework can become "ornamental" and bureaucratic.²⁷⁰ By avoiding specific "roles, duties, and responsibilities of the public and private actors . . . [rights of nature frameworks] leave structural changes in the hands of an asymmetrical and bureaucratic dialogue between the actors involved."²⁷¹ The result is not a participatory and democratic process, but one ruled by technocracy, bureaucratic aspects, and status quo politics. In this way, judicial decisions recognizing nature's rights can disempower and depoliticize social struggles, obscuring claims behind the bureaucracy of the state apparatus.

IV. INTEGRATING AND STRENGTHENING NATURE'S RIGHTS INTO EXISTING REGIMES

This Part will propose potential next steps to address some of the challenges and shortcomings related to nature's rights frameworks. While this Article cannot account for all the jurisdictional differences across the Americas, it seeks to offer ideas to strengthen the development of nature's rights through legislative, judicial, and expert guidance. Although the challenges raised in the previous Parts illustrate the limitations of rights of nature approaches, these efforts have not only emerged but persisted and become widespread. Against this background, it is worthwhile to rethink the project and brainstorm ways to energize it and transform it. Partly, this Article has been motivated by a sense that both supporters and critics of the project are talking past each other, without acknowledging that the project itself will not on its own "solve" the climate and biodiversity crises, but that the project has nevertheless succeeded in capturing the hearts and imaginations of people across the world despite a sense of generalized apathy. Thus, I offer some preliminary thoughts to strengthen the rights of nature project because it is already here, is unlikely to go away, and merits serious engagement.

Atrato case, which arguably departs sharply from the Amazon case because the former "was driven by the concerns of local interethnic riverine communities").

268. Sachs, *supra* note 57, at 98.

269. *Id.* at 95.

270. González-Serrano, *supra* note 19, at 334.

271. *Id.*

A. Legislative Guidance

Whether a jurisdiction already has judicial rulings recognizing nature's rights or not, the legislative branch has an essential role to play. Legislatures can provide guidance on (1) how and whether nature's rights should be recognized, (2) what sources of law and legal principles support their creation, recognition, or development, (3) which governmental agencies should be involved in conceptualizing or implementing these rights, (4) what institutional mechanisms can support rights of nature governance, and (5) what public participation and monitoring mechanisms should be fashioned to support engagement and access to information. Particularly in multicultural and multiethnic societies where Indigenous peoples, *campesinos*, Afro-descendants, and other groups live and have special relationships with natural entities and ecologically significant areas, legislative efforts should be developed in close consultation with affected communities and other stakeholders.

Legislatures can help further conceptualize, flesh out, and crystallize the elements and boundaries of nature's rights regimes by either building on prior precedent or legislative proposals. For example, statutes can establish clear parameters for courts to adjudicate environmental disputes involving nature's rights, though legislatures must be careful not to tread on the judiciary's role. In any case, legislative debates can also result in more diverse and robust discussions around nature's rights, unpacking the national and local effects of nature's rights development and engaging diverse experts, communities, and stakeholders. A broader dialogue might be preferable to the status quo, which has seen organic, fragmented development on a case-by-case basis. Perhaps because of the challenges that accompany the emergence of nature's rights, the Colombian Congress adopted a law in 2024 (Law 2415 of 2024) that provided government agencies with much more detail and guidance on the procedural and substantive components of these rights. The law recognized the rights of the Ranchería River, which has special significance for the Wayuu Indigenous people.²⁷² The law orders the Procuraduría General de la Nación (Attorney General's Office) and Defensoría del Pueblo (Ombudsman's Office) to monitor the law's enforcement.²⁷³ The law also contemplates the participation rights of nearby communities,²⁷⁴ which might help alleviate some of the tensions that have arisen in other cases. The law orders the Ministry of Environment to

272. *Colombia Law: Rights of the Ranchería River*, ECO JURIS. MONITOR (2025), <https://perma.cc/EW8Z-3Y6N>; see also DIGGING DEEPER: THE HUMAN RIGHTS IMPACTS OF COAL IN THE GLOBAL SOUTH 20–21 (Krizna Gomez & Gregory Regaignon eds., 2015), <https://perma.cc/FEA4-XK57> (summarizing the role of the coal industry in displacing communities and undermining access to water across Indigenous communities, including by trying to reroute the Ranchería River to access coal reserves under the riverbed).

273. Ley No. 2415 de 2024, art. 5 (Colom.).

274. *Id.* art. 1 (stating that “[t]he purpose of this law is to declare the Ranchería River, its basin and its tributaries, as an entity subject to rights for its conservation, maintenance and restoration

convene and support the creation of the Ranchería River Guardians Commission, which should include government officials, as well as an advisory team.²⁷⁵ Although it is unclear what the law's long-term effect will be, adopting the law will likely require changes to commercial projects along the river and involve stakeholders such as the Guardian Committee.²⁷⁶ The law also requires relevant entities to allocate sufficient funds to enforce it.²⁷⁷ However, given the lessons of the *Atrato* case, ensuring consistent and sufficient funding to enforce the law may prove difficult.²⁷⁸

Another example from the United States is the "New Jersey Rivers and Watersheds Bill of Rights," which seeks to recognize and protect the rights of rivers and watersheds in New Jersey against intentional or unintentional violations by individuals, business entities, or state agencies.²⁷⁹ The proposal seeks to create "rights and causes of action" including the "right to flow, regenerate and evolve," "the right to full restoration, recovery, and preservation," and the "right to be free from pollution," among others.²⁸⁰ Interestingly, the proposal also recognizes the rights of residents "to healthy, flourishing river ecosystems" and to bring actions under the law. With regards to standing, the proposal states that "the Watershed has legal standing to appear as the real party of interest in administrative proceedings and legal actions affecting its Rights."²⁸¹

While not perfect, Law 2415 of 2024 and the New Jersey Rivers and Watersheds Bill of Rights provide an example of what future legislation on nature's rights can contemplate. Legislation at the national or subnational level can help fill policy and implementation gaps and provide specific parameters and metrics. For instance, in cases involving the rights of water bodies, statutes can clarify what this means in terms of water integrity, quality, and standards. The law can also provide context for the composition of guardianship arrangements, supervisory structures, and roles. Finally, legislative debates can also facilitate a more comprehensive conversation about the significance of specific ecosystems or rivers and offer more direction for courts interpreting and officials enforcing the law. From a strategic lens, broader dialogue may help build

under the responsibility of the State and with the effective participation of the [nearby] communities" (author translation)).

275. *Id.* art. 2. Interestingly, the Commission should include a representative for each municipality from *campesino*, Indigenous, and Afro-descendant communities. *Id.* art. 2(8)-(10).

276. Zapata et al., *supra* note 147.

277. L. 2415, Aug. 8, 2024, art. 6 (Colom.).

278. See generally Suárez Bohórquez, *supra* note 123, at 1 (discussing the challenges of implementing the ruling, including the limited judicial review, unenforceable orders, absent ecological integrity baseline, and insufficient resources for guardians).

279. S.B. 221, New Jersey Rivers and Watersheds Bill of Rights, State of New Jersey (221st Legislature, 2024), § 4.

280. *Id.* at § 3(a)(1-6).

281. *Id.* at § 9(a).

consensus around nature's rights as a policy and legal framework, which, in turn, can reduce future backlash and address some democratic legitimacy critiques.

Legislatures can also address some standing challenges by creating a statutory right of action grounded in nature's rights. In particular, legislatures can adopt proposals that guarantee stronger institutional arrangements and secure funding since some of the obstacles to nature's rights rulings have stemmed from the absence of technical and economic support.²⁸² While in places like the United States, plaintiffs will still need to meet constitutional standing requirements under Article III, in other jurisdictions, creating a legal basis for future nature's rights litigation might be enough to address the potential conflicts that arise when existing legal frameworks are forced to accommodate the emerging framework of nature's rights.²⁸³ Legislation, however, is not a panacea. In the case of Bolivia, despite having legislative recognition of nature's rights, the legislative adoption was fraught with internal divisions between supporters, resulting in the exclusion of some Indigenous groups.²⁸⁴ Furthermore, there has been little judicial review of nature's rights cases, resulting in very limited jurisprudence and implementation.²⁸⁵ The lessons learned thus illustrate the importance of a legislative mandate to consolidate public support and address legitimacy concerns, as well as consistent follow-up to ensure a dialogue between the judicial and legislative branches.

B. Judicial Guidance

Courts have played a central role in developing nature's rights jurisprudence. In some jurisdictions like Colombia, high courts such as the Constitutional Court and the Supreme Court, have declared natural entities subjects of rights. As legislative guidance increases—and perhaps in its absence—it is critical that courts provide sound reasoning grounded in each jurisdiction's laws when recognizing nature's rights. For example, in countries where international environmental law principles, such as the precautionary principle, sustainable development, or *in dubio pro natura*, are part of judicial interpretation, domestic courts play a critical role in explaining how nature's rights fit within existing

282. Lyons, *supra* note 21, at 68; TĂNĂSESCU, *supra* note 3, at 137.

283. This will be much more difficult in the United States, where the Supreme Court has significantly limited Congress's power to confer standing through legislation. See *TransUnion LLC v. Ramirez*, 594 U.S. 413, 442 (2021) (holding that a statutory violation does not automatically satisfy Article III's concrete injury requirement).

284. Lorna Muñoz, *Bolivia's Mother Earth Laws: Is the Ecocentric Legislation Misleading?*, REVISTA: HARV. REV. OF LATIN AM. (2023), <https://perma.cc/F6B6-298X> (summarizing the fractured process that led to the law); see also Paola Villavicencio Calzadilla & Louis J. Kotzé, *Living in Harmony with Nature? A Critical Appraisal of the Rights of Mother Earth in Bolivia*, 7 TRANSNAT'L ENV'T L. 397, 407 (2018).

285. Michaels, *A Hybrid of Hybrids*, *supra* note 222, at 75–79.

legal frameworks, such as tort, property, and constitutional law.²⁸⁶ Many of these rulings have also interpreted nature's rights and human rights as not in tension with one another, a view that warrants further explanation. Are courts using a balancing test informed by constitutional principles? How are judges resolving competing interests? In the case of the Colombian Amazon, Judge Tolosa from the Supreme Court rendered a novel interpretation of constitutional principles and international legal instruments that Colombia had ratified, but also later admitted making the decision with limited knowledge of the history and dynamics of the Amazon region.²⁸⁷ Litigants face the challenge of engaging "generalist" judges in highly complex environmental and social issues. Professor Lyons argues in favor of training judges and lawyers "[on] the historical analysis of territorial and socioenvironmental conflicts" in the regions impacted by their decisions. Thus, building judicial and technical capacity to carefully engage with nature's rights cases can, in turn, help deliver more robust and informed judicial opinions.

Following the IACtHR's advisory opinions recognizing nature's rights,²⁸⁸ states party to the American Convention on Human Rights have additional authority for the development of nature's rights. After all, the Inter-American System has been a battleground for the recognition and expansion of human rights, including Indigenous rights to territory, consultation, collective property, and culture.²⁸⁹ Advocates observe that the explicit recognition in the court's opinion "mark[s] a paradigm shift essential for the long-term integrity and functionality of ecosystems by bringing domestic developments to the international sphere and adding an additional layer of scrutiny to State conduct."²⁹⁰ Thus, states may have a duty to progressively incorporate nature's rights within their domestic systems.²⁹¹ In the context of recent developments clarifying states' obligations to fulfill, promote, and respect the right to a healthy environment,²⁹² courts can help interpret the law coherently. The IACtHR opinion did not offer much guidance on whether nature's rights are a corollary of the right to a healthy environment,²⁹³ and thus further doctrinal clarity on the relationship between

286. Bradshaw, *supra* note 110, at 1454 (2022) (summarizing a variety of legal instruments to actualize nature's rights).

287. Lyons, *Rights of the Amazon in Cosmopolitical Worlds*, *supra* note 21, at 69. Judge Tolosa admitted not having considered how the ruling might be used to criminalize or exclude certain groups.

288. *See supra* note 170; *see also* Amor Vázquez & Theresa Amor-Jürgenssen, *The Bloom of Nature's Rights: On the IACtHR's Recognition of Nature's Legal Personality in AO-32/25*, SABIN CTR. CLIMATE L. BLOG (July 18, 2025), <https://perma.cc/8CHG-NF6C>.

289. *See supra* note 179.

290. Vázquez & Amor-Jürgenssen, *supra* note 288.

291. *Id.* (citing Advisory Opinion OC-32/25, *supra* note 1, ¶¶ 244–46).

292. *See supra* notes 178–80 and accompanying text; *see also* U'wa Indigenous People and its members v. Colombia, Inter-Am. Ct. H.R. (ser. C) No. 530 (July 4, 2024).

293. David Boyd, *The Right to a Healthy Environment as a Catalyst for Urgent and Ambitious Climate Action at the IACtHR*, VERFASSUNGSBLOG (July 15, 2025), <https://perma.cc/MFR9-M6EP>.

nature's rights and the right to a healthy environment is needed. If nature has the "right to maintain its essential ecological processes,"²⁹⁴ how does this map onto the rights of nature models discussed earlier, where a natural entity can have legal personhood or specific rights?²⁹⁵ Are we discussing "all of nature" or specific ecosystems of special importance? Are nature's rights grounded under international human rights law, and if so, in what ways? Because three IACtHR judges dissented from the majority's decision recognizing nature's rights, further guidance from domestic and regional tribunals is needed.

Furthermore, courts can engage with legislatures through a dialogic process of collaboration and mutual respect.²⁹⁶ In places like Bolivia, the vagueness of nature's rights frameworks has hindered litigants and reviewing courts from interpreting and deciding cases involving nature's rights.²⁹⁷ However, further dialogue between judges and legislators could help advance the theoretical and practical development of nature's rights frameworks. While this may not overcome the political economy critiques of nature's rights rulings or legislative proposals (i.e., that these rulings are merely performative and do not address the root causes of environmental degradation and social exclusion),²⁹⁸ the judicial and legislative branches play a crucial role in ensuring that nature's rights do not remain purely symbolic advances in legal theory, but can result in some concrete changes as documented in the *Los Cedros* case in Ecuador.²⁹⁹

C. Expert Commissions

Besides legislative and judicial guidance, executive agencies can convene expert commissions on nature's rights to provide additional direction on specific questions relating to this novel paradigm. In the context of human rights abuses,

294. Advisory Opinion OC-32/25, *supra* note 1, ¶ 279.

295. See *supra* note 196 and accompanying text (discussing the Martin and Kauffman models).

296. See generally Kent Roach, *Dialogic Judicial Review and its Critics*, 23 SUP. CT. L. REV. 49 (2004); Swati Jhaveri, *Interrogating Dialogic Theories of Judicial Review*, 17 INT'L J. OF CONST. L. 811 (2019) (explaining that "[d]ialogic theories of judicial review emphasize the importance of a cooperative exchange between the judicial and political branches of government on constitutional questions."); Roberto Gargarella, *"We the People" Outside of the Constitution: The Dialogic Model of Constitutionalism and the System of Checks and Balances*, 67 CURRENT LEGAL PROBS. 1 (2014) (discussing how "dialogic" theories "have the capacity to challenge traditional ideas and assumptions concerning the system of separation of powers, the organization of checks and balances, and more particularly judicial review.").

297. Michaels, *A Hybrid of Hybrids*, *supra* note 222, at 75–79 (discussing how the Bolivian law balances rights of nature with other interests and observing that Bolivia's legislation has very limited impact in part "because the institutional framework intended for implementation was never established.").

298. Suárez Bohórquez, *supra* note 123, at 5 (observing that "[u]nder RoN, structural problems have remained often unaddressed while the public and the environment navigate badly drafted legislation, complex institutional arrangements, lack of resources and education, and complicated historic socioeconomic contexts.").

299. See *supra* note 88 (discussing the *Los Cedros* case).

expert commissions have been key in providing independent assessment of factual and legal questions.³⁰⁰ The benefit of expert commissions is that their members can serve as independent monitors, provide expertise, and support the development of legal frameworks. Expert commissions have been important in contexts of social and political upheaval, such as societies in conflict or transition, some of which are in the Americas.³⁰¹ In the context of nature's rights, this model can be replicated to solicit input from affected communities, businesses, government officials, and others interested in providing input on nature's rights frameworks.

Specifically, commissions can provide support on how to integrate Indigenous knowledge in decision-making processes³⁰² or how to better train judges on specialized subjects related to nature's rights, including best available science.³⁰³ On this last point, some scholars have suggested that the creation of a court or tribunal specialized in nature's rights can further advance this framework by having expert judges weigh in on technical or scientific questions.³⁰⁴

Another interesting example emerges in Colombia, within the Special Jurisdiction for Peace or "JEP" (*Jurisdicción Especial para la Paz* in Spanish). The JEP is the main transitional justice mechanism created by the Peace Accord in 2016³⁰⁵ to prosecute war crimes during the Colombian armed conflict (officially demarcated between January 1, 1990, and December 1, 2016).³⁰⁶

300. See, e.g., U.N. Human Rights Council, *International Commissions of Inquiry, Commissions on Human Rights, Fact-Finding Missions and Other Investigations* (2026), <https://perma.cc/HPT4-X47L>.

301. See, e.g., Valeria Vegh Weiss, *Exploring the World's First Successful Truth Commission: Argentina's CONADEP and the Role of Victims in Truth-Seeking*, 15 J. OF HUM. RTS. PRAC. 100 (2023) (discussing the establishment of the truth commission in Argentina after the 1976–83 dictatorship); *South Africa*, INT'L CTR. FOR TRANSITIONAL JUST., <https://perma.cc/V4EJ-48XB> (offering an overview of transitional justice mechanisms after South Africa's apartheid government, including the Truth and Reconciliation Commission).

302. Skurky proposes tactics to adopt more effective laws, including through the codification of Indigenous customary laws and ways of knowing, real collaboration with Indigenous peoples, and drawing from Indigenous knowledge, among others. Skurky, *supra* note 79, at 369.

303. Antonio Herman Benjamin, *We, the Judges, and the Environment*, 29 PACE ENV'T L. REV. 582, 589 (2012).

304. See generally, 1 COMPARATIVE ENVIRONMENTAL LAW & REGULATION § 41:57 (observing that Ecuador's "Organic Code on the Judicial Branch has predicted the creation of such courts, but nothing has been done since."); Michelle Maloney, *Building an Alternative Jurisprudence for the Earth: The International Rights of Nature Tribunal*, 41 VT. L. REV. 129, 130 (2016). On this issue, it is important to note that while the International Rights of Nature Tribunal has heard over a dozen cases and found rights of nature violations, the tribunal is not "legitimate" insofar it does not render binding judgements; it was not created by states and therefore its decisions have no legal consequences for perpetrators. BOYD, *supra* note 8, at 180–85.

305. Jurisdicción Especial Para La Paz [JEP] [Special Jurisdiction for Peace], <https://perma.cc/9LB8-57SE>.

306. Lyons, *"Nature" and Territories as Victims*, *supra* note 22, at 64.

Some of the ongoing cases before the JEP have recognized nature as a “victim” of the armed conflict,³⁰⁷ focusing on areas that suffered severe environmental damage as subjects rather than objects.³⁰⁸ For instance, attacks on oil infrastructure or aerial fumigation of illicit crops using glyphosate have caused severe environmental damage.³⁰⁹ Some of these places overlap with Indigenous, *campesino*, or Afro-descendant territory, or are deemed sacred by these communities.³¹⁰ The cases emerged after communities requested their territories to be recognized as victims of the armed conflict.³¹¹ Interestingly, the JEP can issue provisional measures suspending environmental licenses allowing extraction in these territories.³¹² Through this process, the judges (some of whom are Indigenous themselves) have approached “justice” questions creatively by seeking and integrating non-Western and non-dominant approaches to the concept of “victim.”³¹³ Through these processes, the JEP led a novel effort to integrate non-Western epistemologies into traditional legal systems. Although it may be too early to “assess” the success of these initiatives, they offer concrete examples of how to use different types of expertise that can at the very least question the hierarchy between Western and non-Western ways of knowing. As Professor Lyons explains, the JEP’s emerging jurisprudence “uses the dominant language of law, its ideas and canon, not to represent or speak for a group but instead to

307. See, e.g., Jurisdicción Especial Para la Paz, Noviembre 9, 2019, Auto SRVBIT 079/19, Case No. 002-079 (Colom.), <https://perma.cc/QL3J-3AM6>; Jurisdicción Especial Para la Paz, 2020, Auto SRVBIT 099/20, Case No. 099 (Colom.).

308. Press Release, Jurisdicción Especial Para la Paz, Unidad De Investigación y Acusación “Reconoce Como Víctima Silenciosa el Medio Ambiente.” (June 5, 2019), <https://perma.cc/5NYN-ZTFK>; Alexandra Huneus & Pablo Rueda Sáiz, *Territory as a Victim of Armed Conflict*, 15 INT’L J. OF TRANSITIONAL JUST. 210, 210–11 (2021) (describing how “the Katsa Su, the Cxhab Wala Kile and the Eperera Euja – the territories of the Awá, the Nasa and the Sia people respectively – as well as the territories of the Black communities of Tumaco, have been transformed into legal subjects with rights to justice, truth and reparation, and the right to participate in each stage of the legal process.”).

309. Huneus & Rueda Sáiz, *supra* note 310, at 66; see also Kristina Lyons, *Chemical Warfare in Colombia, Evidentiary Ecologies and Senti-Actuando Practices of Justice*, 48 SOC. STUD. OF SCI. 414, 414–16 (2018); Diana Pardo Pedraza, *Artefacto Explosivo Improvisado: Landmines and Rebel Expertise in Colombian Warfare*, 3 TAPUYA: LATIN AM. SCI., TECH. & SOC’Y 472–92, 493 (2020) (describing how anti-personnel mines in Colombia do not only affect people, but also fields, crops, and creeks).

310. Lyons, “*Nature*” and *Territories as Victims*, *supra* note 22, at 64 (“Indigenous communities, in particular, have placed special emphasis on their restricted ability to visit sacred sites and on the spiritual imbalances produced not only by the continued presence of unexploded land mines but also by mass graves on their lands.”).

311. *Id.*; see also Alexandra Huneus, *The Canon of Nature Rights*, in GLOBAL CANONS IN AN AGE OF CONTESTATION, 526 (Sujit Choudhry, Michaela Hailbronner, & Mattias Kumm eds.) (2024); Huneus & Rueda Sáiz, *supra* note 310, at 218 (describing how the law that created the JEP requires the tribunal to coordinate with Indigenous and Afro-descendant justice systems on matters over which they have jurisdiction).

312. Huneus & Rueda Sáiz, *supra* note 310, at 218.

313. Lyons, “*Nature*” and *Territories as Victims*, *supra* note 22, at 72–73.

destabilize dominant legal thinking and to suggest alternatives.”³¹⁴ Professors Huneeus and Rueda Sáiz similarly explain:

Part of the reparatory work of the JEP, in other words, is to convey the worldviews of Indigenous peoples and Black communities, and to treat these ideas not as the curiosities of a dying culture but as a way to question and recast the thinking of the majoritarian Colombian legal culture, and Western legal concepts more generally.³¹⁵

Although rural communities’ conceptions of nature may go beyond the view of nature as a resource or source of ecosystem services, the JEP is actively complicating simple narratives about ecosystem protection that certain rights of nature rulings may employ.³¹⁶ Its transforming potential lies in its ability to engage in “political and relational” work vis-à-vis Indigenous, *campesino*, and Afro-descendant communities, while defending the legal frameworks of the “liberal international [order] embedded in its ongoing colonial legacy of dispossession.”³¹⁷ The experience of the JEP can at least begin to address some of the concerns related to legal pluralism raised above.

In addition to addressing challenges related to legal pluralism and epistemic justice, expert commissions can strengthen the implementation of nature’s rights cases by providing further guidance on guardianship arrangements. Most guardian groups have included members of nearby communities, public officials from across governmental entities, and scientific experts. Expert commissions could develop guiding questions, parameters, and metrics to help guardians think through the ethical, practical, scientific, and social considerations that shape what it means to represent or speak on behalf of a natural entity. While who “speak[s] for the trees”³¹⁸ will never be a straightforward inquiry given the inherent conflicts between different sentient beings and their ecosystems,³¹⁹ guardianship structures can prioritize ecological integrity or, at the very least, balance it with other competing interests. In the case of the JEP, leaders or traditional authorities have been the natural representatives or those who can “speak on behalf of territories as victims.”³²⁰ Precisely because “[e]nvironmental protection is ultimately about drawing lines between acceptable and unacceptable degrees of human use of natural systems,”³²¹ well-resourced and supported guardians can do a better job at this line-drawing exercise. Finally, the outputs of expert commissions can support both the judiciary and the legislature in

314. *Id.* at 65.

315. Huneeus & Rueda Sáiz, *supra* note 310, at 224.

316. Lyons, “Nature” and Territories as Victims, *supra* note 22, at 67, 69.

317. *Id.* at 72.

318. DR. SEUSS, *THE LORAX* 29 (1971).

319. Sachs, *Anti-Democratic*, *supra* note 57, at 114–17.

320. Lyons, “Nature” and Territories as Victims, *supra* note 22, at 68.

321. Sachs, *Anti-Democratic*, *supra* note 57, at 128.

thinking through the specific contexts in which they operate and in developing nature's rights regimes.

CONCLUSION

This Article has sought to explore some of the conceptual and practical difficulties of implementing nature's rights remedies across the Americas. Rights of nature frameworks have already provided a discursive and legally innovative approach for communities to advocate on behalf of natural entities and ecosystems. The nature's rights movement has found momentum in an era of climate disasters, growing inequality, biodiversity crisis, and increasing concentration of wealth. For its proponents, the rights of nature serve important dialogic functions and have helped coalesce support for environmental protection when traditional environmental law has not been enough. However, the emergence of nature's rights jurisprudence has been riddled with design and implementation challenges, hindering its potential to guarantee better social and environmental outcomes.

To strengthen nature's rights frameworks across the Americas, this analysis proposes a three-pronged approach involving legislative, judicial, and expert guidance. Legislatures should provide clear statutory frameworks that define the scope and implementation of nature's rights, thereby helping ensure better institutional arrangements and address legitimacy concerns. Courts must ground their nature's rights decisions in sound legal reasoning that coherently integrates these emerging frameworks with existing constitutional, tort, and property law principles. Finally, expert commissions can fill critical gaps by providing specialized guidance on technical questions, integrating Indigenous knowledge, and developing guardianship structures that balance ecological integrity with competing human interests.

This coordinated approach offers a path toward more robust and sustainable implementation of nature's rights, moving beyond the current fragmented, case-by-case development toward comprehensive legal frameworks that can withstand future challenges.