



IN BRIEF



WOMEN, THE ENVIRONMENT, AND RIGHTS OF NATURE

Photo: UN Photo/Kibae Park

Gender inequality coupled with the climate crisis is one of the greatest challenges of our time. Connections between gender, social equity, and climate change, have given rise to a powerful climate justice movement that has amplified the voices of Indigenous communities, and women environmental defenders. Justice actors across the Asia Pacific region are increasingly embracing the Rights of Nature as a legal framework through which to advance sustainability. By drawing from the world views, cultures, and knowledge systems of Indigenous peoples in the region, and around the world, people across Asia Pacific are developing unique legal and governance approaches to protecting the environment.

THE GLOBAL RIGHTS OF NATURE MOVEMENT

The Rights of Nature movement is growing worldwide. Recognising the Rights of Nature means recognising that our entire biosphere — all plants and animals — together with our planet's geological processes, atmosphere and hydrosphere, have just as much of a right to exist, regenerate and thrive as human beings do.

Rights of Nature is a social movement and a legal movement. Rights of Nature laws now exist in many countries around the world, including Bangladesh, Bolivia, Canada, Colombia, Ecuador, India, Mexico, New Zealand, Panama, Uganda and the United States of America.

Rights of Nature is also being advocated for within international initiatives, such as United Nations Harmony with Nature, and the Global Alliance for the Rights of Nature civil society network. Many non-governmental organisations, activists, researchers and government agencies in countries such as Australia, Germany, South Korea, Germany, Sweden, and the UK, are researching and considering how Rights of Nature may be incorporated into their legal and political systems.

The Rights of Nature movement recognises the powerful impact that changing the legal status of nature can have. Recognising that nature has rights directly challenges the concept that nature is human property. Rights of Nature laws can strengthen or replace ineffective environmental protection laws that offer weak protection for the living world. The Rights of Nature movement draws parallels with previous rights movements, including the rights of women, to create a paradigm shift by creating rights for those discriminated against and marginalised from decision-making.

FROM GLOBAL MOVEMENT TO REGIONAL ACTION

The Asia Pacific region has led the way in catalysing the growth of the Rights of Nature movement. In 2017, the New Zealand government recognised the legal rights of the Whanganui River, together with the rights of the Indigenous peoples responsible for the river, as having the authority to speak on the rivers' behalf.

This legislation, which connects Indigenous and western legal systems in New Zealand, inspired courts and communities around the world to also recognise the rights of rivers and the rights of Indigenous peoples and tribal communities to speak on behalf of ecosystems.

Following New Zealand, courts and policy makers in countries such as India, Colombia and Mexico began recognising the rights of rivers. In Bangladesh the Supreme Court gave all rivers in the country legal rights, recognising them as “living entities” with rights as “legal persons”.¹ The rights of the rivers may be enforced against both private and public entities.

In Pakistan, the Supreme Court recognised the need to protect the rights of nature stating that “the environment needs to be protected in its own right” and that “[m]an and his environment each need to compromise for the better of both, and this peaceful coexistence requires that the law treats environmental objects as holders of legal rights.”ⁱⁱ

HOW IS THE RIGHTS OF NATURE MOVEMENT DIFFERENT FROM EXISTING ENVIRONMENTAL LAW?

Advocates for the Rights of Nature criticise existing environmental laws, arguing that they do not address the root causes of the current ecological crisis — a pro-growth, resource-extractivist economic system that treats nature as property.

Rights of Nature is a paradigm-shifting concept because it rejects the idea that nature is human property, and it places the health of the non-human world as a primary concern of the legal system.

Rights of Nature can be used to critique, reveal, and respond to the negative impacts of the human centred, non-regenerative cultures and economic and legal systems. It can also lead to a range of diverse legal, policy and strategic responses.

HUMAN-CENTRED (ANTHROPOCENTRIC) VERSUS EARTH-CENTRED (ECOCENTRIC) LAW

The philosophical approach of Rights of Nature is grounded in ecocentrism: the recognition that humanity is just one member of the wider Earth community and that we have evolved with, and are dependent on, a healthy, interconnected web of life and life-supporting systems on Earth. In contrast, anthropocentrism, the foundation of industrialised societies and dominant legal systems, is a worldview in which humans see themselves as separate from — and more important than — the rest of nature. Under an anthropocentric worldview, humans have the right to control and dominate nature.

Rights of Nature is particularly seen as a challenge to human-centred property law. In the globalised economy, property law treats nature as human property that can be bought, sold, looked after or used up by humans. This is a profound structural foundation in western law and is in stark contrast to the world view and legal systems of other cultures, such as many Indigenous peoples, who see the living world as sacred and ‘in relationship’ with human wellbeing.

KEY CONSIDERATIONS:

RIGHTS OF NATURE AND INDIGENOUS PEOPLES

The Rights of Nature movement is inspired by the worldviews, knowledge and culture of Earth-centred Indigenous peoples. Environmental lawyers and activists have looked to the culture, law and economic systems of Indigenous peoples for inspiration for decades.

Across the Asia Pacific region, Indigenous women are known to be holders of traditional knowledge. With 70 per cent of the world’s Indigenous and tribal peoples living in the region, Indigenous women and their communities can deepen our understanding of living in harmony with nature.

For people interested in Rights of Nature, it is very important to first ask how this concept may or may not be suitable for your local place, culture, and legal system. It is particularly important to explore how the concept of ‘Rights of Nature’ connects with (or doesn’t connect with) the culture, law, and governance reality of local Indigenous and tribal communities.

Some Indigenous commentators have criticised Rights of Nature laws as being a western legal construct, and not appropriate for use within Indigenous legal systems.

It is important that Indigenous peoples and tribal communities be enabled to choose their pathways to continue their traditions, as well as challenge and amend existing laws and governance systems. Nonetheless, there are many examples of where Indigenous peoples have adopted Rights of Nature concepts to change the legal status of nature within law, to protect their traditional lands, and their own rights to that land.

In Australia, several Indigenous communities have used ‘Rights of Nature’ framing in their own documents; Aboriginal leaders within the Martuwarra/Fitzroy River Council have proposed that there needs to be a recognition of the ‘rights of ancestral beings’ to properly reflect their legal relationship with the Martuwarra River.

However, others have questioned whether there is a need to bring the Rights of Nature into Aboriginal law given “Rights-based law is seen as a conflict-oriented approach to resolving different land use demands. This contrasts with Aboriginal concepts of obligation, and the fundamental goal of Aboriginal societies, which is to create stability, harmony, and balance.”ⁱⁱⁱ

WHAT RIGHTS DOES NATURE HAVE?

Where legal systems have recognised the rights of nature, specific rights are usually set out in the court decisions or legislation that recognised those rights in the first place.

Deep ecologists who have advocated for Rights of Nature, such as 'geologist' and philosopher, Thomas Berry, say that the Rights of Nature are already existent; they are not created by human law but rather are created by the very act of the universe bringing forth its evolutionary processes. Thus the rights of nature come from the same source as human rights do — the universe itself.

DIFFERENT WAYS THAT RIGHTS OF NATURE LAWS HAVE BEEN CREATED AROUND THE WORLD

Legally recognising that the natural world is just as entitled to exist and evolve as we are necessarily changes the way humans act. It has both proactive impacts (e.g. changing the way people view nature and ensuring that they plan their activities to support life and minimise harm) and it has reactive impacts (e.g. changing the types of restorative remedies available if the Rights of Nature are violated).

Creating a Rights of Nature law requires that all elements of how the law will work are set out clearly in the law itself and any connected regulations. As the Rights of Nature movement grows, we are seeing two major avenues through which rights of nature laws are being created:

- (i) Laws recognising the rights of nature across an entire jurisdiction, such as a local municipality, state or nation (e.g. in Bolivia, Ecuador, Panama, Uganda and some local municipalities in the USA).
- (ii) Ecosystem-specific laws that recognize the rights of specifically named and defined entities, such as a particular river, mountain or forest (e.g. in Bangladesh, Colombia, India and New Zealand).

These different approaches to making Rights of Nature laws often lead to their own governance and management approaches. For example, laws that recognise the rights of nature across an entire jurisdiction typically have 'open standing', such that any citizen can take action to defend the rights of nature.

Laws can also introduce a range of different administrative and institutional structures to support and administer the rights of nature. In contrast, laws that recognise the rights of a specific ecosystem often involve guardianship structures such that a specific group of people can speak for the rights of the entity (for example, for the Whanganui River in New Zealand, the guardianship group includes an equal number of representatives from the Māori tribe/iwi who belong to the river and government representatives).

BUILDING A FOUNDATION FOR THE RIGHTS OF NATURE

When thinking about how to operationalise a concept like the Rights of Nature, some foundational questions need to be asked, such as:

- Is Rights of Nature compatible with Indigenous, tribal and/or grass-roots communities' or peoples' existing worldview and approach?
- What type of cultural, societal, governance and legal reforms are necessary for the Rights of Nature concept to be effective?
- If nature has rights, who speaks on behalf of nature to articulate and defend those rights?
- If nature has rights, how do we articulate what those rights are?
- How do we manage competing rights?
- If nature has rights, what does that mean for human duties and obligations?

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¹ Appellate Division of the Supreme Court of Bangladesh upheld the 2019 decision of the High Court (in Writ Petition No 13989)

² <https://news.climate.columbia.edu/2021/04/22/rights-of-nature-lawsuits/>

³ Mary Graham and Michelle Maloney, 'Caring for Country and Rights of Nature: A conversation Between Earth Jurisprudence and Aboriginal Law and Ethics', in Cameron La Follette and Chris Maser, *Sustainability and the Rights of Nature in Practice*, CRC Press 2019