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Representing Rights of Nature: A Survey of Representative Forms

SOAS Environmental Policy Clinic 2023-2024

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1. Overview of Key Findings

1.1. Introduction

Rights of Nature has been a growing innovative legal tool that is utilised to ensure environmental protection, confront colonial legacies, and reimagine relationships with communities and Nature. At its core, Rights of Nature reconceptualizes Nature as being a subject of the law, rather than an object to be utilised by humans. This shift from anthropocentric to non-anthropocentric or ecocentric framing has been occurring across the globe. As of June 2024, this included over 500 initiatives around the world related to recognizing the Rights of Nature.[1] Although this term is used throughout the literature, it entails various legal tools, scales of governance, and cultural relationships to the environment. Moreover, these elements are not centralised, reliable in their replicability, and necessarily likely to be framed in similar ways across contexts. This is also evident in the conceptual foundations of the movement, which remain scattered and under construction. In other words, what worked, was deemed essential, or provided the backdrop in one case may not be reflected in a similar case.

With a more general mapping, focused on design and legal analysis, there are common elements that local communities and practitioners can learn from and apply to their own contexts. As a start, this project focuses specifically on the representative model version of Rights of Nature. In this framing, the issue of a ‘lack’ of a voice for Nature is addressed by providing a ‘guardian’ or other representative. This representative is tasked with ‘speaking’ for Nature and ensuring that Nature is able to pursue its own interests. The main formulations of this representative have come through legislations, the courts, local ordinances, non-legal community declarations, or indirectly through open standing. This project considers these five formulations and various examples of these in practice. Through this, the team has given precedence to the design of the representative model. Thus, this project provides a survey of representative models of nature-entities globally, grouped by legal origin. It is distilling them down just to the question of representation, rather than focusing on rights, success, or justice. This is important because it adds to the body of knowledge by having the case studies (of only representative form) collected in one place, and allows for comparison between them

[1] ecojurisprudencemonitor.org

The project is designed in two parts. Part 1 will focus on the more broad takeaways for each legal form that was investigated. Part 2 will provide a more detailed and varied look into each legal form of representative models based on the relevant case studies. As a reader, the initial takeaways should provide an introduction and help with the consideration for the choice that may be most relevant to your specific context. Once this has been understood, Part 2 will allow for a more detailed and nuanced look at the model more specifically. For this section, the general concept and goals of the representative model is introduced and this is followed by insights into each case study's design. Finally, a comparative analysis is provided for each representative model based on the case studies.

1.2. Methodology

The methodology for this project relied on desk-based research. The team began with an initial mapping of the Rights of Nature landscape and the hundreds of cases that have been attempted. Through this, the team began to focus on case studies that would inform practitioners on the various routes that can be achieved to recognize the Rights of Nature through representative models. The decision-making around which cases to include were based on replicability and relevance. This is to say that recognizing the Rights of Nature is a social, political, and legal endeavor that is highly dependent on context. Local legal structures, conceptualizations of Nature, and historical backdrops define this context. Through this, the team decided to decontextualize (as much as possible) these 'moments' of Rights of Nature. This decontextualization was rooted in the idea that understanding these backdrops and applying them to each case was outside of the scope and goals of the project. Instead, the project hopes to inform practitioners, decision-makers, and communities on the various legal avenues that are possible within the representative model for Rights of Nature. Through this, the takeaways can be understood and placed within the scope of the goals of the practitioners. In other words, this guide does not intend to prescribe specific choices or pathways for the reader, but to unpack the various elements of each route to assist the reader in understanding where their own specific context can fit within this matrix.

For those interested in more detailed and comprehensive investigations into a specific example from the case studies, an annex will be provided at the end that points to books, articles, and other contributions that will help fill these gaps.

1.3. Summary of Key Findings

1.3.1. Legislation

Legislation is a widely used method to establish guardianships while considering governmental and local interests. Legislation often stems from grassroots movements led by local (e.g. Mar Menor) and indigenous (e.g. New Zealand, Australia) peoples, and the needs of these movements are reflected in the subsequent legislation. The benefits of this process include that it can provide clear guidelines for a guardian's powers, who can serve as part of the guardian, and can foster collaboration between multiple stakeholders when protecting the environment. However, legislation can also be an arduous process, and the guardianships rely on bureaucratic structures that may slow environmental protection in some circumstances. Despite these drawbacks, legislation remains an emerging means for the creation of guardianships, and these models have proven replicable, with the Whanganui River Claims Settlement Act influencing international policymaking. More information

1.3.2. The Courts

Courts offer a way to integrate nature's rights into the country's administrative infrastructure. This can be achieved through litigation around the Rights of Nature or representative models that have been created specifically by a court. They are often utilised by civil society to represent their concerns through a formalised mechanism. Since courts are not specialised institutions tackling environmental concerns, if the judges have no reference for establishing these rights, they may be ambiguous or fail to make significant change. Effective governance of rivers with granted rights needs clear and specific definitions of those rights, empowered legal representatives covering the entire river basins, and representation of all stakeholders. This setup mirrors what's done for the Whanganui River. Taking Colombia's Atrato River as an example, for the representative model to work well, there must be prior thought given to environmental governance and stakeholder dialogue, which was lacking in the Indian and Bangladesh cases. In India, the issue of transboundary nature of River Ganga (which extends into Bangladesh) was not considered,

creating problems regarding liability. Lack of integration of local stakeholders into management of the river posed a problem for River Turag in Bangladesh. Lack of political will and absence of clear legislative measures add to the woes of exercising Rights of Nature in the Judicial approach. Integrating new natural entities into existing legal and administrative frameworks is likely to offer better protection and management than simply adding them on without establishing legal and administrative pathways to execute those rights.

1.3.3. Local Ordinances and Byelaws

Given the highly localised character of ecosystems, local ordinances and byelaws can provide a useful avenue for establishing representative powers at the substate level. The Indigenous-led ordinances of Canada and Uganda show that Indigenous biocultural relationships can be a powerful driver for the establishment of representative models, but the case of the UK illustrates that the universality of the language of Rights of Nature, even where Indigeneity is absent, can be used to transcend context. Among the other key benefits of local ordinances is the relative accessibility and proximity of local communities to local government. Local ordinances can also be enacted with relative speed. However, considering the comparatively low standing of local ordinances in the hierarchy of domestic law, local ordinances remain vulnerable to being supplanted by other authorities and levels of government. At the local level, particularly in developing countries, a lack of capacity, resources and expertise might impinge on the dissemination of information regarding these byelaws, as well as limit the extent to which they are enforced. More information

1.3.4. Community Declarations

Community declarations are initiatives sparked and driven by grassroot activism, thereby empowering marginalised and/or environmentally-conscious communities to directly advocate and develop Rights of Nature in their local area. Unlike the aforementioned Rights of Nature routes, community declarations aren't tied to centralised governance systems, allowing Rights of Nature to be explored through other legal avenues such as Indigenous or international law; making them particularly suitable representative models for states with legal pluralism. This structural freedom allows them to be flexibly designed to suit the specific needs of the ecosystem they are

striving to protect, as well as the community themselves. More specifically, they can be used to reinforce indigenous culture and identity. Although an emphasis of on-the-ground realisation of Rights of Nature promotes community action, a long-term reliance on volunteers could impede the protection of nature's rights over time. Furthermore, despite its benefits, a lack of relationship with governmental bodies could pose potential drawbacks as, without such collaborations, any developments towards realising Rights of Nature would remain localised. That being said, connections between community representative models and other organisations can be forged over time; the holistic approach to achieving Rights of Nature through environmental protection and community fellowship making community declarations a worthwhile route to realising the Rights of Nature. More information

1.3.5. Open-standing

Open standing is not necessarily a clear case of a representative model for Nature. However, as seen through examples in Ecuador, Spain, and Uganda, a jurisprudence around open standing can be built through the court system, which has provided a quasi-representative for Nature. Open standing allows any class of litigants to initiate legal proceedings without needing formal and specific interests. This concept is gaining traction, particularly in environmental law, where judges are increasingly permissive in granting cases related to the Rights of Nature, thereby broadening legal avenues for environmental protection. Such inclusivity strengthens efforts to safeguard the environment, ensuring broader participation in legal processes and potentially leading to more robust jurisprudence. Moreover, open-standing initiatives empower communities and individuals to act as guardians of nature, without being formally appointed, fostering proactive environmental stewardship. Enhancing open-standing frameworks can ensure balanced access and efficient case management moving forward. By continuing to recognise and support the Rights of Nature, courts can strengthen environmental jurisprudence, fostering a global trend towards more inclusive and effective environmental protection. More information

1.4. Limitations and Ways Forward

The limitations of this research are partially tied to the newness of many of these representative models. Given this recency, it is difficult to analyse how effective these representative models are and will become. Future monitoring is needed to track how viable representation for nature will

become in the future. Considering this limitation, case studies in Section 2 of this guide focus more on the origins of these models and how they have developed in their early stages, and future reports must continue to track how they are implemented in practice.

Additionally, this report is focused on representative models, including the origins, how different communities have thought about who should be included, and why certain representative models are more replicable than others. This report is not focused on broader components of the Rights of Nature movement outside of this more narrow representative scope, and readers are encouraged to consider other documents when understanding other aspects of Rights of Nature policy.

Finally, this document is written with policymakers and community organisers in mind, and so its case studies are directed at guardianships that are implemented publicly. Other private sector guardianships like those integrating guardians onto corporate boards or on university student unions are not included in this report's cases. Though, private sector guardianships should be researched as well and may present an additional creative way to represent nature.

2. Individual Representative Model Analysis

2.1. Legislation

One way for guardianships to be incorporated into Rights of Nature law is through legislation. Legislation allows governments to codify specific, named parameters for who can act as a guardian and what guardians can do on behalf of nature. Oftentimes, guardianships created through legislation are the result of prolonged grassroots efforts spearheaded by local and indigenous communities. Such guardianship models tend to incorporate voices from these groups, along with government or business representatives. However, the purview of guardianships created via legislation is varied, with some acting as legal representatives who can sue to protect natural bodies or other guardians that advise politicians on what is best for nature. Additionally, the structure of these guardians can differ in membership and structure.

The following section discusses four case studies of guardianships established through legislation. These include the Tripartite Committee of Mar Menor in Spain, which utilised a multi-tiered system to reflect local interests in the lagoon. Additionally, two case studies from New Zealand

consider how that government has attempted to repair relations with local Māori iwi that have disputed governmental control of natural bodies for decades, influencing emerging Rights of Nature declarations like the Taranaki Maunga negotiations to establish legal personhood for another New Zealand natural body.[2] Australia's Birrarung Council stemmed from similar consideration of indigenous groups as the New Zealand statutes but employs a different model of political advocacy to effectuate its policy goals.

Case Study One: Mar Menor, Tripartite Committee, Spain

The Spanish Lagoon of Mar Menor, located in the Autonomous Community of Murcia in Spain, was granted legal personhood by the Spanish Parliament under the "Ley del Mar Menor" (19/2022), on the 30th of September 2022. This was a response to the Popular Legislative Initiative initiated by the University of Murcia in an attempt to recover the lagoon from its advanced state of degradation. The Spanish Constitution allows for "popular legislative initiatives" to be taken by private persons, provided such initiatives assemble sufficient authenticated signatures. This movement managed to gather 600,000 signatures, and thus the Law 19/2022 was passed in Parliament. The reasons behind the law were, firstly, the serious environmental degradation and a humanitarian impact to the residents of its coastal municipalities due to excessive industrial use since the 1960s, and the inadequacy of the current legal protection system in protecting the lagoon. Secondly, the importance and cultural significance of the lagoon for Murcian identity. The law recognises the inherent right of the lagoon 'to exist as an ecosystem and to evolve naturally,' and establishes provisions for its protection, conservation, maintenance, and restoration.

The guardianship model for Mar Menor, including the representation and governance of the lagoon and its basin, was also established under the same legislation, and it was embodied by three figures: the Committee of Representatives, the Monitoring Commission and the Scientific Committee. The Committee of Representatives is composed of representatives from the General State Administration, from the citizens of the riparian municipalities and from members of the general citizenry. Its functions include actions for the protection, conservation, maintenance, and

[2] Record of Understanding for Mount Taranaki, Poukai and the Kaitatake Ranges (New Zealand, 20 December 2017).

restoration of the lagoon, as well as monitoring and overseeing compliance with the rights of the lagoon.

The Monitoring Commission is considered the "guardian" of Mar Menor, and is composed of two members representing each of the 8 riparian municipalities, which are appointed by the respective City Councils and are renewed after each municipal election. Moreover, the Commission also includes representatives of the following sectors: business associations, labour unions, neighbourhood associations, fishing groups, agricultural groups, livestock groups (including representation of organic and/or traditional agriculture and livestock), environmental defence groups, groups advocating for gender equality and youth groups. The functions of the Commission include the dissemination of information regarding this law, the monitoring and controlling of the compliance with the rights of the lagoon, and the provision of periodic information about the enforcement of this law.

Lastly, the Scientific Committee is an independent committee of experts and scientists from the University and other research centres. Among its functions, it identifies indicators related to the ecological state of the ecosystem, its risks, and appropriate restoration measures.

Case Study Two: Te Awa Tupua (Whanganui River), Te Pou Tupua, New Zealand

Te Awa Tupua–also known as the Whanganui River–was granted legal personhood through the Te Awa Tupua (Whanganui River Claims Settlement Act) in 2017 following negotiations with Māori groups over land disputes.[3] This Act created a three-tiered guardian to act for the river. First, the two-member Te Pou Tupua acts as the human face of the river, with one representative coming from a local Māori iwi and the other being nominated by the New Zealand government.[4] Te Pou Tupua can represent the river legally and perform landowner functions on behalf of the river. Second, Te Pou Tupua is assisted by the advisory body known as Te Karewao, which develops policy for Te Pou Tupua to best protect the river and is made up of members from the government and Māori iwi.[5] Third, Te Tōpuka develops strategy for Te Pou Tupua through technical guidance.

[3] Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (New Zealand) § 3.
[4] Ibid § 18(2).
[5] Ibid §§ 27-28.

Members of this group include voices from the government, Māori iwi, and private interests (including commercial groups).[6] The guardianship model here was the result of lengthy negotiations between the New Zealand government and Māori groups to settle land disputes and decolonise the river from top-down control.[7] Therefore, the guardianship for Te Awa Tupua represents a complex model using a tripartite system with a primary face for the river supported by two subsidiary bodies to advise and provide technical support for Te Pou Tupua. The Act itself is designed to promote the participation of local groups, with special focus on the Māori people.

Case Study Three: Te Urewera, Te Urewera Governance Board, New Zealand

Te Urewera is a range of natural bodies that had previously been managed by the New Zealand government, but in 2014, under the Te Urewera Act, the area was granted legal personhood to protect the ecology and biodiversity of the area, as well as shift control of the land to the Tūhoe people who are the local Māori iwi.[8] To these ends, the Act creates the Te Urewera Board as a legal guardian for the area.[9] Additionally, a primary role of the guardian is to act as a legal administrator for Te Urewera, creating a management plan and bylaws for any actions that may impact the land.[10] The guardian itself consists of members from both the relevant Tūhoe iwi and governmental representatives, but guardianship membership was shifted to majority Tūhoe after three years.[11] Furthermore,, the Act specifies that the guardian must consider indigenous spiritual needs when making its decision. Like other Rights of Nature designations in New Zealand, the Te Urewera Act was the result of lengthy negotiations between Māori groups and the New Zealand government.[12] After a negotiation stalemate regarding ownership of the Te Urewera range, the two sides agreed that the range would be granted legal personality and a jointly controlled guardian would act for Te Urewera in accordance with Tūhoe custom.[13] Therefore, this guardianship model

[6] Ibid § 32.
[7] Ibid § 3.
[8] Te Urewera Act 2014 (New Zealand) § 4.
[9] Ibid §§ 16-17.
[10] Ibid § 18.
[11] Ibid § 21.
[12] David Takacs, 'We Are the River' (2021) 2021 U. Ill. L. Rev. 545, 571.
[13] Ibid 572.

utilises a single body to represent Te Urewera made up of governmental and indigenous members that was the result of Māori advocacy.

Case Study Four: Wilip-gin Birrarung murron (Yarra River), Birrarung Council, Australia

The state of Victoria recognised that the Yarra River was a living entity through the Yarra River (Wilip-gin Birrarung murron) Act 2017, reflecting Aboriginal belief. However, the Act does not go so far as to grant the river legal personhood, but it does establish the Birrarung Council, a political advisor meant to advocate for the river's needs to the state of Victoria's executive branch.[14] Additionally, the Birrarung Council manages development on the Yarra River by crafting and implementing a strategic plan. The guardian itself is made up of 12 members representing a variety of interests,[15] including those of indigenous peoples that the Act recognises as the 'traditional owners' of the river.[16] Unlike other guardianships established via legislation discussed in this section, the Birrarung Council was established through state legislation and not through federal statute. This jurisdictional limit, coupled with the Birrarung Council's inability to speak for the river as other guardians may hinder its capacity to effectuate change on behalf of the river. Thus, the Act establishes a one-body guardianship that incorporates indigenous interests; however, its legal and jurisdictional limitations may inhibit the guardian's powers.

Comparative Analysis of Legislation Examples

Key Takeaways

1. Legislation can be a way to incorporate the views, customs and needs of local and indigenous communities, ensuring their voices are reflected in environmental protection efforts;

2. Legislation on guardianships typically have a multi-layered structure and include both community and governmental members, promoting balanced decision-making

3. Integrating community voices in guardianships enhances participation and

[14] Yarra River Protection (Wilip-gin Birrarung) Act 2017 (Victoria, Australia) §§ 46-48.
[15] Ibid § 49.
[16] Ibid Preamble.

fairness in legal processes, addressing the needs of those most affected by environmental issues, and improved the implementation of such legislation.

4. Guardianships' effectiveness can be limited by complex bureaucratic structures, which may restrict their powers and require coordination among multiple layers of governance.

5. While government involvement provides resources and expertise, it can also impose bureaucratic constraints and dilute community priorities. Effective guardianships need legal authority to ensure they can enforce protection measures.

There are several recurring motifs regarding guardianships created through legislation. First, legislation can help codify some elements of the views of local and indigenous interests. These views are often a result of compromise and contestation between differing conceptualisations of the human-nature relationship. In Mar Menor, the University of Murcia initiated a referendum that eventually became law. This grassroots movement informed the design of Mar Menor's Tripartite Committee to respond to the needs of the lagoon and the communities that rely on it. Moreover, the New Zealand and Birrarung cases also integrate the language of relevant communities into their legislative frameworks, with those statutes invoking indigenous customs and belief systems. For Te Urewera and Te Awa Tupua, local iwi, who were the driving force, negotiated with the New Zealand government regarding the statutes' drafting, and they are statutorily guaranteed seats on the guardianships. Similarly, the Birrarung Council is required to give seats to named community voices, and the Act itself recognises indigenous groups as the owners of the river. Turning to what these instances say about guardianships generally, legislation can provide an effective method to reflect the movements that preceded legislation. These communities feel the effects of environmental degradation most acutely and are often those most attuned to the needs of the nature that is protected. Such integration of community voices bolsters procedural justice and greater participation in legal processes. On the other hand, legislation may also distort community needs due to the lengthy process of negotiating and continued political contestation of the specifics of legislation, which leads to a conceptual compromise. The examples in New Zealand were the result of a longstanding dispute between the Māori people and the crown, stemming from the Treaty of Waitangi in the 19th-century and is still being addressed during the

21st-century. Though, this prolongation is not always the case. For Mar Menor, the initiative proposed by Professor Teresa Vincente Giménez was submitted in 2020, and the resultant law was approved in 2022. Therefore, legislation can prove a streamlined way to express the views of local and indigenous communities, but the ability for communities to negotiate these guardianships quickly varies.

Second, one drawback of the statutorily created guardianship is that their powers may be curtailed by bureaucratic design. In Mar Menor and Te Awa Tupua, the guardianships deploy a three-layered structure with a primary guardian and two subsidiary bodies, necessitating cooperation between multiple layers of guardianship. This may be considered a tool for strengthening representative models, but could also lead to further political contestation. The Victorian legislation has also added bureaucratic layers by limiting the Birrarung Council's powers. The Birrarung Council's powers are derived exclusively from its ability to influence ministers politically, and the Council is not granted legal power. Furthermore, all guardianships in this section utilise a hybrid system that incorporates both community and governmental members. Considering these facts, guardianships' powers are inextricably linked with the government, which may lead to issues regarding distribution of power. Positively, the integration of governments provides guardians with a greater perspective of the policy landscape, technical understanding of environmental issues, and access to other infrastructure that communities may not have on their own. Additionally, the Birrarung Council's power remains especially tenuous because its role as a purely political advocate may result in ministers ignoring the Council's advice, but this remains to be seen. Still, granting a guardian legal recourse when governments or other firms harm the environment is essential to the efficacy of guardians. The connection between guardians and governments can pose an obstacle to effective environmental protection, but more research must be conducted over time to better understand these limits.

Third, legislation is helpful in providing specific, broadly applicable design for a guardianship that takes effect quickly once passed. The guardians highlighted above all had specific schemes regarding membership, temporal jurisdiction, and powers that were in effect once the legislation was passed. Specificity and clarity promotes replicability. For example, the Te Awa Tupua guardianship has captured the imaginations of policymakers and influenced other Rights of Nature

programs in New Zealand and internationally. Legislation can provide clear models that future Rights of Nature movements can draw upon, as the case studies above have shown. These cases have influenced one another and have used early frameworks of grassroots involvement, hybrid government/community memberships, and powers to iterate upon. Policymakers can take from past examples and tailor it to the discrete needs of their localities' environmental concerns. Therefore, legislation provides a valuable means of establishing guardianships that is targeted and can draw upon other models to serve their own needs.

2.2. The Courts

Courts offer another way to establish representative models to protect Rights of Nature, either through litigation or the creation of a unique representative. Often, these rulings are results of sustained advocacy and litigation efforts led by environmental activists and affected communities. The scope of judicially established guardianships can vary, ranging from those with the authority to enforce environmental protections to advisory roles that influence public policy. The structure and composition of these guardianships can also differ, encompassing stakeholders from the community, legal experts, and ecological scientists. However, drawbacks include enforcement challenges, inconsistencies in local authorities' willingness to act, and complex legal battles over jurisdiction and guardianship responsibilities.

To illustrate, in India, while the High Court of Uttarakhand recognised the Yamuna and Ganga rivers as legal persons to protect them from environmental degradation, the decision was stayed by a higher court due to the rivers' transboundary nature and uncertainty regarding various states' responsibilities and liabilities. Similarly, in Bangladesh, while the Court declared the River Turag a living entity with rights to safeguard it from encroachment and pollution, the 'top-down' approach has not materialised in sustained action against the violators. In Colombia, the Constitutional Court recognised the Atrato River as a subject of rights, mandating the government to take protective measures and ensure its restoration.

Case Study One: Rivers Yamuna and Ganga, India

In March 2017, the High Court of Uttarakhand granted legal personhood to the Ganga and Yamuna rivers, including their tributaries and catchments, citing their religious significance and aiming to

safeguard them from degradation. State officials from Uttarakhand were appointed as legal guardians for the rivers. However, the decision was stayed due to two main reasons: lack of clear guidelines on the rivers' rights and responsibilities, potentially leading to legal issues, and the challenge for Chief Secretary of the State in enforcing decisions beyond Uttarakhand's jurisdiction, as the rivers extend across multiple states. Although this case was stayed and no representative model was established, this example provides an example of what this process could look like through the various levels of the court system.

The court created the representative model of State and government officials, as well as a consultative committee composed of local peoples along the river. This included, the Director of NAMAMI Gange (conservation mission to revive river Ganga and control pollution), the Chief Secretary of the State of Uttarakhand and the Advocate General of the State of Uttarakhand as *persons in loco parentis* "as the human face to protect, conserve and preserve all the Glaciers including Gangotri & Yamunotri, rivers, streams, rivulets, lakes, air, meadows, dales, jungles, forests wetlands, grasslands, springs and waterfalls in the State of Uttarakhand."[17] NAMAMI Gange is a part of the Ministry of Jal Shakti under the Central government. The Chief Secretary of the State and the Advocate General of the State function under the ambit of the State government. The Court also included legal advisors (of NAMAMI Gange) as a part of the guardianship committee. In order to provide representation to the concerned communities, the Court directed the Chief Secretary to select seven public representatives from all the cities, towns and villages residing along the banks of these rivers to be a part of the representative body. The Court declared that the rivers Yamuna and Ganga are now treated as legal minors and their rights "shall be equivalent to the rights of human beings and the injury/harm caused to these bodies shall be treated as harm/injury caused to the human beings."[18]

Case Study Two: River Turag, Bangladesh

In 2016, an NGO petitioned the Bangladesh High Court to stop illegal encroachment on the Turag River. In January 2019, the court granted legal personhood to the Turag River and all rivers in Bangladesh, appointing the National River Conservation Commission (NRCC) as guardians.

[17] *Lalit Miglani vs State Of Uttarakhand And Other*, Uttarakhand High Court, 30 March 2017, Writ Petition (PIL) No.140 of 2015 (India); *Mohammed Salim v. State of Uttarakhand*, Uttarakhand High Court, 20 March 2017, Writ Petition (PIL) No.126 of 2014 (India).
[18] ibid (Direction no.5).

While the Commission has been playing a crucial role in taking note of the polluters, it currently does not have authority to stop such actors. Hence, the 2020 bill aims to empower the commission to penalise polluters.[19]

The NRCC, established by the 2013 Act, aims to prevent illegal river occupation and pollution while promoting socio-economic development. It operates under the Ministry of Shipping and is funded by government allocations. As the legal guardian of all rivers in Bangladesh, the NRCC oversees river conservation, protection, and pollution removal. All projects affecting rivers require NRCC approval. The Act requires there to be a chairman and up to 5 members in the commission. Members of the commission should consist of a river specialist or a hydrologist, environment specialist, a river engineer or a river survey specialist or an expert in river management, an activist of human rights or of an environment organisation or a lawyer. The government was directed to amend the 2013 Act to criminalise river pollution and encroachment. Local authorities were required to list polluters and use GIS technology to map water bodies, while educational institutions and broadcasters were to raise public awareness about river conservation.[20]

Case Study Three: Atrato River, Colombia

In 2016, the Colombian Constitutional Court recognised the Atrato River and its basin as a subject of rights in its judgement T-622/16.[21] It granted the Atrato River, located in the Chocó region, legal subjecthood and distinct rights to regeneration, care, conservation, and protection. The ruling came in response to a an 'acción de tutela' (action for protection of constitutional rights) filed by the Colombia-based Center for Social Justice Studies (Tierra Digna) on behalf of an alliance of Chocó residents, including Afro-descendants, Indigenous and mestizo campesino communities.[22] The claimants argued that the activities of illegal miners in Chocó violated the fundamental human rights of the communities living alongside the river, causing extreme degradation of the river,

[19] Tahseen Lubaba, 'An Analysis on the Draft NRCC Act 2020' (*The Daily Star*, 22 December 2020) <www.thedailystar.net/law-our-rights/news/analysis-the-draft-nrcc-act-2020-2015337> accessed 20 January 2024.
[20] *Nishat Jute Mills Limited v Human Rights and Peace for Bangladesh (HRPB)*, The Supreme Court of Bangladesh Appelate Division, 17 February 2020, Civil Petition no. 3039 of 2019 (SC) AD (Bangladesh) <https://thinklegalbangladesh.com/wp-content/uploads/2022/04/13-Final-Appellate-Judgement_compressed.pdf> accessed 30 November 2023.
[21] *Judgment T-622/16 (The Atrato River Case)* (2016) Constitutional Court of Colombia.
[22] Hugo Nelson Castañeda Ruiz et al, '*The Declaration of the Atrato River as a subject of rights: an opportunity for the construction of a present-future project of sustainable territory'* (2019) Revista Kavilado 11(2) 417-433.

destroying its natural course of the river, flooding the rainforest, and contaminating the river with chemicals.[23]

The representation and governance of the Atrato river and its basin are embodied in two figures: first, the Colombian Ministry of Environment, and second a Guardianship Commission consisting of a representative from the National Government and a representative from the communities. In an autonomous process, the communities selected 14 representatives from 7 community organisations, forming a collegial body of guardians, which will act as the representative on behalf of the communities. The Ministry of Environment will act as the other representative of the guardianship commission. The legal basis for recognising the Rights of Nature is found in Colombia's constitution, since as early as 1992, the Constitutional Court developed the concept of "ecological constitution" (Judgment T-411/92), which implies a fundamental right to a healthy environment.[24] Moreover, the concept of "Biocultural rights" is very established in Colombian legislation, referring to the rights that ethnic communities have to autonomously manage and exercise guardianship over their territories – in accordance with their own laws and customs – and the natural resources that constitute their habitat. This is where their culture, traditions, and way of life develop based on the special relationship they have with the environment and biodiversity.

Comparative Analysis of Examples from the Courts

Key Takeaways

1. The role of the courts in recognising and upholding the Rights of Nature vary depending on the jurisdiction. However, they have been central in many Rights of Nature cases.

2. The courts offer both an avenue for litigation for upholding certain rights and an avenue for the creation of a particular representative model.

3. The courts have shown an openness to utilising judicial exchanges from other contexts to uphold the Rights of Nature in their jurisdiction, as seen in Colombia and India.

[23] bid p. 417-433.

[24] Whitney Richardson and Camila Bustos, *'Implementing Nature's Rights in Colombia: The Atrato and Amazon Experiences'* (2023) Revista Derecho del Estado 54, 227-275.

4. The courts have applied various traditional rights, typically applied to humans as collective rights or individual rights, such as *loco in parentis* and *acción de tutela.*

While legal personhood for Yamuna and Ganga, Turag and Atrato were granted by the Courts to prevent environmental degradation, their models are distinct. The differences in the models lie in the courts' recognition of the relationship between the rivers and the riverine communities. The Courts in India and Bangladesh declared Yamuna and Ganga, and Turag as legal persons under the doctrine of *loco parentis* where the guardianship committee acts as their legal guardian (similar to that of a minor). The rivers are considered living and any harm done to them can be punishable.[25] In Colombia, the communities used the *acción de tutela* procedure commonly used for claiming individual subjective fundamental rights, which in this case, was used to grant a collective right.[26] The court recognised the 'special relationship they [ethnic river communities] have with the environment and biodiversity'[27] and aimed to protect their biocultural rights by making the communities a part of the guardianship committee.

In both South Asian examples, guardianship was imposed primarily on State officials as an add-on responsibility without establishing proper financial support or power to hold perpetrators accountable.[28] While the Indian court later directed the guardianship committee to hold consultations with representatives of the affected communities, the State officials have the power to select these representatives. It is questionable whether State officials, appointed by the government, have the independence to act in the interest of the rivers if the government itself is the polluter.[29] Moreover, State officials, in this case, are legally obligated to fill this role, rather

[25] Viktoria Kahui, Claire W Armstrong and Margrethe Aanesen, 'Comparative Analysis of Rights of Nature (RoN) Case Studies Worldwide: Features of Emergence and Design' (2024) 221 Ecological Economics 108193 <http://dx.doi.org/10.1016/j.ecolecon.2024.108193> accessed 8 May 2024.

[26] Markus Ciesielski, Carlos Andrés García Carvajal and Juliette Vargas Trujillo, 'Shortcuts and Detours of Environmental Collective Legal Mobilizations: The Cases of the Atrato River and the Amazon Region in Colombia' (2024) Journal of Law and Society <http://dx.doi.org/10.1111/jols.12467> accessed 4 June 2024.

[27] ibid 98-99.

[28] Viktoria Kahui (n 25) 7.

[29] Philipp Wesche, 'Rights of Nature in Practice: A Case Study on the Impacts of the Colombian Atrato River Decision' (2021) Journal of Environmental Law <http://dx.doi.org/10.1093/jel/eqab021> accessed 4 June 2024.

than having a specific cultural relationship to the river, which is a questionable role for a 'guardian.' Similarly, in Bangladesh, the guardian (NRCC) is a state functionary but also constitutes members of the scientific community including a river engineer, hydrologist, river management expert and an environmental specialist. There are no local communities involved in the decision making process. However in Colombia, the courts empower both government officials and indigenous groups in the guardianship committee. Comparatively, the Atrato model better represents the combined interests of the government and the indigenous groups, providing both parties equal opportunities to participate in river management.

In terms of conflicting interests representing, all the three cases show how the rivers had to be protected from degradation due to various entities misusing the rivers for their own interests. In India, Mohammed Salim filed a Public Interest Litigation (PIL) to protect the rivers from pollution. The rivers are considered sacred by the Hindus and are worshipped by the community. However, encroachment, illegal mining and pollution made it impossible to use the rivers for their sacred purposes. In Bangladesh, an NGO filed a writ petition to protect the 'dying' river from encroachment. In Colombia, the indigenous communities claimed for protection of the river against illegal mining. While the indigenous communities use traditional methods for mining sustainably, the newer commercial methods include chemicals and these processes pose significant damage to the river.

Finally, the representative models for rivers in India, Bangladesh, and Colombia offer distinct lessons regarding liability, accountability, and procedural innovation. In India, the Supreme Court overturned the decision to grant personhood to the Ganga and Yamuna rivers, citing concerns over liability and jurisdictional complexities, particularly given the Ganga's transboundary nature extending into Bangladesh. This highlights the importance of clearly defining guardianship and liability in such legal frameworks. In Bangladesh, the Turag River was similarly granted legal personhood. However, the lack of separate financing and clear liability provisions underscores the need for comprehensive support mechanisms to ensure effective accountability and enforcement. In Colombia, the Atrato River's legal recognition is coupled with detailed procedural orders and an interinstitutional monitoring mechanism, reflecting the Colombian Constitutional Court's

unique approach of 'dialogical judicial activism.'[30] This method integrates judicial directives with policy formulation, demonstrating an innovative model that balances judicial oversight with legislative processes, which may provide a valuable precedent for other jurisdictions.

2.3. Local Ordinances & Byelaws

This section will look at the design of local byelaws and ordinances that give rise to representative powers for nature at the local level. Three cases from Uganda, Canada and the United Kingdom will explore both successful and failed attempts to codify such representative powers through substate structures, such as local councils and municipalities. The enactment of ordinances and byelaws to create representative powers for nature is a manifestation of the Rights of Nature movement and ecojurisprudence that may help provide communities the ability to confront various power dynamics at the local level.

The three cases discussed in this section illustrate a diversity of approaches to achieve the protection of nature through representation. The cases of the Buliisa district council in Uganda and the Magpie River in Canada demonstrate the significance of Indigenous practices and customary law in influencing the enactment of natural representative models, while the Frome River highlights that representative protections for nature for various local communities, where the key component is the cultural significance of the ecosystem. Highlighting the significance of the substate level, this analysis also acknowledges the limits of peripheral substate structures as an avenue to achieve the protection of nature through the creation of representative models. The case of Uganda is a particularly interesting one, because it represents a multiscalar approach to the protection of the Rights of Nature, with nature afforded rights more generally at the national level and parts of nature given representation at the local level.

Case Study One: Buliisa District Ordinance, Uganda

[30] 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' (2022) 34 Geo Env't L Rev 351.

In 2019, Uganda emerged as a leader in environmental jurisprudence by codifying the Rights of Nature.[31] The National Environment Act 2019 in Section 4 establishes nature's rights to persist and regenerate with enforcement through open standing (see section 5 on open standing of the present paper).[32] Subsequently, and of interest for this subsection, in 2020 the Buliisa District Council enacted a district-level ordinance recognising the customary laws of the Bagungu people – an Indigenous ethnic group native to the northeastern shores of Lake Mwitanzige (Lake Albert).[33]

The Local Governments (Buliisa District) (Bagungu Customary Laws) Ordinance 2020 established a co-governance body, the Customary Law Board, which is composed of leaders of the Indigenous Bagungu people and members of local government. The body is primarily led by Indigenous custodians (or Balamansi – traditional Indigenous leaders), whose responsibility it is to safeguard the Sacred Natural Sites and Territories (Mpuluma) within the Bagungu ancestral territory. The ordinance formally codifies the Balamansi's customary powers to "uphold the dignity and integrity of the Sacred Natural Sites and Territories, such as restoring damaged areas, planting trees or offering seeds," as well as regulate fishing activities on Lake Mwitanzige.[34] The ordinance formalises the Balamansi's rights continue to control, access and protect these sites, and continue to carry out traditional ceremonies on these lands.[35] The ordinance is also seen as part of a wider attempt to decolonise Uganda's domestic legal systems, recognising the importance of Indigenous belief systems in protecting butoka, or Mother Earth.[36]

Case Study Two: The Magpie River, Quebec, Canada

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[31] 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' (2022) 34 Geo Env't L Rev 351.

[32] Act 5, The National Environment Act 2019 (Uganda) § 4(1).

[33] The Local Governments (Buliisa District) (Bagungu Customary Laws) Ordinance 2020 (Uganda).

[34] Dennis Tabaro, 'Indigenous Biocultures and Rights of Nature in Uganda (*Global Assembly*) https://www.globalassembly.de/en/rights-of-nature/case-studies/interview-indigenous-biocultures-and-rights-of-nature-in-uganda#:~:text=In%202019%2C%20Uganda%20passed%20the,ANARDE)%20at%20the%20parliamentary%20level. Accessed 2 February 2024.

[35] The Gaia Foundation, 'Uganda Recognises Rights of Nature, Customary Laws, Sacred Natural Sites' (The Gaia Foundation, March 2021). https://gaiafoundation.org/uganda-recognises-rights-of-nature-customary-laws-sacred-natural-sites/.

[36] Skurky (n 1); The Local Governments (Buliisa District) (Bagungu Customary Laws) Ordinance 2020 (Uganda).

In response to decades of environmental harm to the Magpie river, the Minganie municipality and Innu Council of Ekuanitshit passed two parallel resolutions in 2021 granting the Magpie river the title of "personne juridique" with nine corresponding rights.[37] Subsequently, an alliance, known as the Muteshekau-Shipu Alliance, was created to act as the river's representative.[38]

The Muteshekau-Shipu Alliance is a collaboration between the Innu community of Uashat mak Mani-utenam and the Minganie RCM, which is a political body made up of the mayor of each municipality in the Minganie region and the prefect. Both of these bodies are located in Quebec, Canada. Additionally, the Alliance consists of other non-state entities, such as The Canadian Parks and Wilderness Society (SNAP Québec) and The Association Eaux-Vives Minganie (AEVM).[39]

The byelaw bestows legal personhood upon the river, extending to it the right to live, to exist and to flow. In addition to taking legal action on behalf of the river, the Alliance helps conduct scientific research and partakes in decision-making regarding the river's management. The Alliance appointed the Innu Council as the official guardians of the river, while the municipality and the non-state entities perform administrative and supportive roles. Their duties include legal action to protect the river, enhancing scientific research, and participating in decision-making with the planning department regarding river management and activities affecting it.

Case Study Three: The Frome River, Somerset, United Kingdom

In 2018, a draft byelaw for the protection of the Frome River was presented before the Frome Council for decision.[40] The draft byelaw was rejected in 2020, but its contents and design are

[37] Résolution n°025-21, Reconnaissance de la personnalité juridique et des droits de la rivière Magpie – Mutehekau Shipu (2021) (Province of Quebec, Canada) https://ecojurisprudence.org/wp-content/uploads/2022/02/CA_Quebec_Recognition-of-legal-personality-and-rights-of-the-Magpie-River_245.pdf accessed 10 March 2024; No. consécutif 919-082, No. de dossier 919-01-18, Conseils Des Innus de Ekuanitshit (2021) (Province of Quebec, Canada) https://ecojurisprudence.org/wp-content/uploads/2022/02/CA_Quebec_Second-Resolution-Document_245.pdf accessed 10 March 2024.

[38] Alliance Muteshekau-Shipu, https://alliance-ms.org/en/muteshekau-shipu/ accessed 12 March 2024.

[39] Ibid.

[40] Agenda item 6, 'For decision – Bye-law on River Frome Nature Rights', http://files.harmonywithnatureun.org/uploads/upload852.pdf.

instructive for the kind of protections that states and localities can adopt for the development of representative models by linking to the cultural significance of the ecosystem.[41]

The draft byelaw would have empowered the town council to act as a guardian alongside the not-for-profit Friends of the River Frome.[42] The byelaw's scope would have covered the river and an adjacent meadow, the Rodden Meadow. The byelaw intended to give the river a list of rights, including "the right to exist, the right to natural water supply, the right to natural flows and sustainable recharge sufficient to protect habitat for native flora and fauna, the right to maintain the functionality of the water cycle in the quantity and quality needed to sustain and restore a thriving healthy ecosystem in all its forms, the right to flourish and thrive and the right to timely and effective restoration". The meadow would also have benefitted from similar rights. Guided by principles of sustainability and recognising the cultural, economic and ecological significance of the river, the guardians would have held the right to enforce the rights of the meadow and the river.

Comparative Analysis of Examples of Local Ordinances and Byelaws

Key Takeaways

1. Byelaws and Ordinances have taken varied approaches to incorporate Indigenous customs and laws into environmental governance, as well as Rights of Nature directly.

2. Co-governance models involving Indigenous groups, local governments, and community stakeholders are pivotal, however in some cases the extent of powers delegated and the technological and financial limitations can constrain the working of such models.

3. Local byelaws and ordinances provide significant potential for local communities to actively participate in the creation of Rights of Nature governance models.

[41] Eco Jurisprudence Monitor, 'Town of Frome England law on rights for the Frome River and Rodden Meadow', https://ecojurisprudence.org/initiatives/frome-river-and-rodden-meadow/ accessed 15 March 2024.
[42] http://files.harmonywithnatureun.org/uploads/upload852.pdf

The byelaws acknowledge the rights of natural areas, albeit to varying degrees. Both Canada and the United Kingdom cases reference nature's rights directly. In Uganda, however, the focus is on decolonising legal frameworks by empowering Indigenous land management. Though not explicitly stated, the customary laws of the Bagungu people inherently safeguard nature and ecosystems, reflecting their symbiotic spiritual and cultural relationship with the land and nature.[43] While the ordinance does not overtly mention nature's rights, it aligns with and explicitly makes reference to the National Environment Act (2019), which enacts the Rights of Nature at the national level.[44]

Moreover, all three byelaws, established or proposed, create co-governance bodies to manage and enforce regulations for natural areas. In Canada and Uganda, these bodies include Indigenous and local government representatives, while the UK model features members of the community group Friends of the River Frome and local government members. Canada also includes non-governmental and non-Indigenous entities in advisory and scientific research roles. In contrast, the Buliisa district ordinance primarily empowers Indigenous custodians without non-governmental representation. These ordinances operate within broader environmental protection frameworks. For instance, the Buliisa ordinance falls under the National Environmental Management Authority, positioning it at a lower level of legal hierarchy and potentially more vulnerable. The extent of the powers and how they are allocated in the Uganda case also remains unclear. Local governments often struggle with technological and financial limitations, which can hinder the distribution of information, the creation and implementation of local laws, and the availability of technical expertise. Each of the proposed bodies only include elected members insofar as the local government officials are elected.

Each case offers great potential for empowering local communities to participate in the protection and enforcement of nature's rights, though the extent to which political contestation may play a role is still to be seen. In the UK, while the byelaw was rejected, there is still great value in

[43] The Gaia Foundation, (n 5).
[44] The Local Governments (Buliisa District) (Bagungu Customary Laws) Ordinance 2020 (Uganda).

illustrating how local legislation can justify RoN with a link between local communities and cultural significance of an ecosystem.

2.4. Community Declarations

Within this report, community declarations refer to initiatives triggered by communities which aim to achieve Rights of Nature status for their local environment. Community declarations are categorised as a 'bottom-up' approach to realising the Rights of Nature, giving individuals more agency and decision-making power, thereby empowering citizens to take the lead in the Rights of Nature movement. With this in mind, this section shall focus on two representative models: the Martuwarra Fitzroy River Council (MFRC) and Love Our Ouse (LOO). In comparison to other representative models, community declarations are a tool for communities to advocate for Rights of Nature outside of a country's formal legal system. Therefore, this route could be considered a more attractive option for communities that feel like their voices and interests are not being represented in the dominant governance system. This reasoning was the primary incentive for selecting the MFRC as a case study; as its framework, rather than taking inspiration from the federal legal system, is based in an Aboriginal legal system known as First Law.[45] As a result, the MFRC can serve as a suitable example of how Rights of Nature can be achieved within a pluralist legal context. In comparison to the MFRC's direct connection to Indigenous ontology, the LOO representative model originating from an English town can illustrate how Rights of Nature projects have the potential to succeed by linking RoN to cultural significance. Considering that the majority of Rights of Nature initiatives thus far have been spearheaded by indigenous communities,[46] the Ouse River demonstrates the potential community declarations have in achieving Rights of Nature in a global context from the grassroots level.

Case Study One: Martuwarra River, Martuwarra Fitzroy River Council, Australia

The Martuwarra (Fitzroy) River is located in Western Kimberley, Australia with a catchment area of 93,829 km^2 and over 20 tributaries. The Fitzroy River Declaration was published in 2016 by a

[45] Martuwarra RiverOfLife and others, 'Recognising the Martuwarra's First Law Right to Life as a Living Ancestral Being', (2020a) 9:3 Transnational Environmental Law 541, 544

[46] Mihnea Tănăsescu, 'Rights of Nature, Legal Personality and Indigenous Philosophies' (2020) 9:3 Transnational Environmental Law 429, 430

collective of Aboriginal community leaders in response to over 150 years of colonial oppression and development projects that have continued to degrade the river, its catchment and Aboriginal community identity.[47] As a part of the declaration, the Martuwarra Fitzroy River Council (MFRC) was originally established in 2018, passing a formal structure and action plan in 2020 after two workshops conducted that year and the year prior. The main body of the Council is run by a collective of elders from six independent Aboriginal nations from the Fitzroy River catchment. These communities are all categorised as Native Title Body Corporates (PBCs), meaning they are formally recognised by the Australian Federal Court.[48] As of 2024, the MFRC Elders Council has one chair, two deputy-chairs and 13 additional elder members[49]. The Council's project manager is tasked with developing communication plans and strategies with MFRC's alliances. Intended to function as a think-tank, the MFRC holds regular meetings during which the elders discuss the Council's cultural, social and environmental objectives. As a result of being a governance body formed of multiple PBCs, the Council aims to promote all communities' indigenous interests and values, strengthen the decision-making powers of Traditional Owners and advocate for recognition of the Fitzroy Catchment's heritage. In addition, the MFRC helps strengthen sustainable economic and social development in regional and remote areas along the catchment. Finally, the MFRC strives to protect the Fitzroy River's right to flow under First Law and customary laws.[50] In 2022, the Martuwarra Youth Council (MYC) and Martuwarra River Keepers (MRK) were established as branches of the original MFRC. The MYC is spearheaded by 4 'emerging leaders' and functions to educate younger generations on First Law and how to protect the Fitzroy Catchment ecosystem; whilst the MRK is composed of 'traditional custodians' who use indigenous scientific strategies to restore the Fitzroy environment and communities on-the-ground.[51]

Case Study Two: Ouse River, Love Our Ouse, United Kingdom

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[47] Martuwarra RiverOfLife 'Martuwarra Country: a Historical Perspective (1838-present)', (2020b) Martuwarra Fitzroy River Council; Nulungu Research Institute, The University of Notre Dame Australia. <https://doi.org/10.32613/nrp/2020.5> 84

[48] Martuwarra RiverOfLife and others, 'A conservation and management plan for the National Heritage listed Fitzroy River Catchment Estate (No. 1)' (2020c) Martuwarra Fitzroy River Council; Nulungu Research Institute, The University of Notre Dame Australia. <https://doi.org/10.32613/nrp/2020.4> 5, 48

[49] MFRC(a), 'About - Governance' <https://www.martuwarra.org/aboutus>

[50] Ibid 44

[51] MFRC(b), 'MFRC Annual Review 2023' <https://assets.nationbuilder.com/martuwarra/pages/1/attachments/original/1710134279/MFRC_Annual_Review_2023.pdf?1710134279> 4-10

The River Ouse is located across the West and East Sussex counties in England, spanning 56 kilometres with a catchment area of approximately 430 km^2. In November 2021, a community interest company (CIC), LOO was inspired by the increased public awareness of poor river quality in the UK and began inspiring positive actions for the river. Composed of Lewes residents, academics and professionals, LOO facilitates a variety of community-centred projects designed to connect local people to all aspects of nature around the River Ouse and its tributaries, despite the lack of formal representation being achieved.[52] The River Festival held in September 2022 arguably marks the official launch of LOO, which was followed in November 2023 by the Rights of Rivers Summit; which was held to discuss, alongside other organisations and individuals, what Rights of Nature protection and guardianship could look like in the UK. In addition to a small Steering Group of two for the CIC as a whole, a specific 'Our Rights of Rivers' Steering Group meets every 2 months to keep track of progress made. The latter steering group is made up of representatives from LOO and its partners, which includes the Railway Land Wildlife Trust, Environmental Law Foundation and the Lewes District Council, amongst others. The 'Legal Mechanisms' team are the key drivers behind the development of a 'Rights of River Ouse Charter', which shall be inspired by the Universal Declaration of River Rights.[53] Additionally, LOO functions as an educational platform for people to learn about the history of the Ouse catchment, what threatens its rights and facilitate community action. This is achieved through a variety of projects, including: 'Community Mapping', 'River People Tour', 'Citizen Science' and the 'River Festival'. Whilst each of these projects is overseen by official project leaders, the projects are primarily undertaken by volunteers.[54]

Comparative Analysis of Examples of Community Declarations

Key Takeaways

1. Community Declarations offer an opportunity to make the distinct link between a community and a particular ecosystem defined the cultural significance of the ecosystem to the community.

[52] Love Our Ouse, 'Rights of Rivers Summit Report' (November 2023) <https://loveourouse.org/wp-content/uploads/2024/02/Love-our-Ouse_Rights-of-River-Summit_REPORT.pdf> 1-3
[53] Love Our Ouse, 'Rights of Rivers' <https://loveourouse.org/rights-of-rivers/>
[54] Love Our Ouse, 'Projects' <https://loveourouse.org/projects/>

2. The bottom-up nature of community declarations offer an opportunity for flexibility and responsive to the community interest alongside the interest of the ecosystem.

3. Representative Models designed within community declarations often demonstrate a co-governance model rooted in the various interests and goals of stakeholders within the community.

4. The non-legal nature, and the potential subordination to hierarchical government structures at the local, state, and national level create a sense of precarity of these representative models. This is also reflected in a general lack of funding and reliance on volunteers.

Whilst both representative models were designed to tackle the ongoing degradation of their respective rivers, one of the benefits of using a community declaration route towards Rights of Nature is that both guardianship were firmly rooted in the community interest. Consequently, their aims and initiatives have a nuanced understanding and are directly intertwined with each context. The MFRC's focus on reinforcing Aboriginal autonomy and decision-making is a result of the colonial oppression communities have experienced for many generations.[55] On one hand, the MFRC could be critiqued as too anthropocentric for a representative model intended to safeguard Nature. However, it is important to recognise that, according to the Aboriginal knowledge that underpins the MFRC, protecting and nurturing the community is incongruous with restoring and protecting Martuwarra's nature.[56] As a result, the challenges that the MFRC decide to focus on tend to have environmental, cultural and socio-economic repercussions; such as the three "major threats" highlighted by the MFRC's current campaigns on mining, fracking and water extraction.[57] Similarly, while the MFRC works to reinforce the local communities' ancestral connection to the Martuwarra through indigenous conservation strategies, the LOO representative model seems to consider establishing a connection between local communities and the Ouse through education as

[55] RiverOfLife (2020b) 68

[56] Erin O'Donnell and others, 'Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature (2020) 9:3 Transnational Environmental Law 403, 424

[57] Nick Rodway, 'First Nations unite to fight industrial exploitation of Austrailia's Martuwarra' Mongabay (West Kimberley, 14 December 2021) <https://news.mongabay.com/2021/12/first-nations-unite-to-fight-industrial-exploitation-of-australias-martuwarra/?fbclid=IwAR2o07GDtgJ4GH4LYzfGZ5naMF9nAnyX_IRi7C6tRuSkcz9cw1BYjZirScs>

a key strategy to successfully protect Nature's rights. Importantly, the application of international environmental law by LOO's Legal Mechanism team illustrates how environmental precedent can be used as a foundation for Rights of Nature initiatives.[58]

In terms of who the primary decision-makers are, both representative models operate on a co-governance model. In a similar way that the MFRC is an amalgamation of Aboriginal communities living in the Martuwarra catchment area, LOO was designed for the technical purpose of pooling together the diffused community efforts attempting to protect the natural environment of the Ouse River and catchment.[59] Initially, the LOO's decision-making structure seems to be the more fluid of the two as, in addition to the steering community and legal mechanism, workshops conducted during their Rights of Rivers Summits are designed to give decision-making power to a broader collective of individuals. Comparatively, although the MFRC includes the Martuwarra Youth Council and River Keepers, the majority of decision-making power remains with the Elders. Although the vast majority of community declarations addressing Rights of Nature do start as grassroot movements, the co-governance approach adopted by both representative models creates an opportunity to collaborate with formalised legal and government institutions. For example, opportunities for council members to participate in LOO's decision-making, via their River Festival and Summit, led to the Lewes District Council passing a motion in 2023 acknowledging a Rights of Nature framework and pledging to support LOO in advocating for Rights of Nature in the UK.[60] On the flip side, the MFRC seems to be making slower progress in solidifying an official partnership with any local or federal government. That being said, the MFRC has been collaborating with NGOs like the Wilderness Society to create long-term sustainable development and river restoration management plans.[61] Whilst the LOO representative model's approach to decision-making may seem preferable for those considering a community declaration route, the MFRC's more concentrated form of decision-making was designed to allow for collaboration with

[58] Susan Borras, 'New Transitions from Human Rights to the Environment to the Rights of Nature', (2016) 5 Transnational Environmental Law 113, 114
[59] Love Our Ouse, 'Newsletter October 2023' <https://loveourouse.org/?mailpoet_router&endpoint=view_in_browser&action=view&data=WzcsIjg4NWEzZDA5YzQ5YiIsMCwwLDAsMV0>
[60] Lewes District Council, 'Motion - Rights of the River' (February 2023) <https://democracy.lewes-eastbourne.gov.uk/documents/s27490/Motion%20-%20Rights%20of%20the%20River.pdf>
[61] MFRC(b) 4

other stakeholders whilst ensuring that the indigenous jurisprudence and leadership central to the representative model does not become diluted over time (as observed in previous joint management projects).[62] From this, one could suggest that co-governed, community representative models are more flexible than codified routes like courts in terms of decision-making, allowing them to be adapted to reflect the changing socio-political context and, therefore, potentially ensure the long-term protection of nature's rights.

Finally, both representative models rely heavily on community volunteers to realise the Rights of Nature on-the-ground, particularly in terms of collecting data and restoring their local rivers. For instance, the MFRC's 'River Keepers' combines western and indigenous monitoring and conservation strategies to support the rights of Martuwarra as well as the catchment's wider ecosystem. LOO also conducts a variety of citizen science projects, although these seem to be designed more as educational tools. Citizen science, in addition to helping develop scientific databases, has the additional advantage of providing the wider community a way to connect to their environment, spurring further community action.[63] Despite its benefits, an overreliance on voluntary data collection and conservation could hinder the success of both representative models in the long-term if volunteer interest declines over time[64]. Nevertheless, including opportunities for citizen science would be particularly advantageous for representative models aiming to protect the Rights of Nature in communities with various cultural relationships to the environment.

2.5. Open Standing

This section will analyse open-standing initiatives that can serve as venues for ensuring a solid representative route to defend the RoN without a formalised representative. Several scholars recognise two primary definitions for open standing—a broad model based on citizen action that

[62] Anne Poelina and others, 'Martuwarra Fitzroy River Council: an Indigenous cultural approach to collaborative water governance' (2019) Australasian Journal of Environmental Management 1, 11
[63] McKingly and others,'Citizen science can improve conservation science, natural resource management, and environmental protection' (2017) 208 Biological Conservation 15, 20
[64] Cathy Conrad and Krista Hilchey, 'A review of citizen science and community-based environmental monitoring: issues and opportunities' (2011) 176 Environ Monit Assess 273, 281

grants standing to any applicant class with general and personal interests and a narrower model influenced by private rights where courts intervene only when individual interests are infringed.[65]

Yet, for this study, we will adopt a broader definition where litigants have venues to initiate legal proceedings without pursuing formal and specific interests, which demonstrates how judges becoming more open and active in granting cases of Rights of Nature can have an immense effect.[66]

Our examples will include Ecuador and Uganda, under the 2008 Political Constitution of Ecuador (CE) and the National Environment Act ("NEA"). However, while including the RoN in the CE or NEA does not adhere strictly to a guardianship model, our examination reveals a discernible trend towards the courts' application of these rights. This trend persists even in cases where neither the defendant nor the claimant invokes the RoN explicitly. These elements have significantly broadened the participation of nations in safeguarding environmental rights. This report explores these groundbreaking approaches, offering insights into their implications and potential to reshape global environmental jurisprudence.

In this section, we will delve into Ecuador's constitutional cases, focusing specifically on the judicial sentences related to Case 7-23-UE/23 and the sentence concerning the Aquepi River. Additionally, we will examine the implications of the National Environmental Act.

The previously analysed case of Mar Menor (refer to page 9) is an illustrative example of combining guardianship and open standing, highlighting the judiciary's role in environmental protection and the recognition of the RoN, alongside a formal guardian.

Case Study One: Ecuador Constitution & Judiciary

[65] Chris Hilson & Ian Cram 'Judicial Review and Environmental Law - Is There a Coherent View of Standing?' (1996) 16 Legal Studies 1.p. 3

[66] Lauren Magnotti, 'Pawing Open the Courthouse Door: Why Animals' Interests Should Matter When Courts Grant Standing' (2006) 80 St John's L Rev 455.

Ecuador made history by becoming the first state worldwide to enshrine the RoN into its constitution,[67] ushering in a new paradigm.[68] We will analyse its two pivotal elements: its constitutional codification and prominence of open standing as the adherence of judicial courts to the Rights of Nature.

The CE not only provided legal validation to ancient Andean indigenous traditions but also heralded a paradigm shift in humanity's relationship with the natural world.[69] Rooted in the profound reverence for nature inherent in the Andean worldview of Sumak Kawsay (Buen Vivir), embodied by the concept of Pacha Mama (Mother Nature). This anthropocentric perspective signifies a recognition of nature's intrinsic value beyond its utility to human communities, encompassing all living beings.[70] The Constitution venerates nature from its preamble to its provisions (articles 10, 71, 72 and 73). To enforce the RoN, the CE assumes that every person, community, people, and nation can call upon the public authorities.[71] In legal terms, this means that, in accordance with Articles 86 and 88, anyone can present a protection proceeding before the court in a case of damage to Nature. The first lawsuits on the topic are examples of this principle in action.[72] We will examine two examples illustrating open standing and the recognition by Ecuadorian courts of the Rights of Nature.

- Caso 7-23-UE, Amicus Curie and Dictum: This case involves the Judiciary denying a Presidential proposal to reclassify shrimp fishing areas as no longer public goods, arguing these areas had 'lost marine influence'. The Court cited social and labour considerations, noting many people's reliance, including artisanal fishermen, on these beach areas. Although not explicitly a Rights of Nature case, the decision was based on these rights, referencing the constitutional right of nature to exist and regenerate.
- Sentence 1185-20-JP/21: The plaintiff initiated a protection action against the National Secretariat of Water and the provincial of Santo Domingo de los Tsáchilas, claiming that

[67] Byron Ernesto Villagómez Moncayo, Rubén Fernando Calle Idrovo and Dayanna Carolina Ramírez Iza, Guía de jurisprudencia constitucional. Derechos de la naturaleza: actualizada a febrero de 2023 (Corte Constitucional; Centro de Estudios y Difusión del Derecho Constitucional (CEDEC), 2023) (Jurisprudencia constitucional, 12).
[68] Arroyo & Mustelier (2022) p.287
[69] Corte Constitucional del Ecuador, Sentencia 166-15-SEP-CC, 20 May 2015, caso 0507-12-EP, pp 9-10.
[70] Arroyo & Mustelier (2022) p.286
[71] Article 71 CE.
[72] Maria Berros, 'Challenges for the Implementation of the Rights of Nature: Ecuador and Bolivia as the First Instances of an Expanding Movement' (2021) 48 Latin American Perspectives 192 https://doi.org/10.1177/0094582X211004898 accessed 30 May 2024.

the authorisation to use the Aquepi River's flow in favour of the provincial violated her rights to health, water, a healthy environment, legal certainty, prior community consultation, and the RoN. This case exemplifies the judiciary's role in upholding the Rights of Nature by ensuring environmental and community rights are respected in governmental decisions.

These cases exemplify how Ecuadorian courts have recognised and enforced the Rights of Nature, establishing a significant precedent for open standing and demonstrating the judiciary's role in protecting the environment.

Case Study Two: National Environmental Act, Uganda

In 2019, Uganda became the first African nation to implement a legal Rights of Nature initiative by revising its 24-year-old environmental legislation.[73] The National Environmental Act (NEA) was amended, particularly Section 4, with the aim 'to repeal, replace, and reform the law related to environmental management in Uganda'.[74] The revised law acknowledges that Nature has the right to exist, endure, sustain its vital cycles, structure, and functions, and continue its evolutionary processes. 11 The incorporation of the RoN in Uganda's new NEA, enables local and Indigenous communities along with their legal representatives, to litigate on behalf of Nature. This provision enhances the ability to hold corporations and other entities accountable for environmental harm.[75] As previously discussed, this Act serves as a prime example of federal legislation that integrates RoN and open-standing models, providing a comprehensive framework

Comparative Analysis of Examples of Open Standing

Key Takeaways

1. Open standing is not a straightforward representative model. Over many years, a jurisprudence may develop, alongside a culture of public interest litigation and judicial activism, that could present a quasi-representative model for

[73] Ecojurisprudence Monitor 'Uganda National Environmental Act' https://ecojurisprudence.org/initiatives/uganda-national-environmental-act/ accessed 5 June 2024.
[74] Alex Putzer, Tineke Lambooy, Ignace Breemer, Aafje Rietveld. The Rights of Nature as a Bridge between Land-Ownership Regimes: The Potential of Institutionalized Interplay in Post-Colonial Societies. Transnational Environmental Law. 2022;11(3) p.512
[75] Gaia Foundation - https://gaiafoundation.org/rights-of-nature-gain-ground-in-ugandas-legal-system/

ecosystems.

2. Open standing designed as part-and-parcel of a wider representative structure, as seen in Mar Menor, may be an ideal balance between the various issues around designing a representative model.

3. Open Standing as designed in Ecuador is beginning to form a significant, and growing, application of the Rights of Nature in diverse cases. This demonstrates the non-linear path of upholding the Rights of Nature through open standing, which may allow for continued legal innovation.

This session will examine the differences between CE and NEA's design. Although both countries share a similar colonial history, the focus will be on the difference in design of the representative models. Some scholars see a significant opportunity to compare CE and NEA as they aim not to replicate post-colonial legal dominance.[76] In contrast to Uganda, we will consider Ecuador, a country with an established RoN. In other words, Ecuador has institutional success and relatively early implementation, which came into force in 2008, while Uganda's National Environmental Act was adopted in 2019.[77]

Ecuador restructured its entire constitution to include the RoN and a non-anthropocentric vision. However, President Correa altered this approach throughout his presidency, particularly during the constitutional drafting process, placing greater emphasis on economic development and extractive industries.[78] These two developments enhanced the institutional impact of RoN. Moreover, we analysed that the CE is already being implemented unilaterally by the Ecuadorian Court in the above mentioned cases.

Uganda revised its NEA to include RoN, empowering local and indigenous communities to sue on behalf of nature. This provision increases the accountability of corporations and other actors for environmental damage. The NEA’s approach integrates decolonial perspectives and

[76] Putzer, Lambooy, Breemer, Rietveld, p. 513
[77] Ibid
[78] Putzer, Lambooy, Breemer, Rietveld, p. 513

environmental protection, addressing environmental degradation while respecting cultural relationships with nature.

An example from Ecuador is the Court's reasoning in the Dictum, where RoN to restoration and the State's duty to recover degraded areas were argued. This was emphasised in the cases of Los Cedros[79] and the Mangroves[80], highlighting the need for special protection of fragile ecosystems. The Court's decision opened the door for future juridical debates on nature restoration and the recovery of degraded areas, marking a significant step in legal recognition of RoN. Conversely, Uganda's approach through the NEA ensures that the legal framework reflects the country's unique environmental and cultural context rather than repeating post-colonial structures.

Considering the balancing of power, Ecuador is internationally recognised for its established RoN framework, which is attributed to its early implementation and institutional success. The CE has affirmed that any 'person, group of persons, community, people or nation' has the active legitimacy to represent Nature when its rights are violated.[81] Citizens and local communities are pivotal in safeguarding RoN, as they can demand compliance from administrative and judicial authorities. Case 0507-12-EP underscores the State's role in fostering citizen participation in protection mechanisms, ensuring a clear path to justice through the Judiciary in Ecuador.

NEA emerged through sustained assistance over three years from NGOs, such as Advocates for Natural Resources and Development, the National Association of Professional Environmentalists, the African Institute for Culture and Ecology, the African Biodiversity Network, and the Gaia Foundation.[82] As we analysed, this Act enables Indigenous and local people to protect traditional and sacred sites, demonstrating the power of collective advocacy.

Further, Ecuador is the most established and formal example that countries seeking to ensure the Rights of Nature (RoN) should aspire to. Various cases in Ecuador involve different parties

[79] Judgment 1149-19-JP/21 – Rights of Nature of the Los Cedros Protected Forest.
[80] Judgment 22-18-IN/21 – Unconstitutionality of Various Provisions of the Organic Environmental Code and its Regulations.
[81] Article 86 CE.
[82] Putzer, Lambooy, Breemer, Rietveld, p.517

pursuing RoN, whether to block a presidential decree in favour of marine life or to maintain a river's course to continue supplying their communities. Despite President Correa's shift towards economic development and extractive industries, the institutional impact of RoN in Ecuador has been significant, with unilateral implementation by the Ecuadorian Court.

Uganda showcases the power of societal and NGO mobilisation in restructuring federal law to include RoN, driven by efforts to protect land from large corporations. Both countries illustrate the potential and challenges of implementing RoN, offering valuable lessons for others to follow.

Finally, Ecuador is the most established and formal example that countries seeking to ensure the RoN should aspire to. As we have seen, there is already some adherence in the courts, as evidenced by the cases analysed, although the number still needs to be substantial. Uganda also serves as a good example, demonstrating how the mobilisation of the population and NGOs can lead to an impact and the restructuring of federal law for inclusion. Neither case represents a perfect guardianship model, but they serve as examples of valid paths to be disseminated.