Missing the Mark: A Critical Analysis of the Rights of Nature as a Legal Framework for Protecting Indigenous Interests

Caelyn Radziunas*

I. INTRODUCTION

It is well documented that the rights and interests of indigenous populations worldwide have historically been ignored, most notably through European colonization, by which outside nations set claim to land,

* © 2022 Caelyn M. Radziunas, J.D. Candidate 2022, Tulane University Law School; B.S. 2019, Wildlife Biology, the University of Vermont. The author is a Student Attorney in the Tulane Environmental Law Clinic and hopes to pursue a career in environmental justice. The author would like to thank Professor Günther Handl for his thoughtful insight and guidance during the writing process.

subjugating its inhabitants and often exploiting its resources.[1] Modern colonization began in the 1400s and was justified by colonizers asserting moral obligations to "tame" the "uncivilized" and "savage" peoples of the desired land.[2] Through colonization, conquering powers often ignored the interests and customs of the native inhabitants.[3] Across the globe, colonialism has stripped native populations of their land, culture, language, and often, their lives.[4]

Following the global decolonization movement in the latter half of the twentieth century, many indigenous communities now face a new threat to their land and resources.[5] In recent years, the demand for and subsequent exploitation of natural resources and raw materials has increased, largely through "resources grabbing."[6] Resources grabbing tends to have a negative effect on local populations, particularly indigenous groups, whose traditional livelihoods are often disrupted through land degradation or forced eviction.[7] Many countries lack the legal frameworks for indigenous communities to access the judicial system and many communities do not have formal land titles.[8] Because indigenous groups often live in remote areas, resource exploitation may not be easily discovered.[9] In addition to its impacts on local indigenous communities, natural resource extraction can have devastating effects on the environment itself.[10]

---

1. *See* Hannibal Travis, *The Cultural and Intellectual Property Interests of the Indigenous Peoples of Turkey and Iraq*, 15 TEX. WESLEYAN L. REV. 415, 423 (2009); Elizabeth Prine Pauls, *Native American*, ENCYCLOPÆDIA BRITANNICA (last visited Jan. 25, 2022); Erin Blakemore, *What Is Colonialism?*, NAT. GEOGRAPHIC (Feb. 19, 2019), https://www.nationalgeographic.com/culture/article/colonialism.

2. *See* Blakemore, *supra* note 1.

3. *Id.*

4. *Id.*

5. *Decolonization*, UNITED NATIONS, https://www.un.org/en/global-issues/decolonization; John Quintero, *Residual Colonialism in the 21st Century*, UNITED NATIONS UNIV. (May 29, 2012), https://unu.edu/publications/articles/residual-colonialism-in-the-21st-century.html.

6. Jérémie Gilbert & Nadia Bernaz, *Resources Grabbing and Human Rights: Building a Triangular Relationship Between States, Indigenous Peoples and Corporations*, *in* NATURAL RESOURCES GRABBING: AN INTERNATIONAL LAW PERSPECTIVE 38, 38 (Francesca Romanin Jacur, Angelica Bonfanti, and Franscesco Seatzu eds., 2016).

7. *Id.*

8. *The Indigenous World 2020*, 34 INT'L WORK GRP. FOR INDIGENOUS AFFAIRS 13 (Apr. 2020).

9. *Id.*

10. *See* Ruth Greenspan Bell, *Protecting the Environment During and After Resource Extraction*, *in* EXTRACTIVE INDUSTRIES: THE MANAGEMENT OF RESOURCES AS A DRIVER OF SUSTAINABLE DEVELOPMENT (Tony Addison and Alan Roe, eds., 2018); Babagana Gutti, Mohammed M. Aji, & Garba Magaji, *Environmental Impact of Natural Resources Exploitation in Nigeria and the Way Forward*, J. OF APPLIED TECH. IN ENV'T SANITATION, June 2012, at 95, 96;

The term "indigenous" is a label applied to peoples that lived on a particular area of land prior to colonial settlement and who tend to maintain a strong connection with the land and its natural resources.[11] Under this definition, communities have a right to land claims because at the time the land was colonized, control over the land and its natural resources had already been established through local non-Western customs and traditions.[12] Because of this distinction, indigenous land claims are considered separate from state laws under both domestic and international law.[13] Indigenous understandings of ownership are incompatible with Western property law, putting the two at odds with each other and making a common understanding of land use and ownership difficult to establish.

There is an intrinsic connection between indigenous communities and environmental health in the way of traditional knowledge. Traditional knowledge describes the often-insightful nature of indigenous peoples' knowledge of native flora and fauna [14] and often emphasizes sustainable use of the environment, largely due to a community's closeness to and reliance on the local ecosystem.[15] The intertwinement of many indigenous communities' culture with their local environment demonstrates the inherent connectedness of nature and indigenous rights, such that actions taken to benefit the surrounding ecosystem can also improve living conditions for the community itself.

II. INTRODUCTION TO INDIGENOUS RIGHTS AND RIGHTS OF NATURE

A. The Evolution of Indigenous Rights

In the era of colonization, the rights of many indigenous communities were individually negotiated with colonizing nations and later codified

---

Jonathan Watts, *Resource Extraction Responsible for Half World's Carbon Emissions*, GUARDIAN (Mar. 12, 2019), https://www.theguardian.com/environment/2019/mar/12/resource-extraction-carbon-emissions-biodiversity-loss.

11. *Who Are Indigenous Peoples?*, UNITED NATIONS PERMANENT FORUM ON INDIGENOUS ISSUES, https://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf.

12. Elisa Ruozzi, *Land Grabbing and International Human Rights: The Jurisprudence of the Inter-American Court of Human Rights on the Rights of Indigenous Peoples*, *in* NATURAL RESOURCES GRABBING: AN INTERNATIONAL LAW PERSPECTIVE 75, 79 (Francesca Romanin Jacur, Angelica Bonfanti, and Franscesco Seatzu eds., 2016).

13. *Id.* at 80; *see* Johnson v. M'Intosh, 21 U.S. 543, 562 (1823) (discarding indigenous land claims in the United States under the premise that such claims were negated through the process of colonization).

14. *Id.*

15. *Traditional Knowledge, Innovation and Practices*, SECRETARIAT OF THE CONVENTION ON BIOLOGICAL DIVERSITY, https://www.cbd.int/undb/media/factsheets/undb-factsheet-tk-en.pdf.

through the enactment of treaties.[16] Not generally included in these encoded rights were the rights of citizenship, despite the fact that many of the colonizing countries adopted assimilation policies in an attempt to integrate indigenous communities into the colony.[17] These policies often resulted in the breakdown of indigenous traditions, land, language, and culture.[18]

In the United States, indigenous rights were undercut by the Supreme Court in the 1823 case of *Johnson v. M'Intosh*, in which the Court held that grants of land title by Native Americans to private individuals "cannot be recognised in the Courts of the United States."[19] *M'Intosh* was a case to resolve a dispute over land claims between a plaintiff who received title to land through purchase from a native tribe and a defendant who was granted the land by the United States.[20] In coming to its conclusion, the Supreme Court affirmed the European "discovery doctrine," through which the discovery and seizure of lands in the process of colonization rendered invalid any prior claims to the land.[21] The discovery doctrine effectively disregarded indigenous land claims by negating their traditional customs and understandings relating to ownership of property.

The consequences of the discovery doctrine were compounded in 1871 when Congress passed 25 U.S.C. § 71, which precluded the United States from negotiating treaties with native tribes and from recognizing such tribes as being independent of the United States.[22] In 1903, the Supreme Court held that congressional decisions to break tribal treaties are not subject to judicial review.[23] In that case, *Lone Wolf v. Hitchcock*, an act passed by Congress effectively negated a treaty agreement between the United States and occupants of the Fort Hall Indian Reservation.[24] The Court reasoned that due to the Reservation's dependence on the United States government, it was incapable of entering into a contract with the government, and that Congress had "paramount power over the property of the Indians, by reason of its exercise of guardianship over their

16. *See* Kristen A. Carpenter, *Indigenous Peoples and the Jurisgenerative Moment in Human Rights*, 102 CAL. L. REV. 173, 181-84 (Feb. 2014).

17. *Id.* at 185.

18. *Id.*

19. Johnson v. M'Intosh, 21 U.S. 543, 562 (1823).

20. *Id.* at 543.

21. Adam Walczak, *Coming to the Table: Why Corporations Should Advocate for Legal Norms for the Protection of Indigenous Rights*, 42 GEO. WASH. INT'L L. REV. 623, 626 (2010).

22. 25 U.S.C. § 71 (1871).

23. Lone Wolf v. Hitchcock, 187 U.S. 553, 568 (1903).

24. *Id.* at 554-60.

interests."[25] *Lone Wolf* severely limited the rights and interests of indigenous peoples in the United States by rejecting their sovereignty.

The actions of the United States were not unique; several other countries also limited the rights of indigenous peoples during this period. In 1876, Canada passed the Indian Act, designed to marginalize native populations by bringing all native affairs under the control of the Canadian government.[26] The Indian Act effectively stripped native communities of their rights, granting legal title of native land and funds to the central government and requiring that all indigenous peoples in Canada be recorded in the national Indian Register.[27] Similarly, in 1840, the British government executed the Treaty of Waitangi with 540 native Māori chiefs.[28] This treaty transferred indigenous sovereignty to Britain and granted the Māori full ownership rights to "their lands, forests, fisheries and other possessions" in exchange for Britain's exclusive right to purchase Māori land.[29] However, poor translation of the word "sovereignty" generated a decades-long debate over the meaning of certain terms of the treaty, putting rights long-believed to be held by natives at odds with their actual legal recognition.[30]

Despite hopes that the twentieth century's global decolonization movement would mark the return of sovereign rights to land and culture to indigenous populations, indigenous claims were largely ignored in favor of transferring sovereignty from the former colonial power to the new national government.[31] However, also during this time period, the global community began to establish international law and develop instruments for international human rights, both of which helped to set the stage for a contemporary indigenous human rights movement.[32]

In June 2006, the United Nations (UN) General Assembly adopted Resolution 61/295, the Declaration on the Rights of Indigenous Peoples (UNDRIP), which affirmed indigenous rights to: self-determination; "maintain and strengthen their distinct political, legal, economic, social and cultural institutions;" nationality; "live in freedom, peace and security;" "not be subjected to forced assimilation or destruction of their

25. *Id.* at 564-65.
26. Carpenter, *supra* note 16, at 184-85.
27. Indian Act, R.S.C. 1985, c. I-5.
28. *The Treaty in Brief*, NEW ZEALAND HIST. (May 17, 2017), https://nzhistory.govt.nz/politics/treaty/the-treaty-in-brief.
29. *Id.*
30. *Id.*
31. Carpenter, *supra* note 16, at 187.
32. *Id.*

culture;" and develop and practice their own culture and traditions, among other guarantees.[33] Because of UNDRIP's limited utility as an instrument for indigenous human rights law due to its nonbinding nature, however, states can—and do—often fail to implement and enforce its recommendations.[34]

B. Sierra Club v. Morton

The first formal mention of the concept of rights of nature in United States caselaw was in Justice Douglas's dissent in *Sierra Club v. Morton*, in which the Supreme Court held that an organization lacks standing to sue when it fails to allege an injury directly felt by the organization or its members.[35] In *Morton*, the Sierra Club brought suit against the United States Secretary of the Interior and sought a declaratory judgement, claiming that the proposed development of the Mineral King Valley by the Disney Company violated federal laws and regulations.[36] In an opinion written by Justice Stewart, the Court cited § 10 of the Administrative Procedure Act (APA), reasoning that the Sierra Club's alleged injury—that it "would impair the enjoyment of the park for future generations"—was not sufficient to meet the "injury in fact" test requirements because it failed to show that the Sierra Club itself or its members would be actually injured.[37]

In his dissent, Justice Douglas argued that the issue of standing could be improved by a rule allowing parties to bring suit and litigate environmental issues on behalf of inanimate objects facing imminent harm.[38] This dissent makes reference to Christopher Stone's ("Stone") *Should Trees Have Standing? —Toward Legal Rights for Natural Objects*, in which Stone proposes a system that gives legal rights to nature and enables persons to bring suit in defense of threatened or endangered natural features.[39] In his writing, Stone established the concept of rights of nature, which has since become a global movement driven heavily by

33. U.N. GAOR, 61st Sess., 107th plen. mtg., U.N. Doc. A/56/53 (June 29, 2006).
34. Carpenter, *supra* note 16, at 194.
35. Sierra Club v. Morton, 405 U.S. 727, 741-42 (1972) (4-3 decision) (Douglas, J., dissenting).
36. *Id.* at 728-30.
37. *Id.* at 732-35.
38. *Id.* at 741 (4-3 decision) (Douglas, J., dissenting).
39. Christopher Stone, *Should Trees Have Standing?—Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450 (1972).

indigenous communities to protect both sacred and necessary natural features.[40]

One international non-governmental organization, the Global Alliance for the Rights of Nature (GARN), champions the adoption, implementation, and enforcement of Stone's vision. According to its website, GARN defines rights of nature as acknowledging:

> That nature in all its life forms has the right to exist, persist, maintain and regenerate its vital cycles. And we—the people—have the legal authority and responsibility to enforce these rights on behalf of ecosystems. The ecosystem itself can be named as the injured party, with its own legal standing rights, in cases alleging rights violations.[41]

Through its advocacy work, GARN aims to reshape existing Western-centric property law to afford standing to nature and elements of nature.[42]

The rejection of the Western model of property law is a principal theme of rights of nature. Proponents of rights of nature advocate the infusion of indigenous custom into the Western ideas of rights and property.[43] This is the result of indigenous influence, as rights of nature as a concept is derived from indigenous traditional knowledge.[44] As rights of nature has spread globally, the movement has largely been driven by indigenous influence.[45] This is especially apparent in states and communities where these historically marginated groups have recently been included in the legal process.[46]

C. Rights of Nature in the United States

Following *Morton*, the concept of rights of nature was not put into practice until 1995, when the Community Environmental Legal Defense Fund (CELDF) was established in Pennsylvania as a public interest law firm.[47] CELDF was the first to formally advocate for the use of rights of

---

40 *Id.* at 456.

41. *What is Rights of Nature?*, GLOB. ALLIANCE FOR THE RTS. OF NATURE, https://therightsofnature.org/what-is-rights-of-nature/.

42. *Id.*

43. David R. Boyd, *Recognizing the Rights of Nature: Lofty Rhetoric or Legal Revolution?*, NAT. RES. & ENV'T, Spring 2018, at 13.

44. *Champion the Rights of Nature: Overview*, CMTY. ENV'T LEGAL DEF. FUND, https://celdf.org/advancing-community-rights/rights-of-nature/.

45. Gwendolyn J. Gordon, *Environmental Personhood*, 43 COLUM. J. ENV'T L. 49, 55 (2018).

46. *See* Joel Colón-Ríos, *Comment: The Rights of Nature and the New Latin American Constitutionalism*, 13 N.Z.J. PUB. & INT'L L. 107, 107-09 (2015).

47. *About CELDF*, CMTY. ENV'T LEGAL DEF. FUND, https://celdf.org/about-celdf/.

nature on a legal basis.[48] Since its establishment, CELDF has repeatedly attempted to codify the rights of nature into law through litigation, but its arguments have been repeatedly struck down by federal courts.[49]

In the United States today, municipalities in ten different states and at least two indigenous communities formally recognize the rights of nature.[50] However, this is far from a comprehensive framework. Many of these municipalities, like Orange County of Orlando, Florida, the most populous area in the United States to formally recognize rights of nature, has given personhood rights to particular natural features, whereas other jurisdictions have applied rights of nature more broadly.[51] In one of the most recent developments from 2021, Orange County, Florida residents amended their county charter through The Right to Clean Water Charter Amendment, which granted to the Econlockhatchee and Wekiva Rivers the right to be free of pollution.[52] Despite the widespread support for this amendment, however, the health of the rivers remains at the discretion of state officials who can decide whether or not to enforce the provision.[53] This issue points to a major flaw in the concept of rights of nature: its enforceability.

Formally, the United States has no direct recourse for environmental injuries, so those seeking to bring suit for environmental harm are limited to claims for economic damages.[54] This is reinforced by the language of the National Environmental Policy Act (NEPA), which requires the development of an Environmental Impact Statement for federal agency actions that could significantly affect the *human* environment, rather than focusing more broadly on the greater, non-human environment.[55]

Giving personhood status and rights to non-human entities is not an entirely novel concept, however. The origins of corporate personhood can

---

48. Gordon, *supra* note 45, at 58; Meredith N. Healy, *Fluid Standing: Incorporating the Indigenous Rights of Nature Concept into Collaborative Management of the Colorado River Ecosystem*, 30 COLO. NAT. RES., ENERGY & ENV'T L. REV. 327, 341 (2019).

49. Healy, *supra* note 48, at 342.

50. Boyd, *supra* note 43, at 13; *see* Rebecca Renner, *In Florida, a River Gets Rights*, SIERRA MAG. (Feb. 9, 2021), https://www.sierraclub.org/sierra/2021-2-march-april/protect/florida-river-gets-rights.

51. *See id.*, for an example of Orange County, Florida, which granted the right to exist for waterways by means of a bill amendment; *Advancing Legal Rights of Nature: Timeline*, CMTY. ENV'T LEGAL DEF. FUND, https://celdf.org/rights-of-nature/timeline/, for timeline and descriptions of national and global steps taken in the progression of rights of nature.

52. Renner, *supra* note 50.

53. *Id.*

54. Healy, *supra* note 48, at 329.

55. *Id.*

be traced back to ancient Roman law.[56] This became codified in modern law in 2010, when the Supreme Court of the United States held that corporations and their financial expenditures are protected by the First Amendment to the United States Constitution, granting personhood to corporations.[57] In *Citizens United v. Federal Election Commission*, a non-profit corporation brought suit against the Federal Election Commission, challenging a provision of the Bipartisan Campaign Reform Act of 2020 that prohibited corporations from using general treasury moneys to fund any "electioneering communication."[58] Finding for the plaintiff corporation, the Court reasoned that this provision violated the First Amendment by censoring or restricting the political speech of corporations.[59]

Proponents of rights of nature in the United States often argue that because corporations are treated as legal persons, it stands to reason that nature could be afforded the same or similar rights by extension.[60] In his writing, Stone likens natural features to corporations as entities that cannot speak but have legal standing.[61] Stone then goes on to compare nonperson entities to "incompetents," people who are unable to make legal decisions without aid, typically in the form of a guardianship.[62] The position of such a guardian, suggests Stone, could easily be filled by certain environmental groups with the resources to represent and defend the legal interests of nature or natural features.[63] Federally, advocates also propose an extension of the Due Process and Equal Protection clauses of the Fourteenth Amendment to include the rights of nature.[64]

III. CASE STUDIES: ECUADOR, BOLIVIA, NEW ZEALAND, AND INDIA

A. Ecuador

Inspired by United States-based CELDF's work, Ecuador approved its constitution to be rewritten in 2008 to recognize "Pachamama," or

56. Gordon, *supra* note 45, at 63.
57. Citizens United v. Federal Election Comm'n, 558 U.S. 310, 372 (2010).
58. *Id.* at 320-21. "Electioneering communication" is defined as "'any broadcast, cable, or satellite communication' that "'refers to a clearly identified candidate for Federal office' and is made within 30 days of a primary or 60 days of a general election." *Id.* at 321 (quoting 2 U.S.C. § 434(f)(3)(A) (current version at 52 U.S.C.A. § 30104(f)(3)(A))).
59. *Id.* at 352-56.
60. *See* Healy, *supra* note 48, at 328.
61. Stone, *supra* note 39, at 452-53.
62. *Id.* at 464.
63. *Id.* at 464-65.
64. *Id.* at 465.

"Mother Nature," as a legal entity.[65] This move was part of the early 2000s wave of New Latin American Constitutionalism (NLAC), during which the states of Venezuela, Ecuador, and Bolivia rewrote their constitutions to reflect greater and more wide-spread public participation, a less privatized economy, and a more extensive list of rights.[66] Each of the three newly adopted constitutions expressly stated its support for nature and ecological diversity.[67] NLAC and the introduction of state-wide rights of nature was largely driven by indigenous influence in state policy.[68] In the adoption of these new constitutions, NLAC-participating countries created inclusive constitution-making bodies to foster the participation of groups such as indigenous peoples who have been historically excluded from the process.[69]

Ecuador was the first country to formally fully incorporate rights of nature into its constitution.[70] Other countries that address the environment or environmental health in their constitutions tend to focus on community rights to clean and healthy resources. For example, in 2017, Thailand rewrote its constitution to require environmental and health impact assessments for activities with the potential to cause environmental harm to the *human* environment.[71] Unlike states with a more human-centric approach to constitutional guarantees of environmental protection, Ecuador's Pachamama provision guarantees the right to life for nature and features of nature not for their utility to the human population, but for their intrinsic value.

The Pachamama provision was tested in 2010, when property owners invoked rights of nature in defense of the Vilcabamba River, whose path was altered by the upriver dumping of construction debris.[72] In *Wheeler v. Director de la Procurator General del Estado en Loja*, plaintiffs argued that the Vilcabamba River has the right to exist and run in its own natural course.[73] The court ruled in favor of the plaintiff property owners, additionally commenting that had this case involved a conflict over constitutional rights, nature would prevail because of the Pachamama

65. Gordon, *supra* note 45, at 58; María Valeria Berros, *The Constitution of the Republic of Ecuador: Pachamama Has Rights*, ARCADIA (2015).

66. Colón-Ríos, *supra* note 46, at 107-09.

67. *Id.* at 109.

68. Gordon, *supra* note 45, at 55.

69. Colón-Ríos, *supra* note 46, at 107-08.

70. Jacqueline Peel & Jolene Lin, *Transnational Climate Litigation: The Contribution of the Global South*, 113 AM. J. INT'L L. 679, 712 (2019).

71. *Id.* at 712-13.

72. Healy, *supra* note 48, at 331-32.

73. *Id.*

clause.[74] This case was a landmark decision concerning constitutional rights of nature in Ecuador, establishing that the courts have a constitutional duty to protect the environment.[75] In addition to the Vilcabamba River case, between 2008 and 2013, 1,164 cases invoking rights of nature were filed with the National Judicial Council.[76]

However, similar to concerns over Florida state officials in the case of the Econlockhatchee and Wekiva Rivers, one of the most significant flaws with Ecuador's constitution is that the Pachamama provision is easily overlooked by the country's leadership.

Despite its constitutional statements, the Ecuadorian government continues to advance resource extraction operations.[77] GARN itself has criticized Ecuador's implementation of rights of nature, particularly following the Vilcabamba River decision, and describes steps taken by the Provincial Loja Council as "incomplete and careless."[78] A 2012 visit to the river by non-governmental organization Fundación Pachamama revealed that the Council had not fully complied through constitutional action, having merely placed signs and a waste containment system, and had performed only a "superficial cleaning."[79]

Even where the Pachamama provision has succeeded in its role of granting personhood to nature, the foreign companies involved in resource extraction in Ecuador have limited the country's ability to enforce rights of nature in protection of its resources. In a nearly twenty-year long battle, Ecuadorian lawyers have fought Chevron U.S.A., Inc. ("Chevron") to remedy the "Amazon Chernobyl," an environmental disaster caused by the Texaco, Inc. oil company (acquired by Chevron in 2001) and resulting in destruction of the Ecuadorian rainforest, water toxicity, and harm to human life, particularly to indigenous communities in the Amazon Basin.[80] Despite the fact that over a dozen Ecuadorian judges have ruled

---

74. *Id.* at 332.

75. *Id.*

76. Nathalie Cely, *Balancing Profit and Environmental Sustainability in Ecuador: Lessons Learned from the Chevron Case*, 24 DUKE ENV'T L. & POL'Y F. 353, 360 (2014).

77. Johnny Magdaleno, *Indigenous Rights 'Invisible' as Ecuador Pushes Mining, Oil Projects: U.N.*, THOMSON REUTERS FOUND. (Nov. 30, 2018), https://www.reuters.com/article/us-ecuador-mining-rights/indigenous-rights-invisible-as-ecuador-pushes-mining-oil-projects-u-n-idUSKCN1NZ269.

78. Gabriela León Cobo, *Vilcabamba River Case Law: 1 Year After*, GLOB. ALLIANCE FOR THE RTS. OF NATURE (Mar. 27, 2012), https://therightsofnature.org/vilcabamba-river-1-year-after/.

79. *Id.*

80. Alec Baldwin & Paul Paz y Miño, *Chevron is Refusing to Pay for the "Amazon Chernobyl"—We Can Fight Back with Citizen Action*, GUARDIAN (Sept. 17, 2020), https://www.theguardian.com/commentisfree/2020/sep/17/chevron-amazon-oil-toxic-waste-dump-ecuador-boycott.

against Chevron and demanded that the company pay $9.5 billion in damages, Chevron, as a foreign corporation, has responded by moving the lawsuit from court to court across the international community and has managed to avoid paying what it owes the affected communities.[81]

For these reasons, Ecuador's constitutional Pachamama provision in its current form is a distraction at best, encouraging the international community to overlook environmental injustices while the state continues to profit off of resource exploitation regardless of the infringement upon indigenous land and resource claims, and ignorant of the impact on environmental health. Despite the global praise Ecuador has received for its constitutional efforts, the rights of nature provision remains little more than a superficial acknowledgement and has little enforcement power, rendering it essentially ineffective.

B. Bolivia

In another example of NLAC, Bolivia rewrote its constitution in 2009 to recognize nature as a legal entity that "takes on the character of collective public interest."[82] By considering nature to be of the collective public interest, Bolivia's rights of nature provision broadly protects *all* of nature, rather than specific natural features.[83] The constitution also set up the framework for the establishment of a "ministry of Mother Earth" and the appointment of an ombudsman to hear disputes.[84]

In 2010 and 2012, Bolivia passed regulations formally recognizing the rights of nature as being equal to those shared by humans.[85] Similar to other NLAC countries, Bolivia's passage of the so-called Law of Mother Earth was driven by indigenous influence and the idea of Pachamama.[86] It was also an acknowledgement of the failures of its existing environmental protections and aimed to increase transparency and strengthen regulatory power.[87] By enacting this law, Bolivia went one step further than Ecuador, which, since the passage of its amended constitution, has still failed to

81. *Id.*
82. Gordon, *supra* note 45, at 52.
83. *Id.* at 55.
84. Brandon Keim, *Nature to Get Legal Rights in Bolivia*, WIRED (Apr. 18, 2011), https://www.wired.com/2011/04/legal-rights-nature-bolivia/.
85. Berros, *supra* note 65; John Vidal, *Bolivia Enshrines Natural World's Rights with Equal Status for Mother Earth*, GUARDIAN (Apr. 10, 2011), https://www.theguardian.com/environment/2011/apr/10/bolivia-enshrines-natural-worlds-rights.
86. Vidal, *supra* note 85.
87. *Id.*

enact laws or take any further action to protect its environment from degradation.[88]

Another interesting step taken by Bolivia was the election of Juan Evo Morales Ayma ("Morales") as president from 2006 to 2019.[89] Morales became one of only two indigenous men to ever be elected president in Latin America.[90] The former leader of a coca farmer union and a proud socialist, Morales was a supporter of indigenous farmers and an advocate for the 2009 constitutional changes acknowledging rights of nature and indigenous peoples.[91] In addition to pushing for the constitutional rights of nature provision, Morales also supported efforts to "renationalize" the state's oil and gas industries by demanding that all foreign energy transactions go through the state government.[92]

However, similar to Ecuador, Bolivia is inconsistent with its enforcement of the rights of nature. In a 2018 statement, the International Rights of Nature Tribunal declared that Bolivia has:

> violated the rights of nature and of indigenous peoples as defenders of Mother Earth and ha[s] failed to comply with its obligation to respect, protect, and guarantee the rights of Mother Earth as established under national legislation and relevant international regulations.[93]

This judgment was in response to an incident involving a government-run road development project in the Isiboro Sécure National Park and Indigenous Territory (TIPNIS) during which the Tribunal was refused entry into TIPNIS during a visit to investigate claims that local communities were negatively impacted by the development.[94]

In addition to the TIPNIS incident, the Bolivian government made a push toward increased agricultural development in the years following its redrafting of the constitution. In 2013, Morales announced a plan to

---

88. *Id.*

89. Karen Giovanna Añaños Bedriñana, Bernardo Alfredo Hernández Umaña, & José Antonio Rodriguez Martín, *"Living Well" in the Constitution of Bolivia and the American Declaration on the Rights of Indigenous Peoples: Reflections on Well-Being and the Right to Development*, 17 INT'L J. OF ENV'T RES. AND PUB. HEALTH 1, 5 (Feb. 1, 2020); *Evo Morales: Bolivian Leader's Turbulent Presidency*, BBC NEWS (Nov. 10, 2019), https://www.bbc.com/news/world-latin-america-12166905 [hereinafter *Evo Morales*].

90. Giovanna et al., *supra* note 89, at 2.

91. *Evo Morales*, *supra* note 89.

92. *Id.*; *Bolivia Gas Under State Control*, BBC NEWS (May 2, 2006), http://news.bbc.co.uk/2/hi/americas/4963348.stm [hereinafter *Bolivia gas*].

93. Erik Hoffner, *Bolivia: Nature Rights Tribunal Condemns TIPNIS Project*, MONGABAY (May 20, 2019), https://news.mongabay.com/2019/05/bolivia-nature-rights-tribunal-condemns-tipnis-project/.

94. *Id.*

increase Bolivia's farmland by ten million hectares over the course of ten years, permitting the encroachment of farmers on indigenous land.[95] In 2019, the legislative assembly for the lowland region of Beni passed a law opening forty-two percent of its land to the development of agricultural and industrial activities.[96]

Similar to how continued resource exploitation reduces the efficacy of Ecuador's Pachamama provision, Bolivia's rights of nature regulations have been poorly enforced in favor of the advancement of industry at the costs of damaging the local environment and harming the interests of indigenous communities.

C. New Zealand

In 2012, New Zealand recognized the personhood of the Whanganui River, removing the requirement that third party persons must bring suit claiming injuries of their own in order to protect the interests of the river.[97] The Whanganui River Claims Settlement Bill is recognized by the UN Special Rapporteur on the Rights of Indigenous Peoples for its significance in recognizing the historical struggles of indigenous peoples.[98] This Bill granted personhood to the Whanganui River by naming it as a new legal entity, 'Te Awa Tupua.'[99] Much like a charitable trust, New Zealanders have a legal obligation to act in the best interests of the river.[100] The Bill also established an appointed guardian for the Whanganui River, the office of Te Pou Tupua, to:

> (1) speak on Te Awa Tupua's behalf; (2) promote the health and wellbeing of Te Awa Tupua; (3) perform landowner functions on behalf of Te Awa Tupua; and (4) take any other action reasonably necessary to effect any of these goals.[101]

---

95. Iokiñe Rodríguez & Mirna Inturias, *Bolivia: Contribution of Indigenous People to Fighting Climate Change is Hanging by a Thread*, CONVERSATION (Feb. 11, 2020), https://theconversation.com/bolivia-contribution-of-indigenous-people-to-fighting-climate-change-is-hanging-by-a-thread-129399.

96. *Id.*

97. Healy, *supra* note 48, at 332-33.

98. *Id.* at 334; S. James Anaya, *Report of the Special Rapporteur on the Rights of Indigenous Peoples on the Situation of Maori People in New Zealand*, 32 ARIZ. J. INT'L & COMP. L. 1, 23-4 (2015).

99. Healy, *supra* note 48, at 332.

100. *Id.* at 334.

101. Malcolm McDermond, *Standing for Standing Rock?: Vindicating Native American Religious and Land Rights by Adapting New Zealand's Te Awa Tupua Act to American Soil*, 123 DICK. L. REV. 785, 807 (2019).

The government of New Zealand, in enacting this Bill, codified and integrated traditional views of the indigenous Māori peoples into modern Western law by giving the Whanganui River the legal status as a non-human entity, similar to a corporation.[102] In fact, harming the river is legally equivalent to harming the Māori Tribe.[103]

In 2014, New Zealand granted personhood to former national park Te Urewera, allowing the park to bring a cause of action without proving direct injury to a human person.[104] The Te Urewera Act acknowledges Te Urewera's spiritual value as a place central to the indigenous Tūhoe peoples' culture and identity as well as a place beloved by non-indigenous New Zealanders.[105] The Act is meant to guarantee that Te Urewera remain in its natural state, preserving both the ecological and indigenous systems that rely on it.[106] The State of New Zealand appointed indigenous guardians to bring action on behalf of the park.[107]

Similar to the countries engaged in NLAC, New Zealand's incorporation of rights of nature into legal policy was driven in part by aboriginal influence.[108] The passage of the Whanganui River Claims Settlement Bill also remedied a 140-year-old ownership dispute between the native Whanganui Iwi people and the government.[109] At the time the Whanganui Iwi people signed over ownership of the Whanganui River via treaty to the British government, a language discrepancy over the term "sovereignty" led the aboriginal community to incorrectly believe that they retained the right to manage their lands.[110] Acknowledgement of Te Awa Tupua as a legal person, therefore, is less of a grant of rights so much as it is an extension of the religious and cultural customary rights of the Whanganui Māori peoples.[111] Similarly, the Te Urewera Act grants personhood to a natural feature for the purpose of preserving the cultural and spiritual identity of the Tūhoe peoples.[112]

---

102. Healy, *supra* note 48, at 332.

103. Ashley Westerman, *Should Rivers Have Same Legal Rights as Humans? A Growing Number of Voices Say Yes*, NPR (Aug. 3, 2019), https://www.npr.org/2019/08/03/740604142/should-rivers-have-same-legal-rights-as-humans-a-growing-number-of-voices-say-ye.

104. Healy, *supra* note 48, at 334-35.

105. *Te Urewera Act*, ENV'T FOUND. (Nov. 17, 2017), http://www.environmentguide.org.nz/regional/te-urewera-act/.

106. *Id.*

107. Healy, *supra* note 48, at 334-35.

108. Gordon, *supra* note 45, at 55.

109. Healy, *supra* note 48, at 333.

110. *Id.*

111. McDermond, *supra* note 101.

112. *Te Urewera Act*, *supra* note 105.

Despite its international recognition for extending personhood to nature and encouraging greater participation in governance by the Māori tribes, however, New Zealand's rights of nature is far from a perfect solution. Although the Special Rapporteur on the Rights of Indigenous Peoples on the Situation of New Zealand praised the significance of the country's Whanganui River Claims Settlement Bill, it also highlighted a need for New Zealand to bolster its efforts and recommended that the country increase and strengthen its policies for inclusion of the Māori in various aspects of decision-making.[113]

D. India

Following New Zealand, India became the second country to recognize a river as a legal entity.[114] In 2017, the Uttrakhand High Court granted personhood to Ganga River Basin, namely to the Ganges and Yamuna Rivers.[115] Similar to New Zealand's Te Urewera and its intrinsic value to the Tūhoe, the Ganges and Yamuna Rivers are held sacred to people of the Hindu faith.[116] In fact, some Hindu believe the Ganges River, or "Ganga Maa," to be a Mother and Goddess personified.[117] And just as with the Te Urewera Act, the rivers were granted the right to life and to representation—a government body known as the National Mission for Clean Ganga was appointed to represent the rivers and oversee projects enacted thereupon.[118] The Uttrakhand High Court's ruling was based on the Indian Supreme Court's recognition of the juridical personhood of Hindu deities, and reasoned that protection of the rivers is essential for safeguarding the culture, religion, and natural resources of the community.[119] Days after this decision, the Uttrakhand High Court extended personhood to include glaciers, lakes, and wetlands in the Ganges and Yamuna River basins.[120]

---

113. Anaya, *supra* note 98, at 24.

114. Westerman, *supra* note 103; Rina Chandran, *India's Sacred Ganges and Yamuna Rivers Granted Same Legal Rights as Humans*, REUTERS (Mar. 21, 2017), https://www.reuters.com/article/us-india-water-lawmaking/indias-sacred-ganges-and-yamuna-rivers-granted-same-legal-rights-as-humans-idUSKBN16S109.

115. Gordon, *supra* note 45, at 58; Chandran, *supra* note 114.

116. Chandran, *supra* note 114.

117. Kelly D. Alley & Tarini Mehta, *The Experiment with Rights of Nature in India*, *in* SUSTAINABILITY AND THE RIGHTS OF NATURE IN PRACTICE 365, 373 (Cameron La Follette and Chris Maser eds., 2019).

118. Chandran, *supra* note 114.

119. Lidia Cano Pecharroman, *Rights of Nature: Rivers That Can Stand in Court*, 7 RES. 1, 8 (Feb. 14, 2018).

120. Alley & Mehta, *supra* note 117, at 373.

In 2018, the Uttarakhand High Court extended the rights of legal persons to include animals.[121] It was again extended in 2020, when another Indian high court declared the Sukhna Lake to have legal personhood.[122] Sukhna Lake was also assigned a guardianship, as the high court ordered all Chandigarh citizens to be "loco parentis" to the lake.[123] Action to assign personhood and protection to Sukhna Lake was a response to its decreasing water levels and the consequent concern that immediate action was necessary to conserve the lake.[124]

Despite these promising high court decisions, India's efforts have been met with skepticism. According to urban water management expert Suresh Rohill at the Centre for Science and Environment Advocacy in New Delhi, "We are failing in our duty, and we ignore other laws meant to protect our rivers. So simply giving the rivers greater rights does not automatically give them greater protection."[125] This skepticism is further supported by the Indian Supreme Court's decision to overturn the Uttrakhand High Court's ruling that gave personhood to the Ganges and Yamuna Rivers.[126] The Supreme Court sided with the state government's argument that a rights of nature declaration is not sustainable nor practical, and granting a river legal personhood "could lead to complicated legal situations."[127] Final hearings for several of these cases concerning personhood of natural features are pending, and in all likelihood will be overturned by the Supreme Court to return to the status quo.[128]

IV. DISCUSSION

A. The Rights of Nature Movement and Indigenous Rights

Indigenous rights and autonomy are inextricably linked to environmental health. One commonality shared by NLAC states is the "resource curse," a phenomenon where a country rich in valuable

121. Shrishtee Bajpai, *'Righting' the Wrong: Rights of Rivers in India*, MONGABAY (June 23, 2020), https://india.mongabay.com/2020/06/commentary-righting-the-wrong-rights-of-rivers-in-india/.

122. *Id.*

123. *Sukhna Lake is a Living Entity with Rights: HC*, HINDUSTAN TIMES (Mar. 3, 2020), https://www.hindustantimes.com/chandigarh/sukhna-lake-is-a-living-entity-with-rights-hc/story-Jrt8vKUy8kqIUwWaLpcYtM.html.

124. *Id.*

125. Chandran, *supra* note 114.

126. *India's Ganges and Yamuna Rivers are "Not Living Entities*," BBC NEWS (July 7, 2017), https://www.bbc.com/news/world-asia-india-40537701.

127. *Id.*

128. Alley & Mehta, *supra* note 117, at 379.

resources experiences little economic success and often poverty, and where large-scale resource extraction degrades the environment at the expense of the local population.[129] For example, in the NLAC state of Ecuador, which is a major exporter of copper and oil, UNICEF reported in 2012 that the poverty rate for indigenous Ecuadorians was approximately sixty percent—about double the rate for non-indigenous Ecuadorians.[130] Given that many indigenous communities rely on their land for survival, resource exploitation on or near lands inhabited by natives presents a very real danger.

Another key feature of several of the states that have enacted rights of nature provisions is the prominent effects of climate change. For example, Bolivia has already experienced increased temperatures and severe weather events in recent years, attributable to a warming global climate.[131] In the coming years, as the climate is expected to continue warming, some of the most heavily hit populations will be indigenous communities.[132]

Perhaps the most frightening consequence of the resource curse experienced by many natural resource-rich countries is the vulnerability it bestows upon indigenous communities. Because indigenous populations in countries that depend on the export of natural resources often live in poverty, they are consequently in a disadvantageous position for combating the effects of climate change.[133]

Climate change will undoubtably impact the natural world in disastrous ways. Among these anticipated changes are increased drought, unreliable agricultural harvests, and ocean acidification.[134] Perhaps most alarming are the unpredictable impacts of climate change on ecosystems.[135] Climate change also presents a threat to traditional knowledge in indigenous communities, the loss of which would be to lose

---

129. Melissa Mittelman, *The Resource Curse*, BLOOMBERG (May 19, 2017), https://www.bloomberg.com/quicktake/resource-curse.

130. Bentley Long, *Witnessing UNICEF's Work in Ecuador*, UNICEF USA (May 18, 2012), https://www.unicefusa.org/stories/witnessing-unicef%E2%80%99s-work-ecuador/7208.

131. Vidal, *supra* note 85.

132. *Climate Change*, UN DEPT. OF ECON. & SOC. AFFAIRS, https://www.un.org/development/desa/indigenouspeoples/climate-change.html#:~:text=The%20effects%20of%20climate%20change%20on%20indigenous%20peoples&text=Climate%20change%20exacerbates%20the%20difficulties,rights%20violations%2C%20discrimination%20and%20unemployment.

133. E. Rania Rampersad, *Indigenous Adaption to Climate Change: Preserving Sustainable Relationships Through an Environmental Stewardship Claim & Trust Fund Remedy*, 21 GEO. INT'L ENV'T L. REV. 591, 594 (2009).

134. *Climate Change Impacts*, NOAA, https://www.noaa.gov/education/resource-collections/climate/climate-change-impacts.

135. *Id.*

an integral part of indigenous culture, customs, and relationships with nature.[136] Such a loss would be felt not only within individual communities, but on a global scale, as indigenous groups often have deep insight into the unique ecosystems of their region.[137] The permanent loss of traditional knowledge would be detrimental to the preservation and conservation of unique or vulnerable ecosystems and species.[138]

In addition to climate change, resource extraction, particularly when poorly regulated, can wreak havoc on ecosystems, landscapes, and ultimately the human population, with far-reaching impacts.[139] One of the clearest examples of the effects of poorly regulated resource extraction on native communities was witnessed in the Lago Agrio oil field of Ecuador, where Texaco, Inc. disposed of crude petroleum waste in large unlined and uncovered waste pits, taking minimal action to remediate, in what has been labelled the "Amazon Chernobyl."[140] From these pits, petroleum byproduct leached into the soil and groundwater, contaminating the land and resulting in increased rates of cancer, birth defects, and death in the local indigenous population.[141] The harms of environmental degradation, therefore, affect both ecosystems and human populations alike, and it stands to reason that a movement advocating for the rights of nature would ultimately benefit indigenous communities as well.

Certainly, the rights of nature movement has drawn much-needed attention to the plight of indigenous communities facing harms associated with environmental degradation and resources extraction across the globe. Despite the positive attention the movement has received, however, rights of nature as a legal concept fails to adequately protect both the environment and indigenous rights.

---

136. U.N. Inter-Agency Support Group on Indigenous Peoples' Issues, Collated Paper on Indigenous Peoples and Climate Change, U.N. Doc. E/C.19/CRP.2 (2008).

137. Rampersad, *supra* note 133, at 594.

138. *Id.*

139. Michael Gross, *Latin America's Resources: Blessing or Curse?*, 24 CURRENT BIOLOGY, Mar. 17 2014, at R209.

140. Lindsay Ofrias, *Fighting Chevron in Ecuador*, NACLA (Nov. 3, 2017), https://nacla.org/news/2017/11/03/fighting-chevron-ecuador.

141. *Id.*

B. The Normative Utility of Rights of Nature

1. Value Balancing

The ascription of value to nature is itself an act that reflects human valuation and political choice.[142] The natural features we choose to protect are a reflection of what we, as humans, choose to give value to, rather than granting legal rights to all of nature for its intrinsic value alone.[143] This is especially evident in the fact that features held sacred to certain indigenous or religious communities are some of the primary entities given legal rights.[144] Even more blatantly, many of the constitutions and ordinances adopted to promote rights of nature emphasize the *human* environment rather than the intrinsic value of nature itself.

Ecuador is one example of a country whose constitution addresses the rights of nature not in the context of the human environment or human benefit; however, human values are a major factor in the enforcement of this constitutional provision.[145] The 2008 Ecuadorian constitution guarantees the right of "buen vivir," translated to "good living," in English from the indigenous Quechua peoples' traditional way of living, which centers around the themes of community and respect for the environment.[146] Further, as one of the most biodiverse countries, Ecuador's prioritization of protection of nature ultimately translates to an inherent protection of the country's resources.[147] Human values also play a major role in enforcement of rights of nature, particularly in countries like Ecuador or Bolivia which rely on income from natural resource extraction.

Although indigenous minorities have been a driving force in the propagation of rights of nature across the globe, these communities are not generally the officials charged with the responsibility of enforcing such provisions. A common theme in several of the rights of nature countries is

---

142. Günther Handl, *The Human Right to a Clean Environment and Rights of Nature: Between Advocacy and Reality*, *in* THE CAMBRIDGE HANDBOOK OF NEW HUMAN RIGHTS 137, 149 (Andreas von Arnauld, Kerstin von der Denken, and Mart Susi eds., 2020).

143. *Id.*

144. *See*, *e.g.*, Chandran, *supra* 114 (discussing the legal personhood status given to India's Ganges and Yamuna Rivers, both held sacred by people of the Hindu faith); *Te Urewera Act*, *supra* note 105 (discussing the Te Urewera Act, which granted legal personhood to a former national park on the basis of its intrinsic value to the Tūhoe peoples).

145. Cely, *supra* note 76, at 358.

146. *Id.*

147. *Ecuador Country Profile*, CONVENTION ON BIOLOGICAL DIVERSITY, http://www.cbd.int/countries/profile/default.shtml?country=ec (discussing Ecuador's standing as one of the planet's 17 "mega diverse" countries).

inconsistency in enforcement of their rights of nature ordinances and constitutional provisions.[148] Decisions to overlook environmental damage or to not enforce environmental protections are reflective of the state government's own value judgements. Because excessive or poorly regulated resource extraction can have disastrous impacts on nearby indigenous communities, a value judgement to move forward with extraction in ignorance of rights of nature protections is inherently a value judgement against the wellbeing of those communities. This conclusion is further evidenced by the fact that several of the countries with rights of nature protections, namely the resource-rich and biodiverse NLAC countries, are primarily exploited by foreign companies.[149]

2. Efficacy

Ecuador's efforts in rewriting its constitution to reflect the rights of nature have been praised by rights of nature advocates.[150] However, this praise overlooks the glaring enforcement issues. Notwithstanding its acknowledgement of nature's personhood, the Ecuadorian government has frequently overlooked irresponsible resource extraction practices by foreign corporations, often to the detriment of local indigenous communities.[151] In a revealing article, Johnny Magdaleno of the Thomson Reuters Foundation writes about a 2018 UN fact-finding survey, in which UN Special Rapporteur on the Rights of Indigenous Peoples is quoted as commenting that there have been "serious violations of the constitutional provisions," and "so-called development projects have violated and continue to violate [indigenous peoples'] fundamental rights."[152] Despite its constitutional provisions recognizing the rights of nature and a requirement to consult local communities prior to project development, the country continues to pursue and encourage foreign mining and oil projects at the expense of its indigenous communities.[153]

---

148. *See*, *e.g.*, Hoffner, *supra* note 93 (discussing a statement by the International Rights of Nature Tribunal addressing Bolivia's failure to enforce its protections of nature); Magdaleno, *supra* note 77 (discussing Ecuador's continued advancement of foreign natural resource extraction projects despite its constitutional statements in support of protection of nature).

149. Ava Azad, *Remedies for Foreign Citizens Subjected to Outsourced Pollution: A Case Study of American Big Oil in the Ecuadorian Amazon*, 9 FLA. A & M UNIV. L. REV. 277, 279 (2014).

150. *See Ecuador Adopts Rights of Nature in Constitution*, GLOB. ALL. FOR THE RTS. OF NATURE, https://therightsofnature.org/ecuador-rights/.

151. Magdaleno, *supra* note 77.

152. *Id.*

153. *Id.*

This example points to a key problem with the concept of rights of nature. It is generally understood that for any legal framework to be effective, it must be enforceable.[154] This means that in countries like Bolivia and Ecuador, where the government can simply decide to not enforce its protections of nature, a rights of nature constitutional provision or ordinance can never be effective. Damningly, this suggestion has been proven by each of the case examples in this article: Ecuador, Bolivia, New Zealand, and India have all failed in some capacity to enforce rights of nature, in some cases even overturning it. These examples do not stand alone either, because jurisdictions within the United States that have adopted similar rights of nature regulations or policies have similarly failed to adequately enforce rights of nature.[155] The fatal flaw with rights of nature is the human tendency to apply it to fit certain prioritized human values.

Another major issue with the rights of nature is its incompatibility with existing international frameworks. Through resolutions, the U.N. has reaffirmed the concept of state permanent sovereignty over natural resources.[156] Rights of nature remains a poorly defined legal concept that has no international legal basis, as it is only sporadically embraced by individual countries and is not based on existing customary international law.[157] Even within countries that have adopted rights of nature, the case examples show inconsistency in its application and enforcement.

Although proponents argue that corporate personhood stands as precedent to grant rights of personhood to nature, the comparison of two such different concepts is tenuous at best. Stone argues that corporations and nature are both nonperson entities that are unable to speak for themselves.[158] Corporations, however, can speak for and represent themselves and their interests. This been reinforced through cases like *Citizens United*, which further extended the legal rights of corporations.[159] Further, there is precedent for corporate personhood in the Western legal system, whereas rights of nature is a novel legal concept originating from traditional beliefs and customs very different from concepts in the modern international legal system and which has been poorly defined.

---

154. *Enforceable Law and Legal Definition*, U.S. LEGAL, https://definitions.uslegal.com/e/enforceable/.

155. *See* Renner, *supra* note 50.

156. G.A. Res. 1803 (XVII), at 15 (Dec. 14, 1962).

157. Rampersad, *supra* note 133, at 596.

158. Stone, *supra* note 39, at 12.

159. *See generally*, Citizens United v. Fed. Elec. Comm'n, 558 U.S. 310 (2010).

Finally, another issue with the practical implementation of rights of nature involves redressability. It is unclear how various violations of rights of nature might be remedied.[160] Although a remedy may be as simple as remediating polluted land, often environmental damages are complex and far-reaching. In the event of destruction of an ecosystem or eradication of a species, such damages cannot be redressed through typical, if any, forms of remedy. Further, the form of remedy is important in adequately redressing harm. In cases involving environmental degradation, monetary compensation may be insufficient, as the cultural harms suffered by indigenous locals may only be truly remedied through environmental restoration.[161] As climate change worsens and permanently alters the environment, it may become increasingly difficult to restore damaged ecosystems to their original state as they existed prior to degradation.[162]

C. Alternatives to Rights of Nature

Although rights of nature as a legal concept is currently insufficient for protecting the resource and land interests of indigenous peoples, alternatives remain to safeguard these interests and promote environmental protection. Article 27 of the UN Universal Declaration of Human Rights guarantees a right to culture.[163] This is confirmed by Article 15(1) of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which grants all people the right to self-determination to pursue their own cultural development.[164] The UN Educational, Scientific and Cultural Organization (UNESCO) was established as a "binding global ethic" to help preserve and protect all individual cultures "without distinction" and without infringing on the cultural rights and liberties of others.[165]

Despite the guarantees of ICESCR and UNESCO, the right to culture is poorly outlined and encompasses a wide range of meanings.[166] At the time the Declaration of Human Rights and the ICESCR were adopted, the

160. Bajpai, *supra* note 121.

161. Rampersad, *supra* note 133, at 599.

162. *Id.* at 601.

163. G.A. Res. 217 (III) A, Universal Declaration on Human Rights (Dec. 10, 1948).

164. G.A. Res. 2200 (XXI) A, International Covenant on Economic, Social and Cultural Rights (Dec. 16, 1966).

165. *Culture and Human Rights*, UNITED NATIONS EDUC., SCI. AND CULTURAL ORG., http://www.unesco.org/new/en/culture/themes/culture-and-development/the-future-we-want-the-role-of-culture/culture-and-human-rights/.

166. Lucy Claridge & Alexandra Xanthaki, *Protecting the Right to Culture for Minorities and Indigenous Peoples: An Overview of International Case Law*, STATE OF THE WORLD'S MINORITIES AND INDIGENOUS PEOPLES 61, 61 (2016).

cultural rights of indigenous peoples and minorities were not well understood and consequently were poorly defined, particularly because the term "culture" itself has different meanings to different groups.[167] Today, culture can be defined as "the sum total of the material and spiritual activities and products of a given social group that distinguishes it from other communities."[168] This definition itself is very broad and vague, as it is difficult to assign one specific definition to a term that can vary so widely between groups of people. Unlike rights of nature, however, the human right to culture has a significantly stronger basis of support, as it is guaranteed by multiple binding international instruments.

As it is applied to indigenous minorities, Article 27 of the International Covenant on Civil and Political Rights (ICCPR) states:

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.[169]

This stipulation expanded on the guarantees of the UN Universal Declaration of Human Rights and ICESCR by more specifically recognizing the cultural rights of indigenous and minority populations within a state.[170]

Another alternative, a right to life, is guaranteed by Article 3 of the UN Universal Declaration of Human Rights.[171] The right to life is also codified by Article 6 of ICCPR, which bestows upon member-states an obligation to protect by law the right to life of every person, and that "no one shall be arbitrarily deprived of life."[172] This right is further enforced by the role of the UN Special Rapporteur, human rights experts independent from the UN that advise the international community on human rights issues globally and in specific countries or regions.[173]

Combining the right to culture and right to life defined by earlier UN frameworks, UNDRIP took indigenous rights a step forward by

---

167. *Id.*

168. *Id.*

169. G.A. Res. 2200 (XXI) A, International Covenant on Civil and Political Rights (Dec. 16, 1966).

170. Claridge & Xanthaki, *supra* note 166, at 62.

171. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

172. G.A. Res. 2200 (XXI) A, International Covenant on Civil and Political Rights (Dec. 16, 1966).

173. *Id.*; *Special Procedures of the Human Rights Council*, UNITED NATIONS HUM. RTS. OFF. OF THE HIGH COMM'R, https://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx.

incorporating a state obligation to protect full indigenous enjoyment of their rights.[174] UNDRIP also protects indigenous groups from forced assimilation and guarantees these communities' freedom to develop and practice their own linguistics, customs, and religion.[175] Most useful in our discussion of environmental protection as a facet of indigenous interests is Article 26 of UNDRIP, which states:

> 1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
> 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
> 3. States give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.[176]

In this declaration, the UN affirms indigenous peoples' rights to their land and resources and bestows upon participating state governments a legal obligation to protect these rights.[177]

The indigenous right to land is further codified through litigation. In the 2001 case of *Mayangna (Sumo) Awas Tingni Community v. Nicaragua*, the Inter-American Court of Human Rights formally recognized indigenous land rights, becoming the first Latin American court to do so.[178] In *Awas Tingni Community*, the State of Nicaragua was sued for failure to demarcate Awas Tingni Community lands and for failure to protect these lands by not adopting protective measures, granting a concession on the Awas Tingni Community lands without consent, and for failing to remedy the Awas Tingni Community's subsequent property rights complaints.[179] The Awas Tingni Community, an indigenous group in Nicaragua, are subsistence farmers, hunters, and gatherers living within the bounds of an area that has frequently been the subject of debate between multiple

174. G.A. Res. 61.295, at 1 (June 29, 2006).
175. *Id.* at 8, 11.
176. *Id.* at 26.
177. *Id.*
178. Claridge & Xanthaki, *supra* note 166, at 68.
179. Case of the Mayagna (Sumo) Awas Tingni Cmty. v. Nicaragua, Merits, Reparation, and Costs, Judgement, Inter-Am. Ct. H.R. No. 11,477, 1-2 (Aug. 31, 2001).

indigenous communities residing nearby.[180] Although the Awas Tingni Community does not have actual title to the land it claims, a contract signed between the community and Maderas y Derivados de Nicaragua, S.A. (MADENSA) allowed MADENSA to define the community's communal lands without undermining the community's claims.[181] Through this management plan, the State of Nicaragua granted a thirty-year logging concession to a corporation, which was disputed by the Awas Tingni Community.[182]

In the above case, the Inter-American Court of Human Rights reasoned that the State of Nicaragua has well-established norms for the recognition and protection of indigenous communal property, and that in granting this concession of native land, Nicaragua violated Article 21 of the American Convention on Human Rights, which guarantees that "Everyone has the right to the use and enjoyment of his property," and that "Usury and any other form of exploitation of man by man shall be prohibited by law."[183]

In acknowledging the land claims and right to property of indigenous communities, the Inter-American Court of Human Rights reinforced the right of indigenous peoples to use and enjoy their lands and resources. This right is not only codified through international legislation and litigation but is reinforced by international frameworks like the UN Special Rapporteur on the rights of indigenous peoples. The purpose of this institution is to promote constructive laws and agreements between indigenous peoples and the states they inhabit, as well as to report on, make recommendations on, and address the state of human rights issues surrounding indigenous communities.[184]

The rights to culture, life, and land, while far from perfect, have strong international frameworks and support, which rights of nature lacks. These rights have already been codified into widely supported international agreements and have been bolstered through litigation.

---

180. *Id.* at 49.
181. *Id.* at 50.
182. *Id.* at 52.
183. *Id.* at 65, 73.
184. *Special Rapporteur on the rights of indigenous peoples*, UNITED NATIONS HUM. RTS. OFF. OF THE HIGH COMM'R, https://www.ohchr.org/en/issues/ipeoples/srindigenouspeoples/pages/sripeoplesindex.aspx.

V. CONCLUSION

Despite its good intentions, the rights of nature movement has done little to protect indigenous land and resource claims and environmental health. Although the rights of nature movement has brought the discussion of indigenous rights and welfare to the international stage, as a legal concept, rights of nature does little to actually protect these communities and the environment it seeks to protect. Rights of nature has been shown to be an ineffective legal concept, lacking enforceability and a strong international framework. The fusion of traditional knowledge into Western legal systems would undoubtably bolster efforts to protect the environment; however, due to its incompatibility with existing international legal frameworks, rights of nature as a legal concept lacks the ability to be an effective solution.

Some alternatives to rights of nature, like right to culture and right to life present potentially viable avenues for protecting indigenous interests in protecting and preserving their resources, land, and surrounding ecosystems. Unlike rights of nature, these options enjoy greater contextual support; however, they similarly remain poorly defined and lack international consensus.

Because of the closeness of indigenous communities to their surrounding environment through traditional knowledge and respect for the land, the protection of the global environment could perhaps be achieved not through rights of nature, which enjoys little legal support, but instead through the essential human rights of culture, life, and property. The first step to protecting both indigenous interests and the environment is to increase the access of indigenous peoples to state and international decision-making. In order to protect our lands and resources, it is imperative that we protect the people who rely on those lands for their very survival.