



Discussion paper

Rights of Nature

Challenging the “human-nature”
relationship?

Overview

of an ongoing debate

misereor
ALLY FOR A JUST WORLD

Imprint

Published by

Bischöfliches Hilfswerk
Misereor e. V.
(the German Catholic Bishops' Organisation
for Development Cooperation)
Aachen, April 2023

Mozartstr. 9
52064 Aachen
Phone: +49 241 442 - 0
Fax: +49 241 442 - 188
Email: postmaster@misereor.de
Website: www.misereor.de

Editors

Constantin Bittner, Daniel Boston, Fabian
Scholtes, Steffen Ulrich
Editor-in-chief: Kathrin Schroeder

Graphic design

Anja Hammers

Photo cover page

Kopp/Misereor

What are Rights of Nature?

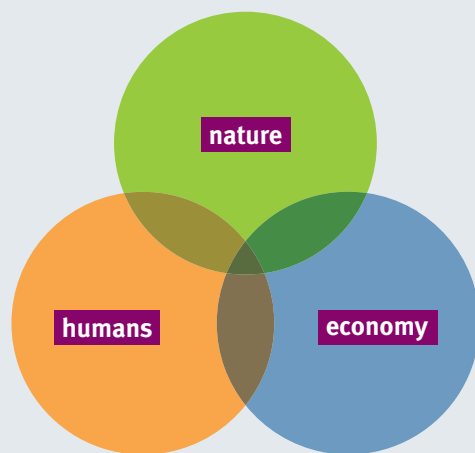
Most legal systems understand nature as an object, as opposed to humans and corporations who are legal subjects. Environmental law is supposed to protect the object “nature” from hazards or deterioration. However, a frequent point of criticism is that the destruction of nature cannot be prevented by the provisions of environmental law currently in use. The concept of the Rights of Nature addresses this. Its aim is for nature to be recognised as a legal subject by law, with rights that can be claimed and enforced in court.

Proponents of the concept of Rights of Nature, including Misereor partner organisations, claim that this change in thinking is required in order to provide a secured legal basis for the fight against climate change and the destruction of the environment and biodiversity. However, the concept of Rights of Nature is more than just jurisprudence. It is part of a broader socio-ecological transformation which redefines how we understand sustainability and the relationship of human and non-human nature. Proponents begin from the basic premise that humans are a part of nature. Therefore, the change must comprise all of society and rest upon an understanding of sustainability which sees the comprehensive stewardship of creation as the basis of just and sustainable development. This discussion paper outlines the debate around Rights of Nature and critically addresses selected points of contention.

Re-visiting sustainability

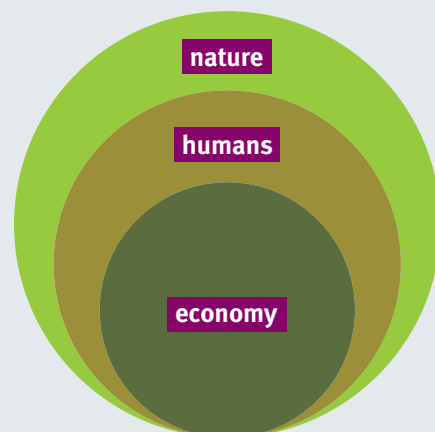
The concept of Rights of Nature challenges our understanding of sustainability. The intersection of all three circles in the first chart reflects the currently dominant understanding of sustainability. It is considered insufficient not solely by proponents of Rights

Currently dominant sustainability model



Sustainability model

from a Rights of Nature perspective¹:



¹ Craig M. Kauffman, Pamela L. Martin: The Politics of Rights of Nature: Strategies for Building a More Sustainable Future, 2021



In Spain, the lagoon Mar Menor was the first ecosystem in Europe to be granted legal rights.

of Nature. For a long time, humans, our economy and nature have been understood to be separate, disconnected areas. As a result, conflicts between nature, humans and the economy only become visible in a small field of intersection between the three areas.

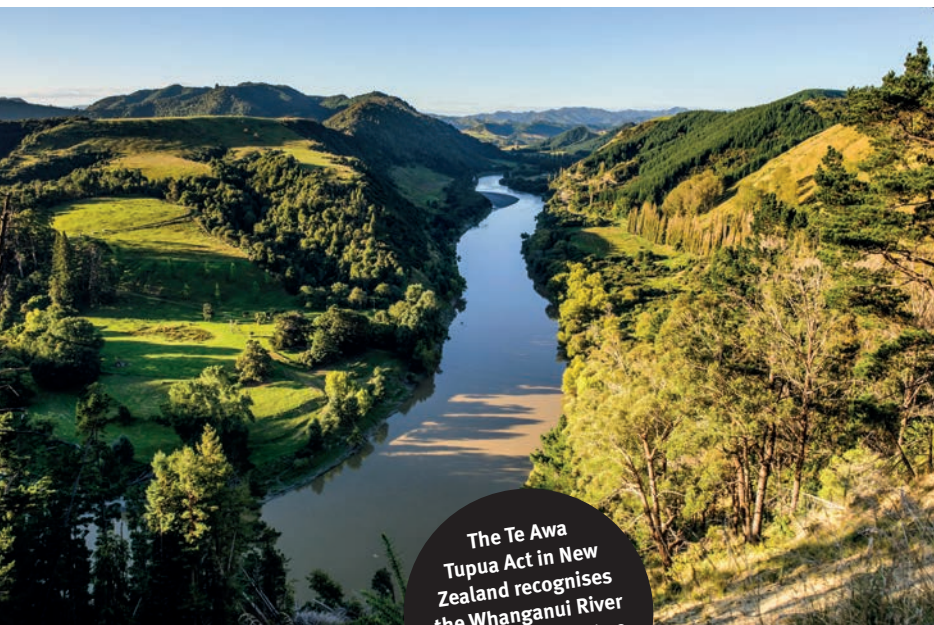
If we assume, however, that the economy serves humans and that humans (and thus the economy) can only survive in the long run within the framework of nature, a different model emerges in which the different areas are embedded in one another and structured hierarchically. In the long term, the economy can only exist in a well-functioning society and both are dependent on their natural bases being intact.

The history of Rights of Nature

The concept of Rights of Nature has manifold origins. Its roots can be traced back to both Western

natural philosophy and Indigenous cosmologies, for example the concept of the good life (Sumak Kawsay, more frequently known as Buen Vivir) from the Andean region. The 1972 article “Should trees have standing?” by legal scholar Christopher D. Stone is commonly considered an important starting point for today’s debate about Rights of Nature as a legal concept. In his article, Stone advocated for the rights of trees.²

In 2008, Ecuador was the first country to integrate Rights of Nature into its constitution. Civil society engagement proved crucial for this; the non-governmental organisation Fundación Pachamama as well as representatives of the Ecuadorian environmental movement and Indigenous rights activists played a key role in the process. Amongst others, they were supported by the Community Environmental Legal Defense Fund (CELDF). This organisation has been one of the major advocates for Rights of Nature in the USA and at the time was already part of an emerging international network, which started to organise pioneering conferences in the



The Te Awa Tupua Act in New Zealand recognises the Whanganui River and the Māori as two parts of a community.

Photo: dpa picture-alliance (left), Nico De Pasquale via Getty Images (top), Kopp/Misereor (right)



'In the forest, everything is connected with everything else', says Ecuadorian filmmaker Eriberto Gualinga.

early 2000s. Since then, the number of locally, nationally and internationally active supporters, such as the Global Alliance for the Rights of Nature (GARN), has steadily grown. Furthermore, the debate around Rights of Nature is taking place at different levels. In 2009, the United Nations designated 22 April as International Mother Earth Day and created the Harmony with Nature platform, a network of practitioners, academics and researchers which advances an eco-centric world view and approaches such as Rights of Nature.³

Where Rights of Nature have become law

The first legal provision to incorporate Rights of Nature came into force in Tamaqua Borough, Pennsylvania, USA, in 2006. The community invoked Rights of Nature to achieve a ban on the disposal of toxic sewage sludge. In 2008, Ecuador integrated Rights of Nature into its constitution, followed by Bolivia in 2010. Since then, the number of countries, laws and court decisions recognising Rights of Nature has significantly increased. There is a broad variety with regard to both the legal form and the definition of nature or the question as to what rights are granted to what nature. How Rights of Nature are enshrined and the form of legal rights chosen range from stipulations at the local level, as was the case in the USA, to national legislation in New Zealand and Uganda, and even constitutional law in Ecuador and Bolivia. The scope of the rights also differs from one country to another. While Ecuador and Bolivia address the rights of

“Mother Earth” (pacha mama), Colombia, New Zealand and India recognise the rights of individual rivers or forests. In Bangladesh, all of the country’s rivers have been granted rights.

Today, more than 200 legal provisions and directives enshrining Rights of Nature exist in 30 countries on all continents other than Antarctica.⁴ In Europe as well, more and more campaigns and initiatives (for example legal opinions) are started that advocate for Rights of Nature. Finally, in April 2022, the lagoon Mar Menor in Spain was the first ecosystem in Europe to be granted rights.

2 Christopher D. Stone: Should Trees Have Standing? – Toward Legal Rights for Natural Objects, 1972

3 <http://www.harmonywithnatureun.org/welcome/> (11/10/2022)

4 Craig M. Kauffmann, Shrishtee Bajpai, Kelsey Leonard, Elizabeth Macpherson, Pamela L. Martin, Alessandro Pelizzon, Alex Putzer, and Linda Sheehan: Eco Jurisprudence Tracker. V1. 2022. Distributed by the Eco Jurisprudence Monitor. <https://eco-jurisprudence.org>. (last accessed: 10/10/2022); Harmony With Nature – Law List ([harmonywithnatureun.org](http://www.harmonywithnatureun.org)) (11/10/2022)

The manifold reasons for Rights of Nature

In view of the multitude of countries and initiatives, it is not surprising that some of the understanding of, reasoning for and use of Rights of Nature differ greatly. At the same time, there exist commonalities in the line of argument across country borders.

Philosophic-theological reasoning

One school derives Rights of Nature from a philosophic-theological viewpoint. The basic idea is that Rights of Nature, like human rights, arise from the very existence of nature. Hence, nature's value is not limited to its usefulness for humans, but is independent of it. According to the philosopher and theologian Thomas Berry, 'the universe is a communion of subjects, not a collection of objects'.⁵ A similar world view is expressed by the Indigenous concept

Pachamama and in the 2015 encyclical *Laudato si'* which is devoted to the 'care for our common home'. In this encyclical, Pope Francis advocates for a break with anthropocentrism. Instead of having 'dominion' over the universe, humans should understand themselves as being tasked with 'responsible stewardship'. Our task as humans is to preserve our planet in its ecological functionality and regenerative ability – that is, to preserve it as our common home – instead of exploiting it.⁶

Hence, human and non-human subjects live together in a communion; it is wrong to differentiate between human and non-human interests. Rights of Nature is one means to express this view. Proponents understand this as a historic expansion of rights to include groups that have hitherto been without rights, such as slaves and women.

Decolonisation

One argument for the Rights of Nature concept is that it can be directly derived from non-



"Stewarding God's Creation – So that All can Live". Campaign poster for the 2010 Misereor Lenten Campaign.



A student demonstrates for sustainable recommendations by the Coal Commission before the Reichstag Building (German Parliament).

Photo: Odd Andersen via Getty Images

the limits of our planet. Instead, we continue to put nature to human use – seemingly without limitation. At the same time, the exploitation of nature and the resulting profits are very unequally distributed. Hence, ecological destruction is directly linked to suffering and injustice on a global scale and restricts the rights of future generations. Hence, the protection of humans is ultimately dependent on the protection of nature. Proponents of Rights of Nature therefore consider these a necessary step towards a socio-ecological transformation which protects nature as well as impoverished people and future generations.

Western, Indigenous world views, involving a decolonial potential. Rights of Nature can be a vehicle to further the awareness, understanding or importance of non-Western world views in postcolonial legal systems or state-structured societies. The goal is to overcome the anthropocentrism and dominance of Western ways of thinking. In addition, minorities – in particular Indigenous people who have a non-Western way of thinking – are enabled to play a prominent part as political actors through Rights of Nature. An example for this is the important role of the Indigenous movement in Ecuador which greatly influenced the wording and integration of Rights of Nature into the Ecuadorian constitution. In New Zealand as well, the Indigenous Māori played a textual and political key role in the passing of two Rights of Nature laws in 2014 and 2017.

Justice and sustainability

The well-being of all creatures – and thus of all humans – is dependent upon a healthy and intact nature. The way our economy operates and how we understand the law does not sufficiently acknowledge

Political-strategic reasoning

The cases of Ecuador, New Zealand and the Philippines demonstrate how marginalised groups use Rights of Nature to strengthen their own position. These examples illustrate the political-strategic potential of Rights of Nature, highlighting that advocacy for Rights of Nature often also has additional objectives. In Ecuador, Rights of Nature allow for a broad mobilisation of society and strengthen the political position of Indigenous people. In the case of New Zealand, Rights of Nature offered the opportunity to amicably resolve long-festered conflicts between claims of the crown and of the Māori, some going back as far as 1824.

5 Thomas Berry, Mary Evelyn Tucker: *Evening Thoughts: Reflecting on Earth as Sacred Community*, 2006
 6 Pope Francis: *Laudato si'*, 2015



Education on organic agriculture by Escola Família Agrícola de Capinzal do Norte (EFAC).

In the Philippines, advocacy of the Rights of Nature provides a broader and deeper framework for environmental protection which lessens the risks to life and well-being of environmental activists, such as the fight against destructive large-scale mining.

What is happening in Germany

There are also several initiatives in Germany that aim to establish Rights of Nature. One example is the Initiative Grundgesetzreform (initiative for a German constitutional reform) by the Netzwerk Rechte der Natur, a network of lawyers, scientists and organisations.⁷ Despite some links to the international discourse on Rights of Nature and its connection to social movements and decolonisation debates, the German debate has a primarily legal character.

As was the case in most other countries, environmental law has been continually expanded in Germany over the last decades. The aim is to minimise hazards to the environment by regularly reviewing and adapting requirements and limitations to human or economic action affecting nature. Still, the destruction of nature and biodiversity forge ahead.⁸ It is frequently said that the existing laws are sufficient and it is merely their implementation which is deficient. The proponents of Rights of Nature argue, however, that the problems of legal protection are not only to be found in the implementation. Existing environmental law is first and foremost understood to intervene with fundamental (economic) rights and the protection of nature is primarily justified by its value for humans. The consequence is an imbalance as to the means that courts have to enforce ecological interests on the one hand and social and economic interests on the other. However, for the sustainable development of humanity and our economy, we need legal balance.⁹

In other words; Rights of Nature must become equally enforceable in court.

Acknowledgement of the intrinsic rights of nature could contribute to a reversal of the burden of justification.¹⁰ This means that activities with a negative environmental impact would always have to be justified. Environmental impact assessments (EIAs), for instance in the context of large projects, are a step in the right direction. However, such assessments should be much more comprehensive and not solely refer to the environment's (economic) benefit for humans. This would strengthen the position of ecological interests vis-à-vis economic interests, which in turn would contribute to creating a balance between the enforceability of human and non-human interests. The possibilities for filing legal action in support of nature would be expanded, which could also help strengthen the implementation of existing environmental law.

7 <https://www.rechte-der-natur.de/de/das-netzwerk.html> (10/10/2022)

8 Busse, Tanja: Das Sterben der anderen: wie wir die biologische Vielfalt noch retten können, 2019

9 <https://www.bpb.de/shop/zeitschriften/apuz/305893/natur-als-rechtssubjekt/> (11/10/2022)

10 Andreas Buser, Hermann E. Ott: Zur Ökologisierung des Rechts: Rechte der Natur als Paradigmenwechsel. In: Frank Adloff, Tanja Busse (Hg.): Welche Rechte braucht die Natur? Wege aus dem Artensterben, 2021

How will Rights of Nature develop?

In light of the vast variety of initiatives, strategies of reasoning and links with other political questions, it is difficult to identify a single or coherent set of Rights of Nature. Rather, Rights of Nature are a collection of core principles and facets which, depending on the context, can be elaborated and embedded differently in existing debates and approaches.

At the same time, some serious challenges to the concept have emerged in the international debate. The decolonial and political potential of Rights of Nature, in particular, give rise to controversies.

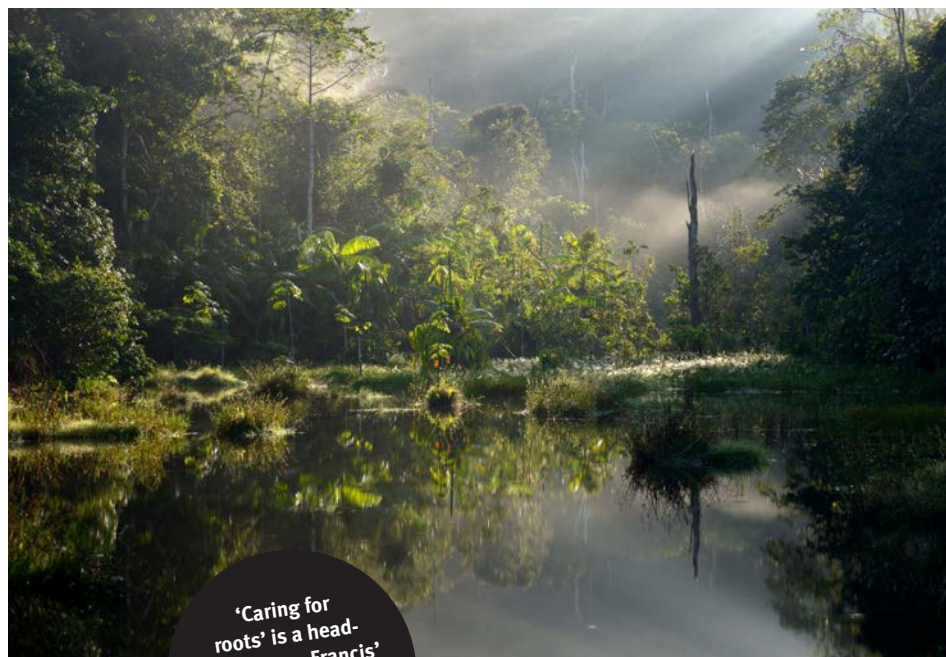
Critical voices say that the depiction of Rights of Nature as a direct translation of Indigenous cosmovisions does not do justice to these and their variety, and, in the worst case, constitutes an act of colonial appropriation in order to legitimise the concept. In addition, critics hold that the formal juridification once again imposes a Eurocentric view – in which the state is the arbiter over the relationship with nature – onto a non-Western understanding of the relationship between humans and nature.

Hence, while supporters argue that translating Indigenous world views by means of Rights of Nature for the broad public helps to overcome Eurocentrism, critics highlight the risk to simultaneously promote continuities of Western dominance.

Furthermore, unanswered questions remain as to the implementation of Rights of Nature. Who represents nature in court varies from one jurisdiction to the other; it ranges from government authorities to the entire population. Moreover, Rights of Nature face the challenges posed by unequal access to justice as a consequence of existing power relations.

The relationship between Rights of Nature and human rights is also a subject of controversy.

The concept of Rights of Nature demands a new understanding of the relationship between humans and nature and radically breaks with the idea that humans are the measure of all things. It is part of a series of approaches that aim at socio-ecological justice and a transformation of current conditions. There are synergies with alternative world views, such as Buen Vivir mentioned above, with critiques of growth aiming at a socio-ecological transformation of our economic system, and with theological approaches like the one elaborated by Pope Francis in “Querida Amazonia”. These too focus on a fundamental re-embedding of humans into nature and can help overcome the instrumental-anthropocentric and utterly colonial treatment of nature. The interaction with these approaches will also influence the role Rights of Nature will play in the transformation.



‘Caring for roots’ is a headline in Pope Francis’ post-synodal exhortation “Querida Amazonia”.



Due to climate change, the frequency and destructive intensity of typhoons are increasing in the Philippines.

What our partners say



‘It is clear to us that we can only defend human rights when we confer rights on nature. We therefore bring Rights of Nature to the centre of society. Our campaign started with a nationwide environmental march. Afterwards, we handed over more than one million signatures to the Ministry of Environment. Since then, we have drafted and filed legislative proposals at national and local levels.’

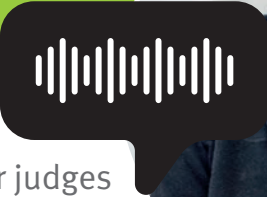


Yolanda Esguerra
Philippine Misereor
Partnership Inc. (PMPi),
Philippines

Photos: Schwarbach/Misereor (top), PMPi (left), Daniela Borja (Mid), Friedrich/Misereor (right)



Pablo Solón
Fundación Solón,
Bolivia



‘We organise workshops for judges to teach them how to apply Rights of Nature. We will continue our work to bring parliamentarians from Latin America and the EU together to facilitate exchange on Rights of Nature.’

Javier Carrera
network Guardianes
de Semillas,
Ecuador



‘Thanks to decades of mobilising civil society, driven by social movements and Indigenous communities, Ecuador became the first country ever to include Rights of Nature in its constitution. Today, more and more organisations and communities incorporate Rights of Nature into their claims and messages. In defence of Mother Earth, especially small farmers, Indigenous and Afro-Ecuadorian communities and women play a leading role.’

