

# Comparing Rights of Nature case studies worldwide

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ŌTĀKOU WHAKAIHU WAKA

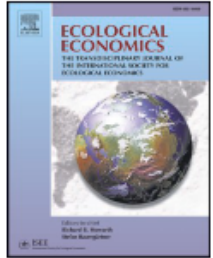




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## Comparative analysis of Rights of Nature (RoN) case studies worldwide: Features of emergence and design

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### ABSTRACT

We provide a descriptive comparative analysis of features related to emergence and design among 14 Rights of Nature (RoN) case studies worldwide. For analysis, we develop a schematic roadmap in which we categorise RoN into case studies with public guardianship and ones with appointed guardians (termed Environmental Legal Personhoods (ELPs) with further sub-categories of indirect, direct and living ELPs). Our findings suggest that RoN case studies emerged under similar circumstances where existing governance structures had been unable to protect natural environments from continued economic (urban, agricultural and industrial) activity by multiple economic actors. The strong role of local community and Indigenous Peoples in advocacy for RoN point to a divide between in situ communities and external economic agents, allowing for eco-centric value systems to emerge in juxtaposition to existing governance structures. We find that the design of RoN, however, varies in geographical entity, legal framework, legal status and guardianship. Poorly defined liability of guardians and economic agents have led to the overturning of two case studies, which stands in contrast to well-defined rights and liabilities in other case studies, suggesting that attention to liability may be an important building block for the effectiveness of RoN to protect biodiversity.





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# THE CONVERSATION

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<https://theconversation.com/granting-legal-personhood-to-nature-is-a-growing-movement-can-it-stem-biodiversity-loss-227336>



April 26, 2024

## Granting legal 'personhood' to nature is a growing movement – can it stem biodiversity loss?

Viktoria Kahui, *University of Otago*

The rights-of-nature movement emerged as a response to economic pressures on ecosystems. But the success of projects depends on how well legal liability is defined.

Interview on TVNZ Breakfast; 30 April 2024

# INTRODUCTION

- Ecosystem diversity is declining
- Current governance frameworks are insufficient
- **Rights of Nature (RoN)** is one emerging concept
- Many Indigenous Peoples have long emphasised the **intrinsic value** of nature
- 1972 late **Christopher Stone** (Law Professor) proposed to vest legal rights in 'natural objects';
- 2008 Ecuador was country to enshrine RoN in its Constitution
- As of 2021, **409 RoN** initiatives in 39 countries

# AT ITS CORE....

- RoN represents ability of persons to take legal action on behalf of nature  
as *opposed* to on behalf of persons affected by degradation
- **Intrinsic vs. anthropocentric** worldview
- Standard economic theory: **negative externality**
- Solution: regulation, taxes, tradable permits, etc.
  
- RoN: natural ecosystems emerge as separate entities in law with their **own agency**  
(like charitable trusts / organisations, etc.)



# CAN RIGHTS OF NATURE STEM THE LOSS OF BIODIVERSITY?

- No easy answers
- RoN often the result of complex historic and institutional settings
- Ecological outcomes not defined / not measured
- What we can do is compare existing RoN case studies:

**What do they have in common? How do they differ?**

# METHODS

- Descriptive Research Design: **how, when** and **where**
- Hypothesis producing (rather than hypothesis testing)
- Comparative analysis of **14 RoN global case studies**



# DATA

Variables of interest related to ***emergence***:

Who advocated on behalf of nature?

What was the exploiting activity?

Time frame of conflict?

Purpose and value recognition of RoN?

Variables of interest related to ***design***:

Geographical entity

Legal framework / legal status

Guardians

Liability and financing

## Appendix A. Appendix

Rights of Nature (RoN) case studies worldwide.

### A.1. Rights of Nature (RoN), Ecuador 2008

**Table A1**

Timeline RoN in Ecuador (source: [Kauffman and Martin, 2017](#); [Tanasescu, 2020](#)).

2006	Rafael Correa was elected president after a decade of political and economic instability. He promised to rewrite Ecuador's Constitution aiming to replace neoliberal economic policies with alternative development approaches.
2006–8	Ecuadorian RoN advocates (Indigenous, environmental activists and lawyers) collaborated with US environmental lawyers from the Community Environmental Defence Fund to draft RoN articles in the new Constitution. Process of writing Ecuador's new constitution was participatory, with over 3000 proposals submitted by civil society.
2008	Ecuador's new constitution is the world's first to treat Nature as a subject with rights in Chapter 7. However, RoN are one set among an array of rights, sometimes in conflict with anthropocentric rights such as rights to water and development-oriented provisions.
After 2008	President Correa launches public campaign to pass mining law that expands existing mining operations, arguing the State could ensure socially and environmentally responsible mining practices. Indigenous and environmental activists criticized the law arguing it violates RoN and constitutional rights of Indigenous communities.
2009	Mining Law leads to tens of thousands of Indigenous, community-rights, and environmental activists to protest nationwide
Sep 2009	Government proposed a Water Law that similarly violated RoN and rights of Indigenous
2011	Nearly 200 Indigenous leaders are arrested, charged with terrorism for protesting mining activities. Efforts to apply RoN in Ecuador occurred in highly politicized context, with little institutional structure beyond general constitutional principles.
2008–16	13 cases succeed in applying legal tools to protect RoN.

**Table A2**

Summary RoN in Ecuador.

Advocates	Local, Indigenous and environmental activists
Exploiting activity	Mining by large companies (neoliberal policies)
Timeline	Since 2006
Purpose and value recognition	Environmental protection; Nature has right to exist (see below)
Geographical entity	'Nature' (Pacha Mama) in Ecuador
Legislative framework	<a href="#">Constitution of the Republic of Ecuador 2008</a> (Chapter 7).
Legal status	Article 71. Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes. The State shall give incentives to natural persons and legal entities and to communities to protect nature and to promote respect for all the elements comprising an ecosystem. Article 72. Nature has the right to be restored. This restoration shall be apart from the obligation of the State and natural persons or legal entities to compensate individuals and communities that depend on affected natural systems. In those cases of several or permanent environmental impact, including those caused by the exploitation of nonrenewable natural resources, the State shall establish the most effective mechanisms to achieve the restoration and shall adopt adequate measures to eliminate or mitigate harmful environmental consequences. Article 73. The State shall apply preventive and restrictive measures on activities that might lead to the extinction of species, the destruction of

## A.8. *Te Awa Tupua (Whanganui River Claims Settlement) Act, 2017, New Zealand*

**Table A13**

Timeline Whanganui River in New Zealand (source: [Ruruku Whakatupua, 2014](#); [Hutchison, 2014](#); [Talbot-Jones, 2017](#); [O'Donnell and Talbot-Jones, 2018](#); [Talbot-Jones and Bennett, 2019](#); [Kahui and Cullinane, 2019](#)).

Before 1848	Whanganui Iwi (local Indigenous Māori tribe) exercises rights and lives along the Whanganui River
1848	British Crown purchases block of 86,200 acres at Whanganui and introduces legislation for local authorities to erect structures on the River without Whanganui Iwi involvement
1885	Crown discusses with Whanganui Iwi 'improvements' of river rapids to help establish steamer service
1887	Whanganui Iwi protests against scale and effect of Crown's river works on eel weirs and fisheries
1891	Most weirs are destroyed; Whanganui River Trust Act is passed to conserve natural scenery and protect navigability of River; however, there is no Māori membership on the Trust's board
1893	Parliament expands the Trust's power, including right to extract and sell River gravel
1903	Coal-mines Act Amendment Act asserts Crown's ownership of River bed
1927	Whanganui Iwi petitions for compensation in recognition of their River rights and for the taking of gravel and land for scenery preservation, damage to eel and lamprey weirs and profits made by the steamer company
1937	Whanganui Iwi applies to Native Land Court to investigate their claim of customary ownership; ongoing court proceedings thereafter
1962	Court of Appeal rules that Māori customary ownership of riverbed had been extinguished
1958	Crown Order in Council authorizes diversion of water from Whanganui River into proposed Tongariro Power Scheme; Whanganui Iwi opposes this decision on the grounds that the reduced flow damages the health and wellbeing of the River and adversely affects their cultural and spiritual values
1988	Establishment of the Whanganui River Maori Trust Board to negotiate for settlement of all outstanding Whanganui Iwi claims over the Whanganui River
1990	Trust Board lodges Whanganui River claim with the Waitangi Tribunal
2014	Establishment of Ngā Tāmngata Tiaki o Whanganui Trust
2017	<a href="#">Te Awa Tupua (Whanganui River Claims Settlement) Act, 2017</a> is passed granting legal personhood to the Whanganui River



Table A14

## Summary Whanganui River in New Zealand.

Advocates	Local Indigenous Māori tribe (Whanganui Iwi)
Exploiting activity Timeline	Steamer service; gravel abstraction; river diversion for energy by Colonial government (British Crown) Since 1848
Purpose and value cognition	<p>S3. The purpose of the Act is to record the acknowledgements and apology given by the Crown; and to give effect to the provisions of the deed of settlement that settle the historical claims of Whanganui Iwi as those claims relate to the Whanganui River.</p> <p>S13. Tupua te Kawa comprises the intrinsic values that represent the essence of Te Awa Tupua (Whanganui River as legal person), namely –</p> <ul style="list-style-type: none"> <li>(a) the River is the source of spiritual and physical sustenance.</li> <li>(b) Te Awa Tupua is an indivisible and living whole from the mountains to the sea, incorporating the Whanganui River and all of its physical and metaphysical elements.</li> <li>(c) I am the River and the River is me: The iwi and hapū of the Whanganui River have an inalienable connection with, and responsibility to, Te Awa Tupua and its health and well-being.</li> <li>(d) Te Awa Tupua is a singular entity comprised of many elements and communities, working collaboratively for the common purpose of the health and well-being of Te Awa Tupua.</li> </ul>
Geographical entity	River and its catchment (Whanganui River) in New Zealand
Legislative framework	<a href="#">Te Awa Tupua (Whanganui River Claims Settlement) Act, 2017</a>
Legal status	<p>S14. Te Awa Tupua is declared to be legal person and has all the rights, powers, duties, and liabilities of a legal person.</p> <p>Section 16(b). Nothing in this Act creates, limits, transfers, extinguishes, or otherwise affects any right to, or interests in, water.</p>
Guardians	<p>Trustees of Nga Tamgata Tiaki o Whanganui; and</p> <p>S19. The functions of Te Pou Tupua (the human face of Te Awa Tupua) are –</p> <ul style="list-style-type: none"> <li>(c) To act and speak for and on behalf of Te Awa Tupua</li> <li>(c) To promote and protect the health and well-being of Te Awa Tupua;</li> </ul> <p>Section 20. Te Pou Tupua comprises 2 persons, one person appointed by Whanganui Iwi; one by the Crown</p> <p>S27(1). An advisory group to be known as Te Karewao is established to provide advice and support to the Te Pou Tupua in the performance of its functions.</p> <p>S29. Nature and purpose of Te Kōpuka (permanent joint committee)</p> <ul style="list-style-type: none"> <li>(2) Te Kōpuka comprises representatives of persons and organisations with interests in the Whanganui River, including iwi, relevant local authorities, departments of State, commercial and recreational users, and environmental groups.</li> <li>(3) The purpose of Te Kōpuka is to act collaboratively to advance the health and well-being of Te Awa Tupua.</li> </ul>
Liability	<p>S21(1). The persons appointed to Te Pou Tupua are not personally liable for any action taken or omission made but only if actions (omission) relates to their powers and functions under this Act and they have acted in good faith.</p>
Financing	<p>S22. Trustees provide administrative support for Te Pou Tupua</p> <p>S23. Te Pou Tupua are to be treated as charitable entity</p> <p>S25. Tax treatment</p> <ul style="list-style-type: none"> <li>(1) Te Awa Tupua and Te Pou Tupua are deemed to be same person for the purpose of Inland Revenue Acts and the liabilities and obligations placed on a person under those Acts.</li> <li>(2) In particular, and to avoid doubt, – this includes income derived, expenditure incurred, funds attributable, goods and services supplied, goods and services acquired etc. by Te Awa Tupua</li> </ul> <p>S57. There is a fund called Te Korotete, which includes Crown contribution. The purpose is to support the health and well-being of Te Awa Tupua.</p> <p>S58. The Korotete must be held by Te Awa Tupua and administered by Te Pou Tupua on behalf of Te Awa Tupua. It may be combined with funds from other sources. The trustees must support Te Pou Tupua in the administration of Te Korotete.</p>

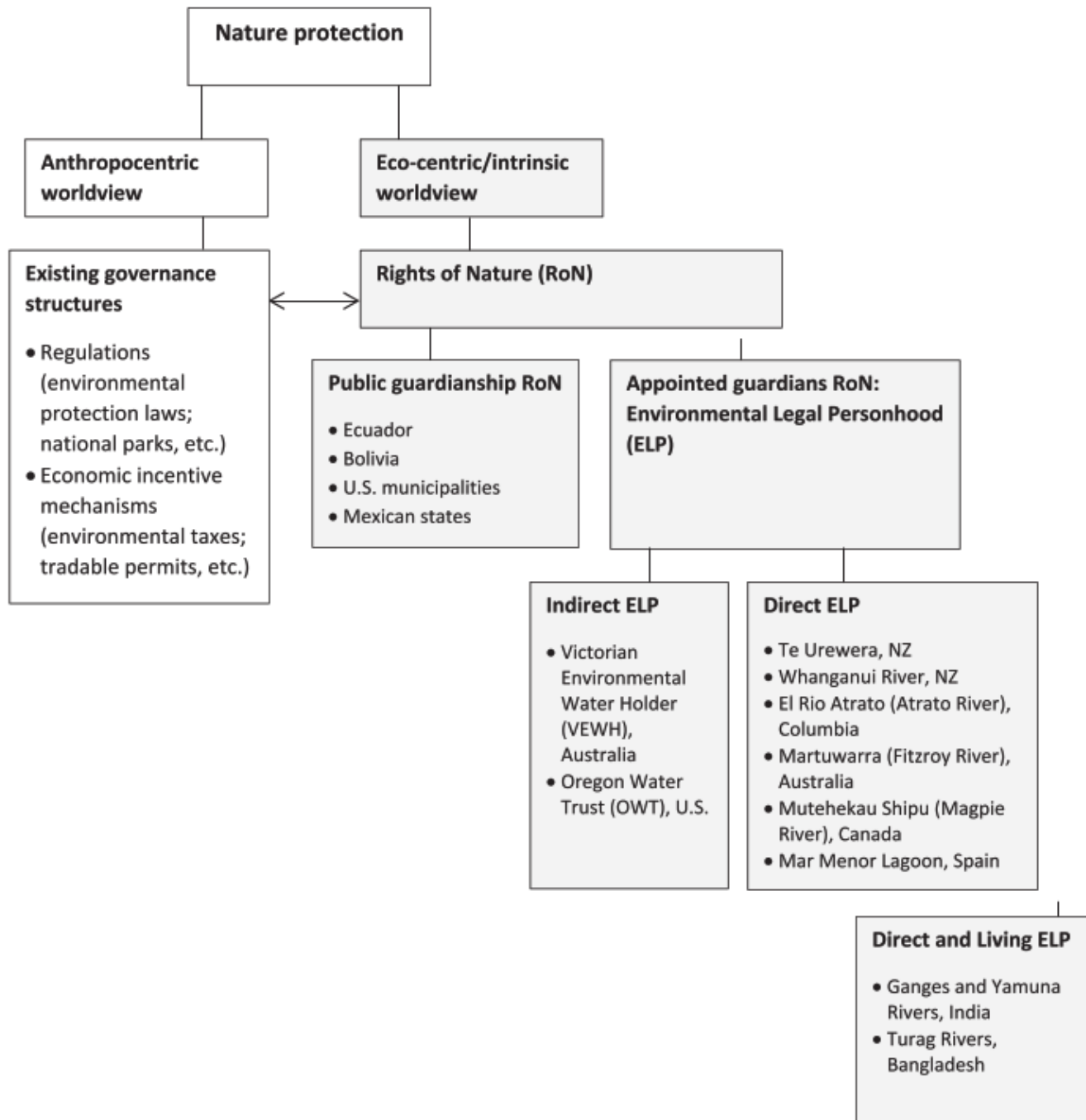


Fig. 1. Schematic roadmap of Rights of Nature (RoN) categories.

**Table 1**

Descriptive comparative analysis of RoN case studies.

Rights of Nature (RoN)				
	Public guardianship	Appointed guardians: Environmental Legal Personhood (ELP)		
		Indirect ELP	Direct ELP	Direct and Living ELP
<b>Features of emergence</b>				
Advocates	Local/Indigenous; Environmental advocates;	Local/Indigenous; Environmental advocates; Government;	Local/Indigenous; Environmental advocates	Local/Indigenous; Environmental advocates
Exploiting activity	Mining; water and gas extraction; sewage sludge; fertilizer runoff, etc.	Urban; irrigation, agriculture; industry	Land appropriation and development; steamer service/ gravel abstraction/ river diversion; mining; logging; agriculture; fracking; unregulated tourism; invasive species; hydroelectricity generations; sewage	Raw sewage; industrial activity; construction; encroachment; pollution
Timeline	Earliest timeline since 2000	Earliest timeline since 1909	Earliest timeline since 1840	Earliest timeline since before 2016
Purpose and value recognition	Environmental protection Right of people to benefit from healthy environment Right of nature to exist/life	Environmental protection	Environmental protection Right of people to benefit from healthy environment Right of named ecosystem to exist/life	Environmental protection Right of people to benefit from healthy environment Right of named ecosystem to exist/life
<b>Features of design</b>				
Geographical entity	Nature; regional ecosystems (in general or specified, e.g. lake)	'Water' in rivers	Forest; River/Catchment; Lagoon	River/Catchment
Legal Framework	Constitution; Constitutional amendments; Municipality ordinances	Water Code; Water Act	Act; Court Ruling; First Law Ruling; Alliance Declaration	Court Ruling/Judgement
Legal status	Constitutional/ Municipal rights; Bill of Rights	Public/private non-profit legal person	Legal person	Legal and living person
Guardians	Every citizen can take legal action on behalf of nature	Commissioners/ Board of directors	Appointed guardians; separate legal entity (non-profit/ charitable trust)	Appointed guardians from existing government roles
Liability	N/A	Limited liability	Limited liability	Not specified
Financing	N/A	Government funded; ability to generate income	Government funded; ability to generate income	Not specified



## Features of emergence:

- Common thread of *local / Indigenous and environmental advocates* resisting sustained *economic pressure* from development (urban, agriculture and industry) over many years

## Features of design:

- Features vary markedly across case studies
- Geographical scale ranges between nature and forests, river, lagoons
- Legal frameworks include Constitutions, Legal Acts, Court Rulings, etc.
- Legal rights, legal personhood and living personhood
- Varying detail and provision for guardianship, liability and financing

# CASE STUDIES THAT STOOD OUT

## Lake Erie Bill of Rights (U.S.):

- The right for Lake Erie to “exist, flourish, and naturally evolve”
- Farmers argued they can never prevent all fertilizer runoff
- **Uncertainty of liability for economic agents**
- The bill was **overturned** in 2020 due to being too vague

## Ganges River (India) living personhood:

- Guardianship was imposed on State of Uttarakhand (in loco parentis)
- Who are the custodians? Who is liable for damages to families of persons who drown?
- **Uncertainty of liability for guardians**
- The decision was **overturned** in 2017 by the Supreme Court

# CASE STUDIES THAT STOOD OUT

## Te Awa Tupua (Whanganui River Claims Settlement) Act 2017

- Clearly defined geographical area, legal status
- Designated Guardians supported by advisory group and representative stakeholders
- Clearly defined liability and financing



# WAY FORWARD IN AOTEAROA NZ

- Aotearoa NZ as a world leader in providing **agency** to nature through embracing **Te Ao Māori**
- Protect natural resources from sustained economic pressure for future generations
- **Streamline** process where every community/Iwi can apply for **Environmental Legal Personhood** in its own backyard
- Pay attention to legal framework (legal personhood; appointment of guardians; limited **liability**; financing)
- **Incentivise** local guardianship and **protect** volunteer efforts (restoration; monitoring; etc.)



