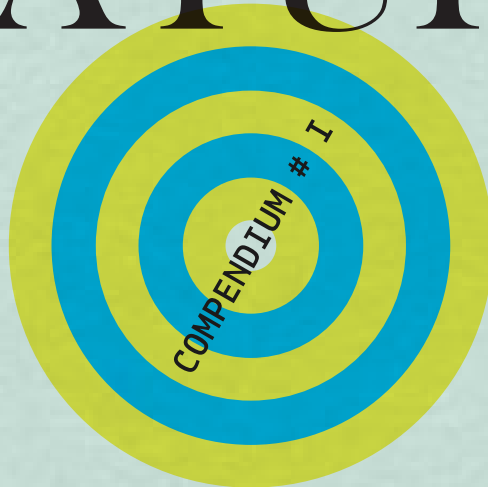


# RIGHTS OF NATURE

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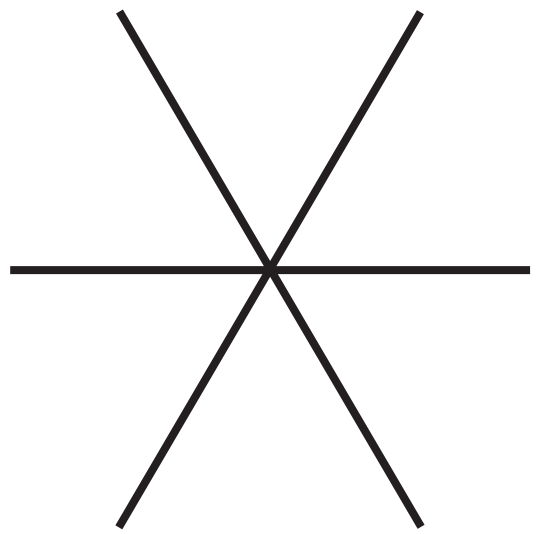


Embassy of the  
North Sea

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**FOREWORD BY THE EMBASSY OF THE NORTH SEA**

We, in the name of the Embassy of the North Sea, have commissioned this compendium to learn more about the rights-of-nature movement and its underlying principles. Founded on the principle that the sea owns itself, the Embassy of the North Sea listens to the voices of plants, animals, microbes, and people in order to involve them in decision making in and around the North Sea. Within this context, the Embassy is investigating whether the North Sea should become its own legal entity.

Despite covering 60 percent of Dutch territory and being the largest public space in the Netherlands, the North Sea occupies little of the Dutch and European social and political consciousness. Yet the North Sea is under increasing pressure – not only due to ongoing fossil fuel extraction, transport, and fishing, but also because of future projects such as wind turbines and energy islands, all of which claim their share of the North Sea without the sea having any say in the matter.

Right now, plants, animals, microbes, and non-living entities such as water have no effective political representation in the Netherlands and Europe. Without a recognized seat at the political table there is a serious risk of exploitation, as is reflected in the facts and figures: since 1970 – thus over the course of one human generation – just under 70 percent of vertebrate life on Earth has become extinct.<sup>1</sup> In our current age, the Anthropocene, humans have become a force of geological proportions with an existential impact. At the same time, the influence of

other creatures and objects within the European context has never been more visible. Melting polar caps show us how icebergs shape our coastlines, declining insect populations point to how insects co-produce our agricultural output, and recent scientific research gives insight into how microbes influence our mood.

In our time, the characteristically European division between nature and culture has come to an end. The challenges we now face – such as loss of life, social injustices, and the climate crisis – transcend international boundaries and are deeply intertwined with each other. It is time for a new politics that responds to this complex and urgent reality. It is time for a politics that listens to all voices, including the often-unheard voices of plants, animals, microbes, and things in our society. Such a politics demands a new democratic toolkit. The Embassy of the North Sea works with artists, scientists, and policy-makers to help develop these new political insights and resources.

Inspired by the rights-of-nature movement, the Embassy has set the goal of the North Sea becoming an autonomous political participant by 2030, possibly as a legal person. We were particularly encouraged by a 2017 New Zealand court decision, whereby the Whanganui River, after years of struggle by the Māori community, was granted its own rights and is now represented by human guardians. This example shows that there is an alternative to the European concept of stewardship, where nature exists to serve human interests, and how guardian-ship allows for political representation based on mutual care rather than ownership.

At the same time, this legal framework also raises all kinds of questions. Isn't a 'legal person' an overly human

framework: does it suit an entity like the North Sea?<sup>2</sup> How do you ensure that a standardized (Western) legal framework does not violate local, indigenous beliefs and worldviews? And why is the term 'rights of nature' used in situations that mainly seem to be about social injustice and the interconnectedness of humans and nonhumans in a certain place?

Despite these questions, doubts, and uncertainties, we believe that the rights-of-nature movement is leading to new frameworks that go beyond current thinking, which aims to protect and cordon off nature. At its core, the rights-of-nature movement is about reshaping our relationships with nature. This compendium is made up of a diverse array of inspiring voices, practices, and examples that are shaping the new relationships between humans and nature. They can teach us a lot about the art of living together and can help us to understand what it would mean to make the North Sea an independent legal entity.

We are therefore thrilled with this overview of the rights of nature that climate-law expert Laura Burgers and independent consultant and speaker on the rights of nature Jessica den Outer have made for the Embassy of the North Sea. It has been a pleasure to work with them. Here in the Netherlands, we are also collaborating with other initiatives such as the Wadden Sea Nature Board and the Zoöp, a new organizational model in which plants, animals, and microbes also receive legal representation. In the coming years, we hope that more editions of the compendium will follow with many new cases and initiatives. We hope you are as inspired by these cases as we are.

Salty greetings!

Anne van Leeuwen  
Christiane Bosman  
Harpo 't Hart  
Thijs Middeldorp

On behalf of the Embassy of the  
North Sea

## INTRODUCTION

### Rights of nature

In his 1972 article 'Should Trees Have Standing?' Christopher D. Stone argued that we should recognize the rights of trees, rivers, and other natural entities.<sup>1</sup> In law, nature has traditionally been regarded as an object of property or as legally irrelevant. If something or someone has his own rights, he is thus a bearer of rights and obligations, a legal subject, a 'person' before the law. When the rights of nature are recognized, nature is legally elevated to a subject of intrinsic value whose rights can be enforced in court. In addition to people, existing legal subjects include corporations, municipalities, foundations, churches, and states. They can all go to court in their own name to enforce their rights.<sup>2</sup>

Although Stone's article was met with derision in the 1970s ('If a tree has rights, I can sue it if it drops an apple on my head, haha!'),<sup>3</sup> just fifty years later we are on our way to turning his ideas into reality. From the rivers in Bangladesh to the Te Urewera forest in New Zealand, the rights of natural objects have been recognized in many countries. According to Ecuador's constitution, even all of *Pachamama* – Mother Earth – has the right to fundamental respect for her existence. It is a legal development that is gaining traction: every month there seems to be a new country, municipality, or region that recognizes the rights of nature. This could include, for example, the right of a forest to live and flourish or the right of a river to flow freely.

At the time of writing, there are nearly four hundred examples of rights of nature worldwide, at the national, regional, and local level.<sup>4</sup> In addition, campaigns are underway on every continent except Antarctica to recognize the rights of nature. Europe seems to be lagging behind. There are active efforts here, but we have made little headway in recognizing any natural objects as legal persons. As with the rest of the world, we do have environmental law, but that consists of obligations for people rather than the rights of nature.

### Rationale

The reasons for recognizing the rights of nature differ. New Zealand's Whanganui River became an autonomous legal entity in 2017 thanks to the efforts of its native Māori people, more specifically the Whanganui Iwi.<sup>5</sup> This law is an attempt to redress the centuries of colonial injustice that they have endured. Moreover, in comparison with the existing law, this new law is more in accordance with the Māori's holistic teachings. They do not see the river as a thing or as part of the environment, but as an ancestor with whom they are connected. *I am the river, the river is me* – this is the starting point for their worldview, and this is now enshrined in law.

That same year, judges in India ruled in favour of the rights of the Yamuna and Ganges rivers, leaning heavily on the idea that these rivers are *sacred*. In India, divine entities have long been regarded as legal persons.

In addition to religious and cultural reasons or organization for colonial injustices, we increasingly see the adoption of the rights of nature as a response to failing (environmental)

laws. In Bangladesh, a delta country with hundreds of polluted rivers, its Supreme Court recognized rights to all the country's rivers in an attempt to better protect them.

#### Added value

Based on this rationale, we can identify at least two ways in which the rights of nature are of added value: (1) as symbolic value and (2) as an opportunity for more effective environmental protection.

The rights of nature have a symbolic value: they reflect a holistic world-view in which man and nature relate to each other not as victor and vanquished, but as intrinsically linked and interdependent. Such a vision forms part of the philosophy of many indigenous cultures, and we might think about the recognition of the rights of nature as a translation of this indigenous philosophy into the Western legal system.<sup>6</sup>

Western systems can learn from indigenous cultures: for starters, they need to shake off the idea that nature exists as something outside of us humans – in this sense the very word 'nature' is problematic. We often use it in contrast to the human, to culture. But as humans we cannot divorce ourselves from that 'nature'. Good environmental protection is crucial, including for us. As Uganda's National Environment Act states, the human right to a healthy environment cannot be guaranteed if the health of the rest of the natural world is not protected.<sup>7</sup>

Moreover, the rights of nature can potentially lead to more effective environmental protection. Our age is one of climate change, biodiversity loss, and ecological crises. Current laws and regulations try to mitigate the effects of these crises but so

far have been unsuccessful in counteracting the rapid disappearance of entire ecosystems. Systemic change is desperately needed, and an important part of this change will involve new legislation and regulations. The rights of nature represent such a new approach. To go to court, it is no longer necessary that a *human* interest be affected; nature can – through a representative, of course – assert its *own rights* in court. The result of a lawsuit then allows nature itself to recover, rather than awarding compensation.<sup>8</sup>

#### Representation

When the rights of nature are recognized, someone must be appointed to represent nature in the human legal system. Juridically speaking, this representation can be compared with the guardianship that parents exercise over their minor-aged children. The guardian can defend the interests and rights of nature and can go to court on its behalf, if necessary.

This construction differs from the *stewardship* model that has been assumed in nature conservation for decades. The idea of man as steward of the earth is often associated with his appointment as 'ruler' over the earth. According to this line of thinking, man is therefore 'above' nature.

**And God blessed them, and God said unto them, Be fruitful, and multiply, and replenish the earth, and subdue it: and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth.**

GENESIS 1:28 (KJV)

The rights of nature are underpinned by a different way of thinking. Man does not rule over nature; he is, rather, intrinsically linked, or related, to nature – to Mother Earth. In countries across the globe, this representation takes a variety of forms. In Ecuador, for example, anyone is able to bring a lawsuit in the name of nature, while in New Zealand a special representation form has been set up, with representatives being appointed from both the Māori community and the Crown (i.e., the local government).

#### Approaches

The rights of nature can be recognized at different levels: at the international level, at the national level (in either the constitution or an ordinary law), or at the local level. In addition, the rights of nature can also be recognized by the courts. There are also bottom-up initiatives led by private parties.

#### International law

International law depends on the cooperation between countries resulting in treaties, agreements, and covenants. At this time, no international treaty explicitly recognizes the rights of nature, though there is some movement in that direction. In Chapter VII we discuss some of these developments, including those in the Convention on Biological Diversity and in the field of international criminal law, which advocates the criminalization of so-called 'ecocide'. A group of specialists drafted a definition of ecocide in the summer of 2021.

#### National constitution

The rights of nature can be incorporated into the constitution

through a legislative amendment, though the ratification of such an amendment is usually difficult. In the Netherlands, for example, the assent of parliament is required twice, with an election in between so that the electorate can give its explicit consent. As of 2021, Ecuador remains the only country that includes the rights of nature in its constitution (see Chapter I). Sweden and Australia are both considering proposals for constitutional amendments that would include the rights of nature.

#### National laws & regulations

At the national level, the rights of nature or the legal personality of (parts of) nature can be recognized through legislation or regulations. There are, for example, national laws or resolutions on the protection of the environment that include the rights of nature. One example is Uganda's National Environment Act (see Chapter IV).

#### Local laws & regulations

Laws, regulations, and/or policies are enacted at the local level that include the rights of nature. For example, Mexico City has taken matters into its own hands and declared the rights of nature. In this compendium, we offer the example of, *inter alia*, a local ordinance that in 2020 recognized the rights of bodies of water in Florida, USA (see Chapter II).

#### Court rulings

Sometimes a judge can recognize the rights of nature in a ruling, without the rights of nature necessarily being included in a