

ENVISIONING NATURE'S RIGHT TO A STABLE CLIMATE SYSTEM

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I. INTRODUCTION

This article introduces the concept of Rights of Nature and explores its potential to help address climate change. First, it provides a brief summary of emerging climate change threats. Second, it highlights the failure of international law to adequately address climate change. Third, the article argues that the Rights of Nature movement can serve as a useful tool to address climate change, such as by giving nature a voice at climate change negotiations. Finally, the article highlights island nations as possible flag-bearers for one subset of the Rights of Nature movement: nature's fundamental right to a stable climate system (or "right to a stable climate" for short).

II. OVERVIEW OF CLIMATE CHANGE THREATS

Climate change, along with biodiversity loss and other global environmental emergencies, is perhaps the greatest challenge ever faced by humanity. The situation is dire: sea-level rise already of six to eight inches in some ocean basins; the threat of over three feet of sea level rise by 2100 and twelve feet by 2300;² an increase in the frequency and severity of drought, heat waves, wildfires, and other extreme weather events;³ 250,000 human deaths per

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² INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, SPECIAL REPORT ON THE OCEAN AND CRYOSPHERE IN A CHANGING CLIMATE: SUMMARY FOR POLICYMAKERS (2019) [hereinafter IPCC], available at <https://www.ipcc.ch/srocc/chapter/summary-for-policymakers> (last visited Mar. 7, 2020).

³ Donald Wuebbles, David W. Fahey & Kathy A. Hibbard, *How Will Climate Change Affect the United States in Decades to Come?*, EARTH & SPACE SCI. NEWS, Nov. 3, 2017, available at <https://eos.org/features/how-will-climate-change-affect-the-united-states-in-decades-to-come> (last visited Mar. 7, 2020).

year (and rising);⁴ and nearly one in six species facing extinction due to climate change.⁵

The outlook is especially grim for island nations and marine ecosystems. A 2019 oceans report by the Intergovernmental Panel on Climate Change (IPCC) reaffirmed that some island nations will likely become uninhabitable due to climate-related changes to the ocean and cryosphere (i.e., the Earth's frozen water).⁶ The report also found that “[a]llmost all warm-water coral reefs are projected to suffer significant losses of area and local extinctions, even if global warming is limited to 1.5 degrees Celsius.”⁷ Amongst the specific threats faced by coral reefs and other marine life is ocean acidification, with marine waters already being 30% more acidic than preindustrial levels due to excess carbon being sequestered from the atmosphere. In sum, island nations and marine ecosystems both face existential threats.

Experts increasingly advocate for fundamental societal transformations in order to tackle climate change. A seminal IPCC report in 2018 found that limiting the global temperature increase to below 1.5 degrees Celsius - commonly recognized as the upper limit to avoid some of the worst impacts of climate change - “would require rapid, far-reaching and unprecedented changes in all aspects of society.”⁸ Additionally, a May 2019 United Nations “mega-report” on biodiversity loss concluded that efforts to protect individual species are no longer sufficient, calling repeatedly – *twenty-one separate times* - for “transformative change” to restore, create, and safeguard a sustainable environment for humans and nature.⁹

⁴ *The Impact of Global Warming on Human Fatality Rates*, SCIENTIFIC AM., June 17, 2009, available at <https://www.scientificamerican.com/article/global-warming-and-health/> (last visited Mar. 7, 2020).

⁵ Mark C. Urban, *Accelerating Extinction Risk from Climate Change*, 348 SCI. 571 (2015), available at <https://science.sciencemag.org/content/348/6234/571> (last visited Mar. 7, 2020).

⁶ IPCC, *supra* note 2.

⁷ *Id.*

⁸ INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, SUMMARY FOR POLICYMAKERS OF IPCC SPECIAL REPORT ON GLOBAL WARMING OF 1.5°C APPROVED BY GOVERNMENTS (2018), available at <https://www.ipcc.ch/2018/10/08/summary-for-policymakers-of-ipcc-special-report-on-global-warming-of-1-5c-approved-by-governments/> (last visited Mar. 7, 2020).

⁹ UNITED NATIONS' INTERGOVERNMENTAL SCI.-POLICY PLATFORM ON BIODIVERSITY AND ECOSYSTEM SERVICES, GLOBAL ASSESSMENT REPORT ON BIODIVERSITY AND ECOSYSTEM SERVICES (2019), available at <https://ipbes.net/global-assessment-report-biodiversity-ecosystem-services> (last visited Mar. 7, 2020).

III. FAILURE OF THE LEGAL SYSTEM TO TACKLE CLIMATE CHANGE

So, how are we doing? During the 2019 Climate Change Negotiations in Madrid (“COP 25”), member states gathered in the wake of a growing climate disaster: unprecedented wildfires roared in Australia; the hottest decade on record (the 2010s) drew to a close; more than 1,400 local governments had recently declared a climate emergency;¹⁰ and worldwide, millions of people marched just weeks before demanding “an end to the age of fossil fuels.”¹¹ The science was irrefutable and many people were uproarious.

Despite this cry for help from the Earth and its people, the negotiations faltered. The member states failed to agree to a nonbinding commitment ratcheting up their already-insufficient pledges to reduce CO₂ emissions. The states also failed to reach a deal to regulate carbon markets as they had hoped.¹² “The final result is low, very low,” said IPCC vice-chair Jean-Pascal van Ypersele on Twitter.¹³ Meanwhile, the United States - the highest per capita CO₂ emitter in the world - will formally withdraw from the Paris Climate Agreement in 2020.

The gap between what is required to solve climate change and the current trajectory of climate change talks is shockingly large. Even if all countries met their current commitments, which seems nearly impossible at this juncture, it would not be enough to stave off the worst impacts of climate change.¹⁴ The status quo has failed. The only solution to these seemingly insurmountable problems is perhaps the phrase cited repeatedly in the 2019 United Nations’ mega-report on biodiversity: transformative change.

¹⁰ Bruno Sarda, *Climate Change is Already Wreaking Havoc in Cities. Here’s How They Need to Step Up*, ETHICAL CORP., Jan. 3, 2020, available at <http://www.ethicalcorp.com/climate-change-already-wreaking-havoc-cities-heres-how-they-need-step> (last visited Mar. 7, 2020).

¹¹ Haley Ott, *Millions Hit the Streets for Global Climate Change Strike*, CBS NEWS, Sept. 20, 2019, available at <https://www.cbsnews.com/live-news/global-climate-change-strike-protests-today-2019-09-20-live-updates> (last visited Mar. 7, 2020).

¹² Alasdair Fotheringham, *COP25 Summit Fails to Address Key Carbon Markets Issue*, AL JAZEERA, Dec. 15, 2019, available at <https://www.aljazeera.com/news/2019/12/cop25-summit-fails-address-key-carbon-markets-issue-191215145030619.html> (last visited Mar. 7, 2020).

¹³ David Wallace-Wells, *U.N. Climate Talks Collapsed in Madrid. What’s the Way Forward?*, N.Y. MAGAZINE, Dec. 16, 2019, available at www.nymag.com/intelligencer/2019/12/cop25-ended-in-failure-whats-the-way-forward.html (last visited Mar. 7, 2020).

¹⁴ Michael B. Gerrard, *Sadly, the Paris Agreement Isn’t Nearly Enough*, 6 ENVIRONMENTAL FORUM 57 (2016), available at <http://columbiaclimatelaw.com/files/2016/10/Gerrard-2016-10-Paris-Agreement-Isn’t-Nearly-Enough.pdf> (last visited Mar. 7, 2020).

But if not the current approach, then what? A growing number of countries are turning to the Rights of Nature movement as a solution to root causes of environmental declines. This transformative legal movement is discussed in the subsequent sections.

IV. INTRODUCTION TO THE RIGHTS OF NATURE

Rights of Nature (also commonly “the Rights of Nature,” “Rights of Mother Earth,” or “Earth Rights”) asserts that nature possesses certain fundamental rights, just like humans. The premise of Rights of Nature is that nature has inherent worth separate and distinct from its benefits to humans, a worldview held by Indigenous peoples for millennia.¹⁵ Rights of Nature is part of a growing body of ecocentric legal movements sometimes called Earth law.

According to Thomas Berry, a religious and ecological scholar whose theory of Earth jurisprudence underpins much of the modern Rights of Nature movement, every member of the Earth community holds at least three specific rights: “the right to be, the right to habitat and the right to fulfill its role in the ever-renewing processes of the Earth community.”¹⁶ Many Rights of Nature advocates assert that nature’s rights are inherent to its existence.¹⁷ This same reasoning has been used to justify the origin of human rights, which the drafters

¹⁵ See MOVEMENT RIGHTS, RIGHTS OF NATURE & MOTHER EARTH: RIGHTS-BASED LAW FOR SYSTEMIC CHANGE, (Shannon Biggs et al. eds., 2017), available at <https://www.ienearth.org/wp-content/uploads/2017/11/RONME-RightsBasedLaw-final-1.pdf> (last visited Mar. 8, 2020); see also Osprey Orielle Lake, *Recognizing the Rights of Nature and the Living Forest*, in RIGHTS OF NATURE & MOTHER EARTH: RIGHTS-BASED LAW FOR SYSTEMIC CHANGE 20 (Shannon Biggs et al. eds., 2017), available at <http://www.uky.edu/~tmute2/GEI-Web/password-protect/GEI-readings/Lake-Rights-of-Living-Forest.pdf> (last visited Mar. 8, 2020).

¹⁶ The concept of Earth community is used by Thomas Berry. “According to this concept, human beings are one interconnected part of a broader community of life. All parts of this community are subjects and have value. Berry uses the concept of Earth community as a platform to advocate for the extension of ethics beyond interpersonal human relationships to include the comprehensive Earth community.” See Peter D. Burdon, *The Earth Community and Ecological Jurisprudence*, 3(5) OÑATI SOCIO-LEGAL SERIES 815, 818 (2013).

¹⁷ As argued by Thomas Berry, “that which determines existence determines rights.” *Thomas Berry’s Ten Principles of Jurisprudence*, GLOBAL ALLIANCE FOR THE RIGHTS OF NATURE, <https://therightsofnature.org/thomas-berrys-ten-principles-of-jurisprudence> (last visited Mar. 8, 2020).

of the United Nations' Universal Declaration of Human Rights found “. . . did not originate in the decision of a worldly power, but rather in the fact of existing.”¹⁸

A flurry of constitutional amendments, laws, and court decisions have recently recognized the Rights of Nature. In 2008, Ecuador became the first country to formally include the Rights of Nature in its constitution, proclaiming that “Nature or Pachamama, where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution.”¹⁹ Furthermore, it gives all Ecuadorians legal standing to enforce the Rights of Nature.

Since its recognition, dozens of courts in Ecuador have considered the Rights of Nature. In many instances, judges upheld nature’s constitutional rights. One such instance was when the Vilcabamba River, as the named plaintiff, secured its own restoration after suffering harm due to a road construction project.²⁰ Another is the use of Rights of Nature to defend sharks in the Galapagos Marine Reserve.²¹ However, in other cases, courts found short-term economic interests outweigh ecosystem protections. In the “Condor-Mirador” mine case, a provincial court ruled that the mine did not violate the Rights of Nature, despite the mine’s severe negative impacts to the Amazon Rainforest, reasoning that the project served the public interest.²²

While many Rights of Nature advocates hoped for a broader application of the legal movement in Ecuadorian courts than has occurred, gradual adoption and acceptance is to be expected for a new rights-based movement. Many human rights - civil rights, women’s rights, immigrant rights, and others - are litigated in courts today, and not always successfully, even decades or centuries after first being recognized by the court. As Theodore Parker and later Martin Luther King Jr. said, “The arc of the moral universe is long, but it bends toward justice.”²³

¹⁸Universal Declaration of Human Rights - History of the Document, UNITED NATIONS, <https://www.un.org/en/sections/universal-declaration/history-document/index.html> (last visited Mar. 8, 2020).

¹⁹ ECUADOR CONST. TIT. II, CH. 7.

²⁰ See Craig M. Kauffman & Pamela Martin, *Testing Ecuador's Rights of Nature: Why Some Lawsuits Succeed and Others Fail*, INT'L STUDIES ASSOC. ANNUAL CONV. (2016).

²¹ *Id.*

²² *Id.*

²³ Melissa Block & Clayborne Carson, *Theodore Parker and The 'Moral Universe'*, NPR, Sept. 2, 2010, available at <https://www.npr.org/templates/story/story.php?storyId=129609461> (last visited Mar. 8, 2020).

Additionally, even with varying acceptance by the courts, Rights of Nature is now part of the national discourse in Ecuador.²⁴ The voice of nature is being heard.

Ecuador's success has inspired other actors around the world. In 2010, Bolivia held the World People's Conference on Climate Change and the Rights of Mother Earth in Cochabamba. This gathering included over 35,000 people representing 140 countries - civil society leaders, fifty-six governmental delegations, Indigenous peoples, climate activists, and others—all of whom sought bold collective action after the failures of the 2009 Climate Change Conference in Copenhagen ("COP 15").²⁵

Amongst the initiatives presented at the World People's Conference was a Universal Declaration for the Rights of Mother Earth (UDRME), which called for the United Nations and all countries to recognize the Rights of Nature. The UDRME's Preamble recognizes the "critical importance and urgency of taking decisive, collective action to prevent humans causing climate change and other impacts on Mother Earth that threaten the wellbeing [sic] and survival of humans and other beings."²⁶ Article II then establishes those basic rights held by Mother Earth: "to exist, to persist and to continue the vital cycles, structures, functions and processes that sustain all beings." While nonbinding, the UDRME has inspired the passage of Rights of Nature laws worldwide.²⁷

This international shift has inspired jurisdictions around the world to acknowledge the Rights of Nature. In 2017, the New Zealand Parliament passed a Treaty bill recognizing the Whanganui River (or "Te Awa Tupua") as a legal person, making it the first river outside of Ecuador to ever be recognized as a legal person. This was the result of a 150-year effort by the Maori people to achieve legal recognition of the Whanganui River as their ancestor. While this victory was more a unique manifestation of Māori culture and beliefs rather than a continuation of the Rights of Nature movement, it still inspired others to evolve river protections.

²⁴ See Kauffman & Martin, *supra* note 20.

²⁵ WORLD PEOPLE'S CONFERENCE ON CLIMATE CHANGE AND THE RIGHTS OF MOTHER EARTH, UNIVERSAL DECLARATION OF THE RIGHTS OF MOTHER EARTH (2010), available at <http://therightsofnature.org/universal-declaration> (last visited Mar. 8, 2020).

²⁶ *Id.* at Preamble.

²⁷ *Id.* at ART. II.

More courts have also begun to recognize the Rights of Nature, even without corresponding legislation. In 2017, the High Court of Uttarakhand in India granted legal personhood to the Ganges and Yamuna Rivers,²⁸ although the Supreme Court of India has stayed the decision while they make a final ruling.²⁹ In Colombia, numerous courts have recognized the rights of at least eight rivers and/or river basins,³⁰ including the Atrato River Basin, which the Constitutional Court held to be an “entity subject to rights to protection, conservation, maintenance and restoration by the State and ethnic communities.”³¹

In 2019, building upon the Atrato River decision, Colombia’s Supreme Court of Justice issued a landmark decision addressing climate change in the country.³² With support from civil society group Dejusticia, twenty-five young persons sued the government, alleging violations of their human rights to life, health, and enjoyment of a healthy environment. These allegations were based on the government’s failure to protect the Amazon against deforestation and other environmental degradation, which contributed to global climate change. The Supreme Court of Colombia declared that “for the sake of protecting this vital ecosystem for the future of the planet” it would “recognize the Colombian Amazon as an entity, subject of rights, and beneficiary of the protection, conservation, maintenance and restoration.”³³ The Court also recognized the human right to a healthy environment and the rights of future generations.³⁴ Finally, the Court crafted strong remedies to combat deforestation and other

²⁸ See Mohd. Salim v. State of Uttrakhand & Others, Writ Petition (PIL) No.126 of 2014 (Uttarakhand H.C. 2017), available at <https://www.nonhumanrights.org/content/uploads/WPPIL-126-14.pdf> (last visited Mar. 8, 2020). The court recognized that the Rivers are sacred to the Hindu community in India, as well as necessary to sustain the physical health and wellbeing of the population. The Indian court also acknowledged the importance of granting legal representation to non-sentient entities that perform essential and culturally valued functions within their community as a way to protect them and safeguard against their destruction.

²⁹ *Rivers Do Not Have Same Rights as Humans: India's Top Court*, PHYS.ORG, <https://phys.org/news/2017-07-rivers-rights-humans-india-court.html> (last visited Mar. 8, 2020).

³⁰ These rivers and/or river basins include: the Atrato River Basin (2016, Constitutional Court); the Plata River (2019, Colombian Municipal Civil Court of La Plata); three rivers in Tolima including the Coello, Combeima, and Cocora (2019, Administrative Tribunal Court of Tolima); the Cauca River Basin (2019, Superior Court of Medellín); the Pance River Basin (2019, Third Court of Enforcement of Sentences and Security Measures of Cali); and the River Otún (2019, Fourth Penal Enforcement Court of Pereira).

³¹ Corte Constitucional [C.C] [Constitucional Court], Sala Sexta de Revision, noviembre 10, 2016, M.P.: J. Palacio, Expediente T-5.016.242 (Colom.).

³² Corte Suprema de Justicia [C.S.J.] [Supreme Court], April 5, 2018, STC 4360-2018 (Colom.).

³³ *Id.*

³⁴ *Id.*

climate change drivers, including an order that the Presidency of the Republic of Colombia and relevant agencies develop short, medium, and long-term action plans that reduce the deforestation of the Amazon to net zero.³⁵

Other countries have also recognized Rights of Nature. In Mexico, the States of Colima and Guerrero, along with Mexico City, have recognized the Rights of Nature,³⁶ and the State of Mexico is now considering passing a similar law or constitutional amendment.³⁷ Bangladesh has recognized the rights of all rivers, granting them the same legal status as humans.³⁸ In 2019, Uganda included Rights of Nature in its new National Environmental Act.³⁹ Meanwhile, other countries have taken similar approaches to Rights of Nature by advancing “ecocentric” (as opposed to anthropocentric, or human-centered) legal movements that protect and restore ecosystems. For example, El Salvador recently passed a national proclamation declaring forests to be “living entities” and requiring humans to care for, preserve, respect, and expand forests within the country.⁴⁰ Many of these legal efforts are discussed and compiled annually at the Interactive Dialogues of the General Assembly on Harmony with Nature and through United Nations General Assembly resolutions on Harmony with Nature.⁴¹

In the United States, Native Americans are on the forefront of the Rights of Nature movement, in accordance with their longstanding cultures and belief systems. In 2019, the Yurok Tribe passed a resolution recognizing, amongst other rights, the Klamath River’s rights to exist, flourish, and naturally evolve and to

³⁵ *Id.*

³⁶ Press Release, Earth Law Center, State of Colima, Mexico Makes History by Granting Constitutional Rights of Nature (Jul. 30, 2019), available at <https://www.prlog.org/12781903-state-of-colima-mexico-makes-history-by-granting-constitutional-rights-of-nature.htm> (last visited Mar. 8, 2020).

³⁷ *Unen Voces Especialistas y Científicos Para Crear Legislación Por el Medio Ambiente*, AD POLÍTICA, <https://adnoticias.mx/2019/08/19/unen-voces-especialistas-y-cientificos-para-crear-legislacion-por-el-medio-ambiente-1028776/> (last visited Mar. 8, 2020).

³⁸ Ashley Westerman, *Should Rivers Have Same Legal Rights as Humans? A Growing Number Of Voices Say Yes*, NPR, Aug 3., 2019, available at <https://www.npr.org/2019/08/03/740604142/should-rivers-have-same-legal-rights-as-humans-a-growing-number-of-voices-say-ye> (last visited Mar. 9, 2020).

³⁹ *Uganda Recognises [sic] the Right of Nature*, SUSTAIN, https://www.sustainweb.org/news/apr19_uganda (last visited Mar. 8, 2020).

⁴⁰ Press Release, Earth Law Center, Pronouncement in El Salvador Deems Forests to be Living Entities (June 6, 2019), <https://www.earthlawcenter.org/elc-in-the-news/2019/6/pronouncement-in-el-salvador-deems-forests-to-be-living-entities> (last visited Mar. 8, 2020).

⁴¹ See *Interactive Dialogues of the General Assembly*, UNITED NATIONS HARMONY WITH NATURE, <http://www.harmonywithnatureun.org/dialogues> (last visited Mar. 8, 2020).

have a clean and healthy environment free from pollution.⁴² The resolution also establishes the Klamath River’s right to “have a stable climate free from human-caused climate change impacts,” building important precedent for nature’s right to a stable climate.⁴³ The Yurok Tribe joined three other tribes in recognizing the Rights of Nature in law: the Ponca Nation (which passed a Rights of Nature law), the Ho-Chunk Nation (which is advancing a Rights of Nature amendment to its constitution), and the White Earth Band of Ojibwe (which recognized the legal rights of wild rice).⁴⁴

Dozens of local governments in the United States and internationally, such as in Brazil,⁴⁵ have also recognized Rights of Nature, sometimes with reference to climate change action. Santa Monica’s Sustainability Rights Ordinance recognizes that “[n]atural communities and ecosystems possess fundamental and inalienable rights to exist and flourish in the City of Santa Monica.”⁴⁶ Concerning climate change, the Ordinance also recognizes the human right to a sustainable natural climate unaltered by fossil fuel emissions and establishes that the city’s residents can bring actions to protect atmospheric systems and other natural entities.⁴⁷ The Rights of Nature in Santa Monica are implemented largely through its ambitious Sustainable City Plan.⁴⁸ Another example is the “climate bill of rights” in Lafayette, Colorado, which recognizes an ecosystem’s right to a healthy climate⁴⁹ and has inspired other communities to pursue similar laws.

Together, these Rights of Nature constitutional amendments, treaty agreements, laws, ordinances, resolutions, and court decisions form a rising legal movement, one which has seen tremendous growth in the last fifteen years, with no signs of slowing down. As the global environmental emergency grows,

⁴² See *Yurok Nation Just Established Rights of the Klamath River*, CULTURAL SURVIVAL, <https://www.culturalsurvival.org/news/yurok-nation-just-established-rights-klamath-river> (last visited Mar. 8, 2020).

⁴³ See *infra* Sections V-IX.

⁴⁴ *Id.*

⁴⁵ See *Rights of Nature Law, Policy and Education*, U.N. HARMONY WITH NATURE, <http://www.harmonywithnatureun.org/rightsOfNature> (last visited Mar. 8, 2020).

⁴⁶ SANTA MONICA, CAL., ORDINANCE § 4.75.040(b) (2013) (ordinance establishing sustainability rights).

⁴⁷ *Id.* § 4.75.040(a)-(b).

⁴⁸ See CITY OF SANTA MONICA, SUSTAINABLE CITY PLAN (2003), <https://www.smgov.net/uploadedFiles/Departments/OSE/Categories/Sustainability/Sustainable-City-Plan.pdf>.

(last visited March 6, 2020).

⁴⁹ LAFAYETTE, COLO., CLIMATE BILL OF RIGHTS, ORDINANCE NO. 02 (2017).

governments are more willing to create and adopt environmental law based in the Rights of Nature and other ecocentric legal movements. Whether these reforms are enough to help solve the climate crisis and other environmental threats remains to be seen.

V. THE HUMAN RIGHT TO A STABLE CLIMATE—IS NATURE NEXT?

Whereas only a few local governments have recognized nature’s right to a stable climate (or a “healthy” or “sustainable” climate), the effort to recognize the human right to a stable climate has entered the mainstream. Perhaps the best-known example is the case *Juliana v. United States*, dubbed by environmentalists as “the case of the century.”⁵⁰ The plaintiffs in *Juliana* include 21 young persons, ages 8 to 19; the nonprofit organization Earth Guardians; and “Future Generations” of humans, represented by appointed Guardian James Hansen, the former NASA scientist who has warned about climate change since the 1980s.⁵¹

In short, the plaintiffs in *Juliana* allege that the United States “permitted, encouraged, and otherwise enabled continued exploitation, production, and combustion of fossil fuels,” thereby allowing CO₂ levels to rise to dangerous levels.⁵² The plaintiffs allege that these actions violate their right to a stable climate system, which is reserved by the Ninth Amendment and essential to the Fifth Amendment’s guarantee that the government shall not deprive any person of life, liberty, or property without due process of law.⁵³ The plaintiffs also allege that these actions violate the public trust doctrine.⁵⁴ In 2016, the U.S. District Court of Oregon denied the federal government’s motion to dismiss the case, allowing it to proceed to trial.⁵⁵ In 2020, the U.S. Ninth Circuit Court of Appeals dismissed the lawsuit, with the 2-1 majority ruling that the plaintiffs’ injuries were not redressable because complex climate change policy must come from the

⁵⁰ James Huffman, *9th Circuit Weighs ‘Climate Kids’ Lawsuit*, INSIDE SOURCES, June 11, 2019, available at <https://www.insidesources.com/9th-circuit-weighs-climate-kids-lawsuit> (last visited Mar. 8, 2020).

⁵¹ 217 F. Supp.3d 1224 (D. Or. 2016).

⁵² See First Amended Complaint for Declaratory and Injunctive Relief, *Juliana v. United States*, No.: 6:15-cv-01517-TC (D. Or. 2015).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ See *Juliana v. United States*, No. 18-36082 (9th Cir. 2019), available at <http://climatecasechart.com/case/juliana-v-united-states> (last visited Mar. 9, 2020). The plaintiffs have since filed a petition for a rehearing *en banc*. If granted, a panel of 11 judges would rehear the case . Petition for Rehearing *En Banc* of Plaintiffs-Appellees, *Juliana v. United States*, No. 18-36082 (9th Cir. 2020).

executive and legislative branches.⁵⁶ Despite being dismissed, *Juliana* helped inspire climate change lawsuits across the world, which now total over 1,400.

Where *Juliana* fell short, the *Urgenda* case in the Netherlands prevailed. In December 2019, in a case brought by the environmental group Urgenda, the Supreme Court of the Netherlands ordered the national government to slash greenhouse gas (GHG) emissions to 25% below 1990 levels by 2020, affirming the ruling of a lower Dutch court.⁵⁷ The failure of the Dutch State to reduce its emissions violated its duty to uphold the right to life (Article 2) and to private and family life (Article 8) as recognized by the European Convention for the Protection of Human Rights and Fundamental Freedoms.⁵⁸ In the decision, Chief Justice Kees Streefkerk wrote that "the lives, well being [sic] and living circumstances of many people around the world, including in the Netherlands, are being threatened" due to climate change.⁵⁹

Similar to the argument that prevailed in *Juliana*, the Dutch government argued that climate change policy must come from the political branches of government, not the courts. The Supreme Court of the Netherlands disagreed, ruling that it could order a reduction in GHG emissions so long as the political branches of government decided upon the means to achieve this reduction.⁶⁰

These groundbreaking climate change cases offer a glimmer of hope to supporters of strong climate change action. But turning back to the Rights of Nature, should *all* life on the planet, not just humans, possesses a fundamental right to a stable climate? Should coral reefs have a right to a stable climate where global warming of two degrees Celsius threatens to eradicate them? What about the death of over one billion animals in the climate-fueled wildfires in Australia in 2019-2020, some of which now have a greater risk of near-term extinction,⁶¹ or

⁵⁶ *Juliana v. United States*, No. 18-36082, at 25 (9th Cir. 2020). The plaintiffs filed a petition for *en banc* review, which has not been decided as of the time of publication.

⁵⁷ *A Moment of Hope: Urgenda Wins Historic Climate Case in Supreme Court of the Netherlands*, URGENDA, <https://news.smart.pr/urgenda/media-release-climate-case-nl> (last visited Mar. 9, 2020).

⁵⁸ *Urgenda Foundation v. Kingdom of the Netherlands*, Translation of Judgment, Dec. 20, 2019, available at <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2019:2007>.

⁵⁹ John Schwartz, *In ‘Strongest’ Climate Ruling Yet, Dutch Court Orders Leaders to Take Action*, N.Y. TIMES, Dec. 20, 2019, available at <https://www.nytimes.com/2019/12/20/climate/netherlands-climate-lawsuit.html> (last visited Mar. 9, 2020).

⁶⁰ *Urgenda Foundation*, *supra* note 58, at ¶ 2.2.3.

⁶¹ Brigit Katz, *More Than One Billion Animals Have Been Killed in Australia’s Wildfires, Scientist Estimates*, SMITHSONIAN MAGAZINE, Jan. 8, 2020, available at

the seventeen million acres of forests that have burned? Does all life not deserve a basic right to justice?

By and large, climate justice for nature remains largely aspirational because traditional Western legal systems define most life on our planet as human property or “things.” Under current legal systems, they have no rights. But, as Section IV demonstrates, anthropocentric laws are ceding ground to ecocentric laws, otherwise known as “Earth laws,” that seek to harmonize our legal system with nature’s basic needs, including the provision of legal rights to nature. If this trend continues, nature, along with humans, may be allowed to fight for its right to a stable climate in court.

VI. THE RIGHTS OF NATURE: A TOOL TO ADDRESS CLIMATE CHANGE

A. Rights of Nature v. Status Quo

The precedent summarized in Section IV highlights the growing use of the Rights of Nature as a tool to address climate change and other environmental harms. Understanding how nature’s right to a stable climate differs from the international community’s current approach to climate change is helpful in guiding future Rights of Nature practitioners.

While existing legal precedent connecting climate change to the Rights of Nature is limited, basic Rights of Nature principles can still be applied to the context of climate change. Therefore, to begin this exercise, consider some of the best practices of Rights of Nature laws:⁶²

1. Nature is a “legal entity” or a “person” with fundamental rights that the government must uphold. Examples of nature’s rights include rights to exist, thrive, and restoration, amongst others.
2. Where these rights are infringed upon, nature should be entitled to full and prompt restoration.

<https://www.smithsonianmag.com/smart-news/more-one-billion-animals-have-been-killed-australias-wildfires-scientist-estimates-180973926> (last visited Mar. 9, 2020).

⁶² For more information, see, e.g., EARTH LAW CTR., COMMUNITY TOOLKIT FOR RIGHTS OF NATURE (2019), available at <https://bit.ly/39GDmW1> (last visited Mar. 9, 2020).

3. Nature must be given a voice in government, including, but not limited to, access to the courts, the right to participate in governmental decision-making, and the right to political representation.
4. To achieve the goals articulated in subpoint 3, nature is entitled to independent, qualified, and appropriate legal guardians that act solely and transparently on behalf of nature, its rights, and its interests. A legal guardian must be empowered to enforce and protect nature's rights, including taking appropriate legal action on its behalf. Note that some laws allow *anyone* to seek enforcement of the Rights of Nature.
5. The government must establish necessary governmental organs, authorities, functionaries, and financial mechanisms to ensure full enforcement of the Rights of Nature.

If the Rights of Nature were widely recognized and applied based upon these best practices, how would this impact the international climate change regime? Additionally, if nature's fundamental right to a stable climate was recognized, how would climate change solutions differ? While these questions remain unanswered, the following charts provide an initial framework.

Climate Change Solutions:
Status Quo v. The Rights of Nature

1. Carbon Trading & Right to Pollute	
Status Quo: A widely accepted approach to mitigating climate change is through carbon markets, which maintain the “right to pollute” for those who can pay for carbon credits, particularly developed countries. Carbon markets have been shown to promote “business as usual” and are associated with corruption and human rights violations.	Rights of Nature: There is no “right to pollute” carbon, including by developed countries - the primary historic contributors to climate change - who can afford carbon credits. All countries must make necessary reductions to their emissions, with developed nations providing significant financial support to help developing countries do so.
2. Limiting Temperature Increase	
Status Quo: Countries have loose, incentive-based commitments to reduce greenhouse gas emissions with the goal of limiting temperature increases to 1.5 degrees or 2 degrees Celsius above preindustrial temperatures.	Rights of Nature: Countries are legally bound to rapid decarbonization to achieve net-zero then net-negative emissions in the near future, limiting near-term temperature increases to well below 1.5 degrees Celsius above preindustrial levels and then fully stabilizing the climate system.
3. Ecosystem Representation	
Status Quo: Ecosystems are represented in climate change negotiations and national lawmaking indirectly, through civil society groups and governmental agencies that may have mixed incentives to balance ecosystem needs against short-term economic gains. Nature has no direct voice in climate change talks. Indigenous leaders, who have strong moral and cultural standing to speak on behalf of nature, are often marginalized.	Rights of Nature: Ecosystems have a “seat at the table,” both internationally during climate change negotiations as well as within domestic legal processes. “Nature” is directly represented in high-level climate change negotiations, including in all closed-door meetings, through independent legal guardians and its own delegation - some of whom must be Indigenous leaders. Nature may become an official party to climate change agreements if it wishes to do so.

4. Climate Change Solutions	
Status Quo: Countries support many climate change solutions that fail to address root causes - e.g., geoengineering and other “techno-fixes,” a shift to natural gas and other dirty energy sources instead of 100% clean energy, carbon markets (see above), REDD+ (“Reducing Emissions from Deforestation and Forest Degradation” - a carbon offsetting regime opposed by many, including Indigenous peoples), and others. ⁶³	Rights of Nature: The global community commits to economic systems change by challenging overarching models of production and consumption, fully decarbonizing in the near-future, achieving zero conversion of natural forests and supporting community forest management, living well within all planetary boundaries, and empowering Indigenous communities to serve as stewards of all ancestral lands.
5. Rights of Nature Recognition and Implementation	
Status Quo: Rights of Nature is recognized sporadically throughout the world with limited implementation in practice. It is not recognized in any climate change agreements.	Rights of Nature: Rights of Nature is recognized globally and is legally enforceable as a fundamental right. Nature’s right to a stable climate in particular is recognized and put into practice through enforceable climate change action plans.

By providing nature with a seat at the table and incorporating Rights of Nature concepts into the international response to climate change, a new paradigm emerges to help achieve a stable climate and countless other environmental benefits. Whether the political will exists to make these drastic changes remains to be seen, but at least giving nature a voice at climate change negotiations to express its needs is a valuable first step.

B. The Right to a Stable Climate: Rights of Nature v. Human Rights

Nature’s right to a stable climate is distinct from the same human right. However, recognizing the Rights of Nature is not in opposition to, nor in place of, human rights; it is merely an ecocentric approach that seeks the same goal: a thriving and healthy planet.

⁶³ See, e.g., *False Solutions to Climate Change*, FRIENDS OF THE EARTH OF EUROPE, <https://www.foeeurope.org/false-solutions> (last visited Mar. 9, 2020).

While the over-arching goal of these movements may be identical, Rights of Nature presents distinct advantages to that of a wholly human right focused regime. One advantage is the consideration of the inherent worth of nature encourages the protections of ecosystems, plant and animal species, and other natural entities beyond their mere economic value to humans. Another advantage is the recognition that all species and ecosystems are interconnected, and that the continued well-being of humans necessitates the protection and restoration of the entire biosphere. Climate change law and policy based on an ecocentric perspective better addresses root causes with the goal of protecting all life - not only humans.

With that background in mind, consider the following summary comparison of nature's right to a stable climate versus the human right to a stable climate.

Climate Change Philosophies:

Human Right to a Healthy Environment v. Nature's Right to a Stable Climate

1. Frame of Reference	
Human Right to a Stable Climate: Anthropocentric perspective (i.e., human-focused). Considers the inherent value of humans.	Nature's Right to a Stable Climate: Ecocentric perspective (i.e., focused on the overarching well-being of all life). Considers the inherent value of both nature and humans.
2. Adaptation Goals	
Human Right to a Stable Climate: Focuses on human adaptation - e.g., climate refugees, human migration, sea level rise impacts to coastal communities, food and water sources for humans, increased wildfire risk where humans live, etc.	Nature's Right to a Stable Climate: Focuses on ecosystem adaptation - enhancing habitat connectivity (e.g., wildlife corridors that connect fragmented habitat), supporting ecosystem resilience, storm buffering coastal wetlands, etc.
3. Connection with Rights-Based Movements	
Human Right to a Stable Climate: Ties into the larger human rights movement; emphasizes social justice, environmental justice, etc.	Nature's Right to a Stable Climate: Ties into the larger Rights of Nature movement (while still considering human well-being since humans are part of nature); places an emphasis on justice for all life.

Many Rights of Nature laws and court decisions also recognize human environmental rights and Indigenous rights with the understanding that these movements support each other. Consider the Colombian Supreme Court case in Section IV, which recognized both the rights of the Amazon as well as the human right to a healthy environment.

VII. A BLUEPRINT FOR ACTION

If a government, international organization, or other entity supports new legal and economic paradigms based upon the Rights of Nature, including the belief that nature has a right to a stable climate, it may be unclear how to manifest this support into tangible action. This section summarizes some of the possible approaches for recognizing and implementing nature's right to a stable climate.

Consider the following strategies that a nation might take to recognize and implement nature's right to a stable climate:

1. Pass a constitutional amendment, national law, declaration, or other legal instrument recognizing the Rights of Nature, including but not limited to nature's right to a stable climate. Such legal instruments could call upon other nations and international bodies to respect these universal rights, including during climate change negotiations.
2. Seek direct integration of the Rights of Nature into climate change negotiations, by ensuring direct representation of nature via a delegation of select legal guardians and experts and by proposing specific text that recognizes and upholds nature's right to a stable climate. This right can then be implemented through specific state obligations.
3. Integrate Rights of Nature concepts into current and future environmental laws, programs, and initiatives at the national level. For example, recognize coral reefs as subjects of rights through amendments to existing coral protection laws⁶⁴ and also ratchet up coral reef protections

⁶⁴ See, e.g., *Coral Reefs*, EARTH LAW CTR., <https://www.earthlawcenter.org/coral-reefs-initiative> (last visited Mar. 9, 2020).

- particularly those related to climate change, ocean acidification, and the like. A similar model could be implemented for forest protection laws, wildlife laws, river protection laws, climate change laws, and others.
- 4. Establish a robust and independent legal guardianship body at the national level to advocate for integration of nature's rights into all aspects of governance and society.
- 5. Upon recognizing nature's right to a stable climate, seek justice internationally and pursue landmark Rights of Nature decisions through the courts (such as the International Court of Justice).

VIII. ISLAND NATIONS: THE FLAG-BEARERS OF A GLOBAL MOVEMENT?

Along with other disproportionately impacted groups, such as Indigenous peoples, island nations have strong ethical standing to call for the recognition and implementation of nature's right to a stable climate. While they contribute less than one percent of global greenhouse gas emissions, island nations and the surrounding marine ecosystems experience a disproportionate amount of harm from climate change. These harms include, but certainly are not limited to, the loss of land caused by rising sea levels, salinization of freshwater sources, loss of endemic species, and damage to coral reefs due to ocean warming and acidification.

Island nations have also long been leaders of cutting-edge environmental movements. Palau was the first country in the world to designate its national waters as a shark sanctuary⁶⁵ and to ban sun cream that damages coral reefs and other marine life.⁶⁶ In 2019, the Pacific island of Vanuatu called for ecocide to be considered a crime at the International Criminal Court in the Hague.⁶⁷ And related

⁶⁵ *Shark Sanctuaries Around the World*, THE PEW CHARITABLE TRUSTS, <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/03/shark-sanctuaries-around-the-world> (last visited Mar. 9, 2020).

⁶⁶ *Palau is First Country to Ban 'Reef Toxic' Sun Cream*, BBC NEWS, <https://www.bbc.com/news/world-asia-50963080> (last visited Mar. 9, 2020).

⁶⁷ *Vulnerable Nations Call for Ecocide to Be Recognized as an International Crime*, CLIMATE LIABILITY NEWS, <https://www.climateabilitynews.org/2019/12/06/ecocide-international-criminal-court-vanuatu/> (last visited Mar. 9, 2020).

to climate change, it was largely due to the vocal demands of island nations, such as through the Alliance of Small Island States (AOSIS), that a limit to global temperature increases of “well-below” 1.5 degrees Celsius above preindustrial levels became an alternative to the traditional 2 degrees Celsius threshold.⁶⁸ While these are only a few examples, they show the willingness of island nations to implement bold, new legal approaches that get to the root of environmental challenges.

Numerous organizations and environmental experts are available to advise countries, island nations or otherwise, that wish to integrate Rights of Nature into their governance. For example, the nonprofit organization Earth Law Center⁶⁹ has a campaign to seek recognition of nature’s rights to a stable climate and offers pro bono legal assistance to interested governments and civil society organizations.⁷⁰ Many other Rights of Nature organizations and experts are listed on the United Nations Harmony with Nature Initiative’s Knowledge Network Experts website.⁷¹ Through new global partnerships, perhaps island nations will be the flag-bearers of a global movement to recognize that nature has a right to a stable climate.

IX. CONCLUSION

Climate change has already caused drastic negative impacts to nature. However, solving the climate crisis is still possible: if we can reach and sustain net-zero carbon dioxide emissions, anthropogenic global warming could be stopped on a multi-decadal time scale. But significant changes to the current passive approach of nations are necessary.

Establishing Rights of Nature would help solve climate change, incorporating an underutilized approach into the international regime. Extending beyond its legal implications, many Rights of Nature advocates believe it will spur a social revolution in which living in harmony with nature becomes the cultural norm. As with most rights-based movements, recognition of rights influences cultural shifts and vice versa. The Rights of Nature, together with other

⁶⁸ Monica Bjermeland, *The Story of 1.5°C*, CTR. FOR INT’L CLIMATE RESEARCH, <https://cicero.oslo.no/en/understanding-one-point-five/the-story-of-15> (last visited Jan. 5, 2020).

⁶⁹ Disclaimer: The author of this article is the Executive Director & Directing Attorney of Earth Law Center.

⁷⁰ *Island Nations*, EARTH LAW CTR., <https://www.earthlawcenter.org/island-nations> (last visited Mar. 9, 2020).

⁷¹ See *Knowledge Network Experts*, UNITED NATIONS HARMONY WITH NATURE, <http://www.harmonywithnatureun.org/experts> (last visited Mar. 9, 2020).

Earth law movements, can form the blueprint of a new generation of laws, economic activities, and societal norms.

Finally, because island nations are more vulnerable to the risks of climate change and have a long history of being on the forefront of cutting-edge environmental movements, they are strong candidates to be the flag-bearers of the movement to recognize nature's right to a stable climate. By giving nature legal rights, island nations and other countries advocating for stronger climate action will also have additional tools and leverage during climate change negotiations. Ultimately, when it comes time for the next climate change conference, ask yourself: what would nature want?