



# NEWSLETTER

## March 2018

### **Nature in Court: Environmental Protection Through Legal Rights**

Does Nature have legal rights, and if so, what are they? How can they be formalised and claimed? And who should be able to enforce them? The theoretical debate about the rights of Nature has engaged philosophers, environmentalists, and lawyers for decades: now, it has reached the courtrooms and lawmakers of the world in a series of landmark decisions.

Ecuador and Bolivia added Nature's right to integral respect into their constitutions in 2008 and 2011, New

Zealand made the Whanganui River a person, India granted the Ganges human rights in 2017, and the Inter-American Court of Human Rights published a headline-making opinion equating the rights of nature with human rights.

To understand the importance and implications of these developments, it is necessary to trace both the theoretical framework and the real-life history of environmental protection through legal rights and distinguish between the different approaches. Page 2

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## **The Concept of the Rights of Nature**

In 1949, the American conservationist Aldo Leopold outlined in “A Land Ethic” an ethical imperative to protect the ecosystem as a whole, of which humans are just one part: “The land ethic simply enlarges the boundaries of the community to include soils, waters, plants, and animals, or collectively: the land.”

This approach was carried forward by Professor of Law Christopher D. Stone in his influential 1972 article “Should Trees Have Standing?” (revisited and revised in 1985), wherein he argues that beyond ethical considerations, the rights of nature should be enshrined in law. Legal standing should be given to natural objects and places, in just the same way that other non-human entities (f. i. municipalities, corporations, or family trusts) have been granted legal rights over time.

Stone’s proposal aims at solving a longstanding problem by providing a new environmental defence strategy. Around the world, cases in environmental litigation keep failing because the plaintiffs have no legal position to argue from. If Nature does not have rights of its own, environmental organisations needed to establish why they can bring a case to court at all, possibly by representing the interests of local communities or land owners. This, however, makes it difficult to protect wilderness areas from industrial exploitation, as exemplified in the landmark case of the Sierra Club v. Morton in 1971/1972, in which the Sierra Club tried to stop construction of a Ski Resort in California’s Sierra Nevada Mountains, but was overturned because no Sierra Club Members were in any way injured by the project.

## **Linking Human Rights to Nature**

The argument for rights of Nature has been further advanced by David R. Boyd in “Rights of Nature: A Legal Revolution That Could Change the World”. From a legal perspective, nature is traditionally considered property and therefore without rights (much like slaves and indigenous people used to be). Establishing positive rights, meaning rights to something, is a way to enable legal standing for Nature and allow its representatives to fight court cases on its behalf.

The current prime example for this approach is the 2008 Ecuadorian constitution, which invests Nature with inalienable rights to respect, restoration, and regeneration. These are positive rights, and any citizen can go to court on behalf of Nature to defend them.

In New Zealand, on the other hand, the Whanganui River has been given the ability to assert itself in court through dedicated representatives: but the exact nature of its rights hasn’t been defined and is up to its legal guardians to determine. There are no positive rights of Nature stated, the river is merely given the same ability as any person or organization: to defend itself in court.

A third approach is expressed in the opinion published end of 2017 by the Inter-American Court of Human Rights, which has garnered great attention and shows that there is a growing mainstream debate of environmental law. The central passage in this regard reads as follows: “This court recognises the existence of an undeniable relationship between the protection of the environment and the realisation of other human rights, in which environmental degradation and the adverse effects of climate change affect the effective enjoyment of human rights.”

The opinion goes on to proclaim a responsibility of states to protect the right to a healthy environment even beyond their borders and as well for future generations. There are countries, including Spain, France, Portugal, Greece, and Finland, which already recognize a human right to a healthy environment within their borders: the addition of extraterritorial obligations is likely to have a wide and lasting impact in legal debate, as is defining the right to a healthy environment as a collective one. If an intact environment is fundamental to the existence of humanity, it has to be protected by all means: and many argue that investing it with legal rights would be the best way to achieve that.

Legal rights for Nature, be they positive, negative, or linked to human rights, are an alternative to the commodification of Nature as a protection strategy, for example through carbon exchange schemes such as REDD+ or emission trading, which use financial incentives to stop deforestation and pollution. If Nature has inalienable rights similar to or included in human beings, those rights could and should be enforced without monetary investment or interest.

## Achievements and Challenges Around the Globe

The developments in the last decade have been spearheaded by strong advocacy from indigenous peoples, who were crucially involved in Ecuador, Bolivia and New Zealand, and by environmental organisations like the Global Alliance for the Rights of Nature (which f. i. proposed a Universal Declaration of the Rights of Mother Nature in 2010, 62 years after the Universal Declaration of Human Rights, and holds Rights of Nature Tribunals since 2014), the Center for International Environmental Law (CIEL), or the Community Environment Legal Defense Fund (CELDF).



Important steps in the propagation of rights of Nature include the 2011 Ecuadorian Vilcabamba River case, in which the river successfully defended itself in court to stop a highway construction project, cases in 2015 in Pakistan and the Netherlands, an Irish court case in 2017, and ongoing litigations in Belgium, Germany, New Zealand, Norway, and the United States (Colorado River v. State of Colorado), among others. There are successes such as the aforementioned personhood for the Whanganui River or the 400,000 acres Te Urewere National Park in New Zealand, which now governs itself and belongs neither to New Zealand's government nor to the Māori who argued for its protection; and there are setbacks and frustrations, for example in fighting the oil industry in Ecuador (which drills deeper into Yasuní national park despite all protests) or mining companies in Bolivia, whose great importance for the economy gives them leverage despite the new constitutions.

In South Asia especially, progress seems slow: but with the Indian National Ganga River Rights Act in 2017 and Nepal considering a constitutional amendment for the legal protection of the environment, some headway is being made. If mountains, rivers, and entire ecosystems gain legal standing, it grants their advocates a new set of tools to defend the environment and the people that depend on it in court, whether in Latin America, New Zealand, the US, Europe, or across Asia.

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## Awareness on Sustainable consumption and production and climate change to media personnel

An Awareness Workshop on Sustainable Consumption and Production (SCP) And Climate Change to Media personnel was held at the Kingsbury Hotel on the 6th of March 2018. It was organised by SWITCH-Asia Sustainable Consumption & Production National Policy Component, Ministry of Mahaweli Development & Environment; SLYCAN Trust and Sri Lanka Press Institute.

The workshop dealt with presentations and discussions about the importance of sustainable consumption and production and how it links to climate change and the role of communicators and sustainable consumption and production.

The Additional Secretary of the Climate Change Secretariat, Mr. Mapa Pathirana delivered the opening remarks by stating the importance of sustainable development goals for a green lifestyle and how it is important to deliver these values to the ground levels of the society.

Eng. Gamini Senanayaka, Key Expert of SCP NPSC for Sri Lanka introduced what is sustainable consumption and production and why it is important environmentally and socially. He was followed by Ms. Vositha Wijenayake, Executive Director of SLYCAN Trust, who addressed climate change through sustainable consumption stressing out the importance of reducing meat consumption, adopting a meatless lifestyle, shifting to organic agriculture and choosing organic products in order to achieve the UN sustainable development goals and help Sri Lanka to tread towards a greener and sustainable future.

Mr. Kumar Lopez, CEO of the Sri Lanka Press Institute continued the workshop by addressing the role of journalists and communicators and sustainable consumption and production. The workshop ended with a Question and Answer session and a group work session where the participants were divided in to their respective media groups and they came together to discuss and suggest what are the best methods to disseminate the discussed themes to the local society through their respected medias.



## **SLYCAN Trust celebrates International Women's Day 2018**

SLYCAN Trust celebrated International Women's day by organising a roundtable discussion that focused on the empowerment of women through sustainable initiatives, education and capacity building. The discussion featured women who had pushed boundaries in their respective fields, through various initiatives related to sustainability and economic environment. The speakers included; Ms.Achala Samaradivakara, Co-founder and Managing Director of Good Market, Ms.Shermila SriKumar, founder of Macklys Garments and Ms.Vositha Wijenayake, the Executive Director of SLYCAN Trust.

The aim of the event was to celebrate the great work of women, championing their initiatives while bridging gender based gaps by promoting economic empowerment, education, being included in decision making roles and preventing gender based discrimination in society. The discussion features opportunities for women to engage in sustainable initiatives as well as recognizing the challenges and needs for empowering women at the grassroots level.



## **SLYCAN Trust and Meatless Monday at 'Yowun Puraya' National Youth Camp – Nikawaratiya 2018**

The 9th National youth camp 'Yowun Puraya' was held at Kurunagala from March 28th to the 1st of April. The camp organised by the Government of Sri Lanka with the National Youth Services Council was aimed at developing leadership skills through a series of capacity building programmes and to motivate them to contribute to the National Development process in the future and to provide them with the necessary skills to do so. The camp brought together 6000 Sri Lankan youths and 100 international participants where they all took part in leadership and outward bound training programs.



SLYCAN Trust along with Meatless Monday organised an awareness stall at the premises of the youth camp to educate the youth and the visitors to the youth camp about the importance of sustainable life styles and how leading a meatless lifestyle contributes to this. The link between meatless lifestyles and climate change was also stressed out. It was mentioned that food production is a major contributor to climate change and that industrial livestock supply chains contributed to 14.5% of human induced green-house gas (GHG) emissions.