

Rights of Nature, Globalization and Legal Pluralism
International Academy of Comparative Law
General Congress – Asunción 2022

I. Description

During the last two decades, the connections between nature, human beings and law have become a relevant object of study around the globe. The recognition of rights to domestic animals in India and Pakistan, the constitutionalization of the rights of nature in Bolivia and Ecuador, and the recognition of rights to a river in New Zealand, for example, have attracted the attention of legal scholars both in the Global North and South. The description, analysis, and evaluation of the intersections between nature, persons, and legal systems, have also generated discourses that complement, contradict, and interweave. These discourses examine different dimensions of the problem from diverse political, theoretical, and disciplinary perspectives. Thus, for example,

- (i) environmental law scholars have focused on the way in which law intersects with biocentric and anthropocentric perspectives of nature to protect or undermine ecosystems;
- (ii) constitutional law scholars have focused on the constitutionalization of the rights of plants, minerals, and animals in countries such as Ecuador and Bolivia, as well as the advantages and disadvantages generated by these processes of juridification of nature;
- (iii) legal theorists have focused on the way in which modern law intersects with moral, political, and legal traditions usually marginalized such as those of Indigenous groups; and
- (iv) civil law scholars have focused in the way that traditional ways of conceptualizing and regulating property are challenged by the idea that nature has rights.

The diversity and richness of these political and epistemological processes, however, are not only valuable for the different ways in which they contribute to the understanding and criticizing the relationships between nature, human beings, and law. These processes are valuable as well because they are a privileged space for understanding and questioning key aspects of contemporary globalization and legal pluralism. The rights of nature allow us to examine four problems that are of particular interest to comparative law and for global legal pluralism: the processes of cross-fertilization between national legal systems; the interaction, clash, and influence of national legal systems and international law; the relationships between transnational theoretical discourses, international law, and national legal systems; and the geopolitics of legal knowledge.

This project, which is part of the XXI General Congress of the International Academy of Comparative Law, therefore, pursues the following four objectives:

- (i) To examine how the dialogue between legal systems of both the Global South and North has contributed to the creation of national and international concepts, rules, and principles related to the rights of nature.
- (ii) To explore the interactions between national legal systems with international law that have allowed the articulation of both a transnational discourse on the rights of nature and the creation of national and international legal regimes that aim to regulate the relationship between human beings and nature.
- (iii) To analyze the way in which transnational theoretical discourses on the rights of nature have interacted with and have been used by very diverse legal actors and levels: from local and transnational non-governmental organizations to governments, international institutions, and universities, passing through political parties and ordinary citizens.
- (iv) To study the processes of production, exchange, use, and legitimation of legal knowledge that cut across the discourses on the rights of nature.

To achieve these ends, national chapters of the International Academy of Comparative law have chosen a group of national rapporteurs. These rapporteurs are in charge of drafting national reports on the object of study of this project. Ralf Michaels and Daniel Bonilla, the general rapporteurs of the project, have also chosen a group of special rapporteurs who will write reports on aspects related to the international and theoretical dimensions of the rights of nature. Michaels and Bonilla will also be in charge of drafting a general report that puts national and special reports in dialogue. In this general report, the rights of nature will be in dialogue with globalization and legal pluralism. The former will not simply be an example to illustrate the latter, nor the latter a pretext for studying the former. In the general report, the particular objects of study will intertwine with the general objects of study.

II. Questions

National rapporteurs are asked to write their reports as responses to the following questionnaire in the structure given. Your reports should not only consist of brief answers to the question: we hope you will write elaborate and referenced responses, focusing not just on statutes and results of court opinions (law in the books) but also the law in action. Also, although we urge you to stick with the structure of the questionnaire, we would much prefer your reports to be in the form of an independent text, rather than simply answers to individual questions. There is no need to repeat the questions in your reports.

Special rapporteurs have some more freedom in their texts, given that many of the questions will not fit their particular topic. Nonetheless, we believe the questionnaire can serve as a source of information for what to expect from other reports, and as a good guideline of questions that may be relevant for you as well.

We ask that your reports not extend thirty pages.

1- Existence and Contents:

- a. Are rights of nature (nature as a whole, ecosystems, or particular components of an ecosystem) recognized in your legal system? (We do not ask for rights of animals here.)

If the answer to this question is positive, when, in what form (e.g., Constitution, statutes, decrees, case law, bureaucratic practice), and through what processes were these rights recognized? Are there proposals to abolish or limit them or their effects? Have they been criticized?

If negative, are there any proposals to recognize the rights of nature in your legal system? How are they being discussed, how likely is it that they will be adopted?

- b. What specific rights, if any, were recognized to nature (or are proposed to be recognized to nature) in your legal system, e.g., legal personality, life, standing, ability to enter into contracts, ability to inherit, etc.? How do these rights relate to broader legal frameworks, e.g., on environment, nature conservation, land ownership, or natural resources? Are they parts of such larger areas, or do they stand alone?
- c. What are the central characteristics of the rights of nature that your jurisdiction recognizes (or that are proposed), e.g., main legal concepts and key procedural elements? Or What are the central characteristics of the rights of nature that are proposed to be recognized in your legal system?
- d. With what other rights can the rights of nature collide in your legal system, e.g., resource extraction or property rights? How are such conflicts resolved? Be specific – report existing case law.

2- Legal and political operators

- a. What *domestic* legal, political, or civil society institutions or groups promoted the recognition of or effectively recognized the rights of nature in your jurisdiction, e.g., congress, courts, administrative agencies, NGOs, or Indigenous groups? What motivated those institutions to do it? What legal, political, or civil society institutions or groups opposed the recognition of rights of nature? What motivated them?
- b. What *international or foreign* institutions or groups played similar roles?
- c. As between domestic and international/foreign influences, are they in tension and, if so, how is that tension resolved? What is their relative grade of importance?

3- Enforcement

- a. Who can exercise the rights of nature e.g., the State, any citizen, specific groups of citizens?
- b. In what courts, if any, or before what state authorities, can such rights be enforced?
- c. What procedure(s) must be followed to exercise these rights?
- d. How are rights of nature enforced?

4- Theoretical sources and foundations

What are the theoretical (philosophical, biological, religious, cosmological, etc.) arguments, sources and foundations that gave rise to and ground the rights of nature that were recognized or are intended to be recognized in your legal system? Are there any tensions between the theoretical sources and foundations of the rights of nature recognized in your jurisdiction and traditional sources and foundations of your legal system?

5- Relationship between national legal systems

- a. Did other legal systems (foreign or substate) influence, e.g., were an inspiration or source for the recognition (or the recognition proposals) of the rights of nature in your jurisdiction?
- b. Have the rights of nature that were recognized by your legal system had any impact on other national jurisdictions?
- c. How are rights of nature treated in conflict of laws? Can foreign rights of nature be enforced in your system? Can your system's rights be enforced abroad?

6- International law:

- a. Did international law influence in any way the recognition (or the proposals for the recognition) or the rejection/limitation of the rights of nature in your jurisdiction?
- b. Have the rights of nature that were recognized by your legal system, or their rejection, had any impact on international law?

- c. Have there been, or could there be, any conflict of laws issues between international law and the rights of nature recognized by your legal system? If any, how have they been or would they be resolved?

7- Efficacy

- a. What individuals, groups, or institutions, if any, are recognized as legal guardians of nature in your jurisdiction? Who has used rights of nature to defend nature in your jurisdiction, e.g., NGOs, state, citizens, Indigenous groups, universities?
- b. Has the implementation of the rights of nature that were recognized by your legal system been effective (please state the indicators that you are using to evaluate the effectiveness of rights of nature)? What legal, theoretical, or empirical factors have been an obstacle for the implementation of these rights?

8- Consequences

- d. What political, legal, environmental, economic, or cultural consequences has the recognition of the rights of nature had in your country?

III. Criteria for writing the reports.

In writing your report, please keep the following points in mind:

- 1- Write the answers to the questionnaire in English (preferred), French, or Spanish.
- 2- Cite the relevant literature and include a list of the bibliography used at the end of the questionnaire.
- 3- Cite the case law, statutes, decrees, etc. completely. Include the full texts of the relevant legal standards in the footnotes.
- 4- Use technical terms consistently.
- 5- Explain concepts that are typical of your legal system or legal culture and unknown or little known in other legal systems.