Realising Rights of Nature: Conceptual Foundations for Legislation[1]

Lawyers for Nature

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Notes

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[2] Version 1 content completed in December 2025.

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1.1 Introduction

This report seeks to map out the breadth and depth of what Rights of Nature legislation could cover. This covers the different elements which a legislative framework would need, the different dimensions of rights and subjecthood, the different legal effects and areas of law which could be included, and some possible legislative models. Much of this is relevant for anyone thinking about Rights of Nature beyond just legislative approaches.

The germination of this project was the question: what could Rights of Nature legislation in the UK look like? This report does not answer this question, but seeks to provide the groundwork for consideration of what form legislative frameworks could take and the contents they might have. There is not one way to bring about Rights of Nature – which is, ultimately, about transforming the breadth of a legal system and relationships with non-human nature across the social order. Instead of one linear course, there are a few dimensions and directions which can be implemented to different intensities and degrees.

This section contains:

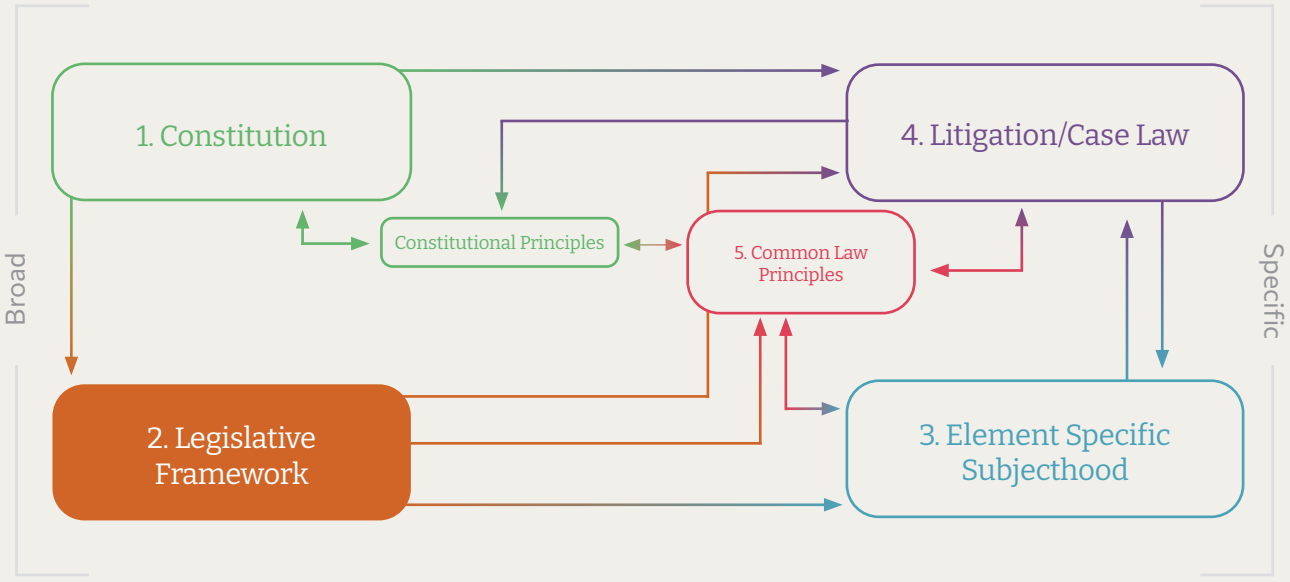
1.2 Contents

1.3 Executive Summary

This report seeks to cover the substance of what Rights of Nature legislation might contain. In doing so, it contains a combination of conceptual and substantive content and schemas for the elements of legislation and different legislative models. It does not seek to propose any particular legislative approach but rather to set out the possible elements, modules and models – though in setting these out, various strengths and weaknesses of different approaches are discussed.

There is not one simple pathway for implementing Rights of Nature laws but rather a range of options. For the most part, these are more like different parts of a jigsaw puzzle which compliment each other than competing choices. Ultimately, Rights of Nature seeks to change the breadth of a legal system so as to cover the various social relations with different aspects of (non-human) nature. While this would require transformation and legal change on a huge scale, it can be done incrementally and programmatically, as shown in this report. There are various ways in which legislation could end up having little meaningful effect, being formal rights that have no substance, or no teeth, or nature-subjects cannot be meaningfully represented, or other such pitfalls. These are discussed shortly in **1.3.2 Thematic Overview, Substantive Points and Pitfalls.**

Figure 1.i: Legislative Framework Only



My previous research report, **'Realising Rights of Nature: Understanding the Variety of Legal Instruments',**[4] set out the different types of Rights of Nature legal change: Constitutional Change, Legislative Framework, Element Specific Subjecthood, Litigation and Common Law Principles (for full diagram see **2.1 Rights of Nature: An Overview**). This research report looks only at legislative frameworks.

[4] Alex May, 'Realising Rights of Nature: Understanding the Variety of Legal Instruments', Lawyers for Nature, September 2023, available at https://interconnectedlaw.com/rights-of-nature-taxonomy

At the weaker end, legislation could establish Rights of Nature as policy considerations for the state within existing administrative law, or establish a new governmental body to protect nature. Stronger and fuller implementation could include strong constitutional-style rights, obligations on landowners, and civil causes of actions where citizens and NGOs could bring immediate litigation on behalf of nature-subjects against private (or public) actors who harm them to protect and restore damage. There could also be an inherent procedural right for nature-subjects to be established as legal subjects. Each of these parts can be implemented with different intensity too.

As there are different ways this report's contents could be engaged with and different possible readers, this section gives three different overviews. The first (immediately below) is the briefest overview in section order, building up from foundations through the main pillars to the final conclusion. The second (**1.3.1 Legislative Schemas**) is much more detailed, starting at the top of the pyramid with the final schema of the building blocks of legislative models and working backwards. The third (**1.3.2 Thematic Overview, Substantive Points and Pitfalls**) sets out various themes and points contained in the report – a tour of the different rooms which a reader may wish to visit. Readers who are generally interested in Rights of Nature, but not specifically about legislative frameworks, should start there.

Section overview:

- **Section 2: Foundations.** This includes an overview of Rights of Nature, the methodology and disclaimers of the report, and conceptual foundations about how we understand subjecthood and rights.
- **Section 3: Legislative Elements and Effects.** This covers the five different elements of Rights of Nature legislation: Subjects; Rights; Obligations/Legal Effects; Representation; and Other Legal Effects. The subsection on legal effects covers: considerations for the state; constitutional-style rights; private law effects with civil obligations and/or effects on landowners; and the incorporation of nature-subjects as legal entities.
- **Section 4: Case Studies.** This looks at Rights of Nature legislation which has been proposed or introduced.
- **Section 5** is intentionally blank (see explanation in **1.4 Author's Note** and **2.2 Methodology and Disclaimer**);
- **Section 6: Legislative Models** sketches out different models and options for Rights of Nature legislation in the manner of a simple blueprint or building blocks.

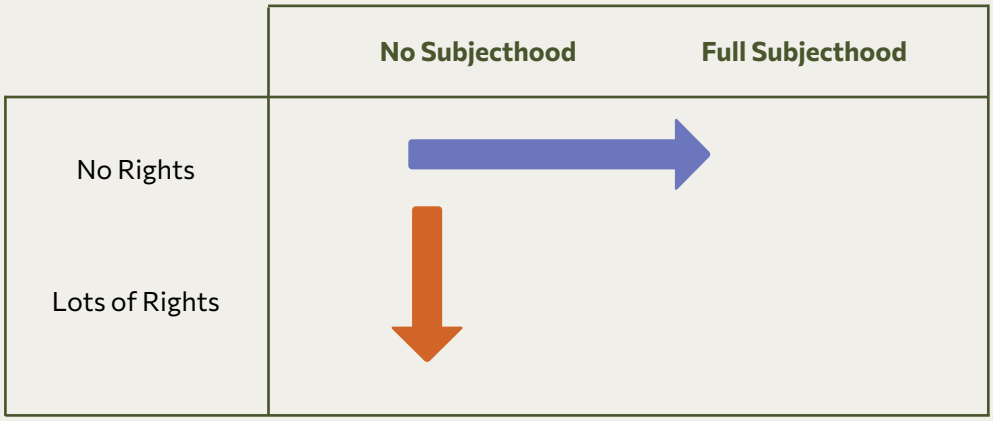
1.3.1 Legislative Schemas

This overview goes in reverse order, starting with the schema of legislative models and works downwards through the different elements. I hope that the understanding and frameworks in this report are useful for designing and discussing Rights of Nature legislation.

Section 6 of the report sketches out different models or possibilities for Rights of Nature legislation, in the manner of a simple blueprint of the frameworks or building blocks for legal effects and obligations. This is understood as two dimensions: 'rights', which is really about their legal effects for both public law and private law (discussed in detail in **Section 3**); and subjecthood, the establishing of nature-subjects as specific legal entities.

This two-dimensional approach builds outwards from the existing main two models of constitutional rights with ad hoc representation (as in Ecuador) and the 'personhood' model seen with the Mar Menor in Spain and in New Zealand, challenging the idea of two distinct models and showing that each exist on a spectrum and can be combined in hybrid approaches. The idea of 'subjecthood on a spectrum' and decoupled from rights is set out in **Section 2.3**

Figure 2.iii: Subjecthood and rights as a two-axis spectrum



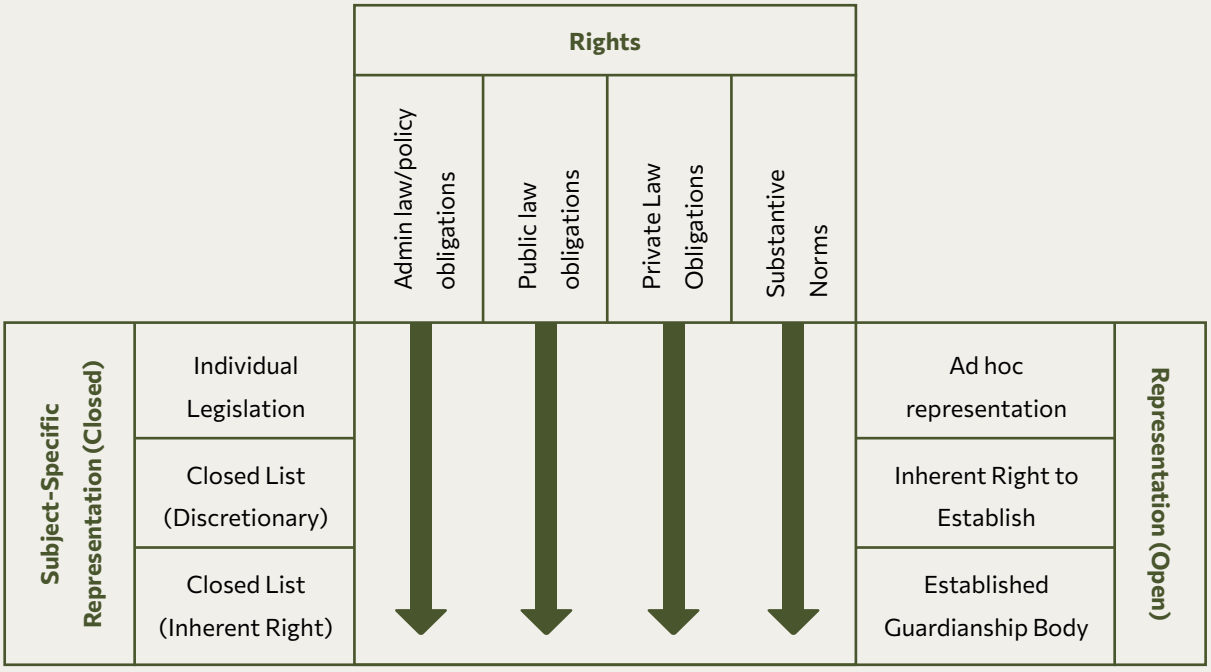
The legal effects of Rights of Nature are independent and modular, and can each vary in their strength or intensity. The modular nature also makes clear that Rights of Nature laws can be introduced and developed incrementally, and also that different types of nature-subjects could have different legal effects. While the general legal effects of Rights of Nature and the subjecthood of nature-entities are different dimensions of Rights of Nature, each have a range of options for how they are implemented and how they are combined well beyond these existing two models.

Figure 6.ii: Legislative Framework Schema

General Rights (Modular)	Admin law/policy obligations	Public law obligations	Private Law Obligations	Substantive Norms
Subject-Specific Representation (Alternative)	Individual Legislation	Closed List (Discretionary)	Inherent Right to Establish	

This schematic is then developed by being integrated with the idea of rights as modular and subjecthood as spectral in Section 6.4 Combined Hybrid Approaches. Modular legal effects (and with varying intensity) and spectral subjectivity means that there are many different ways they can be combined, and even within one jurisdiction or legislative framework, mixed approaches are possible instead of a homogenous one being necessary.

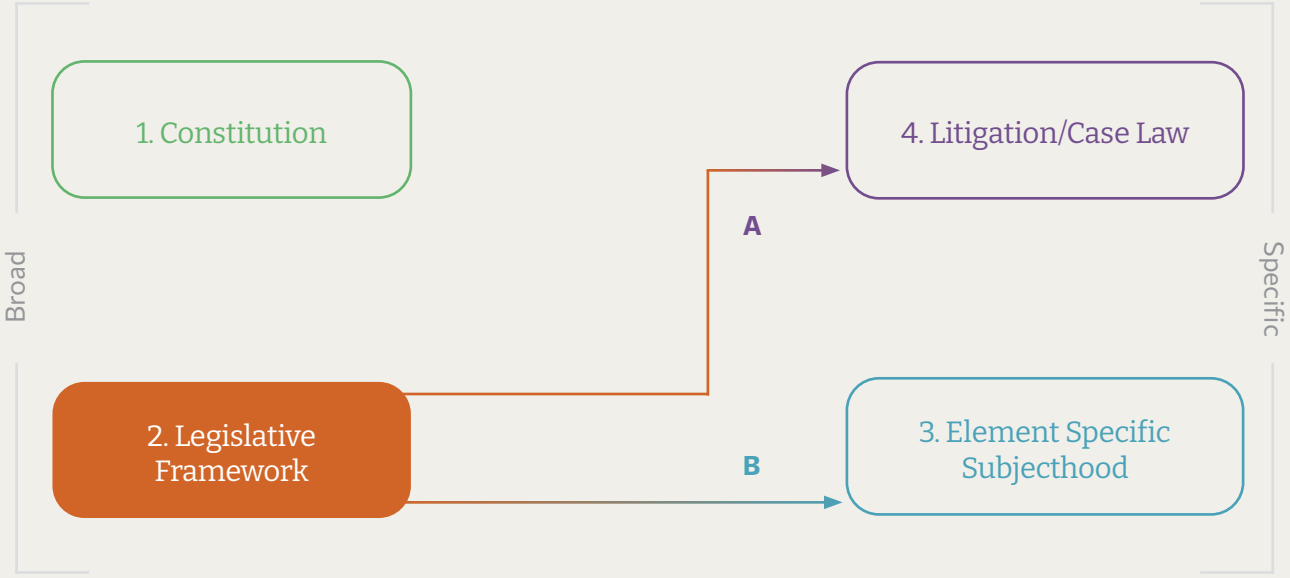
Figure 6.iv: Legislative Framework Schema II



Some different possible combinations and approaches are discussed further in that section: relating to rights and legal areas; relating to intensity of legal effect; and relating to type of nature-entity. Ultimately, there are many different ways that Rights of Nature and nature-subjectivity can be combined and implemented. While the different options may sometimes be best suited to different approaches, they also allow for stronger or weaker implementations, and could be beneficial for a progressive implementation.

The two dimensions of legislative frameworks could also be understood in the taxonomy developed in my previous report and mentioned earlier, though this is a simplification:

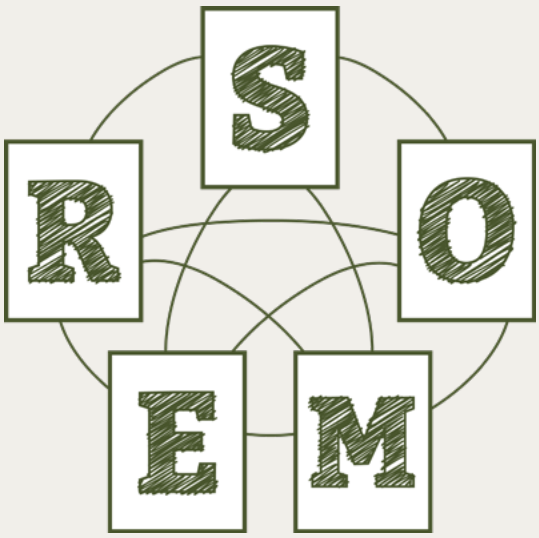
Figure 6.iii: Two dimensions of Legislation on the taxonomy diagram



Various topics relating to subjecthood are throughout the report. 2.3 covers the conceptual foundations for thinking about legal subjecthood as being on a spectrum. Creating nature-subjects is not necessarily straightforward, as discussed in 3.1. 3.1.6 sets out different ways in which nature-subjects could be established procedurally and the idea of an inherent right to such. 3.3.8 covers various aspects of what incorporation would mean and what legal infrastructure would be needed. and 3.4.5 talks about guardianship bodies as a mode of representation.

The width and depth of the different elements which any legislative framework must and could contain is set out in Section 3 and summarised below.

Figure 3.i: 'Five Elements' graphic



Section 3 covers the different interwoven parts that any Rights of Nature legislative framework must include. This is set out as being 4+1 elements: Subjects; Rights; Obligations/Legal Effects; Representation; and a catch-all Miscellaneous/Other Legal Effects. This section sketches out the possibilities in each of these elements.

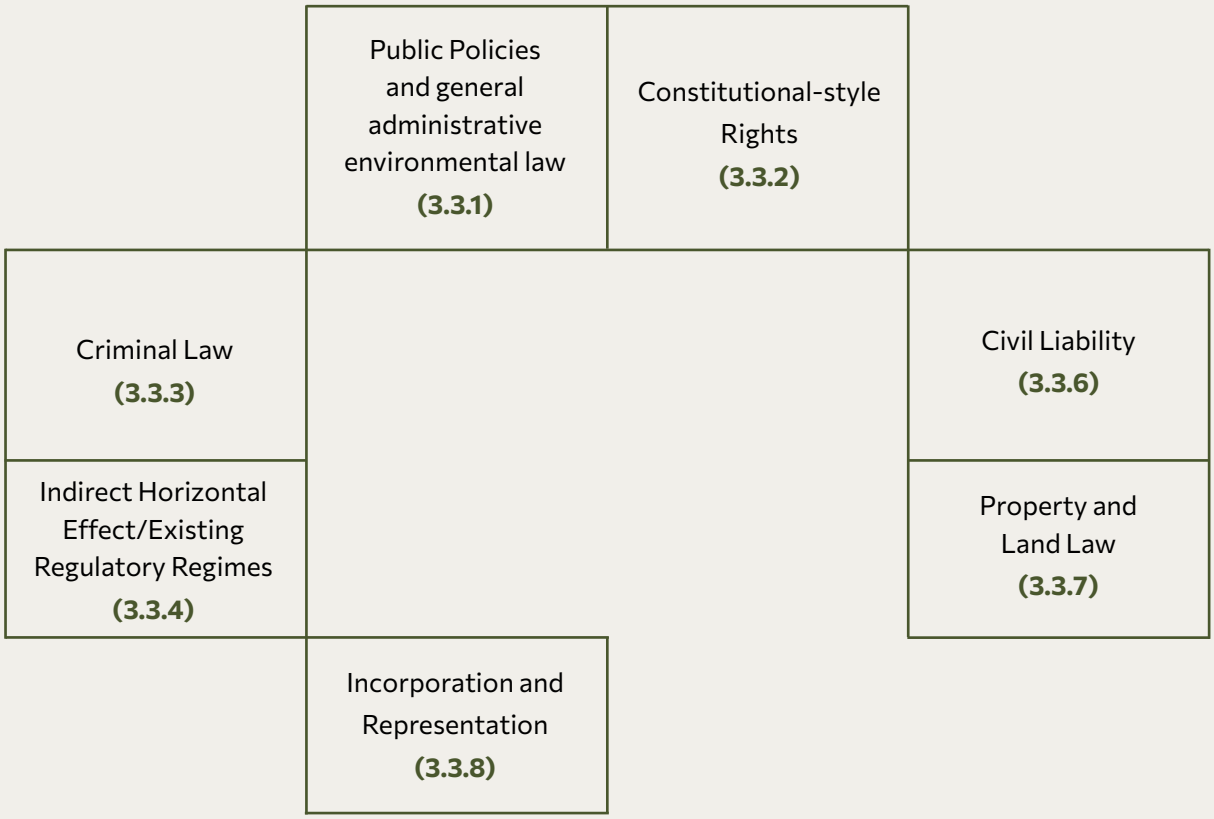
Various different nature-subjects (**3.1**) are possible, and how they should be established and how they are conceptualised is not straightforward. It is possible – perhaps necessary – to treat different types of nature-entity differently. This report does not go into detail or discussion about which rights should be included for Rights of Nature (**3.2**), but it does seek to add the conceptual foundations of how we understand rights (**2.4** and **2.5**) to considerations on Rights of Nature. Of particular note, linking the 'concentric circles' model of rights (**2.4.2**) to a relational-ecological conception (**3.1.2**) of nature-subjects could be a very useful legal conceptualisation for Rights of Nature.

Human representation is necessary for nature-subjects and their interests, and there are different possibilities for how Rights of Nature are enforced and represented (**3.4**): from the state, either from a government department or independent public authority; from civil society, such as any person, a local community, and/or NGOs; or from specific Guardianship Bodies established for a nature-entity. Each mode has advantages and disadvantages, such as in relation to motivation, conflicts of interest, political interference, funding, knowledge, expertise and ability. Allowing civil society to represent the interests of a nature-subject ad hoc – or establish legal entities with suitable representatives for specific nature-subjects – would mean that nature protection would be democratised instead of centralised in the state. The different representative modes need not be distinct but can be complementary (**3.4.6**), which is more likely to lead to an outcome in the true interest of a nature-entity.

Section 3.3 goes into detail about the various possible legal effects of Rights of Nature, which function like independent modules and can cover almost the entire breadth of a legal system. These could include: being policy and administrative considerations for the state; constitutional rights with primarily vertical effect; private law effects with civil obligations and/or effects on landowners; and the incorporation of nature-subjects as legal entities. Each legal area could be implemented in strengths or intensities, and as these effects would change the existing state of play and interact with existing legal norms, there are trade-offs between harsh and broad-brush strokes with quick and strong effects versus slower, nuanced and detailed changes.

This 'problem of legal transition' and different ways new Rights of Nature norms could interact with existing legal regimes is discussed in **3.3.4**. Although fast-paced change can come with difficulties, it must be kept in mind that the purpose of Rights of Nature laws is to transform from destructive and unjust relations with the rest of nature towards more just and sustainable ones, for the benefit of non-human nature itself and for humans. The injustices inevitable in changing from the status quo (including with 'legal stability') should not be given priority over addressing the current mostly ignored ecological and social injustice which Rights of Nature changes seek to address.

Figure 3.ii: Different obligations and legal areas



Section 3.5 covers the other smaller parts of legislation which should be included in the framework and could be included in laws. Many of these relate closely to one of the main elements. These include general operationalising provisions, procedural rights for access to justice and to enable wider participation by representatives of nature-subjects, environmental legal principles, and adding normative depth to Rights of Nature in legislation to give guidance on judges on how to resolve the conflicts of both legal norms and balancing rights-interests.

Section 4 is case studies of existing Rights of Nature legislation and draft legislation, using the structure of Section 3 to look at each dimension of Subjects; Rights; Obligations/Legal Effects; Representation; and Miscellaneous/Other Legal Effects. This features: a 2019 draft of legislation introduced to the Western Australia parliament, the Rights of Nature and Future Generations Bill 2019; the two pieces of legislation passed in Bolivia in 2010 and 2012 (Law 071 of 2010, Law of the Rights of Mother Earth and Law 300 of 2012, Framework Law of Mother Earth and Integral Development to Live Well); and a 2021 draft piece of legislation from Peru, Proyecto de Ley 6957/2020-CR. It was intended to also include three further case studies for Uganda, Panama and the Mar Menor legislation. Unfortunately, it has not been possible to complete these (see explanation in 2.2) and only a brief overview was possible. Section 5 is blank and similarly unfinished.

It was intended to be a comparative analysis between the different legislative frameworks. Unfortunately, it has not been possible to complete this either.

The work on this report has been impaired by the author's illness, and the decision taken to publish it at this stage, leaving the planned numbering in place both to avoid the effort of renumbering the internal references and to leave open the possibility that these sections could be completed and added to an updated version of this report. This is expanded upon in the author's note (**1.4**) and the methodology and disclaimer section (**2.2**).

1.3.2 Thematic Overview, Substantive Points and Pitfalls

This section gives an alternative overview, setting out the various themes which are covered and substantive points which are made in this report. This allows readers to dip into particular points of interest in relation to Rights of Nature which are not specifically about legislation. To assist with that, this subsection will set out the key substantive issues which are covered in this report which may be of interest separate to the schematics of legislation. This includes spotlighting particular pitfalls where Rights of Nature laws might easily fail to be effective.

Section 2.1 Rights of Nature Overview. This includes a delineation of the underlying values and plurality of the Rights of Nature movement, and the different legal pathways available. It also makes the argument from a socio-ecological approach that the focus of legal implementation should be on how legal rights will change the underlying social relations. There is a serious pitfall if too much focus is placed only on changing the law, which could result in formal rights which have no real material effect, or cannot overcome entrenched social relations or political opposition. These themes are also discussed in relation to rights theory in **2.4** and **2.5**, the 'Problem of Legal Transition' in **3.3.4**, and the need for substantive depth for Rights of Nature in **3.5.**

Section 2.3 Subjecthood on a Spectrum. This sets out conceptualising both legal subjecthood and having rights as being on a spectrum. Often, legal subjecthood is treated as a binary and the idea of 'personhood' for nature-entities is discussed as if it is simple. Yet the ability to act as active participants in a legal system – and the rights held by a subject – is better understood as a spectrum which an agent can have to varying extents. Ad hoc representation of their interests is a lesser form of subjecthood, while being established as a legal entity which can act proactively is a greater form. Yet a nuanced approach is needed for nature-subjects: existing legal subjects – human individuals and incorporated entities – do not have identical abilities as subjects, so new models for nature-entities (which are not 'persons' anyway) to be legal subjects need to be developed for what participation in a legal system beyond their substantive rights looks like.

Sections 2.4 Understanding Rights looks over legal theory in relation to rights, including various aspects of human rights theory, and various points which Rights of Nature theory needs to consider. This includes distinctions between 'positive' and 'negative' rights, first-order and second-order rights, and the Hohfeldian classification of rights. 'Traditional' legal rights generally have a clear correlative obligation to the right, with constitutional rights having strong normative force and narrow scope. However, developments in human rights have moved instead to a rights-interest model which is more about ensuring that interferences are justified, with rights-interests on a spectrum with the 'core' valued more strongly than 'peripheral' elements of it. Interferences with a (human) right must be 'proportionate' and 'balanced' against the benefits of the interference – which are usually themselves rooted in protecting or furthering other

(human) rights. This requires a normative valuation of both sides to ensure that the interference is not disproportionate.

Section 2.5 Considerations for Rights of Nature bbuilds on this by highlighting various points to be considered for Rights of Nature, such as which rights should be traditional rights and which are treated as rights-interests with concentric intensities, and whether there are horizontal or private law effects as well as vertical ones. There is also a significant pitfall to be wary of that Rights of Nature simply get outweighed by competing human rights-interests and the status quo of an ecologically destructive social order. With justification and 'balancing' of interferences with rights, when there are competing human rights claims, such as for housing, food, water, economic development, and to private property, it would be all too easy for judges and politicians to simply apply anthropocentric normative frameworks to justify serious interferences with Rights of Nature. This could be a serious problem for meaningful Rights of Nature, taking them one step forward to having formal legal recognition but without any substantive effect, the destructive status quo prevailing. This can be addressed – as discussed in 3.5 – by adding normative depth to Rights of Nature in legislation to give guidance on judges on how to resolve the conflicts of both legal norms and balancing rights-interests.

Section 3.1 Subjects looks over the different nature-subjects which could be established. This includes commentary on the conceptualisation of 'nature as a totality' and a reminder that ecosystems and nature-subjects do not exist as such in reality but are translations (in this case) into a legal representation. It may be better to take differing legal approaches for different types of nature-subject. A relational approach is also key, as ecosystems (and many other nature-subjects) are about relationships beyond one bounded location, and whether something is part of an ecosystem often on a spectrum of intensity instead of a binary question. This ecological nature could pose legal difficulties, and there is a pitfall if these relational entanglements are not properly considered. Linking the more spectral conceptualisation of rights in **2.4.2** to this relational-ecological conception of nature-subjects could be a very useful legal conceptualisation for Rights of Nature.

3.1.6 Inherent Rights versus Closed List Approach sets out different ways nature-subjects could be linked to substantive rights: inherently having them or requiring them to be granted. There could also be an inherent procedural right to be recognised or established as a nature-subject – a sort of 'right to have rights'. **3.3.8 Private Law IV: Incorporation, Contract and Consent** looks over various legal aspects of what representative organisations for nature-subjects, including their creation, governance, and giving proactive consent. The different possibilities for nature-subjects are discussed further in **6.3 Subject Specific Representation.**

Section 3.3 looks over the breadth of how the legal system could be transformed in relation to Rights of Nature. The full transformation is a huge undertaking, but the different areas can be developed as independent modules. Each legal area has considerations for the strength or intensity of implementation as existing legal norms are changed (with

potentially large social consequences), and there are trade-offs between harsh and broad-brush strokes with quick and strong effects versus slower, nuanced and detailed changes.

The different legal areas discussed are: policy and administrative law considerations for the state (**3.3.1**); constitutional-style rights with primarily vertical effect (**3.3.2**); criminal law (**3.3.3**); private law effects with civil obligations (**3.3.6**) and/or effects on landowners (**3.3.7**). **Section 3.3.4** considers the interaction of new Rights of Nature norms with existing legal and regulatory regimes, with a range of possibilities for which takes precedence. In each domain is the potential pitfall of weak implementation and having Rights of Nature introduced as secondary to existing legal norms (**Section 3.3.4** includes a discussion of 'the problem of legal transition', summarised below). There is also a pitfall of introducing Rights of Nature solely in relation to the state, and it is easy to imagine the idea coming into existing environmental policy in a watered-down form only instead of as meaningful rights. Ultimately, Rights of Nature will be far less effective without private law causes of action, as these allow for immediate prevention and restoration instead of having to go via state bureaucracy for enforcement and action.

Section 3.4 looks at different modes of representation, from state authorities, the public at large, NGOs and guardianship bodies. While each has advantages and disadvantages, such as in relation to motivation, conflicts of interest, political interference, funding, knowledge, expertise and ability, there can be a plurality of overlapping possibilities with complementary synergies and/or positive tensions. This plurality approach is almost certainly the best approach for ensuring nature-interests are well represented, as Rights of Nature interests fall on various sides in the maelstrom of social conflicts, and avoids having a single point of weakness.

There are many possible pitfalls, where the law could otherwise be well set up but a failure of representation means no substantive effect or protection for Rights of Nature. One obvious pitfall would be a single point of failure, such as reliance only on one government department. Another

pitfall would be a reliance on the state to represent or protect nature-interests. This falls to a classic case of 'democracy (or just state interests) versus rights', as political reliance is likely to be difficult given that protecting Rights of Nature would often be politically unpopular, and many political ideologies do not support them. This would politicise something which might otherwise be a stronger rights issue. The alternative is to democratise the representation of Rights of Nature, such as by NGOs, local communities, or the public at large. This, of course, has the pitfall of needing adequate funding, which would otherwise prevent meaningful access to justice.

Establishing guardianship bodies for nature-subjects brings with it many benefits for their representation over relying on ad hoc protection of floating rights-interests. Becoming an established legal subject almost functions as a 'right to have rights' for nature. Their ongoing relationship with the nature-subject has advantages including knowledge, expertise, community and ecological ties, and allows for a more proactive protection and representation of their interests that is not possible with just ad hoc representation (discussed also in **3.3.8**).

vvw includes a discussion of how new Rights of Nature norms might interact with existing legal regimes and 'the problem of legal transition' with the justice implications of legal change versus the status quo. There may be norm conflict with new Rights of Nature laws and existing environmental regimes (and other areas of law). There is a significant pitfall in shying away from this change and giving preferences to the status quo (socially or legally), but 'legal certainty' should not mean that there can be no change. Change will inevitably involve loss both for (human) vested interests and incidentally for people in general, in some ways which may seem unfair or otherwise be unjust. Yet it must be kept in mind that the purpose of Rights of Nature laws and justification for this change is the transformation from destructive and unjust ecological relations towards more just and sustainable ones, for the benefit of non-human nature itself and for humans.

1.4 Author's Note

Given the circumstances in which I wrote and published this report, I felt that a more personal note from the author ought to be included – in addition to **2.2 Methodology and Disclaimer.** Namely, that I became severely ill with post-acute covid syndrome and this seems likely to be my final piece of work on legal theory and Rights of Nature.

I hope this report makes a useful contribution for both the understanding and development of Rights of Nature law, both with the frameworks it develops and the substantive thoughts on various aspects. My own dissemination of this research will be very limited, so please do assist in sharing it around if you agree. Further, anyone who wishes to work with it is more than welcome to do so (with appropriate acknowledgement or credit), whether in blog posts, articles, chapters or in presentations. It is published under a Creative Commons licence.[5]

Studying law at university, I was interested in law's role in various social and ecological issues, which was when I first encountered Rights of Nature. I came to the conclusion that it was not only laws which needed to be changed, but a different approach to law itself. So, legal philosophy, which was a strength of mine, became my focus (with some political activism alongside). This led to me beginning a PhD in 2022, on a project to

challenge the typical separation of society from nature and develop legal theory based on a combined socio-ecological approach,[6] and a role as a researcher with Lawyers for Nature in 2023, working on Rights of Nature. I was very glad to be able to do work I was passionate about and felt meaningful as important work towards a more just society; and I am very saddened and frustrated that I cannot anymore.[7]

Unfortunately, around this time I became ill due to Covid-19. Though initially infected in April 2022, for the first year I could live a normal enough life if I avoided exercise. But during May 2023, then again in December 2023, I experienced serious regressions due to some sort of overload. The illness is not yet medically well understood, but the issues I experience include with energy production in the body; acute brain problems; and autonomic issues. The energy limits are difficult to deal with because of a lag effect: I might do something and feel totally fine, but be wiped out the next day. These 'crashes' overload the nervous system and cause further impediment to recovery. Trying to push through just sets you further back. It is managed by 'pacing', trying to figure out what small amount is safe to do and holding yourself back at that limit. Recovery is possible, and medical breakthroughs may happen, but part of the condition is that the healing process is impaired. So I wait and hope, and as long as I avoid big overloads or sudden regressions, I am experiencing very gradual improvements.

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[6] More in this research project can be found at www.interconnectedlaw.com

[7] In case anyone is interested in my more personal reflections, my blog can be found at www.alexmay.co.uk/blog

From March to September 2024, though I was physically incredibly weak, unable to have conversations longer than a couple of minutes, I was still able to do a couple of hours of normal computer work each day. Then, in autumn 2024, I rapidly became yet more ill. The bulk of this report was written before this regression, and since then, it was apparent that I should shift from trying to complete the intended content and work as directly as possible to complete only the elements necessary to tie off and publish the current form of it. The last year has had ups and downs health wise, and this was done on 'crip time' – some days my total work capacity (shared between this work, medical and care admin, writing blog posts and to friends) was 20 minutes, some days 5 minutes, some days 8 minutes, etc. It felt important to me to finish off the projects I had been working on and devoted myself to – both this on Rights of Nature and my other legal theory work.

Most of how this illness affected the research and report process is set out in the 2.2 Methodology and Disclaimer section. It also meant that I wrote with the sense that this was my final piece of work and I wanted to say everything that I had to say about Rights of Nature. I didn't manage everything, being cut short, but it certainly meant that the report was more expanded than originally envisaged and included some elements which may otherwise have been separate pieces of writing or ended up part of my would-be PhD thesis. Perhaps this wasn't the best way of doing things, but it was how things ended up – until I got more ill and it was just about tying off what I could to get the report out in some form. While it remains possible that at some point I am able to do some work at this level again, and I hope for this, it is definitely not a certainty or expectation.

In love, rage, care and solidarity,

Alex

2. Foundations

This section covers various foundational elements for the rest of the report. This includes:

- **2.1** An overview of Rights of Nature;
- **2.2** Methodology and disclaimers of the report;
- **2.3** Conceptual foundations about how we understand legal subjecthood and its relationship to rights;
- **2.4** Conceptual foundations of how we understand rights; and
- **2.5** Consideration of theory of rights in relation to Rights of Nature.

2.1 An Overview of Rights of Nature

In this section I seek to give an overview of the idea(s) of Rights of Nature and (briefly) set out my position. In essence, 'Rights of Nature' is the idea that (non-human) elements of nature have inherent value and should have substantive legal rights and ability to act as legal subjects (via human representatives) in the legal system so as to protect their interests.*

**As is the case with 'rights', 'Rights of Nature' can mean either rights in the moral framing or refer to legal rights. In both this overview and report, the legal sense is my focus.*

In my view, coming from a relational understanding of law and society,8 law is not merely a neutral mechanism but perpetuates and reproduces particular forms and ideas about social (and socio-ecological) relations. The purpose of Rights of Nature is (or should be) that the legal system should be working towards just and harmonious relationships with the rest of nature and transforming the current destructive relationships.

Underlying Values

Rights of Nature thinking is rooted in different values and worldviews than those which are currently dominant in western societies. Western worldviews are primarily 'anthropocentric' – human centred – meaning that they consider humans to be the most (or only) important beings. In this thinking, the rest of the natural world is simply the human environment, full of 'natural resources' for us to make use of, pretty things for us to enjoy, and a healthy environment for us to live in.

[8] This was my main research project – see more at www.interconnectedlaw.com

Though 'Rights of Nature' is not one homogenous approach, the various schools of thought have some core values in common. (Non-human) nature has inherent value for its own sake, instead of only having value as instrumental for humans, and humans live as part of a wider ecological world instead of as masters of it. Humans should respect the rest of nature, and we should live in a sustainable way that does not destroy and degrade it.

Rights of Nature thinking posits a vision for how our legal system and society in general should be different, and work actively towards humans living harmoniously with the rest of nature. These legal rights could protect (nonhuman) interests of nature from being harmed by human activity, require intervention from the state (or others) for their protection, and bring about ecological restoration where harm has occurred.

The biggest current in Rights of Nature thinking is based on moral rights for nature. The foundational moral rights are generally recognised as including the right to exist, the right to ecological integrity and the right to restoration.[9] There are different sets of rights claimed beyond this,[10] and it is generally recognised that different aspects of nature might need different sets of rights.[11] However, the moral rights do not necessarily flow directly into legal rights, so there remains a need for legal and political theory on top of morality, as will be revisited below.

Rights of Nature is not one homogenous approach but a plurality of related approaches around the world – including political, cultural and legal approaches.[12] There are a range of philosophical or cultural foundations for Rights of Nature ideas, ranging from indigenous cosmologies to western folk spirituality to modern science. While the idea of legal Rights of Nature was initially one part of the broader doctrine of Earth Jurisprudence, it has now outgrown that to become an approach used pragmatically. There is a risk it becomes decoupled from any particular underlying values and forgotten that there is more needed for an ecological legal transformation than just Rights of Nature.

Despite these multiple different approaches, these can be collectively understood as being 'ecocentric' or 'ecological' worldviews, meaning that humans are recognised as being part of a wider natural world and that the rest of nature also has inherent moral worth. In this worldview, humans are recognised as part of the wider natural world, not separate from or superior to some 'othered' conception of nature. Non-human entities are neither mechanistic nor random processes, but understood to have agency, make decisions, seek to further their interests, and function as subjects instead of passive objects – and worthy of being valued and respected by humans.

[9] For example: the Universal Declaration for the Rights of Mother Earth, Universal Declaration on the Rights of Rivers, Article 2 of the Law for the Mar Menor in Spain.
[10] Discussed briefly in Section 3.2.
[11] Different nature-subjects is discussed in Section 3.1.
[12] See Mihnea Tanasescu, *Understanding the Rights of Nature: A Critical Introduction* (2022), p17 and Chapter 2.

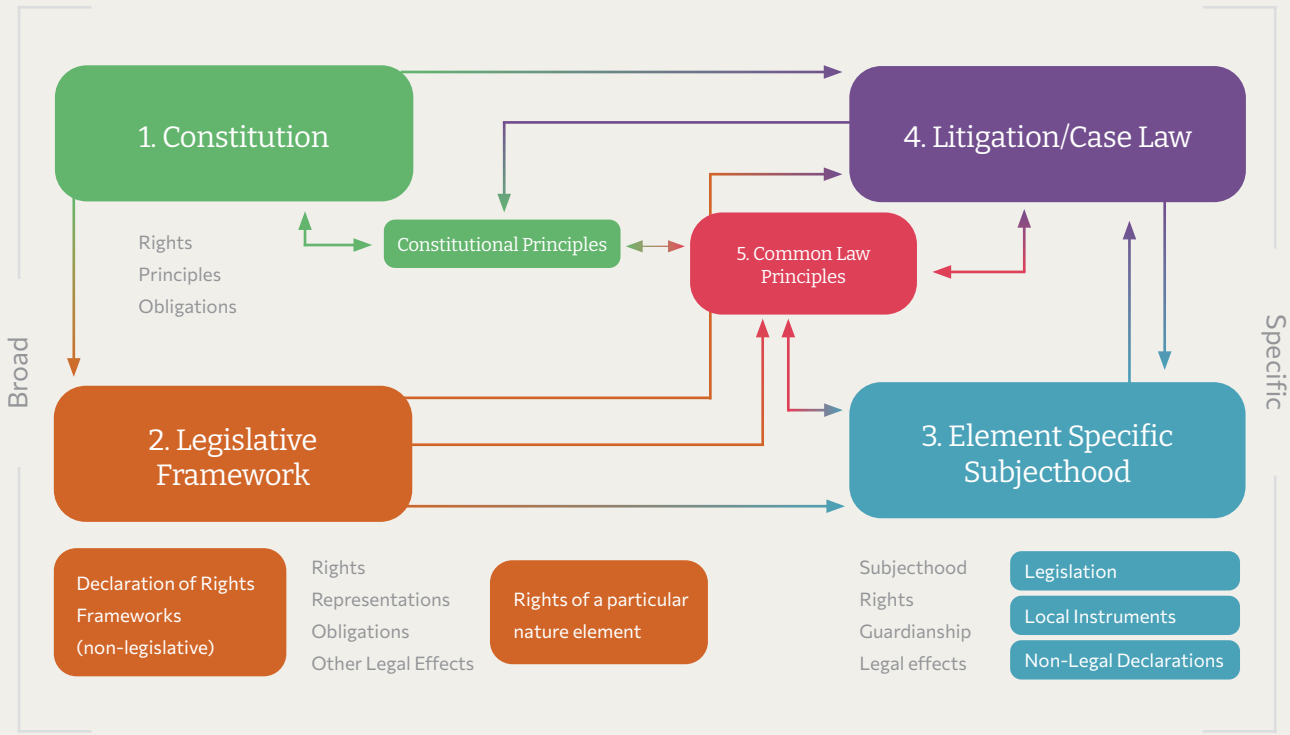
Rights of Nature can certainly have beneficial effects for humans: we need a healthy environment, and Rights of Nature should function to protect 'the environment' directly. However, they should function to protect ecology for its own sake, and not to slip into the instrumental value of Rights of Nature benefit humans, which will almost certainly end up falling short of what is actually needed.

Legal System Transformation

Rights of Nature was originally just one part of the wider thinking of Earth Jurisprudence, or ecological approaches to law, which looks towards transformation across the full legal system and includes other elements. That said, Rights of Nature themselves, if taken seriously, have effects and necessitate change across the entirety of the legal system – which is what this report is about.

There are different pathways for legal developments and a variety of Rights of Nature laws and initiatives, and. Ultimately, for the full transformation of a legal system, multiple (if not all) of these elements must be present. In a previous research report, **'Realising Rights of Nature: Understanding the Variety of Legal Instruments'**,[13] I categorised the different types of legal change and how they interrelate, and surveyed developments in different jurisdictions. As shown in the below diagram, the different types are: Constitutional Change, Legislative Framework, Element Specific Subjecthood, Litigation/Case Law; and Common Law Principles.

Figure 2.i: Rights of Nature Taxonomy



[13] Alex May, 'Realising Rights of Nature: Understanding the Variety of Legal Instruments', Lawyers for Nature, September 2023, available at www.interconnectedlaw.com/Rights-of-Nature-Taxonomy.

These initiatives mean that a nature-subject is granted the ability to participate in the legal system – via humans acting to represent the interests of the nature-subject. This is usually known as 'legal personhood', though I think the language of 'subjecthood' is better because elements of nature are not *persons*.[14] This legal subjectivity of nature does involve an element of fiction in the legal subjectivity of nature: it is always human representatives acting for nonhuman nature and deciding on its behalf.[15] The crucial point is that the interests being served by the law are different: it is the interest of the aspect of nature – distinct from any human interest – which has the rights, can bring legal actions, may be established as a legal entity, and benefits from legal relief.[16] While this sort of representation of nature in law is a novel development, both legal interests being represented by another and the creation of distinct abstract legal entities are not new: there are parallels with corporate entities being created and represented by human directors and employees, officials acting in some 'public interest', trustees, and where a human individual without full capacity is represented by another.

Rights of Nature can (and arguably should) flow across the entirety of the legal system: full effectiveness would be a significant transformation which affects property, criminal, tort, contract, human rights, and administrative law. As they are introduced, these interactions could be either positive or confrontational, smooth or messy, depending on how the new ecological norms are resolved against existing legal norms which benefit humans (or particular human social groups).[17]

Legal Change for Social Transformation[18]

Catastrophic ecological (and social) consequences are on the horizon and a colossal shift in how we live is needed. Social movements and Rights of Nature advocates must always remember that changing the law itself is not the goal; rather, just one step as part of political and social change. Radical changes to our legal system are proposed, but it is this scale of change which is vitally necessary if our legal systems are to work towards societies which live harmoniously with the rest of nature instead of supporting destruction of the natural world. The key issue is therefore to consider how legal rights will change the underlying social relations.

However strong the moral arguments may be, morality does not simply translate into legal rights – or at least establishing legal rights does not necessarily or straightforwardly bring about the desired results in the world. The political and economic system – society as a whole – is generally (though messily and with internal tensions) functioning in an extractive and human supremacist way, and there will be significant resistance to this being challenged. This comes both from particular actors who are currently benefitting from this – such as fossil fuel companies and other financial interests

[14] This will be discussed further in Section 2.3.
[15] This will be discussed further in Section 3.3.
[16] These elements were first set out in Christopher Stone's article 'Should Trees Have Standing? Towards Legal Rights for Natural Objects' (1972) Southern California Law Review 450, 458.
[17] This is the topic of Section 3.
[18] A longer version of the argument in this section can be found on my website: Alex May, 'A Social Ecology Approach to Rights of Nature' available at www.interconnectedlaw.com/Rights-of-Nature-Social-Ecology. A similar argument is made by Mihnea Tanasescu in *Understanding the Rights of Nature: A Critical Introduction (2022).*

who have much vested in extractive licences – and from the inertia that extractivism and ecological damage are woven into almost every aspect of the social order and human activity.

Many Rights of Nature advocates have drawn on liberal legal theory, such as human rights theory. Rights of Nature advocates would do well to bear in mind the mixed legacy of human rights, which often fails to achieve emancipation or social transformation,[19] and learn from critical human rights scholars. In my view, liberal theories of rights – at their core about securing individual freedom – are flawed. Instead, for Rights of Nature thinking (as also for human rights thinking), relational and ecological legal theory is needed.[20]

Designers of Rights of Nature legislation should therefore be considering the key question of how the laws can work to change eco-social relations. One key consideration here is how the change will be driven – and who will represent the interests of nature-subjects. This could be via state bureaucracy or more democratised bottom-up change from local communities, civil society, or simply any person. This will often depend on the particular political and social context – as both law and social change always does – and how it links into existing social movements and political resistance.

[19] This is the topic of Section 2.4.
[20] This was my main research project – see more at www.interconnectedlaw.com.

2.2 Methodology and Disclaimer

The origins of this report were in early discussions about what proposed Rights of Nature legislation in the UK might look like. I was not aware of any existing frameworks of different models or comparative analyses, only case studies of legislation in individual countries, so I set out to look at existing legislation and draft legislation to see what different possibilities existed so as to make such a contribution. I hope this report is useful for ongoing discussions about possible legal developments in the UK and around the world.

The report process went through three phases, which were research phases altered by my ability to work and declining health (discussed further in **1.4 Author's Note**). The first phase, in autumn 2023, began looking at the different elements of Rights of Nature legislation and case studies. This sketched out the basic elements of Rights of Nature legislation (Subjects, Rights, Representation, Legal Areas, Miscellaneous) and started going through the legislative case studies to assess them using this structure.

The second phase was spring and summer 2024. This involved undertaking more detailed assessment of the legislative case studies, as well as fleshing out the detail of what the legislation could include. This was an iterative process, as going through the case studies showed up different possibilities and sparked off new ideas. The detail of what legislation could include was fleshed out beyond the basic structure of the different elements (this became **Section 3**). Out of this iteration the different models and conceptual framework for Rights of Nature legislation was developed too (which became **Section 6**).

Unfortunately, at the start of 2024, I became much more ill. While I was thankfully still able to do a couple of hours of work most days (though none on bad days), but I was no longer able to leave the house or have anything more than a brief conversation. These limitations and conditions affected the report writing process somewhat, meaning that it was done in isolation, not able to have any verbal discussions. The change in my life situation also flowed into a change in the report: I wrote a lot more in terms of conceptual foundations, including sections about the nature of legal rights, about subjecthood, and a greater depth of ideas in **Section 3**, going deeper than just the case studies and development of conceptual models initially intended.

Then, in autumn 2024, I rapidly became yet more ill, with my ability to work much more diminished. This third phase of the report's development was just about tying off what I could to get the report out in some form. **Sections 2.3-2.5, 3 and 6** were pretty much complete, but unfortunately the case studies were around three-quarters done with a mixture of first drafts and some parts with just notes.Finishing these myself would not be possible, and nor would the intended comparative analysis (would-be **Section 5**). Had I known this would happen I might have done things differently, but this was what happened and the decline was unexpected. So, the work since then has just been

about completing the introduction section and this methodology, and tying off loose ends in a few places so that the report could be published in this form. What could have been done in a normal capacity week has been completed in small chunks over the course of the year or so.

Disclaimer 1 is (obviously) that the case studies (**Section 4**) and comparative analysis (would-be **Section 5**) are unfinished; it was simply not going to be possible. I have left in the briefest of overviews for all but one of the case studies. The aim had been to complete an analysis of each case study using the Elements structure as set out in **Section 3**, finished off using the legislative modules as set out in **Section 6**, with these two frameworks working as a cross-matrix.

I thought the other sections of the report worth publishing anyway in the hope that the conceptual frameworks and foundations still make a useful contribution for both the understanding and development of Rights of Nature law, even without the case studies I initially set out to produce. Perhaps someone else will take these forward[21] – or perhaps such case studies have already been done elsewhere. Ideally, such case studies would work best as a collaborative effort like a Wiki instead of just one person's work in any case.

I made the choice to leave the section titles for **Sections 4 and 5** for a few reasons: it recognised the unfinished nature of this report (and in some way honoured my life being interrupted by severe illness); it felt more cohesive to the structure and idea of the report; and it would have been a lot of work to remove it and rework the references. In this final phase I have aimed for 'good enough' instead of the usual higher standard I would aim for with such a piece of work.

Disclaimer 2 is that this report was written in isolation. Due to the constraints of the illness and capacity limit, I was unable to have discussions or share drafts with others for feedback, so this report is lacking for peer engagement or peer review. Similarly, I had intended to engage with emerging Rights of Nature literature and tie this report into other work. Unfortunately, I became more ill before reaching this stage and shifted into the third phase of just tying off what I had already done, so this report only engaged with literature I had already read by that time. Perhaps even some of the topics are redundant or already overtaken by the moving current. It remains for others to make connections and comparisons with this report and other literature, and this author welcomes any developments and iterations from this report.

Disclaimer 3 is that the production quality may fall slightly short in a few places. While everything included here has been written to a suitable standard, I expect there to be a few loose threads such as typos, incomplete references, and perhaps a few unfinished sentences here and there. I was not able to do a final review or have close supervision of the production, and decided I would rather publish it as is instead of delay further. My aim here has not been to produce a report to the same standard that I usually would, only to get it to a good enough state to be published and be useful. I thank the reader for their understanding with this.

[21] If anybody would like to take this on, or even just see the draft versions, feel free to contact me.

2.3 Subjecthood on a Spectrum

As nature-subjects have to be created, the idea of subjecthood needs close consideration. This section will give an overview of subjecthood and how it might relate to nature-entities, as well as how it relates to rights, while a later section (**3.1**) will consider different nature-subjects which could be created.

Legal subjecthood (or personhood)[22] is a foundational concept in western law. Yet it is typically beneath the surface, taken for granted and assumed. When we look more closely, we see it is actually messy, complex, nuanced and contested.[23] This section will give an overview of subjecthood as it relates to Rights of Nature: whether non-humans can meaningfully be subjects; why we should think in terms of 'subjecthood' and not 'personhood'; understanding subjecthood as a spectrum; the relationship between subjecthood and rights; examples of different existing legal approaches; and challenging the idea of there being two dichotomous Rights of Nature models.

Legal subjecthood is about the conceptual entities which can act as active participants in a legal system. The traditional legal dichotomy is between subjects who can act and objects who only have the status of property. One of the core critiques of the Rights of Nature approach is exactly this: that all non-human nature is reduced to passive objects to be dominated and controlled by humans. Part of the response of Rights of Nature, therefore, is to treat non-human nature as having intrinsic value with rights and the ability to participate – or at least have its interests actively represented – in our legal system by creating legal entities with some degree of subjecthood.

At least for the purposes of this sort of thinking about Rights of Nature, it is better to disentangle rights and subjecthood. It is often assumed that rights and subjecthood are two sides of the same coin: *"legal persons are most often understood as those beings that hold rights and/or duties, or at least have the capacity to hold rights, under some legal system."* [24] Yet here a more nuanced approach is needed. Subjecthood can actually refer to two distinct (though closely related) things. The first is the formal legal status, active subject (or 'person') or passive object. This is often treated as a dichotomy, but as will be covered below, it is better understood as a spectrum, as a legal entity can be more or less of a subject. The second meaning is the overall capacity to act: the combination of the status of 'subject' and the rights that they have. This combined function is obviously also a spectrum, and formal subjecthood with limited rights means that an actor only has a limited capacity in reality. In this report, 'subjecthood' will primarily be used to mean the formal legal status, so as to differentiate it from the rights and their effects (see further below).

[22] A discussion on these terms is coming shortly.
[23] For a solid overview, see: Visa Kurki, Legal Personhood (2023 CUP).
[24] ibid 1.

2.3.1 Subjecthood, not Personhood

One of the first questions to address is the terminological one: why I think the term 'subjecthood' should be used instead of the typical 'personhood'. This includes some conceptual points too, though a further exploration of subjecthood on a spectrum will be below.

There are multiple overlapping terms in this regard: legal personhood; legal subject; legal entity; and subject of rights or rights-bearer. Typically, all legal subjects are 'persons': either 'natural persons', which are human beings whose real-life personhood maps onto their conceptual legal personhood; or 'legal persons', which are constructed legal entities (incorporated bodies such as companies, public authorities, charities, etc).

In Rights of Nature discourse, it is normal to talk of giving nature-subjects 'personhood' (or 'legal personality'). This appears in some of the legislation which creates specific legal nature entities: the Spanish Mar Menor legislation establishes the lagoon as having 'legal personhood' ('personalidad jurídica') and being a rights-bearer ('sujeto de derechos);[25] and New Zealand Te Awa Tupua (Whanganui River) legislation establishes that 'Te Awa Tupua is a legal person and has all the rights, powers, duties, and liabilities of a legal person.'.[26] This is not always the case though: the New Zealand Te Urewera legislation instead says that 'Te Urewera is a legal entity, and has all the rights, powers, duties, and liabilities of a legal person.'[27]

However, in my view, we should instead talk and think of 'subjecthood' instead of 'personhood'. There are a few reasons for this.

The first is a semantic and symbolic reason: we should not use language which is specifically for humans – 'persons' – for things which are not humans. Animals, forests, rivers, ecological communities, etc, are not persons. It is literally anthropocentric to use this terminology. Perhaps it is not well suited to incorporated legal entities – 'legal persons' – which were presumably created by conceptual extension from natural persons either.

The second is the conceptual objection that it simplifies and reduces what it means for nature-subjects to have legal subjecthood. Even if legislation might state that a nature-entity has all of the rights, powers, duties and liabilities of a legal person, there will be significant differences – and not even all natural persons have exactly the same rights and liabilities. Casting nature-subjects as 'legal persons' is forcing a square peg into a round hole. In my view, we should instead treat something which needs nuance and complexity with such. Additionally, it could well be that different types of nature subjects should have differentiated legal forms, rights and legal effects.[28]

The third reason is that subjecthood is not a simple binary but rather something which is established

[25] Spain, Ley 19/2022, de 30 de septiembre, para el reconocimiento del Mar Menor.
[26] New Zealand, Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, s 14 (1).
[27] New Zealand, Te Urewera Act 2014, s 11 (1).
[28] Discussed further in 3.1.

or experienced on a spectrum, as will be discussed below. This is arguably already the case with existing natural and legal persons, but with the inclusion of nature-subjects and the different approaches to subjectivity which already exists with these, we should move away from 'personhood' to talking of 'subjecthood'.

In this report, I will therefore generally avoid the term 'personhood' with regards to non-human legal entities, instead talking in terms of 'subjecthood'. 'Legal subject' and 'legal entity' will refer to the formal legal structure. The terms 'nature-entity' and 'nature-subject' will also be used: a nature-subject would usually mean a non-human legal subject, whereas 'nature-entity' could also mean a conceptual part of nature which is not necessarily a legal subject.

2.3.2 Non-Human Entities as Subjects

There is no conceptual legal barrier to establishing nature-entities as legal subjects. Though there may be difficulties with how they should be represented or how their best interests should be evaluated, these are organisational, philosophical and scientific problems.

Law is a social system created by humans to be a structure for our social order, relations and interactions. This means that how it functions is limited by our imagination and technical ability – including coherence and consistency. It is straightforward that each 'natural person' (ie human being) maps onto a legal personhood. This is taken as a given – even though until quite recently, only certain categories of humans were given full legal personhood. 'Legal persons' such as corporations, public authorities and charities all function fine even though they do not represent human individuals but organisational structures – and many incorporated companies function simply to make profit for a 'shareholder' which is an incorporated entity itself just trying to make profit such that many companies exist simply to increase financial value. Representing another where they lack full capacity themselves, either through a nominated individual or by a court, is also standard practice. The legal system includes norms around representing others (eg fiduciary duties) and distinct legal roles that can be taken on, such as in relation to trusts, incorporated entities, and ownership.

It is therefore totally possible for a legal system to create legal entities to represent the interests of nature-subjects. Whether it should is of course still a relevant question – yet such discussions are beyond the scope of this report. The point here is that the idea that legal systems must only include human subjects (or human organisations...) is without merit: such a position is an ideological one based on a normative position outside of legal concepts.

That said, there is not a straightforward path for how components of the real natural world are translated into legal conceptual subjects. In other words, we have to decide how to construct non-human nature as legal subjects and legal entities. Different possible nature-subjects which could be established are discussed below (**3.1**).

Whereas individual humans exist discretely, many nature-subjects are conceptual creations. An 'ecosystem' is a conceptual representation of reality, not reality itself, and particular ecosystems may not have clear boundaries. Rivers and their catchment areas exist scientifically, but while species exist, communities of animals do not always exist as independent communities. Unlike the current approach to land of drawing clear boundaries with one owner, ecology is relational and dynamic instead of spatially delimited. One way to address this is taking a relational approach instead of a clear bounded approach may often be the better way to approach these limit questions: that whether something is part of an ecosystem is a relational question on a spectrum of intensity instead of a binary one. This also fits well with a relational approach to rights, and the 'concentric circles' model, to be discussed below (**2.4 and 2.5**).

2.3.3 Relationship between Subjecthood and Rights

As discussed above, 'subjecthood' can mean either formal status or overall capacity to act. When subjecthood is a simple binary with identical rights, these are effectively the same. Yet where subjecthood is not so, we do better to separate these meanings conceptually, and will have a clearer understanding for doing so.

Formal legal status subjecthood is distinct from the rights a subject has – though often the bundle of rights will flow from the status. The total extent of active participation in a legal system is therefore the combination of rights and formal subjecthood. It is possible to be a subject without rights – or at least with a de minimis amount – and it is possible to have rights without being a subject – or at least not formal subjecthood. There is therefore a matrix of options based on the combination.

Figure 2.ii: Subjecthood and Rights Matrix

	No (Formal)* Subjecthood	Formal Subjecthood
No Rights	No Rights or Subjecthood (ie an object)	Subjecthood without Rights
Rights	Rights without Subjecthood	Rights and Subjecthood

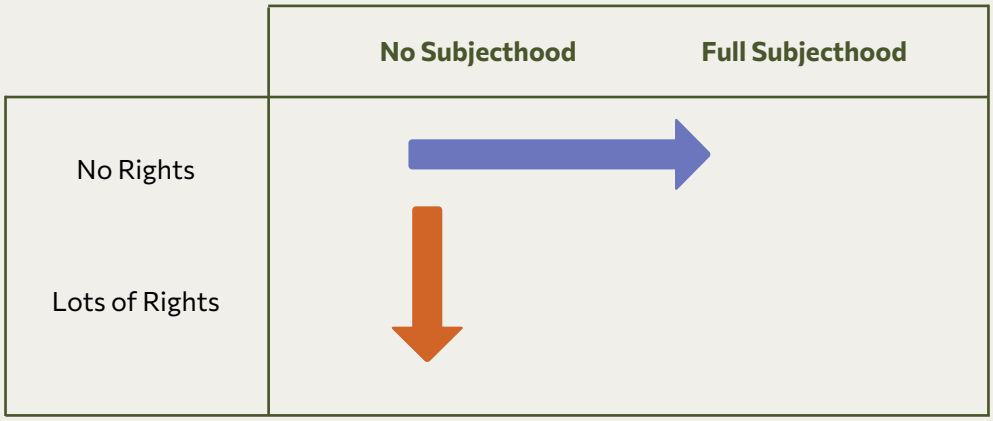
**Here, 'no subjecthood' means that there is not a specific legal entity for a (would-be) nature-subject and only ad hoc consideration and representation.*

This table is a simplification as it treats both rights and subjecthood as binaries. This is useful for considering their relationship, but, as we will come onto momentarily, is not a good model: 'Subjecthood without Rights' and 'Rights without Subjecthood' cannot really exist. Instead, both are spectral.

2.3.4 Subjecthood and Rights on a Spectrum

Both subjecthood and rights are best understood as each being on a spectrum. A particular legal subject can then be placed in relation to each, as shown in the diagram below. These are not as simple as linear spectra, but that complication will be left aside. Of course, the combination is what matters – though methodologically and for thinking about Rights of Nature, it is much clearer to separate the two.

Figure 2.iii: Subjecthood and rights as a two-axis spectrum



Subjecthood is best understood as on a spectrum. The traditional legal dichotomy is between subjects and objects, treated as a dichotomy. This simplistic binary approach may be useful for categorising persons as distinct from non-persons in a legal system. However, with a little consideration it is clear that it is better understood on a spectrum, as a legal entity can be more or less of a subject, with a different extent, degree or

quality of subjecthood. Even within human subjects, there are differences in formal legal status linked to age and citizenship – as well as (thinking historically and internationally) gender, marital status, ethnicity, or as a slave. Considering also so-called 'legal persons' – incorporated legal entities such as companies, public authorities, NGOs and charities – these also have differing legal status from each other and 'natural persons'. Subjecthood is best understood on a spectrum, not a binary. As will be discussed below and later in this report, nature-subjects could be granted or established with a range of options of subjecthood.

For nature-subjects, the question of how they are represented is also a key part of their subjecthood. This can range from just administrative environmental law, public authorities, ad hoc representation by civil society, a nature guardianship body, or representative guardianship bodies for particular nature-subjects. These options are covered in detail later in this report (**3.4**).

The same is true for understanding rights, though this is a common understanding. Rights are not a binary of simply having or not having rights, as what rights a rights-bearer has can vary. Typically, all individuals are understood to have the same rights, though actually there are some differences to be found, such as in relation to age and citizenship – as well as (thinking historically and internationally) gender, marital status, ethnicity, or as a slave. For nature-subjects, the breadth of rights and the effects of the rights will be covered in section **3.3** (and revisited in **6.2**), but in brief, the different bundles of substantive rights could be understood as: being a policy consideration and general administrative law rights; constitutional-style rights; private law rights; and procedural rights.

Ultimately, it is the combination of formal subjecthood and rights which make up a subject's capacity for action and participation in a legal system. Rights with limited subjecthood mean that the rights are less able to be used effectively, and subjecthood without rights means formal representation without substance.

Procedural rights – such as rights to participation, access to justice and funding – are also vitally important. These are perhaps best understood as rights to subjecthood or rights that make up subjecthood – both rights and subjecthood combined. Because nature-entities have to be created (discussed further in **3.1.6** and **6.3**), represented (discussed in **3.4**), and don't have a way to generate income, these procedural rights must be established clearly, as they cannot always just be assumed. Funding will be particularly important: whereas human individuals and human organisations have access to funding on their own (though often not enough to be able to afford legal representation), nature-entities do not have access to any funding on their own accord but must be funded either by the state or donations from private individuals.

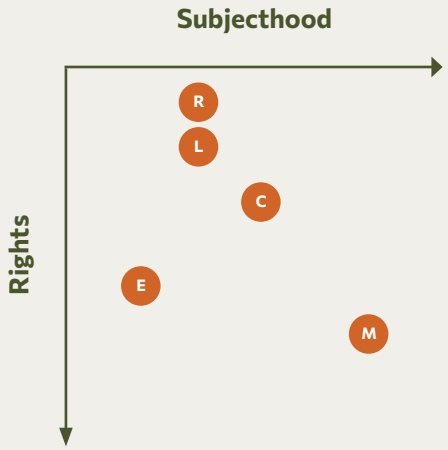
2.3.5 Existing Examples

There are therefore different extents to which nature-entities could be granted subjecthood. This section will briefly set out a few options, including existing Rights of Nature examples.

This figure shows some existing case studies on the matrix of subjecthood and rights.

At one end of the spectrum of very limited subjecthood would be something like participation in legal and political processes: the ability to have one's interests represented for consideration, participate in consultations, etc. This would usually come with rights in general administrative law. At the other end of the spectrum is the 'full' formal subjecthood equivalent to (adult) humans and incorporated entities. In the below matrix, they would be clustered in the bottom-right quadrant on the below matrix. As mentioned earlier, though they are all 'full subjects' they do not all have exactly equal subjecthood or rights – generally humans have some rights which incorporated entities do not have (such as constitutional and human rights).

Figure 2.iv: Examples on the subjecthood and rights matrix



This figure should be understood as broadly indicative way, not methodologically precise – especially as some of the options below are a range of options instead of one precise version.

- R – Political Representation (without rights). There are many cases where a nature-entity has some sort of political representation without having any legal rights or full subjecthood. The exact form of political representation can vary. Many nature-entities have grassroots alliances which have created an informal or formal organisation to represent them, and in a few instances, such an organisation has been formally created. The strongest version of this is probably in the Australian state of Victoria, where the Yarra River (Wilip-gin Birrarung murron) Act establishes a body (the Birrarung Council) to represent the river as a political advocate. There is therefore some

limited form of subjecthood with some limited rights, with a representative body for participation in political and limited legal processes, but nowhere near 'full' legal subjecthood or significant substantive rights.

- L – Local Ordinances. These can vary significantly in terms of what they involve, but in many places around the world, a local ordinance has established some form of Rights of Nature. Sometimes these include establishing some sort of representative body for the nature-entity (which could go further along the 'subjecthood' axis than the dot on the diagram), and sometimes these also include some manner of rights (with a few different options). However, typically Local Ordinances can only have legal effect within the competency of the local authority (ie a local authority cannot create legal norms which supersede national law). This means that both subjecthood and rights only exist in a limited fashion.
- E – Ecuador. The so-called 'Ecuador model' is to establish constitutional Rights of Nature which then have ad hoc representation against the state. There is a form of subjecthood in that action on behalf of the nature-subject can be brought against the state (with general standing for someone to represent the nature-subject and bring a case). Once the case is concluded, the legal subjecthood fades into the background as a latent possibility. There is not a formal legal entity, so the subjecthood is relatively limited and somewhat fluid, but nonetheless some form of 'subjecthood' does exist. In Ecuador this exists with substantive rights against the state, though this approach to subjecthood could also exist with different rights and legal obligations.
- C – Colombia. In Colombia, case-law has developed rooted in constitutional norms which recognise substantive Rights of Nature which are effective against the state. This has similarity with Ecuador in that all cases started just with ad hoc representation, but in some (though not all) cases, the litigation has also created (through judicial rulings) some form of legal entity with human guardians to represent the nature-entity. This allows for an ongoing representation of the legal interests of the nature-entity. As it is only created through judicial ruling instead of legislation, the formal subjecthood is probably more limited than otherwise, and certainly less clear. Different nature-entities would therefore be placed in different places on the matrix. It may be that this case-law also establishes some sort of inherent procedural right to establish a nature-subject (see further **3.1.6** and **6.3**)
- M – Mar Menor. Often termed the 'personhood model', this is perhaps the best example of a full nature-subject with formal subjecthood and substantive rights.[29] The lagoon is established as a legal entity with a representative body of guardians, and a 'rights subject' with various substantive rights. Unlike other examples, it also has private law effects, hence being placed further along the 'rights' axis.

Both subjecthood and rights therefore exist on a spectrum, and there are different ways that nature-subjects and Rights of Nature can be implemented. At present, there are often seen to be two models: 'constitutional rights' (or 'Ecuador') model or the 'personhood' model (ie Mar Menor and New Zealand). There is a useful distinction to be made between ad hoc representation and an

[29] There are also similar entities in New Zealand, though these are not quite as straightforward as some of them are about territorial settlement with indigenous people instead of only being about the ecological interests of non-human nature.

established legislative body, which has many benefits over ad hoc representation (discussed in **3.3.8** and **3.4**). These are not competing models but can converge in complimentary ways. However, these are far from the only two ways that Rights of Nature can be implemented. The full legislative options will be covered in **Section 3**, while **Section 6** looks at blueprints for different legislative models.

2.4 Understanding Rights

This section will look at different concepts relating to legal rights, including: an overview of different types of rights; the two different models of constitutional rights; and the difference between formal legal rights and the substantive values behind them. The next subsection will then consider what this means for Rights of Nature. Conceptually, Rights of Nature remains in the early stages, and it is hoped that this report makes a useful contribution to the discourse and development of Rights of Nature legal theory.

The 'orthodox' Rights of Nature position is a set of moral rights and some form of 'natural law' argument for how this relates to law.[30] This is rooted in or inspired by liberal political theory, which underpins traditional human rights approaches, and extends this approach to Rights of Nature. However, this orthodox position does not

include much detail on how Rights of Nature should work legally, either as rights or what this should mean in terms of legal obligations. This subsection will give an overview of how we might think about rights, while subsection 3.4.3 will survey what Rights of Nature means in terms of legal obligations.

Rights of Nature theory is still in its infancy – and a Theory of Rights is not an easy feat. However, there is a clear lesson from human rights that practical use can be well underway without a completed theory. Human Rights still do not have a universally accepted conception of what they should be and how they should function. Arguably, it may even have been the other way round: human rights jurisprudence was developed judicially, not applied based on a theory. As will be discussed below, Kai Möller posits a 'reconstructive' theory of human rights is based on how they function in legal reality (discussed below).[31]

[30] I have in mind Thomas Berry, Cormac Cullinan and Christopher Stone. See also discussion of the 'orthodox position' in Mihnea Tanasescu, Understanding the Rights of Nature: A Critical Introduction (2022).
[31] Kai Möller, *The Global Model of Constitutional Rights* (OUP 2012).

2.4.1 Different Types of Rights (and Obligations)

A wide variety of things can be legal rights, and there are different ways of categorising rights.[32] There are various distinctions that need to be made. The distinction between procedural rights and first-order rights, and between 'positive' and 'negative' rights, are useful for understanding Rights of Nature. This section will also very briefly set out the Hohfeldian system, just to show the complexity that hides beneath the language of 'rights', but this will not generally be used in this research report.[33]

One simple distinction is between 'primary rules' and 'secondary rules'.[34] The primary rules are about performing or not performing particular actions – the privileges and claims. Secondary rules are in relation to primary rules – such as anything procedural. Various things are claimed as 'rights' which are in the category of 'secondary rules', instead of being primary rules. Sometimes this distinction is made between 'substantive' and 'procedural' rights, though this is a simplified dichotomy.[35]

A more complex and thorough understanding of 'rights' is the 'Hohfeldian' taxonomy.[36] Hohfeld categorised things described as 'rights' fall into either one of four elements: 'liberty' (or 'privilege'); 'claim'; 'power'; and 'immunity'. For a simplified explanation of each: a liberty right (or privilege) is the ability to do something; a claim right is to demand fulfilment of a duty from another; a 'power' is in relation to amending other rights and duties; and an 'immunity' is when another cannot affect a situation. In the logical structure, each also has an opposite and a correlative: for example, a claim

correlates to a duty; and the opposite of a power is a disability. These different elements can then be combined in different situations for a 'molecular' understanding of what particular legal claims or rights claims are about. Each situation will have an initial first-order right, then one or more second-order rights in relation to the first-order right. This structure could be applied to an analysis of Rights of Nature and related proposals, so as to distinguish what is meant by the different 'rights' and what legal effects they should have.

The final useful distinction in rights is between 'negative rights' and 'positive rights', which is a common distinction in relation to constitutional rights. Negative rights are about not being interfered with. A simple RoN example could be the right to ecological integrity. A less simple example could be a 'right to flood', this means the natural flooding should not be stopped. In Hohfeldian terms, this could entail the privilege of flooding (with a correlative of nobody having a claim right to stop the river flooding), and may have a claim right against anyone who interferes with the natural flooding (who have a duty to let the flooding happen). 'Positive rights' are the entitlement to provision of a good or service, and claim rights against another to provide this. For example, Rights of Nature might include that an ecosystem

[32] See further: 'Rights' (Leif Wenar), *The Stanford Encyclopedia of Philosophy* (Spring 2023 Edition) available at https://plato.stanford.edu/archives/spr2023/entries/rights/
[33] The reader does not need to fully grasp the Hohfeldian taxonomy, only to recognise that there is a complex tangle beneath the surface of 'rights'.
[34] in Hart's terms; the Hohfeldian classification similarly has first-order rights and second-order rights.
[35] Procedural rules also have substance, so to speak.
[36] For a proper overview beyond this introductory summary, see: 'Rights' (Leif Wenar), *The Stanford Encyclopedia of Philosophy*, 2.1 The Form of Rights: The Hohfeldian Analytical System.

could have a right to a natural flow of clean water from upstream, a right to protection from the state, and a right to restoration from anyone who damages it.

Related to these questions around rights are questions around whether a nature-entity would also have responsibilities or legal obligations. If a nature-subject can enter into a contract, it would have obligations that follow from this. A trickier question is whether a nature-entity might have general obligations (ie tort or delict). Few argue that general 'environmental damage' in the natural order of things should be compensated for, as this is nature playing out freely and to argue otherwise would be to argue that nature as a whole should be reordered so as to best suit short-term human interests. Yet there could be particular obligations which established nature-subjects would have as part of their activity as such.

2.4.2 Constitutional Rights: Two Models

Within constitutional rights (which includes human rights), there are two different philosophical and legal approaches.

The traditional idea is that these rights have a special normative force, meaning that they are superior and categorically outweigh other types of reasons. This translates into constitutional legal rights which are legally strong and cannot be violated ('inviolable'), termed 'absolute rights'. The state is categorically not allowed to violate them, no matter what justification might be put forward. As anything which interferes within its scope is not permitted, the legality depends on the borders and limits of the right in a binary way. Given this strength, they are typically narrow and confined in their scope.

Examples in the European Convention on Human Rights include that a State may not kill someone or subject them to torture or inhuman treatment. The US Constitution includes multiple absolute rights, such as the right to free expression (though in reality there are some limited exceptions).

There is also another type of such a 'strong' right known as a 'limited' right. These have legally sanctioned exceptions (which themselves are based on a special normative force). If an interference is within the scope of an exception, it is lawful; otherwise, they function in the same manner as 'absolute' rights. The right to personal liberty, for example, is only against arbitrary and unlawful deprivations of liberty.

The second legal approach to constitutional rights is that of 'qualified rights'. Instead of a strict, strong approach, these are broad and weak, functioning more like general 'interests' than strong 'rights'. They have a much wider scope in what they cover, but interferences with these rights are only violations if they are not justified. In the European Convention on Human Rights, these include the

right to respect for private and family life, the right to freedom of expression, and the right to free assembly and association. The 'right to private life' in particular has been interpreted very broadly.

In their legal structure, there are typically two stages to the justification of an interference with a qualified right. The first is that it must be in accordance with the law (ie the 'rule of law' principle); the second is the justification (the ECHR terms this as "necessary in a democratic society"). For this second stage, there is typically a closed list of types of reason which can be relied upon for a justification; for the protection of rights and freedoms of others; or a particular flavour of general public interest. Philosophically, the general public interest can be seen as an aggregated and diluted form of the rights and freedoms of others.

The justification then has two stages: Proportionality and Balancing.[37] Proportionality assesses whether the benefit or justification of the interference is 'in proportion' with the harm or restriction caused by it. This checks that a hammer isn't being used to crack a nut, or that there isn't a less intrusive measure which would achieve the same result. Balancing then makes a normative assessment of the 'weight' of each side, comparing the positive value of the activity with the negative value of the interference with the rights-interest. This is inherently a normative exercise, requiring judges to make subjective judgements based on their valuation of each side – even if judges are typically understood as being neutral, apolitical or objective and simply applying rules or norms.

The exercise of Balancing – with rights-holders and rights-interests on both sides – is therefore dependent upon underlying political frameworks about society, justice and political values, though this is often not acknowledged. Many of the classic rights-conflicts are based subjective valuations which have different weightings and balance points depending on the assessor: how permissible is freedom of expression which is critical or abusive towards the cultural or religious values of others; the right to respect for privacy while in public places; and how much disruption political protects should be allowed to cause. None of these choices have objective answers, but turn on the subjective valuation given to each value in relation to the other.[38]

Developing a theoretical model which this second type of rights, Kai Möller proposed what he terms a 'Global Model of Constitutional Rights'.[39] This is a 'reconstructive' theory of how human rights work: he is not arguing that this is how human rights should function, but rather developing a (best possible) substantive model of how human rights function in practice.[40] His model builds on qualified rights and posits that human rights should primarily be understood in the broad and qualified way, but with a hybrid approach that includes stronger aspects of each right. He suggests an explicit 'concentric circles' approach (adopted from the German Constitutional Rights jurisprudence

[37] There are different models for proportionality and balancing; one alternative is that the entire justification step is termed 'proportionality' and balancing is the final stage within this.
[38] In Human Rights jurisprudence, much is therefore down to how much deference the judiciary should allow the executive or legislative branches to make this subjective assessment, versus how much they should intervene with their own valuation.
[39] Kai Möller, *The Global Model of Constitutional Rights* (OUP 2012).
[40] It is also worth noting that Möller's model allows for Economic, Social and Cultural rights within human rights theory, whereas the traditional model of strong rights only covered Civil and Political rights.

'Sphärentheorie') where the 'core' of a right is much stronger, functioning closer to an 'absolute' right in that an interference would be much harder to justify, and the periphery is weaker and more amenable to being outbalanced. This places rights-interests on a spectrum of intensity instead of the binary boundary of traditional rights. He proposes that the best theoretical underpinning of this approach to rights is based on personal autonomy, which can be used as the foundational framework for Balancing exercises. This has the advantage of explicitly stating a values framework to use, whereas typically the values used by the assessor are beneath the surface.

2.4.3 Political Contestation in the Courtroom[41]

This model of human rights therefore has political contestation taking place in the courtroom,[42] with courts deciding fundamental political issues. This includes the judiciary as an actor in the political arena, in interplay with elected political institutions, public discourse and cultural norms. This is something about which views differ. For some, this goes beyond what judges should do, which is meant to be about mechanically applying laws set by the legislature.[43] For others, it has always been the case that applying (and developing) legislation and constitutions require political judgements, including in 'absolute' constitutional rights, where the political judgements are instead about the limits and boundaries of the right, or creating doctrinal exceptions to it. All 'balancing' does is make this more explicit, and require more of an explanation of political justification. In highly contested areas, such as human rights conflicts and political issues, judges will be making and applying political values.

So, in this model of rights, instead of being a protected essence, human rights are interests which cannot be interfered with unreasonably. Human rights protection could be reduced down to the right not to have your autonomy overly interfered with. The 'strength' of human rights in this model therefore depends on the scrutiny and the political standards and values applied by judges. At worst, human rights become more formal than substantive: as long as the public body has gone through the right process in establishing a rights-based justification, the interference is legitimate. The legal process functions as a procedural right to demand a public reasons-based justification.[44]

At the end of the process, it is the substantive political values applied by judges which protect people. This can fail to do good either if it is weak, or if existing (bad) political values are relied upon. In these cases, existing political norms are just be reproduced with no protection to the people whose rights are interfered with. As will be returned to below, the form of human rights adjudication requires substantive political values in application and adjudication.

[41] International readers should be aware that this section is written primarily describing the Anglo-American tradition.
[42] It is not novel that fundamental political issues must be decided by courts; this is something inherent to the role of the judiciary. However, constitutional/human rights based review is much more 'political' than traditional grounds of judicial review and other areas of law.
[43] This can be seen in media talk of 'unelected judges'. Of course, much of the assessment is about when judges are applying values that "we don't like", whereas when they are upholding the values that "we do like" they are simply neutrally applying the existing laws.
[44] Mattias Kumm, 'The Idea of Socratic Contestation and the Right to Justification: The Point of Rights-Based Proportionality Review' (2010) Law and Ethics of Human Rights 142.

2.4.4 The Expanded Domain of Human Rights

Over the last decades, we can see that the concept and domain of human rights has expanded, now covering the breadth of politics. The original idea of human rights developed with liberal political theory where basic individual freedoms are assumed and people are otherwise free to act as they wish, and initial human rights practice was mostly about stopping state interference with individual's civil and political rights. With the expansion of democracy and every individual becoming enfranchised with human rights, politics becomes about relationships between rights-holders. With a broader approach taken in human rights law, resolving clashes between conflicting human rights-interests becomes more common.

Human rights grew from the original negative liberal protections from the state to also include positive claims on states, such as arguments about greater taxation and public spending so as to fund projects to progressively realise economic and social rights. Legally, human rights is no longer only about the vertical relationship between citizen and state – though many still give primacy to this traditional approach – but because the legal system is part of the state and modern society in general, human rights flow through to have an indirect 'horizontal' effect between private actors. There are different views on how strong or weak this indirect horizontal effect should be, but it is still far from being a full 'horizontal' effect where all individuals have general obligations to respect (and possibly protect or fulfil)[45] the human rights of other individuals.[46]

Politically, the idea of human rights is across the breadth of society. The framework of human rights is generally used in politics. Almost any public project or policy can be discussed in terms of realising human rights, including that it might cost too much. Corporations too claim human rights and can justify their business activities in human rights terms. Instead of belonging to particular political camps, political claims using human rights language are made across the full breadth of the political spectrum.

2.4.5 Separation of Form and Substance

Both in human rights jurisprudence and political discourse, we therefore see a shift in human rights to being more about form than substance. Or, in other words, human rights has become (semi-) decoupled from liberal political theory and functions more of a procedural vehicle which requires substantive political values to operationalise. [47]

The traditional 'strong normative force' approach to human rights was about substantive strength has been replaced by a 'global model' of broad human rights where conflicts between rights-interests need to be resolved, both vertically and horizontally. Human rights is the 'form' by which this adjudication takes place, but as discussed above, the conflicts still need substantive political resolution.

[45] More on the different types of obligations will be discussed in the next section.
[46] Private law generally predates the idea of human rights. It would be possible though to base the majority or perhaps entirety of a legal system in terms of human rights, or to recast existing horizontal private law norms in these terms.
[47] I do not mean to suggest that human rights is totally devoid of substantive value; for example, the idea that every human matters is part of it, and authoritarian rule is not compatible with human rights.

Similarly, in the political arena more broadly, 'human rights' terminology and frameworks can be used by actors on all sides. We see arguments on both sides of political debates cast in human rights language, such as for or against 'mandatory' vaccinations, how to treat prisoners and criminals, being welcome or hostile to immigrants, and progressive or pluralistic versus conservative social values. Both in political contestation in general, and human rights adjudication in the courtroom, human rights themselves do not resolve these arguments, which are about competing ideas of what human rights should mean. A conservative religious society can heavily limit free speech based on the importance of protecting religious values; a militaristic authoritarian society can justify imprisonment of dissidents based on their positive obligations to keep everyone safe; a liberal society can justify heavy limits on disruptive political protest because it interferes with people's everyday freedom to live an autonomous live; a capitalistic society can defend business activities from any sort of criticism based on a right to property and business freedom, or because the goods and services provided serve people's human rights or general autonomy. Instead, the realisation, interpretation, and application of human rights needs substantive political values to be coupled with the form of human rights.

2.5 Considerations for Rights of Nature

Based on the preceding discussion, there is much that Rights of Nature can learn and draw from existing Human Rights practice and theory, and to see what issues might lie ahead.

There remains **much to be developed** in Rights of Nature legal theory. Human rights have been theorised and implemented seriously for the last 50 years (and in many cases going back much longer), yet legal developments, competing theories and unresolved issues continue. Rights of Nature only adds to the complexity of these sorts of questions.

This opens up the same questions **around what model(s) of rights** should be implemented as have been faced for (human) constitutional rights. Given the structural rights-conflicts which will exist, much of the resolution of Rights of Nature claims cannot be traditional legal rights where a rights-claim points directly to a particular legal outcome.

There are therefore questions about which model of constitutional rights to implement: should Rights of Nature be strong rights with special normative force, implemented like traditional constitutional rights to protect a hard core which is inviolable? Or should they be implemented following the broader and weaker 'global model', where conflicts are resolved by Balancing. Or perhaps a hybrid 'concentric circles' model is the best way to move towards the relational balances which are needed ecologically, which can allow for a core to be strongly protected while more peripheral interactions can be Balanced?

This would match the approach discussed above that what is in an ecosystem is not a binary question or bounded area but a spectrum of relationship and intensity (see **3.1.2**).

Vertical and horizontal effects. One big question in developing Rights of Nature laws is who they affect: who has legal duties correlative to the rights? This will be discussed in more detail in the next section and will only be covered briefly here.

If introduced as constitutional-style rights, then their primary effect would be in the vertical relationship with the state. As discussed above, this is less about the legality of traditional judicial review and more about resolving conflicts between rights-interests, as the justification for most state actions will be the benefit for humans (with 'public interest' understood as an aggregate of human rights interests)). While many such rights-conflicts would be between

there will also be many instances where there are human rights-interests also on the same side of the equation as a nature rights-interest, where ecological protection is also beneficial for humans. There could also be rights-conflicts between competing nature-entities, as ecological tensions and 'competition' between different beings might flow into the legal system.

These constitutional rights would also have knock-on indirect horizontal effects, where there are already state relationships with private actors or relationships between private actors mediated by the state. This could vary from 'strong' horizontal effects where the rights radiate and flow across the entirety of private law through to 'weak' horizontal effects where there is either no such connection or the rights are not influential in private law cases.

So far the idea of Rights of Nature have generally been more about constitutional effects than private law rights.[48] Rights of Nature could have direct horizontal effect by having immediate validity in private law and causes of action in the law of obligations. If nature-entities are recognised as legal subjects with rights, it would logically follow that they should be able to act directly against private individuals who interfere with their rights. Private law should be transformed by Rights of Nature; the questions are about how this should be implemented and what this would look like.

The structure of competing rights-claims. As discussed above, human rights expanded the scope of rights-bearers and their rights in society and the legal system, especially with the broader 'global model' style of right. This means that various interactions which might previously have been legally governed by specific public law (ie specific legislation, judicial review principles and constitutional norms) and perhaps also by private law, could now come within the scope of constitutional rights adjudication. Where existing legal norms do not match the logic or justification of human rights, they can be challenged, with the measurement of the value of rights-interests on either side of the equation.

[48] Much could be said about how this relates to human rights, but to keep it short: In the Anglo-American tradition, the underlying values of human rights underlie the development of private law, as 'common law values'. Human Rights developed primarily out of a liberal tradition of protecting individuals from state interference, with a focus on the vertical relationship and on civil and political rights instead of economic, social and cultural rights. Wider effects play out on the fringes, but Human Rights theory from alternative positions remains only a countercurrent.

Rights of Nature would similarly be a (huge) expansion of the rights franchise. There would be new rights-bearers (in nature entities), and their rights would be novel and broad. Rights of Nature will be in vertical conflict with state actions or inactions, and will also be in horizontal conflict with various human interests and human rights interests.

Legal form and substantive framework. The vision of Rights of Nature currently includes a strong set of substantive political values. These include the inherent value of non-human nature, moving from human supremacy to seeing humans as part of a much bigger world (and living as such), human responsibilities to the rest of nature, and shifting from the current relations of exploitation and destruction to that humans should live in a harmonious balance with the rest of nature. This sets it against the existing status quo and most current political movements, which generally are competing between anthropocentric visions.

Nonetheless, the movement to establishing Rights of Nature laws runs risks. Political compromise and the shift to contestation being within the legal system (instead of currently outside it). The danger is that too much of these substantive values get lost, and Rights of Nature are established in legal (or rhetorical) form only. As discussed above, legal conflicts will be between competing rights-holders and Balancing doctrine requires adjudication based on political values. A big danger is that Rights of Nature laws are passed but do little, if judges continue the existing dynamics of prioritising human interests over non-human ones. The Rights would be a mere 'right to justification', where the rights-subject can get to court to have their rights-infringement adjudicated on, but as long as the interference is lawful and a justification can be given, there is no redress. This is a significant pitfall seen in existing human rights law and politics, where human rights violations and a lack of progressive realisation is justified by arguments based on the status quo, such that human rights violations which are currently normal remain unchallenged.

Rights of Nature advocates should remain focused on the bigger political movement, instead of just the goal of establishing laws. When laws are established, including some sort of principles, norms or jurisprudence which ensures that substantive values are included will likely be vital to whether they are successful in achieving ecologically positive outcomes.

Finally, the **relationships between Human Rights and Rights of Nature** will need to be resolved. As discussed above, 'human rights' is not one particular vision of society. Rather, there are many competing political visions which can be expressed through a human rights framework, and what the underlying political theory is significant for human rights jurisprudence. Rights of Nature as a movement is challenging the status quo and seeking to transform our society as a whole, and has a competing political vision (or rather, multiple competing visions, as there are different political strands in the Rights of Nature movement).

How Human Rights and Rights of Nature relate to each other therefore goes deeper than just

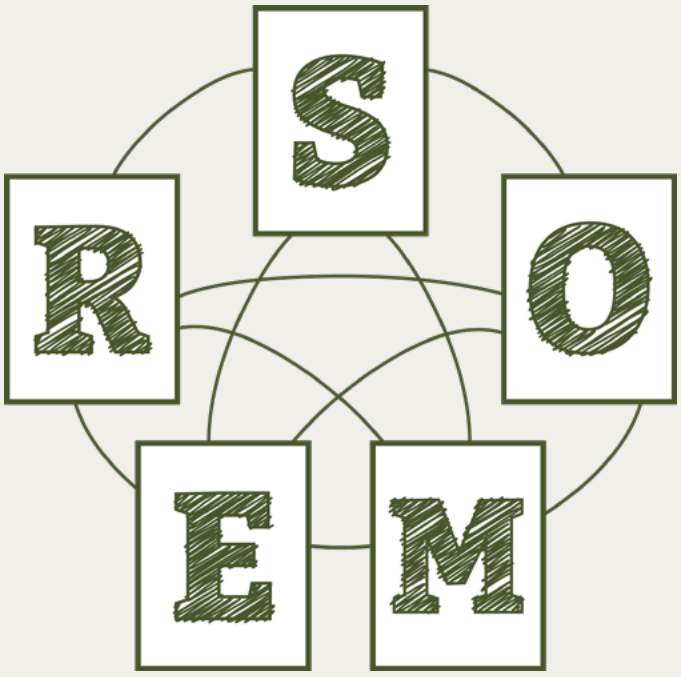
the legal form but depends on the underlying political theories and visions for society. Anything relating to 'the environment' has been generally absent in human rights discourse; only in the last 10 years have there been significant discussions and progress about the (human) Right to a Healthy Environment. If Human Rights continue to be interpreted and realised in a human supremacist way, or focused on capitalistic economic development and short-term human interests, then they will mostly be in conflict with Rights of Nature. Yet alternative approaches are also possible, where Human Rights can be understood in an ecological or ecocentric way. This would recognise that ecological destruction is also bad for humans, and that the best world for humans is one where ecological integrity can be safeguarded. There have been developments along these lines in Latin America, both at the Inter-American Court of Human Rights and in multiple national jurisdictions, which take an ecocentric approach to human rights. However, so far this has received limited attention in the global north or in Anglo-American human rights or legal theory.

The Right to a Healthy Environment could be a possible bridging point with Rights of Nature, especially as there would often be cases where this right is infringed alongside Rights of Nature violations and litigation is based on both grounds. At present, though, the RtHE is generally at the fringe of human rights and is still very much about the human environment and how it best serves humans.[49] It is a long way from transforming human rights as a whole. Human Rights advocates worry that trying to push further for Rights of Nature will create more opposition to the Right to a Healthy Environment and often favour a gradual reformist approach. There are also dangers with arguing that Rights of Nature will be beneficial to humans, as this risks reducing them to only serving that purpose, instead of having this as an incidental benefit of protecting non-human nature for its own ends.

[49] 'Environmental' cases such as toxic spills or climate change litigation is still anthropocentric, being about harm to humans, not based on ecocentric conceptions of 'the environment'.

3. Legislative Elements and Effects

Figure 3.i: 'Five Elements' graphic



As signified in that graphic, Rights of Nature legislation can include five different elements: Subjects, Rights, Obligations (or legal effects), Enforcement (or representation), and Miscellaneous (or other legal effects). This section will go through each of these in turn.

There are a number of considerations for what Rights of Nature legislation could cover and how it could work. Ultimately, Rights of Nature could mean a transformation across the entire legal system, seeking to affect every aspect of relationships with nature. This is a large undertaking and need not be done all in one go; legislative change could work in stages, or in one gigantic sweep. There is also a trade-off between broad brush strokes and making change quickly versus more gradual, detailed and slower changes (the 'problem of legal transition' is discussed in **3.3.4**).

This section attempts to set out the breadth of what could be included, broken down by the different elements of the legislation: subjects; rights; obligations/effects; representation; miscellaneous. This is not a proposal for what legislation would include, or thoughts on the

question of how much to implement or in what stages. **Section 6** then sets out a few different models and building blocks for legislation more like a simplified 'blueprint' for how legislative frameworks could be.

This includes the questions:

- Who are the subjects?
- What rights do they have?
- What legal obligations and on whom?
- How are the nature-subjects represented?
- What other legal effects might exist?

Subjects

Nature as a totality
Ecosystems or habitats
Rivers
Inorganic processes
Individual Trees or Animals

Rights

Obligations

Duty Bearers
National Government
All Public Authorities
Corporations
Private Citizens
Landowners

Legal areas
Public Law
Environmental Regulation
Criminal Law
Civil Law
Land Law

Enforcement

Government Body
Special Public Authority
Civil Society – NGOs
Civil Society – Open standing
Guardianship Bodies

Miscellaneous

Operationalising Provisions
Procedural Rights
Integration with Existing Legal Order
Substantive Normative Depth
Other legal effects

3.1 Subjects

One of the key questions in Rights of Nature law is what is established to be the subjects or legal entities. This report aims only to give an overview and comparison of the different approaches possibilities, with brief commentary, not to go in any depth or address the question of how this should be done.[50] The focus here is more towards approaches taken in legislative frameworks, as opposed to all types of Rights of Nature intervention.

While there is no conceptual or philosophical barrier with creating legal entities to represent elements of the natural world within the legal system,[51] there is not a straightforward path for how components of the real natural world are translated into legal conceptual subjects. In other words, we have to decide how to construct non-human nature as legal subjects and legal entities.

The main possibilities are:

- Nature as a totality
- Ecosystems and habitats
- Species
- Rivers
- Inorganic processes
- Individual beings

In some ways, this goes from the general through to the particular – but they are of course interlinked, as species and individual beings need healthy ecosystems and each ecosystem is part of a wider ecological world. In terms of legislative frameworks for nature-subjects, there is also a possibility that different types of nature-element are treated differently. There has always been an idea within Rights of Nature that different elements of nature should have different rights.[52] They could also be treated differently in terms of establishing legal entities, and different pieces of legislation could be used for different types of nature-element.

Being in an ecological world, a nature-subject is just as much about ecological relations as it is about spatial locations. Many species migrate and many ecosystems and habitats do not have a clear spatial boundary. While this has the potential to create legal mess, taking a graduated approach to rights – a broader scope of the right on a spectrum of intensity such as the 'concentric rings' approach or in the way that rights-interests which are 'balanced' against others (see 2.4) – could match well with ecological relations of different proximities and intensity. This approach to rights also allows for different levels of protection for different Rights of Nature, such as stronger protection when a species is threatened with extinction or a proportionate protection to cleanliness of water (which is on a multi-axis spectrum not a binary state).

[50] For a more general survey see: Stepan Wood 'Rights of Nature: Who Holds Them?' Allard School of Law Centre for Law and the Environment (Sept 2023).
[51] There is much that could be discussed on this topic, and arguments opposing this position, yet such discussions are beyond the scope of this report.
[52] Thomas Berry, 'The Origin, Differentiation and Role of Rights' (November 2001) available at: https://www.ties-edu.org/wp-content/uploads/2018/09/Thomas-Berry-rights.pdf

3.1.1 Nature as a Whole

One approach taken is the conceptualisation of 'nature' as a whole – sometimes specifically written as capital-N 'Nature'. This could also be termed 'nature in general' or 'nature as a totality'. Sometimes, this conceptualisation is treated more like a metaphysical entity or some sort of god, termed 'Mother Nature' (or Madre Tierra, Pacha Mama, etc), either seriously or more metaphorically. Laws which recognise a nature-subject in this way typically also include components of nature instead of only being for nature 'as a whole'.

Treating nature as a totality has some issues. One is that it cannot be easily defined, and nor are there common conceptions of it. Arguably, it is an essentially contested concept.[53] There are different paradigms between the 'reductionist' static aggregation of everything that exists, or dynamic, relational, interactive conceptions, conceptions can be ontological or teleological. If 'nature' is everything that exists, is it a useful concept – what does it actually mean in practice? Often, consciously or subconsciously, humans and human developments (eg urban areas) are excluded from this thinking of 'nature' – yet we know that humans must be part of 'nature'.

A second is the more practical issue that 'Nature' is too abstract to operate legally. Interactions happen at smaller scales and in more specific ways than with nature 'as a whole'. Nature as a whole cannot meaningfully be a legal subject any more than humanity as a whole could be. While there may be philosophically coherent ways of defining nature in this way, which include rights and ethics, most of Rights of Nature is actually about an element of nature at a more defined scale. In other words, even when 'Nature' as a whole is given rights, it is actually only when smaller elements of nature have rights violated and bring legal actions that legal subjecthood is brought into focus.

Most approaches to conceptualising 'Nature' incorporate worldviews and values, whether consciously or subconsciously.[54] As Tanasescu says, "Anthropology compounds the problem further, having decisively shown that 'nature' is a culturally specific concept, and not at all the universal that modernity wants it to be."[55] This is most obvious when we look at other societies, where it is easier to see how 'the other' does something that is different or does not align with our values, but the problem is just as prevalent within western societies.

As part of this, conceptions of 'nature' typically incorporate ideas of 'what is good', often unnoticed, as part of ideological worldviews bundled into it. One common way of thinking about nature is as something 'pure' or 'innocent' outside society, which has underlying ideas that 'nature' is separate from humans or that human society is 'not natural'.[56] While it may be that there are some ethical

[53] See further Mihnea Tanasescu, *Understanding the Rights of Nature: A Critical Introduction* (2022) 32-35.
[54] There is the general philosophical point that in interpreting the real world inevitably uses concepts in our minds, which will include ideological notions. But for more specific discussion about how conceptualisations of 'nature' are projections of social values, see Murray Bookchin, Nature and Ideology.
[55] Tanasescu, Critical Introduction, 32.
[56] See further Chaia Heller, 'Ecology of Everyday Life', Ch 1.

values that could be argued to be inherent in nature, the majority of these claimed values, or how they should be applied to particular situations, are actually human ideologies and ethical frameworks.

This is best recognised as such, instead of claimed as being part of nature. Nature treated as gendered is one example of this problem, ie nature as 'mother nature', which is a sexist approach which typically reproduces patriarchal norms.

This problem is significant within the Rights of Nature movement, with Tanasescu describing what he terms the 'orthodox' approach to Rights of as having an 'ecotheological concept of Nature' in the way it treats nature as a totality.[57] Berry and Cullinan were inspired by 'natural law' thinking, and many advocates and campaigners have normative conceptions of nature without necessarily realising it.

This brief discussion was meant only to highlight these issues which come with this conceptualisation of nature, and make the point that we must pay attention to what we actually mean and the values. It is not to say that we should never talk of 'nature' as a totality, nor that Rights of Nature laws should never take this approach. In practice, this approach to nature-subjectivity functions as something of an umbrella that includes more particular elements, and functions as a legal backstop, with cases (or nature-entities) being brought not on behalf of nature as a whole but rather on behalf of particular elements which are part of nature.

3.1.2 Ecosystems and Habitats

Ecosystems and habitats are – along with rivers – have been the primary organising unit of Rights of Nature in practice so far. Legislation typically includes something in this form, sometimes including variations such as 'ecological communities', 'life systems' or 'natural communities'. The 'ecosystem' scale seems to be the right geographical scale (conceptually, spatially, ecologically, legally, politically) for Rights of Nature to function at.

'Ecosystems' are conceptual representations of reality, but a particular ecosystem does not necessarily have clear boundaries. Nor are ecosystems separate from each other. This is because ecosystems (and ecology in general) are relational, about the dynamics and interactions between everything in them.[58] If a migratory bird moves between two different places, such that changes in the availability of a key food source in one place would have a knock-on effect on the outcomes in the other place, then they cannot really be said to be separate ecosystems.

Yet this lack of boundaries need not pose a problem, and nor is it likely to be the main legal hurdle in Rights of Nature cases. In practical terms, whether something is part of an ecosystem is a relational question on a spectrum of intensity: instead of a binary question of whether something is or is not part

[57] Mihnea Tanasescu, *Understanding the Rights of Nature: A Critical Introduction* (2022); 'Orthodox' first used at 15, 'ecotheological' first used at 26.
[58] This is not only the case for ecosystems: the world as a whole, humans and society are all relational. In ecology, relational thinking is much stronger than in other disciplines, where it is often absent or an emerging paradigm.

of it, the question can be posed of *how much* it is part of an ecosystem. Legally, the main questions would be along the lines of causation and the significance or intensity of the interference or violation of a particular ecosystem's rights are. Though much of law is black-and-white binary thinking, such a graduated approach is common in human rights law and theory, which considers both the degree and intensity of a rights-interference. In the first stage, there is a question of whether a particular alleged interference goes to the core of a right or is nearer the periphery of it.[59] In the second stage of a qualified human right, the intensity of the interference is relevant for the level of judicial scrutiny, proportionality and balancing 'Living Being' or 'Living Entity' or 'living whole' phrases.

3.1.3 Rivers

Rivers, or inland water systems in general, are a common Rights of Nature subject – perhaps the most popular type globally. They have been established in court decisions in multiple Latin American jurisdictions and Bangladesh, in legislation in New Zealand and Spain, in declarations both international and local, and in local ordinances in many jurisdictions. However, legislative frameworks do not specifically mention rivers. They are certainly arguable within the scope of each, within the umbrella of nature's 'components', but it is a curious discrepancy.

Rivers are not simple to define.[60] Though the focus is on the main flow of a river within its banks, it is really a natural process based on the interaction of a water cycle, the landscape, gravity, organic beings and other inorganic processes. A spatial definition based on where on land they flow, aside from the fact that this changes over time, would miss out that they are relational processes across an entire catchment basin. There can also be metaphysical or spiritual definitions of a river as a more-than-material entity. Definitions in Rights of Nature instruments often include basins, catchments or watersheds as part of the nature-entity.

Though taking an approach of 'the river is anything that can affect the river' is huge in scope, this need not be problematic legally. The relational approach to rights described above means that the legal function would be more about the degree and intensity of a rights-interference instead of a border on a map.

3.1.4 Natural Processes

Rights of Nature has generally focused on living elements of nature. When habitats, ecosystems and rivers are subjects, the focus is generally on the living beings within these. Yet inorganic processes could also be recognised as nature-subjects and rights-bearers.

[59] This is standard in the jurisprudence of the European Court of Human Rights, but the clearest and best established model is in German constitutional law, with 'three sphere theory' of intimate, private and social layers of rights.
[60] For example, Boelens et al, 'Riverhood: political ecologies of socionature commoning and translocal struggles for water justice' (2023) The Journal of Peasant Studies 1125, conceptualises 'riverhood' with rivers as 'socionatural entities' with four interrelated dimensions.

This fits comfortably within the 'nature as a whole' conception. A dualistic approach between 'alive' and 'not alive' is not a good representation of the natural world, and is generally being left behind. All living beings live entangled in ecological relations with non-alive elements and processes. Though recognising some sort of non-alive entity as a nature-subject may be unusual, because it challenges the way we primarily focus on alive beings, there is no particular legal obstacle to establishing a natural process as a legal entity or granting it rights. Whether such processes are covered in existing laws or definitions depends on their drafting and interpretation: for example, some instruments say 'nature and all beings' instead of 'nature and all its components', which would distinguish between alive and nonalive.

3.1.5 Species and Communities

Species are another possible unit for bearing Rights of Nature or being represented as a legal subject. Rights of Nature typically is not about the rights of individual animals, instead acting at the level of the collective unit of the species or communities of a species.[61] The animal rights movement predates the Rights of Nature movement and is largely separate, though there are, of course, overlaps and interactions. There have been a handful of instances of declarations, cases or legislation for particular species of animal or plant around the world.

Any species of organic being could be claimed within a 'nature as totality' approach, or recognised in a specific instrument. So far the focus has been on outstanding species with particular meaning for a people or 'charismatic megafauna', though bacteria and fungi (and perhaps there is a difficult question of whether viruses have rights...) would also be included within the scope.

In general, most of the rights-interests of a species will be protected via protecting ecosystems and habitats, which are made up of many species, and the rights-interests of species and communities would play out at the level of the ecosystem. However there could be particular instances where one particular species is being impacted in a way which does not otherwise affect an ecosystem as a whole, so there is merit in having species as nature-subjects and rights-bearers separately from ecosystems.

Worth mentioning are the tensions in the scale between communities of animals and the species as a whole. What do Rights of Nature mean for populous animals not facing any threats? Should every community of a species be protected? If the only aim is to avoid extinction for the species as a whole, does this mean that a species across a broad geographical range could be reduced to just one strong community?

Similarly, if all species are recognised as rights-bearers or granted rights, would this mean protecting invasive species? This question has a clearer answer: this issue would be dealt with at the latter stage of the effect of the rights and interplay between rights-holders, about the *effect of the rights* instead

[61] The relationship between Rights of Nature and individual animal rights will not be discussed here.

of not *who* has. While there are often not easy answers about how best to intervene in ecosystems, in the rights-framework this can be managed as a conflict between rights-bearers, as the invasive species would be interfering with the rights of other species, instead of by denying a species or community as a rights-subject.

There are also perhaps questions about whether *all species* should be protected: alternative approaches could be that (i) only endangered species receive protection, or (ii) only native species. On the first point, in practice, this is probably best dealt with in terms of the graduated approach described before in terms of how intensely a particular species' rights are interfered with, instead of a binary approach of having or not having rights. If all species have rights protecting against extinction, then this would trigger stronger protection for endangered species.

This also ties into the closed list versus open list question discussed below. On the second, the question of whether all species or only native species should have rights is a discussion which I will not cover here. This is more a question of political implementation of Rights of Nature than a conceptual or legal problem.

3.1.6 Inherent Rights versus Closed List Approaches

There are different ways of establishing legal subjects and rights-bearers. The strongest is for rights to be inherent. That is, that the law establishes that a particular legal scope has the rights automatically. This is the case for lots of rights: all human individuals have certain human rights; some rights are linked to citizenship status; private individuals have rights against other private individuals based on general legal obligations; employee status gives rights against employers; and so on. Rights of Nature laws in constitutions and legislation have been inherent rights: the nature-subjects automatically have them.

The alternative is that particular subjects have to be specifically granted subjecthood or given rights to have them, such as by being named in a list (the 'closed list' approach). A good example of this distinction can be seen in wildlife protection law (here talking about England and Wales, the Wildlife & Countryside Act 1981). It is only an offence to kill a wild animal if they are specifically listed for protection (Schedule 5). There is a similar approach in historic building conservation, where 'listed buildings' have specific protections beyond the general planning regime. Interestingly, a hybrid approach is taken for birds and plants: there are various general protections for all wild birds and wild plants; on top of this, particular listed species have stronger protections.

There is a possible hybrid approach of an inherent procedural right to be added to a closed list – which could grant general ad hoc rights or could be to establish a specific nature-subject with representation. For example, it could be that for a certain type of nature-subject (eg ecosystem

type) a group of people could apply to establish a legal entity to represent a particular existence of that type (eg a habitat in one location). Once established, the nature-subject would have substantive rights, but not before. This could be understood as a right to subjecthood, a right to representation, or a right to have rights. This procedural right could be inherent or it could be a discretionary process (these different possibilities are discussed further in **6.3 Subject Specific Representation**).

For a 'closed list' approach, the question of obvious importance is how something gets added to the list. This could either be a case of registration based on set criteria or could be based on a decision-maker's discretion. In the former, there would be a procedural right to be placed on the list (which then leads to substantive protection); in the latter, there is no such right.[62]

Immigration law gives an example of these different rights side-by-side. The EU Settled Status scheme moved non-British EU Citizens living in the UK from having an automatic right to live here to having to apply for recognition of their right to live here. The British Government had the choice between a 'declaratory' scheme and a 'constitutive' one.[63] Refugee status is automatic for a person within the category of 'refugee', with related legal protection. Discretionary Leave to Remain is based on government discretion with no procedural rights. Indefinite Leave to Remain is perhaps a hybrid, based on an established set of criteria with some discretion, and no legal right to the status.

So, while so far there are two different groupings of 'general rights' and 'particular nature subjects', these are not two distinct approaches but can be combined in a matrix of different ways, as discussed in **Section 2.3** and **Section 6.**

3.2 Rights

After deciding what is a legal subject, there is the question of what rights are granted and included in legislation. Earlier in the report (**2.4 and 2.5**) was a discussion about the theoretical approach to rights, which are worth noting. This report is not looking at this in detail or making any comparison between the sets of rights which are in different legislative frameworks, which would in itself be a significant undertaking. In later sections of this report, the rights in different legislation will be presented and discussed, but there will not be a detailed comparison or analysis between them.

For an overview of the different Rights of Nature which have been listed and recognised in different laws, see Stepan Wood's report *Rights of Nature: What Are They?* [64] As well as those in legislation or constitutions, different proposed sets of 'Rights of Nature' have been listed. These include the original set by Thomas Berry and Cormac Cullinan. As well as the various laws and constitutions which have recognised rights, notable documents include the Universal Declaration of the Rights of Mother Earth and the Universal Declaration of the Rights of Rivers.

[62] Though of course general administrative law principles would apply.
[63] 'UK-EU Withdrawal Agreement: Implementation of citizens' Rights', House of Commons Library Research Briefing, 28 November 2023 https://researchbriefings.files.parliament.uk/documents/CBP-9657/CBP-9657.pdf
[64] Stepan Wood, 'Rights of Nature: What Are They?', Allard School of Law Centre for Law and the Environment (Sept 2023).

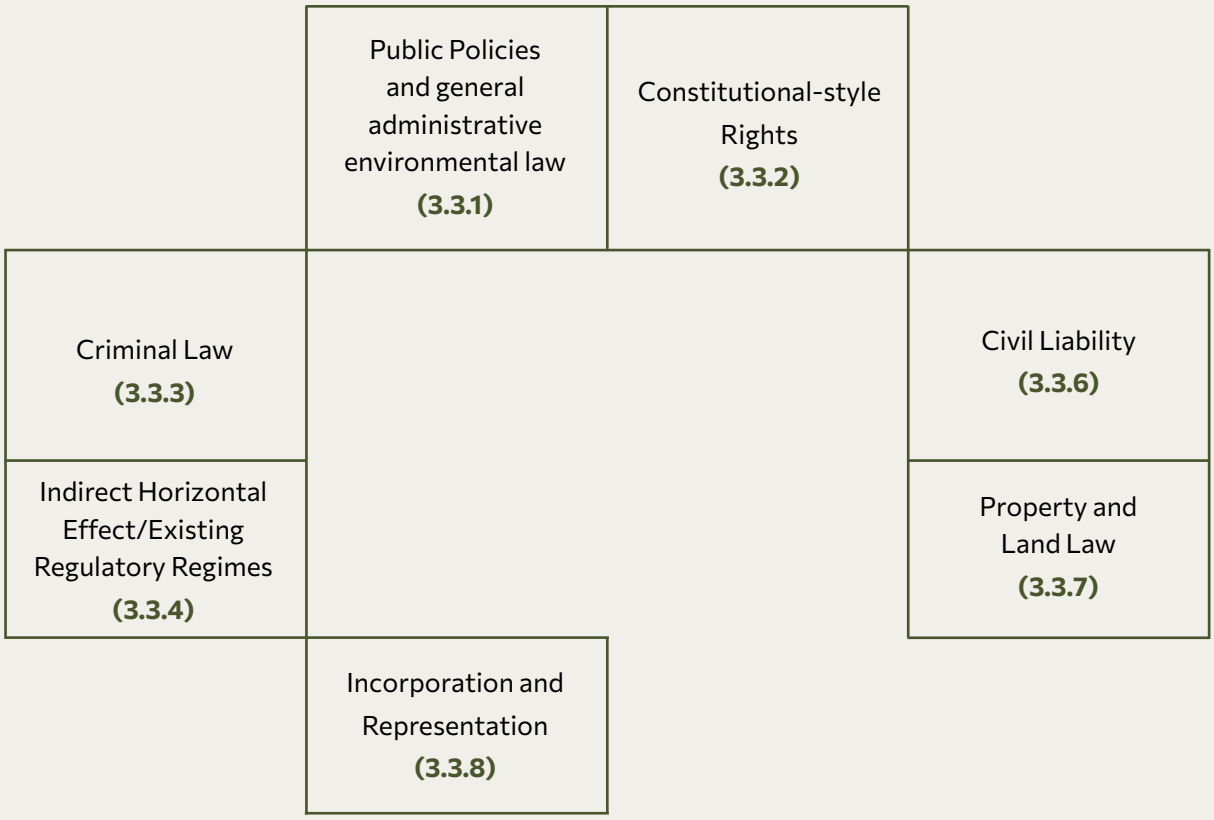
The previous section included an explanation of rights in general, and constitutional rights in particular. There is a complexity to who is affected by rights, what legal effects or areas of law are impacted, what particular obligations the duty-bearers may have, and how to resolve conflicts between the new Rights of Nature and existing legal norms. These will be discussed below in subsection **3.3 Obligations and Different Legal Areas** and **3.5 Principles and Other Legal Effects.**

3.3 Obligations and Different Legal Areas[65]

The point of rights is that there are corresponding duties or obligations on others: the effect of the rights is the importance of the rights. In non-legal terms, these could be thought of as responsibilities: things which are expected of us towards others.

Although most of the legal effects of Rights of Nature so far have been in the vein of effects on the state and public bodies, the whole breadth of the legal system should be considered and can be covered by legislation. One key distinction is whether the rights only affect public authorities, or whether they also affect private actors (individuals and legally established organisations). This creates a significant difference between whether it is only administrative obligations on the state or has broader affects in society.

Figure 3.ii: Different obligations and legal areas



[65] Again, the caveat that the author is writing from an English perspective, based on English administrative and constitutional law, though has done their best to generalise.

3.3.1 Public Law I: General

There are a number of different types of obligations which the state or public authorities could have in relation to Rights of Nature. Drawing from administrative environmental law, a range of different types of obligations which could apply will be set out here:

- **General administrative law.** These aren't specific to Rights of Nature, but would follow automatically as part and parcel of any Rights of Nature legislation which has any such effects. General administrative law includes various obligations to act 'lawfully', such as within a statutory powers, reasonably, using good faith and independent judgement, and following proper procedures (whether statutory or 'natural justice' principles).
- Duties to **act in particular ways.** There can be all sorts of these duties, because any can be created. Some of them are narrow and easy to enforce, others might be more general and vague, more about a direction of travel.
    - The international law human rights obligation of 'progressive realisation' is an example of the latter: constant efforts must be made, more than a token effort, but as long as *enough* is being done then the obligation is fulfilled.
    - Specific examples include the Environment Act 2021 'environmental principles duty' – that ministers and policy makers must consider the environmental impact of new policies, following a framework of key principles – or that land use planning permission should achieve 'biodiversity net gain'.
- Duty to **take into consideration.** There are some things which decision-makers must include as material considerations when making a decision and weighing different factors. These duties can be statutory in relation to specific things, or arise out of common law. This obligation does not relate to the decision itself, only how it was made and which factors were considered. There could therefore be duties to take Rights of Nature into consideration in various ways, such as in planning decisions or any policies which would have effects on Rights of Nature. There have been many judicial reviews in environmental matters relating to what should have been considered when a particular decision was made. However, as long as something is considered, the outcome need not be positive. This type of duty would therefore offer little protection for Rights of Nature.
- **Duty to consult.** There is not a general duty to consult but various legislation creates such duties as part of statutory procedures, such as around land use planning and development. A duty to consult can also arise in particular circumstances (in the UK, when there is a 'legitimate expectation'). It could therefore be the case that particular processes or circumstances could give rise to a consultation obligation on behalf of nature-entities whose Rights of Nature may be affected. There are various ways their interests could be represented, discussed further in the next section.

- Duties towards **targets and to make plans.** Environmental law has often included targets and plans. These can range in their significance.
  - At the weaker end, it can simply be an 'ambition', and the law is functioning only to make an official state a position for political accountability. The 2015 Paris Agreement made such a target, without any force to enforce it.
  - At the stronger end, a target can be legally enforceable. The best example of this is EU Air Quality Directive (Directive 2008/50/EC). This set legally binding limit values which may not be exceeded (Art 13); where these were at risk of being exceeded, states were required to make action plans (Art 24). The UK Government had made plans which were too weak and not likely to achieve the goal, and these were challenged by ClientEarth. In the first case, the Court ordered that a comprehensive plan be made so as to meet pollution limits as soon as possible.
  - The detail matters for obligations in relation to plans and targets. Is the obligation only to produce a plan which works towards a goal, or must the plan be likely (or very likely?) to achieve a defined outcome? Who is making the assessment? For example, the legal obligation for plans under the Climate Change Act 2008 is that the Secretary of State considers that the plan will enable the target to be met. This allows for less judicial scrutiny, yet these plans have still been successfully challenged for a lack of detail such that the decision by the Secretary of State acted irrationally.[66] The Environment Act 2021 takes a similar approach.

3.3.2 Public Law II: Constitutional-Style Rights[67]

Separate to general administrative law are public law obligations in relation to constitutional rights. By looking at the duties which exist already in relation to human constitutional rights, we can consider what duties could or should exist in relation to Rights of Nature. In the development of the jurisprudence, these obligations are generally not specified in conventions or legislation but rather have been developed judicially. The rights documents typically say only that the state should 'secure to everyone within their jurisdiction the rights and freedoms' (ECHR Art 1), 'to respect and to ensure ... the rights recognised' (ICCPR Art 2), or 'to take steps ... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights' (ICESCR Art 2).

The various obligations have instead been created, recognised and elaborated by courts. These have been grouped into three types: respect; protect; and fulfil.[68] These are not necessarily discrete categories, as some duties can be understood as being between two types, but serves as a helpful framework.

- 'Respect' means refraining from interfering with or otherwise limiting human rights. This is a negative obligation not to do certain things, and comes out of a traditional liberal view of the state – that it should respect individual's liberty. It includes things within the state's

[66] R (Friends of the Earth) v Secretary of State for Energy Security and Net Zero [2022] EWHC 1841 (Admin); R (Friends of the Earth) vs Secretary of State for Energy Security and Net Zero [2024] EWHC 995 (Admin).
[67] While at present these are primarily in relation to human rights, if rights-bearers are to be expanded to include nature-subjects, it is better to talk more broadly of constitutional rights. This section will talk of 'constitutional rights' in a broader way which means constitutional-style rights even when made by legislation.
[68] The UN Guiding Principles on Business and Human Rights adapted these for application to business enterprises: Protect; Respect; Remedy.

responsibility, whether more 'immediate' state actions or more 'indirect' things, such what is permitted via regulatory regimes.

- 'Protect' means that states have to take positive actions so as to protect the rights-holder from their rights being infringed by other actors. Or, in other words, to act to ensure that third parties respect the rights. This includes establishing a criminal justice system, public authorities, regulatory regimes, and making plans and policies.
- 'Fulfil' means that states must take direct positive action to the rights-holder so as to realise their rights. For human rights, this includes providing food, shelter, water, education, and so on. Though less recognised, many civil and political rights also have these positive dimensions.

This structure can generally be adopted for state and public authority obligations in relation to Rights of Nature. It helps to differentiate between negative and positive duties, and the different types of positive duties. States should not violate Rights of Nature by their own actions, directly or indirectly. States should take actions to ensure that Rights of Nature are protected from interference by others, through eg the criminal justice system, regulatory regimes and education.

'Fulfil' duties would include conservation and restoration activities, as well as remedying harms. Where an ecosystem is already polluted, for example, this could require action to ensure that the ecosystem or species has access to clean water. Restoration can be done directly or indirectly, ie by creating a legal system and regulatory regimes in which private actors also have Rights of Nature related responsibilities, and in which harms done are required to be remedied, with the state as the backstop ensuring this happens.

Constitutional-style rights must be somehow integrated into a legal system. This might typically be done by inserting them into the constitution. However, as constitutions typically have a high threshold for amendment, introducing Rights of Nature via a legislative Bill of Rights will usually be an easier route to getting constitutional-style Rights of Nature in a legal system.

Though human rights typically do not list obligations, Rights of Nature legislation could go further in specifying particular obligations and types of obligations which correlate with the rights, so as to ensure these exist instead of relying on the judiciary to develop them in that manner. Legislation therefore should set out how the rights fit into the legal order and how they relate to other legal norms. This might include grounding them in existing constitutional norms so as to make them equally as weighty, reducing the chance they can simply be displaced by higher-ranking norms. Legislation could either give guidance or detail on what the relationship and interactions between Rights of Nature, human rights, general human interests and existing legal norms should be, or it could be silent and leave it to the judiciary to resolve. However, if left to the judiciary to resolve, there are strong possibilities that the status quo prevails over Rights of Nature such that the law is of limited effect. This will be discussed further in Section 2.4.5.

The UK Human Rights Act 1998[69] serves to illustrate this well – though it is also a special case because of the UK's lack of an explicit constitution. Section 6 of the Act states that public authorities must act compatibly with the ECHR human rights, meaning that the rights have legal significance across all actions by state bodies (but no direct significance for private actors). Constitutional-style rights norms can also flow into civil liability, as has happened with human rights norms in domestic legal systems. The particular relevance for company law is discussed in 3.3.6.

3.3.3 Criminal Law

Broadly speaking, the change to criminal law would be ensuring that various actions which (culpably) harm non-human nature are criminalised.

There are three significant ways in which a Rights of Nature approach to criminal law differs from the environmental criminal law which already exists:

- Values. Existing environmental criminal law has generally developed with an anthropocentric flavour, often relating to the environment in terms of how it affects humans. It must be ensured that it instead has ecocentric values, understanding 'the environment' in an ecologically holistic way and protecting nature for its own sake.
- Coverage. Environmental criminal law tends to be a patchwork of various specific offences, with many gaps. Certain species might be protected and certain activities prohibited, but there are many activities causing ecological destruction which are not illegal. Instead, there should be general criminal offences which cover all ecological harms, which could be defined based on interference with Rights of Nature. This is the gap that the Stop Ecocide campaign seeks to fill, by creating a general crime of damage to the environment, and is how Ecocide relates to the broader idea of Rights of Nature.
- Priority. Environmental crimes tend not to be responded to or policed well, with less severe sanctions. There are various reasons for this: crimes against humans are seen as mattering more; for businesses, fines are often just a cost of doing business; regulators are underfunded; regulators seek to work with those they regulate with criminal sanction as a last resort; and it isn't popular for the police to punish environmental damage which is socially normal.

There has been a lot of recent progress in terms of ecological approaches to criminal law. The recent EU Environmental Crime Directive takes strides in the right direction: it generally has a more ecocentric approach, and includes a general criminal offence (the so-called 'qualified offence') which is 'comparable to ecocide' which covers damage to an ecosystem or to the quality of air, soil or water.[70] Similarly, many countries have been adopting ecocide laws in the last few years.

[69] The focus here is on the obligations in regard to the rights, but it should be noted that because the UK Human Rights Act 1998 applies the European Convention on Human Rights to the domestic legal system, the 'human rights' here are not the full range of human rights.

[70] In full: *"the destruction of, or widespread and substantial damage which is either irreversible or long-lasting to, an ecosystem of considerable size or environmental value or a habitat within a protected site"*; or *"widespread and substantial damage which is either irreversible or long-lasting to the quality of air, soil or water"*. Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC, Article 3 para 3. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202401203

There could also be a duty to report ecological harm, where anyone who is aware of any (illegal) harmful activities is obliged to report them to the appropriate authority. This not only helps catch and prosecute offenders, but it also means that people who are involved in criminal offences but where it is unclear if they have been directly involved in committing the offences can be prosecuted.

3.3.4 Indirect Horizontal Effect and Existing Regulatory Regimes

Constitutional rights obligations typically flow through into the legal system in general as the division between 'public' and 'private' law is something of a spectrum instead of a firewall. A significant question around Rights of Nature will be how they interact with existing environmental laws, regulatory regimes and policies,[71] and what this means for private actors. The knock-on effects of constitutional rights on private actors are known as 'indirect horizontal effects'. This distinguishes them from 'direct' horizontal effects, which are the immediate effects in private law, discussed next.

To be clear, Rights of Nature are not necessarily only constitutional rights, though one option for legal implementation is to introduce them in this way. As will be discussed next, Rights of Nature can also be introduced in ways effective in private law too. If they are introduced as broader rights then the effects would not be 'indirect horizontal effects' as such – they would be immediate effects of rights which were never intended to only be confined to the vertical state relationship. This categorisation remains useful for mapping out the different types of legal effects.

'Strong' versus 'Weak' Effect, and the Problem of Legal Transition

With human rights, the extent of the indirect horizontal effect can vary. The effect can be 'weak', meaning that it only applies where the state is already involved in the legal relationships (ie through regulatory involvement), or in private law where the law is silent or to help guide existing law. At the other end of the spectrum are 'strong' effects, where all private law would be based in the same human rights norms and these are seen to 'radiate' out into private law. This strongest version would see constitutional rights as being relevant for all legal disputes between private actors.

The main argument for 'weak' effects are that the underlying interests and values of human rights are already being protected by private law norms.[72] This position is that human rights should only be relevant (i) where private law has not considered the relevant rights; (ii) where it has not struck the appropriate balance; or (iii) as gentle influence or legitimation for the development of private law.

In this respect, Rights of Nature is quite different from human rights and existing laws because of the way it challenges a status quo which generally violates RoN norms. Existing legal, political, economic and cultural norms are typically in favour of ecological destruction for human benefit, such as the

[71] For simplicity these will be talked about collectively, usually referred to in this section as 'regulations' for an easier differentiation from RoN laws, though this should be read as including legislation. This includes pollution control regimes, nature conservation, and general land management.
[72] For example: Philip Sales, 'Constitutional values in the common law of obligations', Cambridge Freshfields Annual Law Lecture (10 March 2023) available at: https://www.supremecourt.uk/docs/Lord Sales - Constitutional values in the common law of obligations.pdf

general public interest, extractive economic systems which are the basis for much of human activity (including food, water, shelter, etc), and human rights to property.

There is here a tension in relation to Rights of Nature laws. On the one hand, if Rights of Nature are taken seriously, then they should have a strong effect. The arguments for a 'weaker' effect do not apply here, because existing private law is not based on the same values – opposite values, in fact. The point is that RoN should make a difference, not just be present on a statute book. Yet on the other hand, the political pressure will be in the opposite direction. This socio-political clash will play out in the legal system – the 'problem of legal transitions'.[73] Status quo interests will (understandably) argue for legal stability and that change should be gradual. Though it is uncomfortable, this change is necessary so as to have ecological benefit and for Rights of Nature to mean something. Shying away from this change simply perpetuates the injustices in the current system. This is a zero-sum game where it is anticipated that existing power dynamics will have the upper-hand against those striving for an ecologically sustainable world and the unrepresented interests of non-human nature. The legal problems this presents should be understood in this wider socio-political context.

So, a significant question around Rights of Nature is how they interact with existing laws and policies which impact non-human nature. This is generally the same scope as environmental law – which is a thematic category of 'any law which has environmental relevance' instead of a discrete type of law. Examples include energy production, mining, polluting industrial processes, forestry, fishing, and land use planning and development.

Resolving Norm Conflict

There are a range of possibilities of how this conflict can be resolved, listed below. This is not a universal approach; rather, different legal norm conflicts could be resolved in different ways. [74]

Strongest: immediate change. Rights of Nature could be given general priority over existing regulatory regimes, such that anything which is incompatible with them is invalid. This would allow immediate challenge to the activities of private actors. This is a normal approach to rights violations, and has been generally accepted that (for example) human rights exploitations in supply chains are impermissible. The lawfulness of existing environmental laws would be no defence to Rights of Nature violations, and permits which are currently lawful would become unlawful. This would give the strongest protection to Rights of Nature, giving them immediate primacy with legal authority, but would also be the most disruptive.

[73] See Fergus Green, 'Legal Transitions without Legitimate Expectations'
[74] This is an example of the important of developing further legal theory of Rights of Nature, and careful consideration of how rights and obligations are drafted. For example, interference with qualified rights under ECHR must be lawful, and lawfulness is usually a 'defence' against something otherwise unlawful, yet higher norms can override this 'lawfulness'. If an explicit concentric circles approach is taken, it could also be that the core of the right has a much stronger protection than the periphery.

Mitigation. Though it must be borne in mind that these are zero-sum trade-offs, some of the most disruptive effects could be mitigated:

- There could be a general transition period with a cliff-edge. The Rights of Nature laws could have a delayed effect, allowing a period of time both for regulatory regimes to be updated and private actors to transition, but still with the strongest effect once the time is up.
- Judgments with an immediate effect on private actors could have a transition period. However, this is hard to justify morally as nature harm is often irreparable, and business enterprises would be incentivised to extract as much value as they can in the permitted time.
- In judicial reviews against the government or against private actors which involve challenges to regulatory regimes, appropriate public authorities (such as a
- Rights of Nature ombudsperson) and NGOs could be invited to join the case as an 'amicus curiae'. This would help for a more polycentric development of the law than just an adversarial bipartisan dispute.
- There could be some sort of 'unreasonable cost' or 'necessity' type exceptions. This creates a trade-off where in general something is unlawful, but permitted in exceptional cases. As is typically the case in law, what matters is the scope of the exception. If the aim of Rights of Nature laws to stop ecological damage, it should not only be stopped where it is possible within profitable business operations; the point is that ecological harm should not be a normal part of doing business. This sort of exception should therefore only be done in line with public interests needs – for example, to avoid a general food shortage – instead of business needs.

Medium: general obligation on public authorities to transition. In this approach, the regulatory regimes would not be directly affected and would continue, but there would be an obligation on the government and other responsible public authorities to undertake a transition to ensure that all regulatory regimes are compatible with Rights of Nature. This would establish Rights of Nature as having primacy over existing environmental laws, but without immediate impact. Judicial review could be brought where transitions are inadequate or slow, such that the judiciary still has the final authority. The negatives are that (i) this delay allows further harm to nature in the meantime and (ii) it still relies on other executive and legislative political institutions making those reforms. This means that Rights of Nature might not be guaranteed, only implemented in weak forms, or not at all if political actors refuse to act (even in the face of court rulings against them).

Medium: law invalid but continues. This would allow for a case-by-case challenge to regulatory regimes or components of them which are incompatible with Rights of Nature. There would be immediate effect with regards to public authorities, but not with regard to private actors, who would continue in the meantime. This would trigger the need for the regulatory regime to be amended or replaced so as to be compatible with Rights of Nature. This compromise would give general priority to Rights of Nature, but without the immediate disruptive effects. However, (i) this again means a delay during which harm to nature continues, and (ii) it relies on political institutions making those reforms, which they are less incentivised to do if the status quo prevails. It also relies on other

political institutions to make the changes, removing some of the power from the judiciary. In this way, the norms of Rights of Nature have primacy conceptually but existing law has priority in effect. This is the approach taken under the Human Rights Act 1998, where legislation which is incompatible with human rights is not invalid but declared incompatible and sent back to parliament to remedy (or, if they don't want to, ignore with no consequence).

Favourable interpretation of existing regimes. This should be a given, and is in addition to the other options instead of discrete from them, but would need to be explicitly legally stated. Wherever possible, existing laws and policies should be interpreted so as to be compatible with Rights of Nature. This is the approach taken in the Human Rights Act 1998 with the section 3 duty. It would lead to a general adjustment towards Rights of Nature norms and a tightening of regulatory effects – which would still have a 'transition cost' – and is more about changing the balance. However, it has no effect on existing regulations which go entirely against Rights of Nature and cannot be interpreted compatibly – which is still likely to be the majority.

Weaker: only unlawful violations are not allowed. This approach would give priority to existing regulatory regimes and follow the way that permitting regimes operate. Activities or impacts which are not allowed save for with a permit, but with an expanded scope of the underlying impermissible activity which would cover all RoN interferences instead of only the previously specified activities or impacts. Undertaking an activity with a specific permit would mean that there is no liability for RoN effects. So, this would mean that only unlawful RoN interferences violations are not allowed. This could cover both civil and criminal liability.

Weakest: balancing. In this approach, Rights of Nature is not given any overall higher priority than existing interests and instead nature-interests are balanced against other interests on a case-by-case basis (see also **2.4.2-3** and **2.5**). Challenging regulatory regimes which infringe on Rights of Nature would be possible, with the infringement taken into account and balanced against the public and private interests (which may include human rights interests). In each case it would be up to the court to make an assessment between the two sides and strike the appropriate balance – so what really matters is how this assessment is made.

Balancing assessments are based on underlying substantive political values – whether acknowledged or not – and so what matters is the underlying framework and intensity of scrutiny. In a strong ecological ethic, this approach would function in a strong manner, with Rights of Nature given a general priority over existing interests – recognising that ecological damage is irreversible and ecological health is overall in the public interest – and only allowing for exceptions when they really are justified. However, without this ethic, Rights of Nature could be fairly ineffectual. The default position would be that the status quo prevails, as the substantive values of human supremacy and extractivism are currently normalised. This approach is therefore a potential pitfall for Rights of Nature, where the rights would exist in a legal form which requires adjudication and justification, but

can easily be outweighed via balancing such that they have little substantive effect. This would see the core of the existing system maintained, and only changes around the edges where the balance is seen as in (non-human) nature's favour and ecological damage not found to be justified.

As said above, there does not need to be one blanket approach for all norm-conflicts between Rights of Nature and existing laws and regulations. Different approaches could be adopted for different types of conflict. One easy distinction is between forward-looking regulation and existing or ongoing situations – new permits and planning permission is different in impact than changing permits already granted. Different industries could be treated differently, based on differing public interest needs. Effects on private individuals could also be treated differently compared to adverse effects on businesses – even when businesses become unviable due to changing regulations, there should not be a general right to profit to the detriment of others, and it should be remembered that all that is changing is that non-human interests are now within the sphere of concern instead of being ignored.

3.3.5 Private law I: Introduction

Private law covers the other half of the legal system and possible effects of Rights of Nature laws. If nature has rights to exist, to ecological integrity and to be restored, it follows that there should be causes of action available against private actors who interfere with these rights and cause nature-entity harms. This report will give an overview with broad brush strokes on private law RoN developments, a topic with huge potential.

The expansion of the rights-franchise to non-human entities would be a significant change to private law. As mentioned earlier, there is no reason why Rights of Nature should be solely public law with obligations only to the state and public authorities. It is normal that rights-holders can act as subjects and take immediate action against those who infringe their rights, both in a legal and chronological sense. Just as is the case for human individuals, nature-entities should be able to act directly to protect their rights.

Fundamentally, private law is about the underlying social fabric. It affects daily interactions and relationships, how people live their lives, and how we understand the world – as much about the collective subconscious as overt political or legal mechanisms. As discussed above, Rights of Nature has a significant ideological difference from the underpinnings of most of existing private law of private property and human supremacy. Human supremacy would be directly challenged by including liability for harm to non-human nature within; ideas of private property would not necessarily be totally challenged and transformed, but the 'dominion' approach to ownership might (discussed further below).

Having private law effects for Rights of Nature is vitally important because it allows for harms to be addressed directly instead of relying on state bodies for nature protection, or waiting for the

development of new specialist approaches to regulate or govern Rights of Nature responsibilities for private individuals. A dependency on public bodies creates a centralised point of failure, with issues of limited bandwidth or capacity (especially when public authorities are underfunded) and possible political failure (such as political interference or a lack of independence).

There may be opposition to private law effects for various reasons, and a few different strands of opposition can be anticipated. Of course, it should be borne in mind that although the arguments may be about how the law should work, much of it will actually simply be the surface of deeper political opposition by vested interests who stand to lose out and the reproduction of existing social systems. There is much inertia in what is currently seen as the 'normal' and proper way of doing things, instead of seeing legal mechanisms as political choices.

One strand of opposition will be about the rate of change and loss of legal certainty. Introducing Rights of Nature in private law would allow for causes of action which did not previously exist and be a huge shift in responsibilities. As was discussed in the previous section, transition costs are real, but it must be remembered that they are balanced against ongoing ecological destruction.

A second strand could be that private law causes of action will be messy and chaotic. The argument can be anticipated that instead, more detailed regulatory regimes should be developed than creating a broad-brush open season on civil litigation. This is a question of making the perfect the enemy of the good: civil litigation might be imperfect, but it is preferable than no or delayed actions. Tort law has often been where new legal developments happen.

A third strand could come from the idea that environmental law should primarily be public law, or that Rights of Nature is not appropriate for private law. These are normative arguments, which stand against the argument of Rights of Nature (distinct from existing environmental law) that non-human nature should have legal rights.

This idea would be partly based in the various specialist regulatory regimes which have been developed over the last few decades. Yet before these, tort law was often where legal developments happened which were then adopted by regulatory regimes or tidied up by legislation. It is also a mistaken view – or at least a normative one – that environmental law is or should be primarily public law. Lawsuits against private actors are not generally part of nature conservation law, but if we think of environmental pathways of harm to humans or human property (eg via pollution), then these are routine aspects of private law within the scope of traditional environmental law. There may be some tensions, but it is not a case of choosing between public and private law.[75] Tort law gives (typically) ad hoc immediate responses to harms, whereas regulatory regimes are more about the bigger picture and seeking to prevent or govern damage. Both have their role to play – private law even more so where regulation does not exist or has failed.

[75] For example, in Manchester Ship Canal Co v United Utilities Ltd [2024] UKSC 22, the existence of a regulatory regime for water utility companies did not stop there also being civil liability for sewage discharge.

One final thing worth mentioning is the permeation of indirect horizontal effects into private law as transactional knock-on effects. From both public authorities subject to duties and private actors subject to regulatory regimes, as they conduct activities within their responsibility, effects will ripple out in these transactions. One example is ensuring that public authorities are still meeting their 'respect' duties when using outsourced contractors.

3.3.6 Private law II: Civil Liability

This section will take an initial look at civil liability for Rights of Nature infringements, again based on English law examples but seeking to speak to civil obligations in general.

Establishing the possibility of civil claims on behalf of nature-entities who are harmed by private actors is an important dimension of Rights of Nature. Lawsuits directly against private actors for environmental harm are typical where there is environmental harm to humans or damage to human property. Here, this would be extended to environmental harm against non-human entities as well. Where the rights or related interests of a nature-subject are interfered with, a civil suit could be brought on their behalf. Though represented by a human, this would be in the name of the nature-subject, based on its legal interest, and the remedy would be to the benefit of the nature-subject.

Additionally, this also allows for civil actions against public authorities which interfere with private rights, separate to 'judicial review'. This would allow both harms which have been caused to be remedied (usually via financial compensation, which would be used for nature restoration) and for injunctions to prevent harms likely to occur.

Civil law has many complexities. While a mature Rights of Nature approach to civil law would take time to develop, there is no need to wait for a 'perfect' system or resolving various legal issues before introducing liability. Historically, at least in common law systems, this is an area of law which has been developed through case law. The role of legislation would be to establish the private law effects of Rights of Nature and general obligations to nature-entities which exist. As discussed above, this is a problem of legal transition where current harms and injustices must be addressed, and it would be a significant pitfall to fail to address these due to the costs of the change.[76]

Causes of Action

This could be done via new causes of action or by extension of existing ones to nature-subjects. Here are some examples (from English tort law),[77] which cover a general duty of care not to harm, liability for physical interference, and liability for interference with use of land:

[76] Internal Ref: 2.4.3 – Indirect Horizontal Effect – 'Strong' versus 'Weak' Effect, and the Problem of Legal Transition.
[77] This means that compared to civil law jurisdictions, these torts have been generally developed by the judiciary. They have evolved separately and do not necessarily have delineated boundaries between them. They do not always have clear statements or definitions, but principles which have evolved.

- **'Negligence' – the general duty of care.** This is the general duty of care that all members of society have to exercise reasonable care toward others and their property. It has the name 'negligence' after the threshold for liability – to be negligent, ie, not take reasonable care. If it is accepted that all people have a general duty of care not to cause harm to nature, not only humans (and their property), then it would follow that this tort should be extended to allow for a cause of action for nature-entities who have been harmed by others' negligent actions.

  While this might at first instance appear to be too broad a liability, the tort has a three-stage test for when the duty of care exists. The harm must be reasonably foreseeable; there must be sufficient 'proximity' between the plaintiff and defendant; and it must be 'fair, just and reasonable' for liability to be imposed. This protects against unexpected consequences, remote harms and unjust liability.

- **'Trespass' – physical interferences.** Though in layperson's terms this is understood as trespass to land, in English law there are actually three types: trespass to the person (which subdivides into particular types); trespass to land; and trespass to goods. This tort is generally about some sort of physical interference, not a duty of care that is owed.

  None of these directly translate to Rights of Nature in general. Nature-entities might be more like land, eg habitats and ecosystems with a spatial boundary; more like people, eg animals or species, though the collective of a species is more about the process and environment than the physical being of the animals; or neither (eg natural process, which don't have a physical presence or spatial boundary). This suggests that here, it might make more sense to create new torts which better map onto Rights of Nature subjects, drawing from existing trespass law. For example, trespass to nature could be generally defined as unjustifiable interference with a nature-subject. However, more detailed sub-types should probably be defined or developed for different types of interference.

- **'Private nuisance' – interference with use or enjoyment of land.** This is typically described as 'tort to land', as it is based on a person's interest in the land. The plaintiff must have a legal interest in the affected land, and it is about actions which interfere with the use or enjoyment of the land, not to the person themselves. The interference is usually an activity which the defendant is responsible for, even if they didn't directly cause. The threshold for the interference is that it must be substantial and unreasonable. This tort has often covered pollution (which can overlap with both negligence and trespass) or less specific interferences such as noise and smells.

  In terms of extension to Rights of Nature, this fills a gap where the enjoyment of rights have been interfered with, but without requiring a duty of care or physical interference. For species, this could protect their interests in 'land' which they 'use' being interfered with; for nature-subjects

which are more land-based, ie habitats, rivers and ecosystems, it could be extended to cover the 'use' of their own 'land'.

- There could also be **specific liabilities** established. For example, these could include strict liability in relation to undertaking particular hazardous activities or in relation to endangered species.

- There could be a **'duty to rescue'** in relation to harms to nature. This would mean that there is a general obligation to help another being which is in need of assistance, with culpability for failing to do so. The scope of this duty varies by jurisdiction in terms of what is expected of a would-be rescuer. For most situations of harm to non-human nature, however, the most straightforward obligation would be to report it to an appropriate authority.

Other Considerations

Civil litigation has a significant role to play to protect Rights of Nature through the behaviour change it would bring about, and in securing restoration where harms have been caused. As said above, legislation does not need to resolve the detail but only establish the broad brush strokes, which can then be developed and refined through case law, as has happened with tort law and human rights law.

Tort law has perhaps an uncomfortable relationship with environmental damage due to differences in approach: civil liability seeks to find one actor singularly responsible for a particular harm. Climate change pollution has been described as the 'paradigmatic anti-tort' in a way which can often be expanded to environmental pollution in general: causation is diffuse and aggregate; the harm may be unclear, with lag and ripple effects; the behaviour is often widely accepted despite being harmful.[78] While these are not new questions, in ecological cases they may be the norm rather than the exception. The 'mesothelioma' cases are an significant example of where traditional tort law approaches could not deal with shared and cumulative harm, and alternative approaches were developed.[79]

There may seem a difficulty that post hoc responses to individual harms is inadequate for addressing the scale of ecological destruction. However, what this legal change brings about is a significant 'reflexive effect': changes in behaviour so as to avoid liability mean that the harms are avoided in the first place. This is the sort of systemic behavioural change which is needed.

Although financial compensation cannot always remedy ecological damage once tipping points have been passed, restoration is sometimes possible, and where not, the compensation could be used for comparable ecological benefit elsewhere. It may also be that injunctions to prevent an activity become more significant than seeking post hoc compensation.

[78] See for example Douglas Kysar, 'What Climate Change Can Do About Tort Law' (2011) Environmental Law 1.
[79] Workers who had been exposed to asbestos dust became severely ill much later in life, but had been cumulatively exposed often by multiple employers such that typical attribution of responsibility would have left them unable to claim at all.

Another issue that may need to be addressed would be in relation to 'disproportionate' harm, through knock-on effects in an ecosystem. English tort law has the 'eggshell skull' rule – that the defendant must take the victim as they are found, even if they have unusual vulnerabilities. The application of the same to ecological chain of events could also result in similar 'disproportionate' liabilities – though the fact this may feel unfair on the defendant does not change the fact that such harm has occurred and the fact that the ecological damage is even more 'unfair'.

Company Law

There could also be specific laws or norms for business enterprises in relation to Rights of Nature, building on both existing environmental regimes and (legally speaking) human rights norms and modern slavery laws. These could allow for some wider international effect through supply chains. As with human rights, these could come either through domestic law, international law, or voluntary codes from business.

The UN Guiding Principles on Business and Human Rights provides an instructive framework.[80] The three pillars of 'Respect, Protect, Fulfil' for general state obligations were translated into three pillars of 'Respect, Protect, Remedy' for business enterprises.

The 'Respect' duty on business enterprises is primarily the negative duty not to infringe on human rights, and can easily be transferred for Rights of Nature. The 'Respect' duty also involves some positive obligations to be proactive to identify and prevent possible abuses within business operations, and establishing processes to remedy any adverse impacts (Art 15(b)). Importantly for large businesses, this includes anything 'directly linked to their operations' (Art 13(b))– ie, supply chain and other interactions for which they are responsible – not only their strictly internal activities. Otherwise, large business enterprises typically simply ignore human rights abuses in their supply chains, even though they bear some responsibility for these due to the power dynamics. This same principle could be transferred across to Rights of Nature: business enterprises shouldn't simply be allowed to ignore Rights of Nature violations in their supply chain.

This is important to avoid the offshoring of ecological damage to countries with weaker regulations, and allows for stronger international ecological protection.

'Protect' and 'Remedy' are the general obligations applied to the specific context of business-related human rights abuses. Whereas states have a general obligation to those in their jurisdiction, for business enterprises it is about effective control, with the obligation to protect crystallising where such a relationship exists. This includes and addresses power dynamics in supply chains or attempts to technically dodge such an obligation. The same 'protect' duty could be transferred for Rights of Nature, arising where an appropriate relationship means that a business enterprise has such a responsibility. 'Remedy' means that there be access to effective remedies for those whose human

[80] UN Guiding Principles on Business and Human Rights.

rights are infringed. This typically includes an individual having ability to take direct action against business enterprises who infringe their human rights. For Rights of Nature, it means ensuring or establishing remedies for nature-subjects, whether through domestic law, an intermediary, or the business enterprise itself.

3.3.7 Private Law III: Property and Land Law

There are two dimensions of Land Law to be considered with regards to Rights of Nature. The first is in relation to human land ownership; the second in relation to nature-entities 'owning themselves'.

There is a need for a radical transformation of property law so as to be rooted in ecological values and ensure harmonious relations with the rest of nature. However, this scale of transformation would be hard to achieve immediately, so transitional steps achievable in the short term should be considered.

Current property law is based in human supremacy and an absolute ownership model of private property. Non-human nature is generally reduced to objects which are owned by humans instead of having an active legal role to play. For the most part, the law follows a 'dominion' model of absolute ownership by humans, with some exceptions and limitations, which has been rightly criticised as 'rights without responsibilities'.[81]

The vision of Rights of Nature (or Earth Jurisprudence/other ecological approaches to law more broadly) includes a transformation of this approach of human ownership. Property law should fit within the worldview of humans as sharing the world with the rest of nature in a sustainable and harmonious way, instead of human supremacist notions of the world being made up simply of materials and space for humans to use and abuse as we wish. This requires wholesale transformation of our economic system and our social order, including property law, such that humans are respectful stewards with responsibilities towards the rest of nature. There are resonances with other proposals to transform property law, such as moves away from everything being privately owned towards shared use of 'commons' property, though 'commons' approaches are generally anthropocentric and also in need of ecological transformation.

For initial Rights of Nature legislation, we can think about an earlier stage of reforms to existing property law which can be more immediately achieved.

In the short term, reform for human land ownership could recognise responsibilities for those who own land. This could include both 'respecting' nature-interests which are within their land boundaries – ie, not causing direct harm themselves – and also taking positive actions to protect nature-interests from harm which originates from elsewhere – such as taking actions in trespass and nuisance on behalf of the nature-interests on their land. Both of these would need outside

[81] This phrase is used by many critiques of liberalism and dominant human rights approaches, including made by many proponents of ecological approaches.

enforcement, whether by a regulatory body, local authority, NGO or allowing any citizen standing to represent the nature-interest.

While this could be a significant increase in responsibilities, it is not without precedent: landowners must respect nesting birds, for example, and landowners with watercourses on their land already have 'riparian responsibilities' which include ensuring the proper flow of water and maintaining the bed and banks. Careful legislation or judicial development could also give different intensities of obligation for different categories of landowner.

The second dimension of changing property law is in relation to nature-entities and beings to 'own themselves'. Of course, this wouldn't actually be 'ownership' in the same way that human individuals do not 'own' their own bodies – rather, we are beings which simply legally are and are recognised as autonomous. Although the most significant change would be in relation to 'land', property law in relation to other beings – such as trees (which are owned by the landowner) and wild animals (which are by default not owned by humans) – would also need to be considered.

In general, all land is owned by a human (or human controlled entities). Land owned by public authorities is 'privately owned' without a separate category of public ownership – and anything without a private owner is owned by default by the Crown (including the sea bed as well as some onshore land holdings). When charities and NGOs can hold land, it must be managed subject to their internal rules, which can give some legal direction for it to be for public good or ecological benefit; some jurisdictions have a form of community ownership too. These do give possibilities for land to be established in a way which is more aligned with Rights of Nature values.

However, for full realisation of Rights of Nature, a new mode of 'self-ownership' of land would be needed. This would allow for full alignment between the Rights of Nature, the interests in the land and non-human nature entities. This is not 'ownership' as such as it is not one being exercising control over property; but it would be a form of rights 'in rem' exercisable against others. There may be, at least in the short term, some degree of legal fiction to fit this within a legal system based around owned property, and some complexities and nuances to work out to fit this into the existing system.

An example of this is the New Zealand/Aotearoa case study of Te Urewera, in which the forest area was declared a legal entity, represented and legally managed by a human board, the fee simple estate (ie land ownership) was vested in itself, and the land declared inalienable.[82] While this was done by a specific piece of legislation, a legislative framework could generalise this approach or create a standardised template or procedure which could be used for more places. Of course, there remains a question how self-owned 'land' would interface with the human legal order, which will be discussed next.

[82] New Zealand Te Urewera Act 2014, ss 11-13.

3.3.8 Private Law IV: Incorporation, Contract and Consent

This final section about private law transformation will cover the incorporation of bodies of human representatives for nature-subjects, which could also be called guardianship bodies.

'Incorporation' is the process of becoming a legal entity. Currently, this predominantly means private companies, municipal corporations, charities and non-governmental organisations. For a nature-entity, this could be seen as a particular type of charity or non-governmental organisation which exists for the purpose of representing a specific nature-element and has special status in that regard.

So far, in what is often termed the 'personhood model' of Rights of Nature, [83] specific nature elements have been recognised as subjects either by discrete legislation or as the outcome of a court case.[84] This is about establishing human representatives for the interests of the nature-subject, not about the nature-entity owning itself (though this can also be part of it, as with Te Urewera). This allows for an established organisation to represent the interests of that nature-subject in a forward-looking way, instead of just recognising rights which exist but are only invoked in an ad hoc manner. This would also require laws for procedure and governance for the legal entity. This creates greater representation of the nature-subject's interests beyond litigation, such as making it possible to enter into contracts and give consent for things involving the nature-entity. Some guardianship bodies have also been created bottom-up by civil society instead of through special Rights of Nature laws, though these typically are only able to represent the nature-element politically and culturally, without any special legal role.

There are various aspects of what incorporation would mean and what legal infrastructure would be needed:

Establishment. There could be a standard procedure for establishing guardianship bodies instead of needing them be created case-by-case. This could establish a way by which either people could apply bottom-up on behalf of a nature-entity to create a specific legal subject, or the state could create entities top-down to be filled by official representatives and/or local community members. There are also choices between there being an inherent right for a nature element to be established as a specific legal subject versus a discretionary or other closed list approach.[85] As discussed above (2.4.1 Subjects), different nature elements could be treated differently: there are different considerations for rivers and forests, for example.

Private law subject. Being incorporated would mean that the nature-entity could enter into contracts, own property, employ people and spend money (such as from donations, funding grants, or compensation from civil liability) in the way that companies and charities can. These practical functions are necessary for ongoing activity directly on behalf of the nature-subject, instead of relying on state authorities to do such activity. This allows for human staff capacity, expertise, restoration work, and ongoing political and legal representation. There may need to be specialist regulations about contract law for nature-entities.

[83] As discussed in **2.4**.
[84] Only some RoN court cases have resulted in the creation of guardianship bodies; many others have just decided that case.
[85] See 3.1.6 – Inherent Rights versus Closed List Approaches.

Consent and Participation. Having an established representative body would mean that more can be done proactively on behalf of the interests of the represented nature, instead of just reactive ad hoc actions (ie judicial review or civil litigation). This could include:

- Giving permission for human activity which might affect the nature-entity. Currently, land use planning and development regulations often require an Environmental Impact Assessment (or equivalent) to assess the effects of a project or plan. A guardianship body could represent their nature-subject in these processes, either by providing evidence and scrutiny, or it could be required that potentially affected nature-subjects have to either give consent for development works or have veto power over them.
- Responding to consultations by public authorities. This would allow the interests of the nature-entity to be represented in policy development.
- Applying for and managing funding, if there is public funding available for nature-entities to undertake conservation, restoration or project work.
- Managing human access and interactions – for example, prohibiting or permitting recreational activity.
- Receiving compensation where harms have been committed, and using this for restoration work. As well as compensation for unlawful harm, there could also be schemes where permitted ecological harm is compensated, such as in a 'biodiversity net gain' credit style system. Of course, this must be carefully regulated to avoid any profit-making activity or becoming an offset scheme.
- Generating revenue. There is a possibility that a nature-entity could sell goods and services so as to generate revenue. This would have to be carefully managed to avoid harmful activities, inadvertently interfering with the ecosystem or becoming a profit-seeking enterprise. There are also dangers that this possibility could create dilemmas where, for example, a habitat might consider selling or converting part of its area so as to generate funds for management of other parts of it.

Governance. There would need to be law relating to the governance of guardianship bodies, equivalent to charity law and company law, and the possibility of external scrutiny. This would include legal responsibilities on the guardians (equivalent to directors' or trustees' duties), the purpose of the guardianship body, and limitations on activity (such as around borrowing or investing money). There would need to be mechanisms for appointment and challenge of guardians. The internal rules could be rigid (perhaps multiple options for difference size or elements of nature) or have flexibility to allow for more autonomous institutional design. As the myriad social relations with the nature-element will play out via tensions in representation of their interests, questions around institutional design do not necessarily have straightforward answers, such as the balance between local community members (who may care about the nature but may also have conflicts of interest), impartial laypeople, government representatives and scientists.

External Scrutiny. External scrutiny could come from a regulatory public authority, as is typical with charity regulation, but it would also be a good idea to allow for a challenge to come on behalf of

the nature-entity itself brought by an external person. This creates a check and balance to ensure that the guardians are acting in the interests of nature, so that there is a procedure for good faith differences of opinion and a backup for if the representative committee is ineffective or has been coopted by other interests such that another person could legally challenge.

Legal Participation. It would need to be established how the incorporated representative entity can interface with the legal system, such as standing to bring judicial review or civil litigation and participation in other legal processes.

3.4 Enforcement and Representation

As non-human nature cannot itself participate in legal processes itself, human representatives are required to represent nature interests.[86] These could either come from the state (government department or independent public authority); from civil society (any natural person and/or NGOs); or from Guardianship Bodies for the nature-entity (if this model exists). This section will consider different possible forms of this.

The ability to participate in a legal process is known as 'standing'. There is the typical question of the circumstances in which a nature-entity can take some form of legal action (ie have standing) – what particular legal actions was discussed in the previous section. This is the same question as for humans and incorporated entities. RoN legislation may need to include a norm about standing so as to make the technical connection between the rights and obligations and the ability to participate in the legal system (discussed in the next section).

For nature-subjects, there is an additional question of representation: the nature-subject may have standing, but who is to represent them in this? There are different possible approaches, with different ways in which nature-subjects could be represented (and which could overlap).

There are different ways legal representation could happen, as this section will set out:

- Ad hoc representation, where litigation is brought on a case-by-case basis on behalf of a nature-entity
- Guardianship bodies, where a specific organisation is established which generally represents a particular nature-entity. This would allow for ongoing and proactive representation, as well as case-by-case lawsuits. (This is sometimes known as the 'personhood model', and discussed in detail elsewhere.[87])
- An organisation (ie public authority or large NGO) with general responsibility for representing nature-subjects. One could imagine there being many officials who could each be tasked with

[86] While various animals can communicate with humans, request things, express preferences, it seems unlikely that most (or any) will be able to take part in legal processes without human intermediaries!
[87] Internal refs: part 2 subjecthood; 3.3.8 incorporation; section 6 different models.

multiple subjects (or multiple officials for one larger nature-subjects!). These could also be thematic, eg separate departments or organisations for rivers, woodlands, wild animals, plants, etc.

Finally, to address the common question: but how do humans determine what is in the best interest of nature? The aim of Rights of Nature law is not to 'solve' this problem: this is not a legal problem as such, and the role of law is to ensure that there are good processes which ensure that the best interest of nature is the matter at hand and work towards that outcome.

A Plurality of Representation

The different modes of representation can be parallel options, not competing ones. Rather, just as the public interest can be claimed and represented by many political actors, so too can nature-interests be represented by different types of actors in an overlapping way. Further, Rights of Nature can fall on any side of a social or legal dispute, being for or against the state or for or against versus local community, and even conflict with other nature-interests. A plurality of overlapping possibilities is almost certainly the best approach for ensuring nature-interests are well represented, and avoids having a single point of weakness. This configuration may need careful management, but it could also develop organically over time instead of needing to be well-planned initially.

Conflicts between them are not necessarily negative but can be a positive tension. Differences of opinion about what is in the best interest of a nature-entity and multiple parties seeking to achieve protection can lead to better outcomes. The different forms each have different advantages and disadvantages, and so a plurality of representative modes can knit together into a stronger configuration with good synergies.

Given the high potential for protecting Rights of Nature to be politically unpopular in some cases, the state ought not be relied on as the sole actor, so democratising representing nature-interests to be possible by civil society. Local communities are likely to have awareness, knowledge and passion. Larger specialist organisations – such as in an independent public authority or NGO – will have expertise and economies of scale, and be better able to liaise in an ongoing way with other government departments. All can serve as watchdogs and engage with state policy in different ways.

Guardianship bodies provide an additional mode with advantages – more about establishing an organisational form than the question of who represents, because the representatives could be of various types. A guardianship body's ongoing relationship with the nature-subject has obvious benefits, such as ecological knowledge, and existing in an organisational form allows for more proactivity than just ad hoc representation. This makes them more appropriate for civil law causes of action (as discussed earlier in 3.3.6) and for restoration work. Guardianship bodies would also be well placed to represent nature-subjects in wider legal and political processes, in ways which are more difficult or not viable for ad hoc representatives. Yet there should also be external accountability for

guardianship bodies so that they too aren't a single point of failure. A plurality that allows healthy conflict between local community, NGOs, government authorities and a guardianship body could be in the best interests of nature-subjects.

3.4.1 Government Bodies

The existing government may be able to bring cases on behalf of nature-entities. This could be part of their positive duties to protect Rights of Nature (which would mean that not acting could be an actionable breach of duty), or it could simply be a discretionary power. This could involve bringing cases against private actors or bringing cases against other parts of the government. While it is rare that two branches of the same government bring legal action against each other, this could nonetheless happen;[88] more common is between different levels of government, which has happened in various Rights of Nature cases between federal and state government authorities (in either direction). One of the big problems, however, is that when protecting the interests of nature-entities is politically unpopular, the government cannot be relied on for protection.

To be clear, this specific representation of nature-subjects is distinct from the general obligations which the state and public authorities may have in relation to Rights of Nature interests. It should also be distinguished from general enforcement action, ie criminal prosecution or regulatory enforcement: while these may be in the interests of a nature-subject, these actions are the application of existing laws instead of the specific representation of the interests of a nature-subject. There could, however, be an intersection where the nature-subject is involved either by reporting something to an enforcement body or making representations in the enforcement process.

It makes sense that the government should be able to bring such cases, especially if it is considered that the state should represent 'the public interest' in a broader way which includes non-human interests. This also follows from ideas about the 'public trust doctrine', or an idea that the government should have a responsibility in relation to nature-entities 'in loco parentis', both of which have been raised in relation to Rights of Nature.

However, representation of nature-subjects by government bodies relies on politics. This makes it an unreliable method of representing nature-entities, especially if it is the only mode of enforcement. Politicians may not necessarily want to act on behalf of nature-entities: we can see many political parties who act against ecological interests, and just as many who do not take environmental protection seriously. There are conflicts of interests in the bigger picture as elected governments want to keep their electorate happy (and only humans are represented in the electoral process!). The relevant government departments often have conflicts too, as environmental agencies are often tasked with managing the exploitation of 'natural resources', protecting human health, and human

[88] It depends on the jurisdiction; it is mentioned here as a conceptual possibility.

enjoyment of the natural world, as well protecting the environment for its own sake. This is especially so in the current trend in the global north of neoliberalism, where regulators are often ineffective in enforcing existing environmental regulation.

3.4.2 Independent Public Authority

Given the problems of relying on the executive arm of government, a typical approach is to establish a separate public authority. The question remains of the extent of their independence and power. Establishing an independent body which has the purpose of representing the interests of nature-entities is a good way to address this problem – however, there are always difficulties in true independence actually being achieved. As even 'independent' public authorities are part of the state, there could still be political influences which work against reliable and effective representation.

A weaker form is to establish a public body which is within the broad scope of the executive but distinct from the government. This is usually to try to 'depoliticise' an issue, such as to provide expert opinions or undertake particular functions autonomously. In the UK, these are known as a 'QUANGO': 'Quasi Autonomous Non-Governmental Organisation', often also described as 'arms-length' bodies. Yet as their name says, they are not fully autonomous: often their senior officials, mandate, and goals are still set by the government – as well as, of course, their source of funding.

A stronger form of this is to establish a 'fully' independent public authority by statute. This way, the independence has a legal basis and therefore some legal protection from interference. Examples of this in the UK include the Climate Change Committee, the Equality and Human Rights Commission, and the Office for Environmental Protection (which was formed to fill some of the accountability gap in environmental law following the loss of the European Commission due to Brexit). The Climate Change Committee has a good record of independent advice often critical of the government. However, the Equality and Human Rights Commission has its officials appointed by government and has seen significant political influence undermining its work, and similarly the Office of Environmental Protection generally not regarded as sufficiently independent.[89] National human rights institutions are usually of this nature,[90] though their political independence and powers vary. The most independent form might actually be to have ring-fenced public funding for civil society NGOs – with total political and operational independence – instead of *public* authorities.

Of course, the key questions are of the independence and powers of such authorities, and their funding. Similarly, governments tend not to want to create external bodies which challenge them and hold them accountable, so the power of such authorities tend to be limited. The senior officials are typically appointed by the government, not by civil society, which means that political

[89] This was a significant point of contention during the passage of the legislation, with the main issues being that the government appoints the senior officials, provides the funding, and lack of strong enforcement powers (described often as a 'toothless watchdog').
[90] In Spanish these are usually called a *Defensor or Defensoría*, typically translated to 'ombudsman'.

influence is possible. Governments tend not to like to appoint people who will create much political difficulties for them or are their opponents. If the purpose of a public authority is to properly represent Rights of Nature, it must be able to meaningfully oppose the government and what is popular in society – and not be undermined or ignored when its decisions are politically unpopular. Whereas usually there is some form of political accountability working against this, in relation to Rights of Nature, this protection is weaker. Authorities which are meant to benefit humans (such as a human rights commission) have some form of political oversight through representative democratic accountability and scrutiny from civil society; but as (non-human) nature has no voice or representation, there is less oversight. Finally, there is a question of funding: the complexity of protecting nature is likely to require significant funds and 'civil' servants (which perhaps should have a different name in this context!).

3.4.3 Any (connected?) Individual

At the other end of the spectrum is for private individuals to be able to represent a nature-subject. In the broadest approach, this could be any natural person (ie human being, covered in this section) or any legal persons (ie incorporated legal entity, covered in the next subsection). A narrower approach could also be taken, requiring the person to have some connection to the matter at hand, with a spectrum of how close the connection must be. With private individuals able to bring a Rights of Nature case, guardianship is democratised instead of relying on state institutions. For this mode of representation to be effective, the question of funding will, of course, be key.

Standing in judicial review cases is on a spectrum. At the narrow end is the idea that only people who are personally adversely affected should be able to challenge the actions of a public authority, which is rooted in the idea of righting a wrong that person has suffered. At the broad end is the idea that if something was unlawful or otherwise a wrong action, it is in the general public interest to allow public authorities to be challenged. Even if the person bringing the case was not themselves affected, righting the wrong will still benefit those who are. In-between the two ends of the spectrum is a balance between the two – such as the UK 'sufficient interest' threshold, which allows for judicial flexibility on whether that person should be able to bring the case. For environmental cases, the Aarhus Convention states that 'members of the public' must be able to bring them,[91] which has generally led to broad standing for environmental cases (though not necessarily other types of public interest cases).

With Rights of Nature, the question is about representation of the entity instead of standing in the typical sense, so the question of whether a particular relationship is needed with the nature-entity is not settled. The narrowest approach would be to say that only an individual who is themselves adversely affected may bring a Rights of Nature case. Many Latin American Rights of Nature cases were brought as co-violations of have both Human Rights (often including specifically indigenous

[91] UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) Article 9(3).
[92] Of course, it could also lead to a large volume in cases – but this is the distinct question of transition costs.

rights) and RoN. However, the usual justification for this is the idea that judicial review (or civil litigation) is primarily about righting a wrong to the individual. Here, the wrong that should be righted is in relation to a nature-interest, which is separate from that of the private individual.

A different narrow approach would be to require a spatial or cultural connection to the affected nature-entity. One type would mean a member of the local community or a member of an indigenous group with connection to the place or nature-entity. This is narrower as it is geographically confined. A second type would be someone who 'enjoyed' human rights in relation to the nature-entity (ie through leisure or business activities), which has less geographical confines.

There is a question of whether this filtering is necessary.[92] There may be fears that a broad approach to representation may be abused. An individual might take a view of the nature-entity's interest which is not actually in its best interest – perhaps not even caring about the nature-entity but bringing the case so as to benefit their personal interest (such as by stopping a particular development). While this could happen, it is unlikely to pose a serious problem in general.[93] Even if they have an ulterior motive, they would still have to persuade the court that their position is in the best interest of the nature-entity. Further, it could be open to other parties to join the case as interveners. Where differences of opinion or evidential uncertainty exist, these can be worked through in a process – though a three-way difference of opinion may be judicially more complex than a typical adversarial case.

This might seem a tempting approach to filter out some illegitimate would-be representatives, but it comes at the cost of filtering out legitimate ones too. A further problem is that requiring representatives to have personal skin in the game also means there is more likely to be a conflict of interest: representatives would be less likely to be acting purely on the behalf of the nature-interest. In reality, what a narrow approach would mostly do is bolster existing actions without creating new ones, such that a judicial review case or civil litigation which was already possible would have a stronger remedy in relation to nature.[94]

A balanced approach could therefore be a 'sufficient connection' test – of course the balance would depend on the difficulty of the test. Geographical and cultural ties would be easy ways to meet this test. The significant connections would be (i) how easy the 'enjoyment of human rights' connection is to achieve (eg, someone who goes hiking there a couple of times each year) and (ii) whether someone whose only connection is to care about the nature-interest, in the way of a conservationist or campaigner, could meet it.

This question of representation by private individuals could also be managed by a public authority,

[93] The only serious problem of this nature I can foresee is when there is an inequality of arms – ie if wealthy vested interests start to use Rights of Nature litigation to bog down government actions they do not like or in the manner of SLAPP legal actions, or wealthy vested interests using malicious Rights of Nature lawsuits to stop small-scale developments unable to overcome the legal barrier.

[94] There would be some expansion effect: if a person is adversely affected by the Rights of Nature dimension which was successful, but their private rights were not violated or their human-based judicial review grounds unsuccessful. This approach would therefore have an extended scope of coverage too.

instead of by the court. A person(s) could apply to the authority for approval to represent in a particular case. Of course, the question of the threshold of connection remains, but it could allow for a smoother process by separating it out from being a legal argument. This could links into the possibility of forming guardianship bodies, as discussed above (**3.3.8**), bridging the gap from ad hoc representation to ongoing representation. This will be discussed further below in relation to representation (**3.4.5**).

If Rights of Nature cases are to be brought by private individuals, the question of funding will be key to their success. Access to justice for public interest and environmental judicial review is a well-known problem, and costs are a significant barrier to civil litigation too. In the latter, the cost of litigation is often far larger than the benefit to the individuals bringing the case even in typical civil law cases – when the case is on behalf of a nature-interest, this will be even more so. The argument that there should be an availability of public funding for such cases, instead of relying on wealthy donors, is a strong one, given both the justice arguments for non-human nature and the public benefit to humans of living in an ecologically healthy world. For civil litigation on behalf of nature, where costs could be recovered if the case is won, then it could be that a combination of publicly available funding (where only a small amount is contributed by the private individuals) and recovering legal costs from the other side would work as a funding model. This is recognised as an Aarhus Convention procedural right as access to justice.

3.4.4 Non-Governmental Organisations

As well as allowing natural persons (ie individual humans) to bring cases, it is also possible to give standing for legal persons to represent nature-entities. This gives a good avenue for civil society to take legal action in the public interest or for nature protection without requiring individual rights to be interfered with, and helps to democratise Rights of Nature protection. Public interest and environmental litigation brought by NGOs has been very important in recent decades, as NGOs expertise makes them well-suited to bringing such cases.

Historically, standing has been contentious for NGOs to bring cases, as standing is narrower and based on individual rights (as discussed above). Sometimes public interest litigation has had to play a game of finding a suitable claimant whose private rights had been violated – and who was willing to be involved in the case and take the risk – who could then be supported by NGOs. In the UK, the 'sufficient interest' caselaw has struck a balance of allowing NGOs where it is in their field of expertise and/or representing a particular group in society who are affected, while not allowing the complete liberalisation of any legal entity able to bring any case. EU law, influenced by the Aarhus Convention, has recently resolved that environmental NGOs do have general standing to bring environmental cases.[95]

Funding remains key for NGOs. While they are generally supported by donations by private citizens,

[95] See eg 'The Court of Justice confirms environmental NGOs can challenge all violations of environmental law' (5th February 2024) ClientEarth Communications, available at: < https://www.clientearth.org/projects/access-to-justice-for-a-greener-europe/updates-annual-newsletters/the-court-of-justice-confirms-environmental-ngos-can-challenge-all-violations-of-environmental-law/>.

there is a strong argument that public funds should go towards protecting nature-interests instead of relying on private funding, as discussed above (**3.4.3**). The state should not avoid their responsibilities in relation to this.

How about private companies? As discussed above, there could be concerns of illegitimate representatives using RoN litigation for personal benefit – such as to prevent a land use development which would go against their business interest, or SLAPP lawsuits. This is not of itself a bad thing; if nature protection happens to be good for their business interest then this is a positive spillover for nature protection! As such, a blanket exclusion seems unnecessary, and instead having either a threshold test such as a 'sufficient interest' test or an exclusion for 'illegitimate representatives' and 'abuse of process' would be prudent.

3.4.5 Guardianship Bodies[96]

As discussed above, one possibility for representing nature-entities is to create a specific legal entity for each one. In one sense, the Guardianship Body *is* the nature-subject (being a social construct for legal purposes): or at least, the guardians control and manage the legal entity which represents the nature-subject's interests. There remains the question of *who* makes up the body, which could be formed from public officials, the local community, various experts, or general members of the public.

There are various advantages of this setup. Of course, just as with private individuals and NGOs, funding remains key.

There are various advantages to having Guardianship Bodies. Their make-up could either be predominantly civil society or could be more government officials – this is an organisational design issue and a political question – and therefore have either full or partial independence from the state. The Guardianship Body should have some existing expertise in relation to the nature-entity, and able to react more quickly from already paying attention. They would be able to represent the interests of that nature-subject in a forward-looking way, instead just ad hoc representation where someone recognises a potential Rights of Nature violation and steps up to act on the nature-entity's behalf. This proactive approach is much more appropriate for civil law causes of action, as discussed earlier in **3.3.8.** They would also be well-placed to use any compensation in the interests of restoration, which would be more difficult for an ad hoc representative.

Guardianship bodies would also be well placed to represent nature-subjects in wider legal and political processes, in ways which are more difficult or not viable for ad hoc representatives. These might include: participating in consultations in relation to planning applications; giving evidence for Environmental Impact Assessments (or similar; responding to consultations by public authorities; managing human access and interactions (eg recreational activity in a habitat).

[96] Also known as the 'personhood model'. This subsection is discussing this only in relation to representation among other possibilities.

3.5 Other Legal Effects

The previous four sections have covered the main elements of Rights of Nature legislation. This final section is the catch-all to cover other parts of legislation which could or should be included, many of which relate closely to one of the main elements.

These include:

- Operationalising provisions
- Procedural rights
- Environmental legal principles
- Integration with the existing legal order
- Norms for resolving competing rights-interests

Operationalising Provisions

Legislation could – or perhaps should – include detail on how the laws will function. Much of this is the vital nuts and bolts that relates to representation and enforcement (discussed earlier in **Section 3.3**).

This includes establishing and operationalising standing – who can bring cases and how they can bring proceedings. It also includes the judicial remedies available, as Rights of Nature could cover many different legal areas and court powers in relation to these need establishing.

Procedural Rights

Procedural rights for nature-subjects and in relation to Rights of Nature will also be key – as they have been for public interest environmental law cases – and relate closely to **3.4 Enforcement and Representation.**

Procedural rights for environmental law are set out under three pillars by the Aarhus Convention:[97] rights to information, participation, and access to justice. These may need extending or adapting for nature-subjects or those representing Rights of Nature, as these may not otherwise be able to draw on procedural rights already established for existing legal persons. Participation in the political system beyond just legal proceedings will be important for embedding Rights of Nature.

Of particular note is the funding dimension of access to justice, which has always been a difficulty for public interest environmental law. It will be rare that any commercial interests would want to bring a Rights of Nature case, and nature-subjects do not have any financial resources of their own. Public funding for both state institutions and civil society will therefore be vital to move beyond the narrower possibilities of relying solely on donations from private individuals. Otherwise there could easily be a situation of ineffective legal rights which cannot be used due to practical limitations.

[97] Aarhus Convention, United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters 1998.

Environmental Legal Principles

Environmental legal principles could also be featured in Rights of Nature legislation. These could be those which are already seen both developed in case law and codified in environmental legislation and constitutions simply copied across, or it could be that some need particular adaptation for Rights of Nature context as distinct from general environmental law. These principles add more flesh and flavour for the meaning and application of rights.

Integration with Existing Legal Order

Rights of Nature can have effects and necessitate change across the entirety of the legal system – as covered in **Section 3.3**. While theoretically legislation could cover all of the legal areas, this would be a large undertaking and need not be done all in one go. Legislative change could work in stages, or initially take a more 'constitutional rights' style approach and allow effects to cascade through case law, while more legislative detail is later developed. There is also a trade-off between broad brush strokes and making change quickly versus more gradual, detailed and slower changes (different possible interactions and the 'problem of legal transition' are discussed in **3.3.4**).

Absent detailed provisions on particular legal areas, legislation could include provisions which give more overarching and general direction and guidance to judges on how to resolve conflicts between existing legal regimes or legal areas and new Rights of Nature. Different approaches are possible – from strong approaches which favour Rights of Nature to telling judges to leave it alone.

This can be seen, for example, in the UK Human Rights Act 1998, which was about integrating human rights norms into the existing legal system. Section 3 directed judges to interpret existing laws in a way that is compatible with human rights. This applies both to the judiciary and to public authorities. Where different interpretations are possible, options which favour human rights should be taken, and leads to a soft rewriting of laws. This meant blending blend human rights norms and values into the laws which predate them. Where a soft reinterpretation isn't possible, Section 4 gives courts the power to make a 'declaration of incompatibility'. This was a political solution which stops short of making it legally invalid – in most jurisdictions, constitutional norms (ie human rights) are stronger and would take precedence such that the legislation would be invalidated. However, in the UK, the constitutional arrangement is that parliament is sovereign. As such, a declaration of incompatibility has no legal effect, and it is left for political resolution. The Human Rights Act also embeds human rights in legislation and policy making: Section 19 requires a statement for a legislative Bill to declare either that Bill is either compatible with human rights, or that it is incompatible, but that the Government nevertheless wishes to proceed with it.

Legal Norms for Resolving Competing Rights-Interests

There is a real danger that new Rights of Nature laws could just be formal rights which have little real

[98] See earlier discussions in Sections 2.1, 2.4, 2.5, and 3.3.4.

material effect, or cannot overcome entrenched social relations or political opposition, as discussed earlier in this report.[98] More generally than how new Rights of Nature laws fit with existing legal regimes, legislation could give substantive depth by including provisions which give more over-arching normative direction and guidance to judges (and officials, policy makers, etc) about how to resolve norm conflicts between new Rights of Nature laws and the values of the existing legal regime.

As discussed earlier in this report, the new type of constitutional-style rights are broad and mean which mean that conflicts between conflicting rights-interests need to be resolved, both vertically and horizontally. Structurally, Rights of Nature would therefore come into conflict with competing human rights-interests – as well as notions of 'public interest' and 'economic development' more generally. These conflicts require substantive political resolution, known as 'balancing'.

Without legislative direction, this is done by judges in their adjudication and through developing case law. It would be all too easy for Rights of Nature to lose out against existing political norms which favour a political economy based on extractivism and private property. It isn't a binary of human rights versus Rights of Nature; as discussed in **Section 2.4**, human rights can come into play in many directions and underpinned by many political theories. Ecological approaches to human rights, which recognise that sustainability is necessary for continued human survival and flourishing, are harmonious with Rights of Nature. Establishing norms which encourage resolution in this direction in legislation will strengthen Rights of Nature and ensure that they are meaningful. Otherwise, it would be all too easy for the status quo to prevail and the rights be relatively ineffective.

Miscellaneous

There may also be legal effects which have not been covered, so a 'miscellaneous' section has been included here to have an open-ended place in the framework for anything that has been missed out.

4. Case Studies

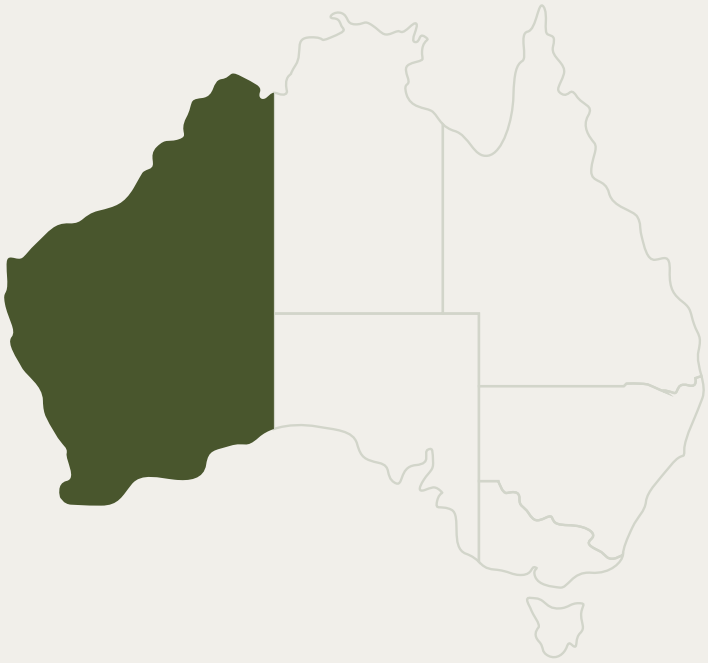
This section looks over existing Rights of Nature legislation and draft legislation. These will be surveyed using the framework and understanding of the different elements covered in **Section 3**: Subjects; Rights; Obligations/Legal Effects; Representation; and Other Legal Effects. This shows us what is (and is not) included, to be analysed and drawn from in analysis and in developing further legislation.

The case studies included here are:

- **4.1 Western Australia** draft legislation, 'Rights of Nature and Future Generations Bill 2019', which was introduced into the Western Australia state parliament but saw no further progress.
- **4.2 Bolivia** legislation: Law 071 of 2010, Law of the Rights of Mother Earth, and Law 300 of 2012, Framework Law of Mother Earth and Integral Development to Live Well, considered together.
- **4.3 Peru** draft legislation from 2021, introduced as 'Proyecto de Ley 6957/2020-CR'.
- **4.4 Panama** Rights of Nature legislation was intended to be the fourth case study but unfortunately has not been completed.
- **4.5 Uganda** National Environment Act, which has one Rights of Nature section in its environmental legislative framework.
- **4.6 Mar Menor law, Spain** is legislation for one specific nature-subject.

Author's Note: It was unfortunately not possible to complete this section as initially intended. Each case study was initially envisaged to have more detailed element-by-element analysis, and unfortunately the fourth case study (Peru) has not been completed to the overview stage of the others. A further explanation is available in **1.4 Author's Note** and **2.2 Methodology**.

4.1 Western Australia, Federal State of Australia[99]



Subjects	• Nature as a whole • Including all ecosystems, ecological communities and native species (s 6(1))
Rights	Rights of Nature: (s 6) • Exist and flourish; • Recovery and restoration; • Healthy and stable climate system; • Biodiverse community of life. Rights of Future Generations: (s 7) • Healthy environment; • healthy and stable climate system; • Biodiverse community of life
Obligations and Legal Effects	• Public law: State has broad positive obligations to implement and defend the rights (s 12) • Private law: Activities which violate the rights are prohibited (s 10(1))

[99] Ecojurisprudence Monitor Entry: <https://ecojurisprudence.org/initiatives/western-australia-rights-of-nature-and-future-generations-bill-2019/>; Bill document: <http://files.harmonywithnatureun.org/uploads/upload898.pdf >; Earth Law Alliance (Australia) press release: <https://www.earthlaws.org.au/news/media-releases/first-rights-of-nature-bill-introduced-in-australia/>.

	• Criminal law: offence to 'significantly interfere' with rights (s 10(2)) • Private law: Liability for damages for harm to restore ecosystem (s 19(1))
Enforcement and Representation	• Broad standing for any natural person (s 13(1)) • State has broad positive obligations to implement and defend the rights. (s 12) • First Nations people may join any proceeding (s 13(2))
Other Legal Effects	• Immediately effective (s 8) • Prevails over inconsistent laws (s 5) • Reversed burden of proof (s 17) • Precautionary principle (s 16) • No obligations on nature (s 9)

This case study is a draft Bill, 'Rights of Nature and Future Generations Bill 2019', which was introduced into the Western Australia state parliament, the Legislative Council. It was introduced by Diane Evers (The Greens WA, a minority party), but does not seem to have ever been scrutinised, debated or voted on. This means it is an earlier stage draft than legislation which is typically passed, and was likely introduced primarily for political campaigning reasons without much likelihood of becoming law at the time.

This Bill demonstrates the breadth of what could be covered by Rights of Nature legislation. There is a mixture of and provisions with some depth and broader brush strokes with less detail. There are broad Rights of Nature (s 6) – established as self-executing (s 8) – which sit alongside rights of present and future generations to a healthy environment (s 7).

A range of legal effects are included. There is a positive duty on the State to take 'all necessary steps and measures' to implement and defend the rights (s 12). While this lacks detail, it does set a strong overriding obligation to take further action to develop the legal system and ensure meaningful access to justice. It states that activities which violate the rights are prohibited (s 10 (1)), including invalidating conflicting permits, which is crucial to give the new rights strong by having priority over existing environmental legal regimes (s 11). It creates a criminal offence (s 10 (2)), giving a broad effect on private individuals and creating criminal offences. Crucially there are provisions specifically for corporate actors, giving a higher fine (s 10 (2)(b) and the potential for personal liability for directors (s 18).

Civil liability to restore (illegally) harmed ecosystems would be established (s 19), including a mechanism for this to be done via appropriate agencies. This also allows for judicial development with existing common law civil liability. As standing is for any person (s 13), bringing a cause of action is wide open here for civil society or state agencies.

Though a few areas may be lacking in detail and require judicial development and political will for implementation, the Bill does include some impressive good depth in other areas. Some of the Other Legal Effects help to buttress it here and ensure the Rights of Nature norms would be meaningful and avoid some pitfalls: clarifying that the rights are immediately effective (s 8); giving them priority over inconsistent laws (s 5) and override inconsistent existing legal permitting regimes (s 11); and the precautionary principle (s 16) and reversing the burden of proof (s 17) avoid weak implementation due to particular uncertainties.

4.2 Bolivia

Bolivia has a pair of statutes on Rights of Nature and related topics:

- 2010 Law of the Rights of Mother Earth (Ley de Protección de los Derechos de la Madre Tierra)[100]
- 2012 Framework Law of Mother Earth and Integral Development to Live Well (Ley Marco de la Madre Tierra y Desarrollo Integral para Vivir Bien)[101]

Subjects	• Mother Earth, the indivisible community and interrelations of living beings, life systems, ecosystems (2010 Law Arts 3 and 4; 2012 Law Art 5(1)) • Mother Earth as 'collective interest rights subject' for legal purposes (2012 Law Art 9) • Progressive registration of the components of mother earth (2012 Law Art 51)
Rights	• 'Rights of Mother Earth' To life; To the diversity of life; To water: To clean air; To equilibrium; To restoration; To pollution-free living (2010 Law Art 7; referenced too in 2012 Law Art 9)

[100] Bolivia, Law 071 of 2010, Law of the Rights of Mother Earth (Ley de Protección de los Derechos de la Madre Tierra). See <https://ecojurisprudence.org/initiatives/law-of-the-rights-of-mother-earth/>.
[101] Bolivia, Law 300 of 2012, Framework Law of Mother Earth and Integral Development to Live Well (Ley Marco de la Madre Tierra y Desarrollo Integral para Vivir Bien). See <https://ecojurisprudence.org/initiatives/law-no-300-the-framework-law-of-mother-earth-and-integral-development-to-live-well/>.

Obligations and Legal Effects	• Public law: obligations on state/public authorities for plans and policies in relation to RME (2010 Law Art 7) • Public law: obligations on state/public authorities for integral development in harmony and balance with Mother Earth (2012 Law Art 10, and elsewhere in that legislation) • Citizens: duty to report (2012 Law Art 39(3)); abstract responsibility to restore damage (2012 Law Art 11(5)), but 'responsibility for damage to RME will be regulated by specific law' which does not yet exist (2012 Law Art 42).
Enforcement and Representation	• Public Authorities in general; the Justice Ministry (Ministerio Público) and the agroenvironmental court (2012 Law Art 39) • Defensoría de la Madre Tierra – protector office for RoN (2010 Law Art 10) • A Mother Earth authority within the Ministry of Environment and Water (2012 Law Art 53) • Individuals or groups affected by a violation (2012 Law Art 39)
Other Legal Effects	• Links to human rights (2012 Law Art 4) • Environmental legal principles (2012 Law Art 4) • Substantive normative and political depth (2010 Law Art 2 and 2012 Law Art 4)

Bolivia has a pair of statutes on Rights of Nature. The first (Law 071 of 2010) is archetypal public law – perhaps constitutional in flavour – Rights of Nature legislation. It sets out Rights of Nature and some definitions, some substantive principles, overarching obligations of goals and policies of the state, and a few general responsibilities of civilians. The second is Law 300 of 2012, the Framework Law of Mother Earth and Integral Development to Live Well. This is about an overarching political vision of holistic development for living well ('desarrollo integral para vivir bien') which is meant to combine respect for RME with economic development and social justice ('desarrollo integral en armonía y equilibrio con la Madre Tierra para Vivir Bien').

This integrated legislation has benefits, though possible downsides. Structurally, it is very much beneficial: the interaction between Rights of Nature and (existing or new) environmental legislation would always be a problem (as discussed in 3.3.4), so having legislation to detail this avoids uncertainty. It also means that more substantive direction is given to the judiciary. Substantively, however, this particular piece of legislation could go either way in conflict between economic needs and Rights of Nature. Overall, it reads as primarily about 'holistic development' with Rights of Nature perhaps relegated to a secondary counterbalance, to be taken in a weaker form and put aside for human benefit. That said, there are also a few stronger strands as well. Ultimately, the impact and resolution will depend on the political approach taken to 'holistic development' in plans and policies, and judicial attitudes as to which side they take in resolving norm conflicts in court.

The primary subject is 'Madre Tierra', or Mother Earth. It isn't entirely clear what the legal subjects could be, and perhaps it would always be Mother Earth as an indivisible whole. The definition includes living systems or ecosystems, though not species; it could be either that a smaller nature-subject could be treated as a legal subject, or could be that all legal action would be from the totality-subject of Mother Earth with the question of what aspects of nature count dealt with via interpretation of the Rights of Mother Earth. The difficulties with the 'nature as a whole' approach are discussed in 3.1.1. It is also worth noting that there are potential problems with the cosmovision of 'Mother Earth', but these will not be discussed here to keep the focus on the legal structure.

In addition, as part of the various state duties, there is a requirement for a progressive registration of the components of mother earth by the relevant authority (Law 300 Art 51). This is to be done strategically and include establishing inventories, baselines or indicators for measuring this. These 'components' would presumably then be a significant part of how Nature as a whole is understood, both as a subject and for the rights. This is good for monitoring and being proactive in taking action, though how exactly it would end up would remain to be seen – such as whether registered components are treated any differently to unregistered ones.

The duties created by the legislation are almost solely in relation to public law with various obligations on the state. The 2010 law has high-level obligations around developing plans and policies to defend mother earth and promoting sustainable production and consumption which safeguards the integrity and regenerative capacity of mother earth. The 2012 law has similar general obligations as well as many more specific obligations on political topics. However, as discussed above, these obligations are mostly not about protecting Rights of Mother Earth but are about achieving the 'buen vivir through integral development' in ways which are compatible, balanced, and in harmony with Rights of Mother Earth. Alongside this there are a couple of specific obligations which are purely ecological, including to 'Guarantee the continuity of the regeneration capacity of the components, areas and life systems of Mother Earth' (Art 10 (5)) and 'Advance in the gradual elimination of the contamination of Mother Earth, establishing responsibilities and sanctions for those who attempt against their rights and especially to clean air and living free of pollution' (Art 10 (7)).

There does not seem to be an obvious general duty to 'respect' Rights of Nature, this only seeming to be mentioned as a principle instead of a legal obligation, so the strength of these obligations depends on judicial (or political) interpretation and application of plans and policies obligations. Duties for plans and policies can either be a weak duty to have some sort of plan with lots of deference, or a strong duty with close scrutiny for a plan which will achieve the desired effect with close scrutiny. Similarly, much will come down to how the balance is struck between development and ecological interest: whether it needs to be compatible with 'strong' Rights of Nature in which human economics must be actually in harmony with ecological cycles, or whether these are easily outweighed by a balancing exercise.

The 2012 law does say that individuals responsible for damage are obliged to restore to the pre-existing conditions, but Art 42 seems to say that this responsibility 'will be regulated by specific

law' (which does not yet exist), so it is unclear whether any new civil liability is established by this legislation. There are no new criminal offences in either legislation, though Art 44 of the 2012 law does strengthen the sanctions for existing criminal offences relating to Mother Earth. However, a new Ecocide law was proposed in 2021.

In terms of other legal effects, the legislation adds a breadth and wealth of substantive depth to be drawn from in interpretation. Article 2 of the 2010 law sets out principles about the aim of harmony between human activity and 'Mother Earth', and the aim for a foundational protection of Rights of Nature. The 2012 Law has 17 provisions in Article 4 which include environmental legal principles, baseline guarantees again for 'Mother Earth', harmony between humans and nature, and normative depth about 'living well', social justice, and the complementarity of obligations and duties with 'Mother Earth' and human rights. This depth gives guidance to judges for how to resolve norm conflicts and mean that Rights of Nature are more likely to be applied in a strong manner.

Enforcement and protection for Rights of Nature is from public authorities in general, two specific public bodies, and any affected citizen may bring a case (2012 Law Art 39). This means that both governmental and civil society actors can bring cases, though the standing for 'affected' citizen could be a severe limit on civil society's ability to do so.

The legislation establishes two new public bodies: a public defender of Mother Earth ('la Defensoría de la Madre Tierra') ('DMT') by the 2010 law (Art 10); and a public authority of Mother Earth ('Autoridad Plurinacional de la Madre Tierra') by the 2012 Law (Art 53). This could be a positive of having two different types of public authority – a department within the government and a more independent champion – or shows a conflict between the two different legislative approaches. The APMT was subsequently created in 2013, within the Ministry of Environment and Water – meaning that a conflict of interest between its parent authority is very much possible. Its responsibilities include plans, policies and guidelines, as well as bringing Rights of Nature cases. The DMT was solely focused on Rights of Nature, not governmental plans and policies, and also required subsequent creation by a special law. However, this has not been forthcoming, and a legislative proposal made in 2021 has not been passed. The Defensoría does not yet exist.

Although this case study is about the structure of the legislation, the political reality should be mentioned here briefly: that there has been little if any real-world effect, as some commentators have highlighted. Broadly speaking, extractivism has continued and expanded, with economic development and human benefits prioritised over ecological wellbeing. I don't know whether there have been any attempts to bring any cases or legal challenges under the legislation, but I am not aware of any reports of any successful ones. It may be that the legislation has had some lesser impact in terms of political direction and policy influences, even without any legal action, but a closer nuanced inspection is well beyond this case study.

4.3 Peru[102]

Subjects	• Mother Earth, ecosystems and species (Art 4)
Rights (Art 4)	• Health, integrity, life • Protection from the state • Peace • Restoration
Obligations and Legal Effects	• High-level obligations on the State to prevent (Art 2(b) and protect (Art 4(c)); • Extends existing administrative environmental law to cover activity harmful to ecological cycles (Art 6) • Strict prohibition on very harmful activity (Art 6)
Enforcement and Representation	• Civil society standing: Individuals, communities, peoples or indigenous nations (Art 7) • New public authority: National Body for the Protection of Mother Earth (Art 8)
Other Legal Effects	• Environmental Legal Principles (Art 2 and 3)

The Peruvian draft Bill was introduced to parliament in January 2021 by a politician of the party Frente Amplio, an ecological left-wing party. However, the parliamentary term ended a few months later and the party won no seats in the subsequent election. This means that it is an earlier stage

[102] Peru, Proyecto de Ley 6957/2020-CR.

draft than legislation which is typically passed, and may have been introduced more for political campaigning reasons than with likelihood of becoming law at the time.

The Bill is perhaps the more straightforward type of Rights of Nature legislation being primarily about public law, though it only gives high-level obligations and not much legal detail. That said, it does give excellent substantive normative depth and breadth linking ecological protection with human rights and social justice.

The legislation states that nature in general and elements of nature have rights and should be subject to protection. The main legal effects flow through the state, with high-level obligations to protect the rights (Art 2(b) and Art 4(c)). There are no more specific obligations, so these would function as a bridgehead into the legal system to require judicial implementation and further action (presumably including legislation) by the state. This may be intended design as the first big stepping stone for legal transformation, or may be more about the early stage or political campaigning nature of the Bill. The Bill also would extend existing environmental law to also protect the interruption of 'ecological cycles' of ecosystems and species, and prohibits industrial extractivism in areas where the ecosystems are at a serious risk of not surviving. There is no immediate effect on criminal law, or civil law, which would have to come further down the line, and arguably such change would be part of the state fulfilling their high-level obligations.

The law would grant standing for individuals, communities, peoples or indigenous nations (Art 7) to exercise legal protections in relation to the Rights of Nature, although there is no further detail or operationalising than this. The law would also establish a new government body, the National Body for the Protection of Mother Earth (Art 8), charged with monitoring projects which might affect Rights of Nature, developing policies for sustainable practices, and with a watchdog and guidance role for other state institutions.

In addition, the Bill contains a huge amount of substantive depth for how Rights of Nature should be implemented in Articles 2 and 3. This includes linking ecological protection as a basis for human rights and democracy, sustainability and holistic approaches. It is also intersectional, recognising links with ecological harm and socio-economic groups, gender and ethnic groups, and includes explicit protection for indigenous peoples. These tie together ecological protection with social justice, and should help reduce the danger of injustices being done through using Rights of Nature laws in more socially unjust ways.

4.4 Panama

Author's Note: The Panama Rights of Nature legislation was intended to be the fourth case study, but it was unfortunately not possible to complete this and decided it was better to publish the report without it instead of delay further. For a further explanation see **1.4 Author's Note** and **2.2 Methodology.**

4.5 Uganda[103]

Subjects	• Conservation areas, to be prescribed by the government (s 4 (4))
Rights (Art 4)	• Rights to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution (s 4 (1))
Obligations and Legal Effects	• Public law: Government shall apply precaution and restriction measures in all activities that can lead to the extinction of species, the destruction of the ecosystems or the permanent alteration of the natural cycles (s 4 (3))
Enforcement and Representation	• Any person can bring an action for any infringement of the Rights (s 4 (2))
Other Legal Effects	• *None*

The Ugandan legislation is an interesting approach, effectively making for strong environmental conservation areas. It contains one Rights of Nature section within the general environmental act. It is incredibly brief, leaving much to be developed and with some uncertainties. It would be interesting to know the development of this section of the legislation, but on appearance it seems that it may have just been inserted in as it is separate to the rest of the environmental law.

[103] Uganda, National Environment Act 2019

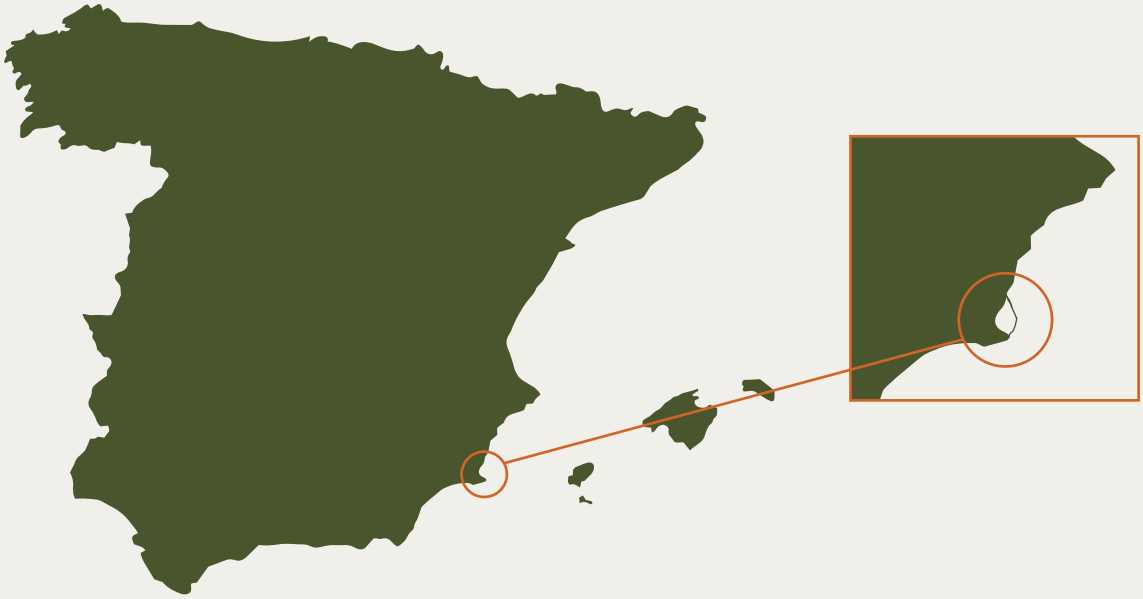
Taking a Rights of Nature approach for specifically prescribed conservation areas should be stronger than traditional environmental law approaches. Its impact will depend on a few things: the scale of conservation areas created; the application and interpretation of the rights, especially in relation to norm conflict with existing laws; and how the duty on the government is interpreted.

This legislation doesn't create nature-subjects but a bridgehead for them to be created by the government (see also discussion in 3.1.6 Inherent Rights versus Closed List Approaches). This obviously means that much depends on the approach taken by the government for the scale of conservation area created. There is also a weakness in taking a geographical approach to nature-subjects because ecology is usually not so geographically bounded, though an ecological-relational approach to Rights of Nature can mitigate this (see discussion in 3.1).

The rights are drafted as superficially as can be, with no expansion on what they mean or other judicial direction. The extent of the duties and legal effects in relation to these is also not set out, with ss (2) only saying that there is a cause of action possible for 'any infringement' of the rights. On the face of it, this seems to be very broad and directly effective, meaning that this legislation is a portal to a wide range of civil lawsuits as well as being effective against the state. However, this would depend on the judicial attitude to being so proactive in taking this approach, though a common law legal system (such as Uganda) is more likely to be amenable to this than a civil law one. It could also be interpreted that such infringements would only be in relation to the government's obligations under ss (3), though this does not seem the best construction based on the wording and structure of this section.

The only specific obligations in relation to Rights of Nature created by the legislation are duties for the government to 'apply precaution and restriction measures in all activities that can lead to the extinction of species, the destruction of the ecosystems or the permanent alteration of the natural cycles'. On the face of it, this appears only to be a negative duty relating to government activities. It is perhaps arguable that 'shall apply ... measures' could mean positive actions in relation to environmental regulation to protect against private actors, but this seems a stretched construction. It is also curious that this is not directly tied to the Rights of Nature but instead to three different effects, meaning that there could be diverging scopes of duties in relation to the rights in ss 1 and these effects in ss 3.

4.6 Spain, the Mar Menor[104]



Subjects	• The Mar Menor lagoon and its basin as a 'biogeographical unity' (Article 1)
Rights (Art 4)	• The 'right to exist and evolve naturally': that its natural order should be maintained 'in the face of the imbalance caused by anthropic pressures coming mainly from the catchment basin'. • Rights to protection, conservation and restoration (Article 2).
Obligations and Legal Effects	• Public law: Any actions by public administrations which violates the rights are invalid (Article 5) • Public law: Public Administrations have various obligations for a range of proactive policies to prevent further harm, monitoring, and for social awareness campaigns (Article 7). • Whole legal system: 'any conduct which violates the rights' will generate liability with criminal, civil, environmental or administrative sanctions (Article 4).
Enforcement and Representation	• Tripartite representation and governance: a Committee of Representatives; a Monitoring Commission; and a Scientific Committee (Article 3). • Any natural or legal person can bring legal actions to defend the ecosystem and enforce the lagoon's rights on its behalf (Article 6).
Other Legal Effects	• None

[104] Spain, Ley 19/2022, de 30 de Septiembre.

Legislation in Spain was made for the Mar Menor, a large saltwater lagoon in the south-east. This is not a Legislative Framework, but legal subjecthood (and rights!) for a specific nature-subject. The legislation is only for the one specific nature-subject, establishing it as a legal subject and granting it rights to exist, to protection, and to restoration. The legislation was passed following a 'popular initiative', where a petition which gathers enough public support gets considered by the legislature.

The legal obligations correlating to the rights are as broad and superficial as could be, aside from some specific obligations on public authorities in relation to proactive policies. There is no detail on the civil liabilities and other effects in Article 4, and general Rights of Nature do not necessarily translate easily to specific applications. The scale of their impact will therefore depend on how courts interpret, develop and apply the law, and the political will which follows. There are some significant pivot points around the intensity and efficacy of this law therefore (as discussed in Section 3.3.4). One is the interaction with existing environmental regulation, which may be in conflict with Rights of Nature, and whether compliance or permits would be a defence against liability. Similarly for activities by public authorities which have a legal basis, for how these interact with the ultra vires clause. The second big pivot point in the general interaction with existing legal norms and how the new Rights of Nature are balanced with existing (human-favoured) rights and interests. This legislation leaves all of these details in the hands of judicial interpretation and application. There is also a question over whether the rights have a direct effect in the manner of constitutional-style rights – ie obligations equivalent to human rights of respect, protect and fulfil – or only the specified effects in Articles 5 and 7. The latter is most likely, though it would depend more on the domestic legal order and perhaps whether there are existing constitutional norms which they can be blended into.

The governance structure for the Mar Menor is broad and well-balanced, made up of three elements: a Committee of Representatives of 13 members made up from the national state administration, regional government body, and seven local citizens; a Monitoring Commission with representative from the local areas and from various stakeholders; and a Scientific Committee with independent scientists and experts. This notwithstanding, any natural or legal person (which would also include public authorities) can bring a legal case to protect these rights and any conduct which violates these rights has criminal, civil or administrative liability, so there is not a sole reliance on the representative body.

5. Comparative Analysis

Author's Note: It was unfortunately not possible to complete this section as initially envisaged. The original idea was to undertake a comparative analysis between the different legislative case studies. While this comparative analysis was not written up, much of the conclusions of this in terms of different legislative models is in Section 6. This section was left in with this note partly to honour the original idea and unfinished nature of this report given the circumstances, but more significantly to avoid having to redo fiddly internal referencing. A further explanation is available in **1.4 Author's Note** and **2.2 Methodology**.

6. Legislative Models

This section is to set out various different models and options which could exist for Rights of Nature legislation, in the manner of a simple blueprint of various designs or building blocks for legal effects and obligations. As discussed in **2.3 Subjecthood on a Spectrum**, rights and subjecthood are not simply two sides of a coin but are semi-decoupled. There can be general rights without having specific subjecthood (fully realised, a representative body), and there can also be a representative body without rights. This section will set out a framework for different possible modules of Rights of Nature legislation, showing various different ways that general rights and subject-specific representation can be combined. These can be used in designing a legislative framework, or as a way of considering incremental transformations across different aspects of a legal system instead of all in one sweep.

Section 3 set out the different elements that legislation could involve in totality, which was used as a framework for the case studies in **Section 4**. That framework is useful but does not include every dimension of what legislation can look like. This section adds a 'blueprint' model of what different legislative frameworks may or may not include.

As this report has covered, there are different ways to approach the subjecthood of nature-subjects, how they are represented, and a breadth of different possible obligations and duty-bearers in relation to Rights of Nature. Different legal effects can be introduced too. Rights of Nature could just be a policy consideration for the state, similar to environmental targets, or they can function as constitutional-style rights. They can have strong or weak normative force, compared to existing and human-benefitting legal norms. Going further, there could be a democratisation of nature protection by enabling large swathes of nature to have human representation and able to take private law actions to protect itself immediately from private actors, recoup damages, and take restorative action.

The few existing legislative frameworks have taken some sort of 'general rights' (and obligations) approach to nature-subjects (even if they aren't all clear about what has rights exactly or how they function). This also matches the constitutional approach in Ecuador and common law approach developed in Colombia. These approaches are only partial in terms of which areas of law and actors are affected, without private law effects. At the same time, Rights of Nature has also developed a second modality, which I term Element-Specific Subjecthood, which is based on individually created nature-subjects, which has seen specific legislation in New Zealand and Spain.

This section will look at how both of these dimensions could be implemented legislatively, showing that there are not two distinct possible models but that these are different dimensions which can (and should) be complementary. It will also be suggested that the individualised nature-subject approach could be standardised such that nature-subjects can be created and may have a procedural right to representation.

These approaches can be complementary, and are not in conflict, and the final sub-section will consider having both of them together.

6.1 Overview of Different Approaches

It has often been described that there are two different types of approaches for Rights of Nature and nature-subjects: general and specific. In the general model, rights are granted generally; in the specific model, rights are only granted for specifically established nature-subjects. Yet these two approaches are not in conflict, and a jurisdiction could have both, with mutually reinforcing benefits. This is well illustrated in Colombia, where common law rights based in the constitution have recognised general Rights of Nature, and particular incidences of litigation have established specific nature-subjects with representation (though not in every case). Legislative approaches have these same options.

Each approach has advantages but is lacking and incomplete on its own. Much in relation to 'general rights' depends on enforcement and representation. Ad hoc representation can only go so far, and having specific representative bodies means there is more proactivity in monitoring, acting, defending rights and taking restoration action. The benefits of guardianship bodies are discussed in **3.4**, where becoming an established legal subject almost functions as a 'right to have rights' for nature. Their ongoing relationship with the nature-subject has advantages including knowledge, expertise, community and ecological ties, and allows for a more proactive approach than is possible with reactive general rights.

The different combinations can be crudely shown in this matrix:

Figure 6.i: Matrix of General Rights and Subject-Specific Representation

No Rights of Nature/nature subjecthood at all	General Rights only **(6.2)**
Subject-Specific Representation only **(6.3)**	General Rights and Subject-Specific Representation **(6.4)**

Showing this as a binary is a simplification, as neither are binary options: both the existence of rights (and their scope and strength) and the significance of being a legal subject are actually on a spectrum, as discussed in 2.3 Subjecthood on a Spectrum. This gets developed by being combined with the different legal options in the next table, showing different possible options within General Rights and different alternate approaches to subject-specific representation:

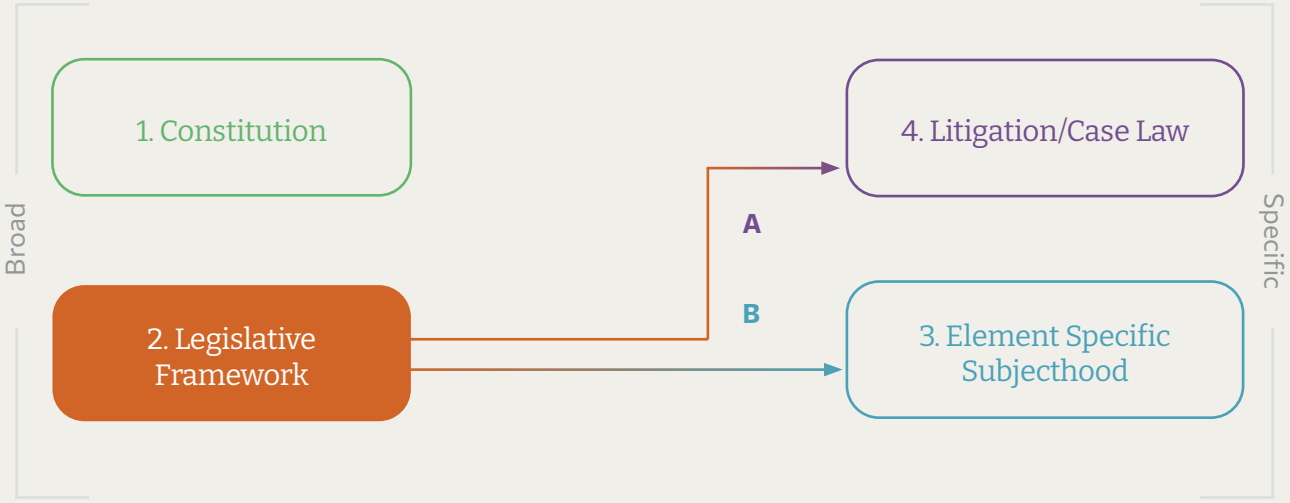
Figure 6.iib: Legislative Framework Schema

General Rights (Modular)	Admin law/policy obligations	Public law obligations	Private Law Obligations	Substantive Norms
Subject-Specific Representation (Alternative)	Individual Legislation	Closed List (Discretionary)	Inherent Right to Establish	

So far, private law effects – such as injunctions or liability for restoration – have been lacking in Rights of Nature developments. Yet as discussed in Section 3, there are strong arguments that the law should be developed in this way.

These different dimensions can also expressed on the Rights of Nature taxonomy diagram featured earlier. This shows how the 'general rights' dimension creates the possibility of litigation (and subsequent case law) to develop (arrow A) and how a legislative framework could create the possibility for establishing Element Specific Subjecthood (arrow B).

Figure 6.iii: Two dimensions of Legislation on the taxonomy diagram



Differentiation by Nature-Subject

It would be possible to treat different types of nature-subjects differently. For example, forests crossing particular thresholds (such as size, age, composition and quality) could have an inherent procedural right to have a representative body established, whereas rivers could be left to a public authority to be established as nature-subjects. Species could have inherent rights of nature without establishing guardianship bodies – perhaps a public authority could have general oversight, as well as broad standing for any citizen to represent. Other habitats could have a discretionary closed-list approach to being established as nature-subjects and no inherent rights.

6.2 General Rights

This sets out the different types of rights which can exist – bearing also in mind, as discussed in **Section 3**, that each can exist with different intensity and strength.

Administrative Law and/or Public Policy Obligations only

- Obligations on the state in the style of general administrative law or administrative environmental law (ie discussed in 3.3.1), but not constitutional-style rights.
- These affect the state though in a much more limited way, with ad hoc Judicial Review
- Strictly speaking this is arguably not actually Rights of Nature because there are not rights, just a RoN inspired policy approach. But it is included here for completeness.

Constitutional-Style Rights of Nature; ad hoc protection

- General rights with no representative body for specific nature-subjects; rights are immediately effective
- Obligations are primarily on the state (with only indirect horizontal effects)
- Reactive ad-hoc representation and enforcement only

General Rights of Nature; ad hoc representation

- General rights with private law obligations, though no representative body or guardians
- Rights immediately effective against private citizens; reactive ad hoc enforcement only

Substantive Norms

- Legislation could include substantive norms in the manner of 'environmental law principles and/or how to interpret Rights of Nature (as discussed in **3.5 Other Legal Effects**).

6.3 Subject-Specific Representation

On a separate axis to the 'general rights' approach, possibilities exist for legislative frameworks based on establishing specific nature-subjects with representative structures. This could happen in a few different ways, based on the procedure for establishment of the nature-subject and how it relates to substantive rights (discussed in 3.1.6 Inherent Rights versus Closed List Approaches). There are different permutations and variations, so the options set out below should be understood as different types along a spectrum.

The strongest establishment of Rights of Nature would have an inherent procedural right to establish a nature-subject with representation in addition to general rights; the weakest version would only be a procedure to establish a nature-subject with substantive rights only existing after it is established (and in this case, the scope and accessibility of this process would be significant). In Colombia, for example, representative bodies have often been granted following litigation in a way that comes close to being a procedural right to such.

Here are a few examples of different possible modes of establishing nature-subjects:

Specifically Established Nature-Subjects[105]

- Rights of Nature with Guardianship Body only for case-by-case specifically established nature-subjects (examples: New Zealand; Spain)
- These are only for the specifically created nature-subjects only

[105] This is often described as the 'personhood model', but for reasons discussed here and in Section 2.3 I consider this a poor term and not a good conceptual approach.

- Typically includes a representative body with some legal rights
- As this relies on each being individually established it is slow and unreliable for general protection, only creating limited islands of protection and representation.

Standardising Case-By-Case Establishment

- A 'Closed List' approach to specific nature-subjects with a standardised discretionary process using a responsible authority.
- Instead of relying on ad hoc approaches, this would generalise from the specific by creating a procedure for establishing new nature-subjects. This would still be discretionary but with a clear process to be followed.
- This makes a transition for greater Rights of Nature protection much smoother and easier to establish by advocates, but has a political reliance with no procedural right for new nature-subjects.

Closed List Rights of Nature protection with inherent procedural rights to be recognised.

- This fully generalises the specific protection, with substantive Rights of Nature once a nature-subject is listed and an inherent procedural right to be recognised for nature-subjects meeting the criteria.
- The big advantages would be that any (eligible) nature-subject can be established, and that there is a managed transition based off a closed list instead of a sudden flood. Advantage: all can be protected; managed transition instead of 'floodgates'
- The key disadvantage is that there are not inherent rights from the outset but only after being listed.

6.4 Combined Hybrid Approaches

As discussed, each model can – and does – exist distinctly. However, they are not in opposition but rather complementary: as each of rights and subjecthood exist on a different axis, they can be combined in different ways. This is not a binary matrix: general rights can be of different types (and each of different strength and intensity); and subject-specific representation exists along a spectrum of options. This allows for the possibility of different combinations within a legal system: relating to rights and legal areas; relating to intensity of legal effect; and relating to type of nature-entity.

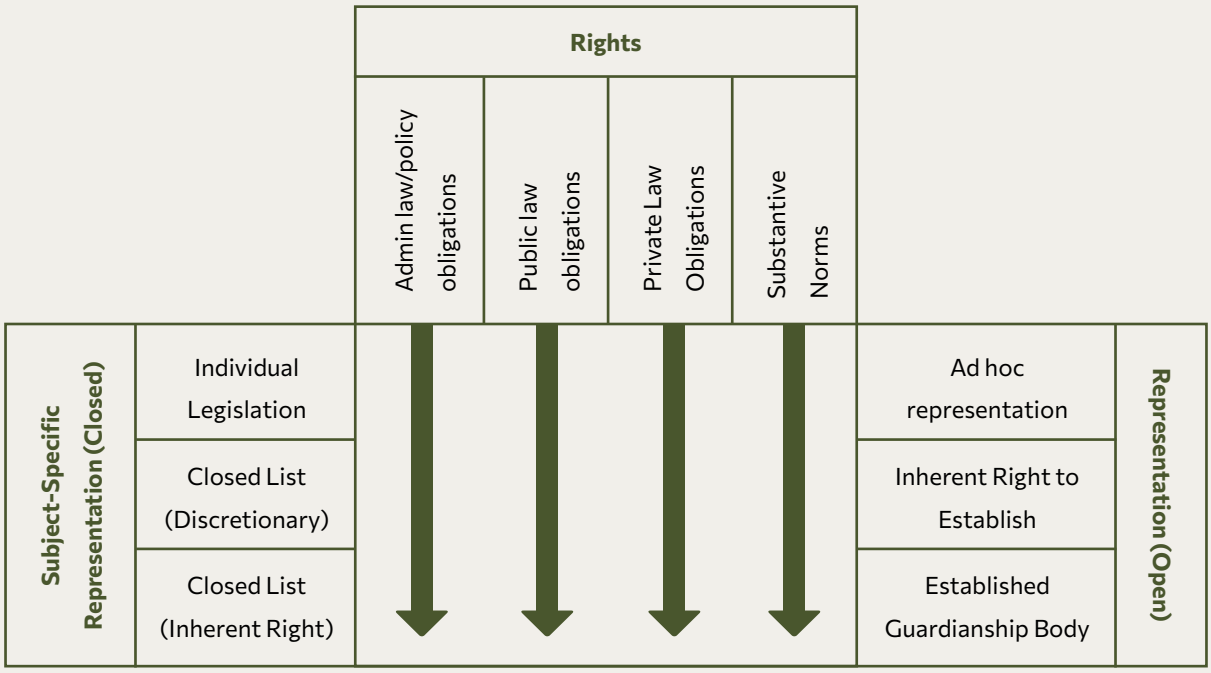
The strongest approach to Rights of Nature would be a legislative framework which combines both rights and representation dimensions: general Rights of Nature with specific representation integrated into this. Beyond just a state policy approach, this would mean general substantive Rights of Nature which can be enforced ad hoc, inherent to the specified nature-subjects without needing establishment. In addition, there could be a procedure (whether inherent or discretionary) to establish representative bodies for particular nature-entities. The rights would exist without the need for an established body, but their ongoing relationship with the nature-subject has advantages including knowledge, expertise, community and ecological ties, and allows for a more proactive approach than

is possible with reactive general rights (as discussed further in **Section 3.4**). Interestingly, an approach along these lines has begun to emerge through case law in Colombia, where ad hoc litigation for Rights of Nature violations has often resulted in the establishment of a guardianship body.

These representative bodies would not need to displace the general standing to bring a case on behalf of the nature-entity. As discussed in **Section 3.4**, a myriad of different relationships between different representatives are possible. Retaining general standing alongside guardianship bodies means that there remains public accountability and two different pathways to protect a nature-entity. This is particularly important for if a representative body is not properly representing the nature-entity's interests, or generally as a positive tension for if there is a good faith difference of opinion about the best way to represent them in a particular case.

These two dimensions of rights and subjecthood are not a binary (as discussed in **Section 2.3 Subjecthood on a Spectrum**), and there are many different options for such hybrid approaches. To represent this, the previous legislative schema diagram has been updated to show subjecthood as on a spectrum, as if integrated with the diagrams in **Section 2.3:**

Figure 6.iv: Legislative Framework Schema II



This diagram is my best attempt to represent the hybrid possibilities of Rights of Nature and nature-subjects. The aim is that it both sets out these possibilities to further understanding, and could be used as a way to represent particular jurisdictions or pieces of legislation. The diagram makes clear that subjectivity is not all or nothing and that the different rights are modular, and includes the options

of nature-subjectivity being either (ie established on a list) or open (ie inherent), shown on the left and right side respectively. However, the many possibilities are too complex and multi-faceted to be shown in one diagram, and this diagram only covers civil society representation, not more specific forms of governmental representation (though these could be within ad hoc representation or through guardianship bodies).

There are three different varieties of hybrid possibilities which could happen within a legal system which merit discussion: relating to rights and legal areas; relating to intensity of legal effect; and relating to type of nature-entity.

One variety would be that rights or legal areas could be different for subjectivity. This would work like layers of building blocks. One obvious example could be to have general constitutional-style rights against the state with ad hoc representation, but then granting additional civil law rights for nature-subjects which are specifically established. This would mean that civil liability is limited to specified nature-subjects and therefore perhaps easier to manage – though also weaker. On the diagram, this is represented by the different modules of rights – though of course each module is not a homogenous bundle but made up of granular options within (and could be graphically zoomed into). Of course, there are many other permutations, including within each module.

A second variety is to have graduated legal approaches for different degrees of subjectivity. General rights could exist inherent to nature-entities, but specifically established subjects could have stronger versions of these rights or their corresponding legal effects. This would be different for different legal areas, but to give some examples: different public law rights could be included; constitutional-style rights could have higher levels of protection (either similar to a 'concentric circles' approach or done through weight in balancing exercises); civil liability could have a different standard (eg between negligence and gross negligence); and criminal law higher levels of punishment. This sort of tiered approach would recognise that all nature-entities should have rights, but that for various reasons (including legal certainty and relating to legal transition) these should be less strong when there is not specifically established representation. Graphically, this could be represented with different intensity colours for the module.

Finally, different types of nature-entities could have different legal approaches. The first Earth Jurisprudence thinkers envisaged that fish should have fish rights, rivers river rights, mountains mountain rights, and so on. This has some common sense, given the immense variety in the non-human natural world, the difference between species (which may migrate or be territorial), habitats, rivers and ecosystems. It could be that different types of nature-entities have different sets of rights, or it could just be that the meaning and effect of these rights (necessarily) varies in their application and interpretation. It may also be that different legal effects are implemented for different types of entity, similar to the graduated legal approaches discussed immediately above (but based on entity

type instead of subjectivity). It could also be that different approaches to subjectivity or different representative structures are better suited to different types of nature-entity.

The aim of this section was to show that there are many different ways that Rights of Nature and nature-subjectivity can be combined and implemented. While the different options may sometimes be best suited to different approaches, they mostly allow for stronger or weaker implementations, which could be beneficial for a progressive implementation. Creating nature-subjects are not necessarily straightforward, as discussed in **Section 3.1**, and there are different ways that legal subjectivity can be established and nature-entities represented. Rights (or legal effects) are modular (and with varying intensity), and subjectivity is on a spectrum, meaning that there are many different ways they can be combined. Even within one jurisdiction or legislative framework, mixed approaches are possible instead of homogenous ones being necessary. My best effort was made to represent this on a diagram, though it is too complex for everything to be shown in one. I hope that this understanding and framework is useful for designing and discussing Rights of Nature legislation.