

# Conserving our Natural Environment and Sustainability

## A Legal Rendition

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In this article, Dr **Nathaniel Falzon** comparatively discusses different legal frameworks adopted to seek to integrate newly minted ‘nature rights’ in modern society, and assesses their viability on the local field. The rest of the article can be found in Id-Dritt XXX.

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## **1. Introduction**

**T**hroughout these last couple of years, one topic has remained in the fulcrum of both local and international affairs, politics and public discourse. This topic has for long been considered as one of the pivotal discussions of our modern age and its repercussions are starting to affect us the more time passes and the situation continues to be exasperated. As a topic it has had its fair share of conspiracies and controversies, with the most notable of all being the ‘Leader of the Free World’ simply dismissing the whole topic and pinpointing the whole issue to his adversaries while dismissing it as a simple political ploy.<sup>1</sup> On the other hand, the United Kingdom and Canada amongst other countries, have declared this as an emergency and urged comprehensive and holistic action.<sup>2</sup>

The topic is none other than the state of our natural environment and how human intervention is affecting the environment with the most notable symptom being that of climate change. The prominence of this issue has led politicians and individuals such as Greta Thunberg, to increase awareness on the topic and tackle the depleting natural environment while also minimising the effects of climate change. All of the above focuses on the natural environment and the need to ensure that it is not only looked after in the short term, but also induce more sustainable and eco-friendly lifestyles and means of living whereby it can be truly said humanity co-exists along with the natural environment.

Bearing in mind the foregoing, the author also shares the opinion that this is one of the biggest issues facing today’s humanity and that something must be done. The author claims to have struggled to understand how humans can be indifferent to their surrounding natural ambient and how humanity could simply pursue their own egoistic and unbounded interests at the detriment of everything else.

Recognizing that there are no clear-cut solutions to this ‘climate emergency’ yet willing to move beyond mere apprehension of this problem, the author has sought to explore and research the topic further and analyse what other jurisdictions around the world have achieved so far. This submission will explore existing and tentative legal frameworks which seek to balance out nature’s right to co-exist in today’s anthropocentric world and assess their viability in the local Maltese scene.

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<sup>1</sup> <<https://twitter.com/realdonaldtrump/status/265895292191248385?lang=en>>

<sup>2</sup> Climate Emergency Declaration, <[https://en.wikipedia.org/wiki/Climate\\_emergency\\_declaration](https://en.wikipedia.org/wiki/Climate_emergency_declaration)>

## 2. What are ‘Nature Rights’?

Back in 2012, the International Union for Conservation of Nature declared that assigning rights to nature is a ‘fundamental and absolute key element for planning, action and assessment’.<sup>3</sup> Various international organizations have committed themselves towards achieving and advocating such legal concepts on an international scale. Establishing the right to our natural environment has been described as means to ‘treat the disease, not the symptoms’.<sup>4</sup> Yet realistically, what is its significance?

In the philosophical discussion surrounding the concept of ‘rights’, one finds that the discussion is often compartmentalized into the ‘form’ and the ‘function’ of the rights. While the former focuses on the internal structure of the right, the latter considers the interaction for the right and the rights holder.<sup>5</sup>

When discussing the ‘form’ of the constitution of rights, the established Hohfeldian incidents are often quoted and consist of the privilege, the claim, the power and the immunity.<sup>6</sup> In this particular scenario, the claim proposition is of relevance as by assigning rights to nature we, collectively as a society, would be recognizing that nature should be treated and allocated a number of rights which may hinge or limit other sets of rights.<sup>7</sup> Yet in order for a thing to be considered as a rights holder, Professor Stone, who is one of the main proponents advocating for the assignment of rights to nature, describes three intrinsic elements which must be considered and included in the discussion: ‘the thing can institute legal actions at its behest, second, that in determining the granting of legal relief, the court must take injury to it into account, and third, that relief must run to the benefit of it’.<sup>8</sup> Simply assigning rights to nature and thus considering nature as a rights holder, yet not recognising and providing solutions to the foregoing three characteristics would prove futile.

In order to better exemplify his ideas Professor Stone makes use of the current example:

*To illustrate, even as between two societies that condone slavery there is a fundamental difference between S1, in which a master can (if he chooses), go to court and collect reduced chattel value damages from someone who has beaten his slave, and S2, in which the slave can institute the proceedings himself,*

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<sup>3</sup> Darlene Lee, ‘Rights of Nature at the International Level’, (26 October 2017) available online on: <<https://www.earthlawcenter.org/blog-entries/2017/10/rights-of-nature-within-the-un-and-iucn>>

<sup>4</sup> *ibid.*

<sup>5</sup> Stanford Encyclopedia of Philosophy, (19 December 2005) available online on: <<https://plato.stanford.edu/entries/rights/#2.2>>

<sup>6</sup> *ibid.*

<sup>7</sup> Mihnea Tanasescu, *The Rights of Nature in Ecuador* (Palgrave Macmillan, London 2016).

<sup>8</sup> Christopher D. Stone, *Should Trees Have Standing? – Toward Legal Rights For Natural Objects* (Southern California Review) 45 (1972).

*for his own recovery, damages being measured by, say, his pain and suffering. Notice that neither society is so structured as to leave wholly unprotected the slave's interest in not being beaten. But in S2 as opposed to S1 there are three operationally significant advantages that the slave has, and these make the slave in S2, albeit a slave, a holder of rights.*

The above example depicts how our current legal system (S1) treats nature as indeed our 'slave' in today's anthropocentric society and how the current legal frameworks protects our natural environment yet without wholly considering the environment as a rights holder in its own right. By assigning rights to nature, we are moving away from a century-old approach by allowing courts to recognise nature's inherent value and whose value is quantified according to its own merit rather than upon consideration to our human value system.

### **3. Nature Rights in Practice: The Ecuadorian and Bolivian Experience**

The first jurisdictions which sparked off this movement were Ecuador and Bolivia back in 2008 and 2010 respectively. An important consideration which needs to be borne in mind is that common to both of the abovementioned countries, one finds a vast and rich natural ecosystem as well as different sects of indigenous local people and tribes who live in small communities and have a spiritual connection to their natural environment.

These communities pursue what they refer to as 'Sumak Kawsay' which translates to 'good living' or the 'good life'.<sup>9</sup> One of the central elements of this way of life is the importance of living in harmony with nature in such a way as to be 'able to preserve their unique culture and identity, and care for an environment that they know will provide for generations to come'.<sup>10</sup> This 'way of living' is deeply rooted into ancient Quechua people of the Andes and focuses on living sustainably in harmony with Pacha Mama, which according to ancient Inca mythology, refers to the 'goddess of Earth, life and harvest' more often termed as 'Mother Nature'.

This presents a different socio-economic perspective which challenges the dominant anthropocentric world view which perceives people's rights and interests as the be all and end all. Ecuador's natural environment and its indigenous communities were also adversely affected by various ecological disasters over the years, the most famous one being the oil dumping case of Chevron/Texaco in the lakes and rivers of Lago Agrio region.<sup>11</sup> Naturally enough, such disasters laid waste to different

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<sup>9</sup> 'Sumak Kawsay: Ancient Teachings of Indigenous Peoples', <<https://www.pachamama.org/sumak-kawsay>.

<sup>10</sup> *ibid.*

<sup>11</sup> 'Chevron wins Ecuador rainforest 'oil dumping' case' (*BBC News*, 2018) <<https://www.bbc.com/news/world-latin-america-45455984>>.

ecological ecosystems and thus affected public perception and led to more political consciousness and awareness on such exploits by large conglomerates while also heightening awareness of the need to better protect the natural environment in pursuit of ‘Sumak Kawsay’.

All of the above, amongst other considerations, laid the groundwork towards the 64% referendum result in favor of amending the Ecuadorian constitution to recognize nature or ‘Pacha Mama’ as a rights-holder. The Preamble section of the Constitution was amended and nature was described as being ‘vital to our existence’,<sup>12</sup> and as a ‘new form of coexistent citizenship, in diversity and in harmony with nature, to achieve the good life, the Sumak Kawsay’<sup>13</sup> was established. A whole chapter is dedicated towards the Rights of Nature according to which ‘Nature or Pacha Mama, where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution’.<sup>14</sup>

All ‘persons, communities, peoples and nations’<sup>15</sup> are considered to have legal standing in order to ‘call upon public authorities to enforce the rights of nature’.<sup>16</sup> The aforementioned persons, communities, peoples and nations have a right to ‘benefit from the environment and the natural wealth enabling them to enjoy the good way of living’.<sup>17</sup> The State is tasked with promoting and motivating individuals to represent natural rights, apply any precautionary or reactionary measures for the wellbeing of nature and its species and decide exclusively on the use, production and exploitation of environmental services.<sup>18</sup> The State is also the designated regulator for production, use and development of environment services and management.<sup>19</sup> However, one specific article which is of particular relevance to the discussion on the topic of Rights to Nature is Article 72. The mentioned Article reads: ‘*Nature has the right to be restored. This restoration shall be apart from the obligation of the State and natural persons or legal entities to compensate individuals and communities that depend on affected natural systems*’.

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<sup>12</sup> ‘Ecuador: 2008 Constitution in English’ <<http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>>.

<sup>13</sup> *ibid.*

<sup>14</sup> *ibid.*

<sup>15</sup> *ibid.*

<sup>16</sup> *ibid.*

<sup>17</sup> *ibid.*

<sup>18</sup> *ibid.*

<sup>19</sup> *ibid.*

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