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RIGHTS OF NATURE: IS THERE A LATIN AMERICAN MODEL OF THEIR RECOGNITION?

Abstract

While having roots in the United States, the concept of recognising nature as a legal person has evolved concurrently in various legal systems worldwide. In Latin America, it has encountered particularly favourable conditions, fostered by distinctive cultural, philosophical, and political factors, including indigenous epistemologies and biocentric traditions such as *Pachamama* and *sumak kawsay*. This article addresses the question of whether it is possible to speak of a singular Latin American model of the Rights of Nature. The primary aim is to conduct a comparative analysis of selected Latin American legal systems in order to assess the extent of convergence or divergence among them. The study focuses on five analytical dimensions: the philosophical foundations underpinning RoN, the scope of the rights granted, the mechanisms of nature's representation, the mode of recognition – whether through constitutional, statutory, or judicial channels – and the actual institutional strength ensuring the enforcement of these rights. Through a detailed examination of developments in Ecuador, Bolivia, Colombia, Panama, and Peru – States that have already recognised rights of nature on the national or federal level – the article highlights both shared regional features and substantial national particularities. While a common biocentric orientation and preference for the 'all-nature model' are observable, significant differences in legal architecture and practical implementation persist. Ultimately, the article contends that Latin America offers a distinctive and contextually nuanced contribution to the global evolution of the legal recognition of nature's rights.

KEYWORDS

Rights of Nature, legal personhood, Latin American law, *Pachamama*, environmental law

SŁOWA KLUCZOWE

prawa natury, osobowość prawna, prawo latynoamerykańskie, *Pachamama*, prawo środowiskowe

I. INTRODUCTION

Granting legal rights to non-human entities is not novel in legal literature; estates, corporations, and public offices already possess legal personality. However, the concept of Rights of Nature (RoN) *sensu stricto* and its codification into positive law are relatively recent, rapidly developing phenomena that spark lively debate. Christopher Stone¹ is widely regarded as a precursor to granting natural ecosystems legal standing and, consequently, subjective rights. The United States also witnessed the first legal act sanctioning RoN: in 2006, the Tamaqua Borough Council in Pennsylvania adopted a Sewage Sludge Ordinance. This ordinance prohibited sewage sludge disposal and recognised that ecosystems shall be considered persons for purposes of their civil rights.²

In South America, Ecuador granted RoN their highest recognition to date: constitutional status. On the same continent, Bolivia enacted pioneering laws declaring Nature a subject of law and guaranteeing its protection. Philosophically, the institutionalisation of RoN appears to have found fertile ground in Latin America, partly due to the historical and cultural conditions of its societies. The debate on recognising and sanctioning RoN is now underway across the region.

RoN are developing simultaneously in many jurisdictions, stemming from diverse sources and varied social, cultural, and political conditions.³ Thus, there is no single, universal concept of RoN; rather, multiple, often distinct concepts exist, which then interact and diffuse.⁴ This prompts the question of whether common features defining a specifically Latin American model of RoN can be identified.

¹ Christopher Stone, 'Should Trees have Standing? Toward Legal Rights for Natural Objects' (1972) 45 S Cal L Rev 450.

² Tamaqua Borough Ordinance 612 of 2006, s 7.6.

³ Craig M Kauffman and Pamela L Martin, *The Politics of Rights of Nature: Strategies for Building a More Sustainable Future* (MIT Press 2021) 14–15.

⁴ *Ibid* 17–20.

This article presents and compares all Latin American legal systems where RoN have been recognized on the national level. The analysis covers the characteristics of this legal personality, the scope of granted rights, implementation methods, and the consequences of this development. This dogmatic-comparative work systematises knowledge on Latin American RoN concepts, their distinct philosophical sources, forms of legal enactment, and the impacts of their introduction. The comparison employs four criteria: method of recognition, scope, strength, and representation. Kaufmann's concepts of scope and strength are adapted: scope refers to the range and breadth of rights afforded, while strength denotes enforcement capacity, reflected in the formal authority of laws and the capacity and responsibility of individuals to enforce RoN.⁵

II. IDEOLOGICAL UNDERPINNINGS OF RON IN LATIN AMERICA

Although the concept of juridifying RoN has US origins, for some cultures, it has been self-evident for centuries that Nature is a subject of rights. Latin America's indigenous peoples are an example. In their traditional cosmovisions, Nature is a collective entity encompassing all vital and natural world forces, of which humans are also a part.⁶ Key feature of this worldview is the conviction that all elements of Nature are interconnected and mutually dependent.⁷ All natural elements are permeated with the same life energy, *Pachamama*, sometimes identified with a deity.⁸

Thus, in Latin America, the concept of RoN found fertile ground, as it ideologically mirrors the traditional epistemologies of the region's peoples. The

⁵ Ibid 17–20.

⁶ Alberto Acosta, 'Los Derechos de la Naturaleza. Una lectura sobre derecho a la existencia' in A Acosta and E Martínez (eds), *La Naturaleza con Derechos. De la filosofía a la política* (Abya Yala y Universidad Politécnica Salesiana 2011) 317, 344.

⁷ Marcelo Melo, 'Los Derechos de la Naturaleza en la nueva Constitución ecuatoriana' in Acosta and Martínez (eds), *Derechos de la Naturaleza. El futuro es ahora* (Abya Yala 2009) 51, 55–57; Josef Estermann, *Filosofía andina, estudio intercultural de la sabiduría autóctona andina* (Editorial Abya Yala 1998) 359; Ramiro Ávila Santamaría, 'El derecho de la naturaleza: fundamentos' in Acosta and Martínez (eds), *La Naturaleza con Derechos. De la filosofía a la política* (Abya Yala y Universidad Politécnica Salesiana 2011) 209–211.

⁸ Nina Pacari, 'Naturaleza y territorio desde la mirada de los pueblos indígenas' in Acosta and Martínez (eds), *Derechos de la Naturaleza. El futuro es ahora* (Abya Yala 2009) 34–35; Eugenio Raúl Zaffaroni, 'La Pachamama y el humano' in Acosta and Martínez (eds), *La Naturaleza con Derechos. De la filosofía a la política* (Abya Yala y Universidad Politécnica Salesiana 2011) 112.

recognition and implementation of RoN advance most effectively in the former sphere of influence of Tawantinsuyu. This society deeply ingrained not only a conviction of the human-nature bond but, crucially, a perception of the world's cyclical nature, involving a continuous flow of vital energy between humans and other natural elements. Embodying these beliefs – which inherently entail living in harmony with nature – is the term *sumak kawsay*, coined in the latter half of the 20th century, signifying ‘good living’ in Quechua. Significantly, RoN were first acknowledged in nations that are both heirs to Andean culture and home to substantial Indigenous and *mestizo* populations.

The initial practical applications of RoN coincided with socio-political transformations in Latin America – the rise of indigenous movements, ‘epistemologies of the south’, and a broader intellectual current focused on the renovation of ancient roots, Andean socialism, and left populism. RoN aligned well with this current. It is crucial to note, however, that these adopted RoN concepts are not a direct continuation or transposition of indigenous cosmivision into the positive law of modern Latin American nation-states.⁹ They often diverge from indigenous ideas, merely sharing points of convergence in this specific area.

Given this distinctive context, we found it compelling to compare how Latin American States recognise RoN and ensure its protection and enforcement. The following sections detail the approaches of countries that have recognised RoN at the national level – Ecuador, Bolivia, Colombia, Panama, and Peru, presented in chronological order. Thus, Ecuador enshrined RoN in its constitution; Bolivia and Panama enacted specific statutes, while in Colombia and Peru, RoN recognition has emerged through the jurisprudence of constitutional and general courts. Beyond these primary jurisdictions, RoN has seen limited juridification in Argentina, Brazil, and Mexico, and there has been a significant intent in Chile. Nevertheless, those fall out of the scope of this article due to space limitations.

III. COMPARATIVE ANALYSIS

1. ECUADOR

Ecuador's 2008 Constitution was the first globally to recognise nature as a subject of rights. Revolutionary in Latin American constitutional history, it fused leftist socialism, neo-indigenous movements, and opposition to neocolonialism

⁹ Mihnea Tănăsescu and others, ‘Rights of nature and rivers in Ecuador's Constitutional Court’ (2024) 28 *The International Journal of Human Rights* 1, 15; Kauffman and Martin (n 3) 121–29.

and capitalist economics. Its framers aimed to bolster democratic legitimacy from a Latin American viewpoint.¹⁰

The 2008 Constitution's RoN concept is biocentric, referencing *Pachamama* (Nature), of which humans are an immanent part. Article 10 grants nature rights detailed in Articles 71–74, establishing a new rights catalogue. Article 71.1 defines *Pachamama* as where life reproduces and occurs. Equating *Pachamama* with nature integrated traditional Latin American views of human-nature interdependence with European rational ecosystem understanding and indigenous worship.¹¹

Nature was primarily granted rights to its existence, the maintenance and regeneration of its life cycles, structure, functions, evolutionary processes, and restoration for harm (Article 71.1). Individuals and collective entities (indigenous/local communities, nations) have standing to protect these rights (Article 71.3), and public authorities must enable their actions. The *Defensoría del Pueblo's* (ombudsman) competence expanded to include RoN protection.

The State has special duties reflecting RoN regarding species, ecosystem, and the protection of the natural cycle. Per Article 73, the State must: first, apply special precautionary measures for actions potentially causing species extinction, ecosystem destruction, or permanent alteration of natural cycles (Article 73.1); second, prohibit introducing organisms or materials that could permanently alter the national genetic heritage (Article 73.2). However, RoN protection under Ecuador's Constitution does not impede meeting human needs.¹² Article 74.1 states that people have the right to use the environment and natural resources that allow them to live well, with the *sumak kawsay* principle defining the limits of individual entitlement. To guarantee this, Article 74.2 stipulates that environmental services cannot be appropriated; their production, provision, and exploitation are State-regulated. Another consequence of RoN recognition is the *favour naturae* principle: in doubts over environmental law scope, the interpretation most favourable to nature applies (Article 395.4).

The potential of this globally recognised RoN reform was not fully realised due to political disputes and mining plans hindering laws for robust RoN protection institutions.¹³ Current laws referencing RoN – the Penal Code and the Environ-

¹⁰ Ruben Martinez Dalmau, 'El proyecto de Constitución de Ecuador, ejemplo del nuevo constitucionalismo latinoamericano' (2009) 23 US Revista del Instituto de Ciencias Jurídicas de Puebla AC 264, 266–67.

¹¹ Eduardo Gudynas, 'La ecología política del giro biocéntrico en la nueva Constitución de Ecuador' (2009) 32 Medio Ambiente 34, 37.

¹² Andres Grijalva Jimenez, *Constitucionalismo en Ecuador* (Corte Constitucional para el Periodo de Transición 2011) 42.

¹³ Kauffman and Martin (n 3) 80, 82–83.

mental Code – largely delegate further rulemaking to the executive, which remains passive. Thus, court jurisprudence is key to effective RoN protection. A strong constitutional basis and RoN doctrine allow courts a dynamic interpretation, fostering RoN's development and improved protection. However, jurisprudence has seen contradictions, often depending on judicial panel composition, and courts were initially cautious: five of eight RoN lawsuits (2009–2019) were rejected, mostly on procedural grounds.¹⁴

Nevertheless, after over 15 years, Ecuadorian case law has solidified the admissibility of judicial RoN protection, and a relatively coherent understanding of its substance is crystallising. The Vilcabamba River case was the first ruling where a court confirmed nature's legal personality and ordered ecosystem restoration.¹⁵ The case concerned regional road construction in Loja province, which led to the alteration of the river and caused flooding, which damaged the local ecosystem. The court ordered the Loja Provincial Government to present a remediation and rehabilitation plan for the river and to issue a public apology in a local newspaper.¹⁶

Developing jurisprudence has effectively eliminated all doubts in this regard. It is now clear that Nature, and all its constituent ecosystems and elements, are legal subjects.¹⁷ Thus, courts do not declare a specific natural element a legal subject but rather delimit the part of nature whose rights were violated in a given case. According to Ecuadorian jurisprudence, RoN are transversal, impacting all other rights. In Decision No 0507-12-EP, the Court affirmed that, unlike anthropocentric views (man as the aim of all things), the biocentric vision underpinning RoN prioritises nature. Here, the court found RoN prevailed over an individual's economic rights.¹⁸

Besides the Vilcabamba River, rulings have found RoN violations concerning animal hunting,¹⁹ water pollution and overuse of rivers,²⁰ as well as refusal to

¹⁴ Kauffman and Martin (n 3) 89.

¹⁵ *Richard Fredrick Wheeler and Eleanor Geer Huddle v Director de la Procuraduría General del Estado en Loja*, Juicio No 11121-2011-0010 (Función Judicial de Loja, 30 March 2011).

¹⁶ *Idem*.

¹⁷ Corte Constitucional del Ecuador, Sentencia No 22-18-IN/21, 8 September 2021, paras 28–29.

¹⁸ Corte Constitucional del Ecuador, Sentencia No 166-15-SEP-CC, 20 May 2015.

¹⁹ *Unidad Judicial Multicompetencia de San Cristobal v Primitivo Rigoberto Pachay Murillo and others*, Proceso No 09171-2015-0004, Oficio de la Sala Especializada Penal de la Corte Provincial de Guayas, 16 March 2016; Kauffman and Martin (n 3) 100.

²⁰ Corte Constitucional del Ecuador, Sentencia No 22-18-IN/21, 8 September 2021; Corte Constitucional del Ecuador, Sentencia No 2167-21-EP/22, 19 January 2022; Corte Constitucional del Ecuador, Sentencia No 1185-20-JP/21, 15 December 2021.

allow remediation of oil spill damage.²¹ Due to the interrelation between nature's elements, violating the rights of a specific ecosystem or element also violates RoN as a whole.²² Moreover, conversely, courts citing RoN have halted infrastructure, mining, or industrial projects violating these rights, e.g., the Charles Darwin Avenue construction (Santa Cruz, Galapagos Islands) affecting the Galapagos Marine Reserve,²³ and the Rio Blanco Mining Project, which posed a risk to a hydrologically significant area.²⁴

The scope of court-granted RoN protection is controversial, often encroaching on State administration, by ordering ecosystem management plans exceeding traditional judicial functions.²⁵ Legislative inaction only increases judicial influence. Conversely, State-initiated proceedings have largely strengthened Ecuador's RoN doctrine.²⁶

Ecuador developed a biocentric RoN concept. Here, nature itself is a legal subject with rights often taking precedence. Its individual elements or ecosystems share this legal standing. The Constitution defines a broad scope of protected rights, which, with a now proficient judiciary, ensures strong, effective RoN protection. However, this protection is primarily reactive and remedial, with courts intervening after RoN violations occur. The Ecuadorian model lacks specific bodies to represent nature or its parts. Although the Defensoría del Pueblo has RoN protection competence, in practice, lawsuits by individuals or groups are the primary means of initiating RoN protection proceedings.

2. BOLIVIA

Shortly after Ecuador, Bolivia joined the trend of recognising RoN, becoming the second country globally to sanction them at the statutory level. This was

²¹ *Ordoñez Ajon Freddy Nixon and others v Juan Andres Delgado Garrido and others*, Proceso No 22281-2020-00201, Razon de la Sala Multicompetente de la Corte Provincial de Justicia de Orellana, 23 March 2021.

²² Corte Constitucional del Ecuador, Sentencia No 22-18-IN/21, 8 September 2021, paras 26–27.

²³ *Oscar Luis Aguirre Abad and others v Gobierno Autónomo Descentralizado Municipal de Santa Cruz*, Juicio No 269-2012 (Juzgado Segundo de lo Civil y Mercantil de Galápagos, Medida Cautelar Constitucional, 28 June 2012).

²⁴ *Yaku Sacha Pérez Guartambel and others v Estado Ecuatoriano*, Juicio No 03145-2018 (Sala de lo Civil y Mercantil de la Corte Provincial del Azuay, 2 August 2018).

²⁵ Tănăsescu (n 9) 8.

²⁶ Kauffman and Martin (n 3) 97.

achieved in 2010 through the Law of the Rights of Mother Earth,²⁷ subsequently supplemented by the Framework Law of Mother Earth and Integral Development for Living Well of 2012.²⁸

While some argue Bolivia's 2009 Constitution already recognised RoN,²⁹ citing Preamble references to *Pachamama* and human-nature interdependence, this seems an overly sanguine reading. The Constitution itself does not explicitly grant RoN, a topic absent from its drafting materials,³⁰ though it paved the way for statutory recognition.³¹

The Law of the Rights of Mother Earth, the world's first statute proposing a simplified RoN framework,³² marked a 'break with Cartesian dualism'.³³ Its stated goal is 'the recognition of the rights of Mother Earth [equatable to RoN], and the duties and obligations of the Plurinational State and society to respect these rights (Article 1). Their exercise and protection must adhere to six principles from Article 2: harmony of human actions with Mother Earth's cycles; common good; guaranteed regeneration of Mother Earth, including ensuring conditions for self-regeneration and, if necessary, minimally invasive restoration; respect for and active protection of Mother Earth's rights; non-commodification, i.e., prohibiting commercialization of Mother Earth's elements, which should not be private property; and interculturality.

Under the Law of Mother Earth, the subject of rights is Mother Earth – a dynamic, living system of an indivisible community of life systems (all relations between nature's elements, including humans and living beings, interconnected, interdependent, and complementary, sharing a common destiny and a sacred reference point for many indigenous nations and peoples. Thus, in Bolivian law, the legal subject is all of nature as a collective entity of public interest, and all its elements, including humans and human communities. In conflicts between individual and collective rights, they must be applied to avoid irreversible impacts on life systems' functioning. Mother Earth is a collective legal person, with its personality rooted in public utility.

²⁷ Ley No 071 de derechos de la Madre Tierra 2010 (Bolivia).

²⁸ Ley No 300 Marco de la Madre Tierra y Desarrollo Integral Para Vivir Bien 2012 (Bolivia).

²⁹ Zaffaroni (n 8) 106–108; Kauffman (n 3) 117.

³⁰ Paola Villavicencio Calzadilla, 'Los derechos de la naturaleza en Bolivia: un estudio a más de una década de su reconocimiento' (2022) 13(1) Revista Catalana de Dret Ambiental 1, 11.

³¹ *Idem* 17.

³² Cletus Gregor Barie, 'Doce años de soledad de los derechos de la Madre Tierra en Bolivia' (2022) 4 Naturaleza y Sociedad. Desafíos Medioambientales 142, 156.

³³ Louis J Kotzé and Paola Villavicencio Calzadilla, *Somewhere between Rhetoric and Reality: Environmental Constitutionalism and the Rights of Nature in Ecuador* (CUP 2017) 407–408.

The Law of the Rights of Mother Earth provides a specific catalogue of rights for nature: the right to life, biodiversity, water, clean air, equilibrium, restitution, and life free from contamination. Correspondingly, the State and its institutions have duties, including: preventing species extinction, alteration of life-sustaining cycles, or destruction of life systems; shaping production and consumption to balance human needs (justified by ‘Living Well’) with nature’s regenerative capacities and process integrity; and protecting nature internationally and combating the global climate crisis. Individuals also have duties to respect the Rights of Mother Earth.

Finally, Article 10 of the Law of the Rights of Mother Earth establishes the Ombudsman for Mother Earth, tasked with overseeing compliance, promotion, dissemination, and implementation of these rights. A separate law, yet to be adopted, is to define this body’s functioning and structure.³⁴ A draft bill (PL-136-20) was presented in March 2021, but legislative work has not significantly advanced since.

The very general Law of the Rights of Mother Earth was supplemented in 2012 by the Framework Law of Mother Earth. This law revised the initial Ecuadorian-inspired direction, detailing and thereby limiting the implementation of rights recognised in the earlier law. According to Article 4, rights attributed to nature are ‘subject to collective public interest’. The law not only covers RoN but also attempts to establish a new socio-economic order consistent with the *sumak kawsay* principle, ensuring respect for RoN as a component.³⁵ Even though it falls short of its aim to specify the earlier law, as RoN protection procedures remain ill-defined. While articles assign responsibilities (Article 34), set protection levels (Article 36), and define violations (Article 38), concrete enforcement instruments are lacking. Instead, it offers mainly declaratory provisions, highlighting a deficiency in practical mechanisms.

Regarding representation, all individuals or collective entities affected by or aware of a violation are empowered, and essentially obligated, to initiate RoN protection proceedings – an *actio popularis*. Other interested third parties can join such proceedings (Article 40). Given the Ombudsman’s absence, *actio popularis* is the primary means of representing nature and protecting its rights.

While the Framework Law is an institutional step forward, supplementing the general Law of the Rights of Mother Earth, it is a step back regarding the scope of these rights’ protection, being less radical. For instance, where the Law of the

³⁴ Villavicencio (n 33) 19.

³⁵ Idem 19–20.

Rights of Mother Earth provides for nature's freedom from genetic modification (Article 7.I.2), the Framework Law speaks only of the gradual elimination of genetically modified crops (Article 24.8-9). Similarly, the right to restitution of life systems (Article 7.I.6 of the first law) is replaced by the principle of integral and effective restitution or reclamation of the functionality of these [life systems] (Article 4.5 of the Framework Law).³⁶ This dilution is attributed to political aims: enabling effective economic policy and minimising risks from a strict interpretation of the Rights of Mother Earth.³⁷

Consequently, RoN protection in Bolivia is virtually non-existent in practice; its recognition is largely a declarative political act. The situation is far from desirable, with protection subordinated to State interests and foreign policy. To date, RoN has not been invoked in any Bolivian lawsuit, upheld by courts, or inserted into administrative policy.

Thus, while Bolivia's legal framework for RoN is institutionally well-developed, practical implementation remains nascent. Hopes for the first Ombudsman for Nature/Mother Earth are high in Latin America, but the office's operational launch seems distant.

3. COLOMBIA

Colombia uniquely recognised RoN through jurisprudence evolving from its 'ecological constitution'. In 1992, the Constitutional Court (T-411/92) affirmed humanity's non-omnipotence over nature and ecology's essential, legally protected core, whose function conditions other rights, like property.³⁸ A pivotal step was the Constitutional Court's 2016 Atrato River ruling (T-622/16). Following a complaint by local communities about pollution violating multiple rights, the Court recognised the Atrato River as a rights-subject, affirming that natural elements can have legal personality.³⁹ The ruling's foundation distinctively integrated an ecocentric vision recognising nature as a genuine subject of rights, with the interconnected environmental and cultural rights of the indigenous and Afro-Colombian communities inhabiting the river's valley. The Court emphasised that nature's significance extends beyond mere human utility, highlighting

³⁶ Similarly, Barie (n 35) 157–159.

³⁷ *Idem* 158.

³⁸ Corte Constitucional de Colombia, Sentencia T-411/92, 17 June 1992.

³⁹ Angela Schembri Peña, 'La naturaleza como sujeto de derechos' (2022) 7(78) *Revista Nova et Vetera* <<https://urosario.edu.co/revista-nova-et-vetera/columnistas/la-naturaleza-como-sujeto-de-derechos>> accessed 31 March 2025.

its intrinsic value and connection to all living organisms, which are themselves worthy of protection.⁴⁰

The Court extensively interpreted the social rule of law and constitutional environmental protections, noting the ecocentric view where man belongs to the earth and nature is an authentic subject of rights, recognised by States and exercised under the guardianship of its inhabiting communities or other legal representatives.⁴¹ Analysing the indigenous rights-nature nexus and human impacts, especially mining, the Court then ruled the Atrato River a subject of rights – implying its protection, conservation, maintenance, and restoration – stressing the need for evolving legal interpretation.⁴² The Court found these concepts aligned with Colombia's 'ecological constitution', ruling that nature must be a subject of rights. This interpretation, the Court stated, is justified by the overriding environmental interest established in the 'Ecological Constitution'.⁴³

Thus, the Constitutional Court, referencing biocentrism, explicitly stated that nature itself – not just the Atrato River – is a subject of rights, although the ruling, limited by the case's scope, did not grant general legal personality to all nature and the judgement T-622/16 became a cornerstone for subsequent court decisions.⁴⁴ For representation, the Court adopted a model similar to New Zealand's, with joint guardianship for the Atrato River (one community representative, one State delegate)⁴⁵ and a Guardian Committee including support from the Humboldt Institute and WWF Colombia.

A second key ruling, the Supreme Court's STC-4360-2018 (5 April 2018), recognised the Colombian Amazon as a legal person. This followed a lawsuit by 25 youths against State entities, arguing that Amazon deforestation violated their fundamental rights. The Court upheld the youths' legal standing and, referencing prior Constitutional Court jurisprudence, declared the entire Colombian Amazon a subject of rights, entitled to protection, conservation, maintenance, and restoration by State and territorial entities. However, the ruling did not specify representation mechanisms for the Amazon. This Supreme Court decision rein-

⁴⁰ Johana Fernanda Sánchez Jaramillo, 'Colombia: La naturaleza como sujeto de derechos entre el activismo y la contención' (2022) 16(3) *Novum Jus* 189, 197; Walter Pérez Niño, Nancy Paola Montañez Aldana and Juan Camilo González Borda, 'Reconocimiento de la Naturaleza como sujeto de derechos en Colombia: Algunos retos de su inserción en el sistema jurídico' (2022) 33 *Revista Republicana* 21, 34.

⁴¹ Corte Constitucional de Colombia, Sentencia T-622/16, 10 November 2016, para 5.9.

⁴² *Idem* 9.28.

⁴³ *Idem* 9.31.

⁴⁴ Pérez Niño (n 44) 29.

⁴⁵ Corte Constitucional de Colombia, Sentencia T-622/16, 10 November 2016, 9.32.

forced the view that nature is a subject of law, highlighting judicial activism – not legislation – as the primary driver of this axiological shift in Colombia.

Various courts subsequently recognised other natural entities as subjects of rights, including rivers (e.g., Quindío River,⁴⁶ Magdalena River,⁴⁷ and Guáitara River⁴⁸), animals (e.g., Chucho the bear⁴⁹) and National Parks (e.g., Los Nevados National Park⁵⁰).

Protection scope and representation were determined case-by-case. Rulings typically ordered public authorities to protect or reclaim natural entities (e.g., a sewage plant for Rio Quindío⁵¹). The rights granted were fairly uniform: protection, conservation, maintenance, and restoration. Representation was generally assigned to public administration bodies, though models varied (e.g., Atrato model, Environment Minister for Amazon, discretion to the National Government for the Rio Cauca). Guardian Committees were appointed occasionally (e.g., in the Atrato River).

In 2024, Colombia passed its first law recognising a natural element – the Río Ranchería – as a legal person⁵² granting it rights to ‘conservation, maintenance and restoration, which has to include active participation of indigenous peoples’ (Article 1). A collegial Guardian Committee (Article 2), including ministers, environmental authorities, mayors, and community representatives, was established for river affairs and can appoint an advisory committee. An earlier plan to recognise the Rio Magdalena as a legal subject was not promulgated.⁵³

Finally, recent constitutional debates included a 2019 bill to amend Article 79, proposing Nature as a ‘living entity subject to rights’ ensuring its existence,

⁴⁶ *Carlos Alberto Arrieta Martínez and others v Nación – Ministerio de Vivienda, Ciudad y Territorio and others*, Sentencia, Radicado No 63001-2333-000-2019-00024-00 (Tribunal Administrativo del Quindío, Sala Cuarta de Decisión, 5 December 2019).

⁴⁷ *Andres Felipe Rojas Rodriguez and Daniel Leandro Sanz Perdomo v Ministerio de Ambiente y Desarrollo Sostenible and others*, Radicado No 41001-3109-001-2019-00066-00 (Juzgado Primero Penal del Circuito con Funciones de Conocimiento de Neiva-Huila, Sentencia de Tutela de Primera Instancia No 071, 24 October 2019).

⁴⁸ *Omar Armando Benavides Cerón v Municipio de Ipiales and others*, Sentencia, Radicación No 52001-23-33-2017-0639-00 (Tribunal Administrativo de Nariño, Sala Primera de Decisión, 20 November 2023).

⁴⁹ Corte Constitucional del Colombia, Sentencia SU-016/20 (T-6.480.577), 23 January 2020.

⁵⁰ *Juan Felipe Rodríguez Vargas v Presidencia de la República and others*, Sentencia de Tutela de Primera Instancia, Radicado No 73001-22-00-000-2020-000091-00 (Tribunal Superior del Distrito Judicial de Ibagué, Sala Quinta de Decisión Laboral, 28 August 2020).

⁵¹ *Arrieta Martínez v Nación* (n 52).

⁵² Ley 2415 de 2024 (Colombia, 8 August 2024).

⁵³ Proyecto de Ley 038 de 2023 (Colombia, 8 August 2023).

habitat, restoration, etc.⁵⁴ This was not adopted, similarly as a 2022 bill explicitly proposing animal rights.⁵⁵

In Colombia, RoN recognition initially evolved through jurisprudence (T-622/16 pivotal). Legislative activity began emerging in 2023 (one law adopted). While biocentrism is an inspiration, its ideological aspect is marginal in court practice. Judicial and legislative efforts focus on protecting specific threatened elements (rivers, parks, animals). Effectiveness varies but is generally viewed positively (e.g., Atrato Guardian Commission, Quindó River plant). No single representation model exists; guardian commissions or public curators are common. Actions are mostly reactive, though proactive guardianship is intended. The catalogue of recognised rights is consistent: protection, maintenance, conservation, regeneration, and restoration.

4. PANAMA

On 24 February 2022, Panama's National Assembly adopted Law 287/2022, recognising RoN and the State's related duties. The law primarily aims to protect Nature's intrinsic value, with concern for present and future human generations as a secondary consideration (Article 3).

Panama adopted a model for recognising Nature as a subject of rights similar to Ecuador and Bolivia, particularly inspired by the Bolivian Law of the Mother Earth. Under Article 3.2 of Panama's law, Nature is a collective, indivisible, self-regulating entity comprising its elements, biodiversity, and interconnected ecosystems;⁵⁶ thus, the legal subject is all Nature. All natural and legal persons, individually or collectively, have standing to represent Nature and protect its rights. No general guardianship body or ombudsman for Nature was established.

Article 8 of Law 287/2022 specifies six principles according to which the law is to be interpreted and applied. A similar construction was indeed adopted in the Bolivian Law of Mother Earth (Article 2); nonetheless, the catalogue of principles in Panama's law is structured differently. These notably include protecting Nature for its intrinsic value, mandating proactive harm prevention through State-individual cooperation, ensuring full restitution for damage that enables natural

⁵⁴ Proyecto de Acto Legislativo 'por el cual se modifica el artículo 79 de la Constitución Política de Colombia', Cámara de Representantes de Colombia (2019).

⁵⁵ Proyecto de Acto Legislativo No 003/2022C 'por el cual se modifican los artículos 79 y 95 de la Constitución Política de Colombia', Cámara de Representantes de Colombia (2022).

⁵⁶ Cf Ley No 071 de derechos de la Madre Tierra 2010 (Bolivia), Art 4.

self-recovery, and establishing three State administrative directives – *in dubio pro natura*, *in dubio pro aqua*, and the precautionary principle – to favor Nature in cases of doubt or insufficient knowledge.

Regarding the scope of rights attributed to Nature, Law 287/2022 arguably provides the most extensive catalogue recognised globally. These include RoN to live, exist, persist, and regenerate; the right to biodiversity; rights to the preservation of water cycle functionality and air quality; the right to timely and effective restoration; and, mirroring human rights doctrine, the right to exist free from contamination. The State is responsible for establishing norms for the exercise and protection of these rights. One such implementing law is Law 371 of 1 May 2023, concerning marine turtle conservation (Law 371/2023). While largely a standard environmental law, its Article 29 protects the rights of sea turtles and their habitats, such as the right to live and move freely in a healthy environment.

In practice, however, neither Law 287/2022 nor Law 371/2023 has yet seen broad application. RoN have been invoked in Panamanian jurisprudence only once, in October 2023. The Supreme Court, invalidating a law granting a copper mining concession as unconstitutional, referenced Law 287/2022, highlighting the State's duties to protect RoN and biodiversity – obligations the concession law failed to meet. This reference, however, was a secondary aspect of the ruling.

Panama recognised RoN legislatively following Ecuadorian and Bolivian influence and emphasising Nature's intrinsic value with biocentric undertones. The law designates 'all Nature' as a collective legal subject and grants universal standing to all persons for its representation, without creating a specific ombudsman. It mandates proactive prevention and features a uniquely broad catalogue of rights, including rights to exist, biodiversity, functional water cycles, clean air, restoration, and freedom from contamination. An implementing law (Law 371/2023) details rights for marine turtles. However, practical application remains limited, with RoN being invoked just once as a secondary point in a 2023 Supreme Court ruling invalidating a mining concession. The development of robust enforcement and proactive protection is still in its early stages.

5. PERU

Peru recently joined the Latin American nations recognizing Nature or its elements as subjects of law, with a key ruling becoming final in January 2025. A prior Peruvian Constitutional Court ruling enabled this development by affirming the

validity and potential for a biocentric interpretation of constitutional provisions on the environment and human-nature relations.⁵⁷

The Loreto Superior Court of Justice heard a case that the indigenous community initiated against the Peruvian State and the State oil company Petroperú. The case concerned systematic oil spills into the Marañón River basin, which severely threatened the river and the communities reliant on its ecosystem. In its 8 March 2024 ruling, the court granted the plaintiffs' request, recognising the Marañón River and its tributaries as a subject of law. The river now possesses specific rights, including: to flow freely, ensuring a healthy ecosystem; to an unpolluted environment; to feed and be fed by its tributaries; to biodiversity; to the restoration and regeneration of its natural cycles; to the preservation of its ecological structure and functions; and to protection, conservation, and restoration. To ensure representation, the court appointed the State, the Regional Government of Loreto, and local community representatives as guardians and curators for the river and its tributaries.

Peru has thus embarked on recognising RoN. While the future extent of this path remains uncertain, Peru evidently follows the Colombian model: although Constitutional Court statements may subtly imply Nature as a whole is the subject, ordinary courts grant subjecthood to specific elements. Regarding the scope of protection, the court independently defined the rights for this natural entity, adopting, at the plaintiffs' request, rights already recognised in Ecuador and declared in Bolivia. Similarly, the Peruvian court mirrored the Colombian representation model by immediately appointing a Guardian Committee to oversee the newly recognised legal subject.

IV. CONCLUSIONS

Analysis of Latin American legal systems recognising RoN does not reveal a single regional concept for their recognition and protection. However, all these jurisdictions reference biocentrism as the source of RoN's juridification. In practice, this frequently links to indigenous cosmovisions, notably the Andean worldview (*Pachamama*, the *sumak kawsay* principle). Biocentrism's influence is particularly strong in Ecuador, Bolivia, and Panama, and is also evident in cornerstone judgments in Colombia and Peru.

⁵⁷ Tribunal Constitucional del Perú, Sentencia 322/2023 (Exp No 03383-2021-PA/TC, caso *William Navarro Sajami and others*), 25 July 2023, paras 40–41.

A common feature across these jurisdictions is the ‘all nature model’, where Nature as a whole is the subject of rights, and its individual elements and systems derive legal standing as its emanations. In my view, Nature here assumes a structure similar to the Polish State Treasury’s legal personality, whose distinct components (*stationes fisci*) partake in its overall legal capacity. Similarly, Nature possesses inherent legal personality, and her constituent elements, conceptualised as *stationes naturae*, derive their standing from her. This principle is found in Ecuador, Bolivia and Panama. This is effectively the case in Colombia and, consequently, Peru. However, lacking specific normative acts, courts are limited by claim scope and can often only rule on particular elements of nature or ecosystems. Nonetheless, judgments, particularly those initiating favourable RoN jurisprudence, indicate, in my assessment, that rights vest in Nature as a whole. Thus, equating this model with New Zealand’s, as Kauffman does,⁵⁸ is incorrect.

While this finding might suggest some conceptual uniformity, approaches to the RoN catalogue and its representation vary significantly. For representation, *actio popularis* is the most common solution, empowering individuals and communities to initiate proceedings to protect RoN. Two main institutional models emerge. The first, likely adapted from New Zealand, is the Guardian Committee model – a body appointed to protect and represent a specific ecosystem or distinct natural element. This model is primarily adopted where RoN are recognised judicially, as in Colombia and Peru. The second, an authentically Latin American model, involves a specialised Ombudsman for Nature acting as a general ombudsman for RoN. Unfortunately, although this model offers sensible, holistic protection via a specialised, relatively objective body, no country has successfully established it. Formally instituted only in Bolivia’s Law of Mother Earth, that provision is now defunct. Its establishment was advocated in Argentina and Chile, where a practical operational framework was developed, yet necessary legislation was not adopted. Ecuador is currently closest to implementing this model.

Panama and Bolivia offer the most extensive catalogues of rights theoretically, but in practice, the most effective RoN protection occurs where the judiciary has adapted to this new legal paradigm, notably in Ecuador and Colombia. Numerous challenges impede effective RoN recognition and enforcement. Nevertheless, the Latin American experience highlights the judiciary’s paramount role. If RoN are recognised, the judiciary must understand how to identify and reflect their legal nature. Consequently, any debate on adopting rights for Nature necessitates thorough doctrinal preparation.

⁵⁸ Kauffman (n 3) 15.

In conclusion, RoN has undoubtedly found fertile ground in Latin America, developing distinct regional characteristics, primarily biocentrism as its philosophical justification and the ‘all-nature’ model. The evolving jurisprudence in these nations, alongside ongoing projects to juridify RoN in other countries, suggests a promising trajectory for RoN in Latin America.

REFERENCES

Acosta A, ‘Los Derechos de la Naturaleza. Una lectura sobre derecho a la existencia’ in A Acosta and E Martinez (eds), *La Naturaleza con Derechos. De la filosofía a la política* (Abya Yala y Universidad Politécnica Salesiana 2011) 317

Ávila Santamaría R, ‘El derecho de la naturaleza: fundamentos’ in A Acosta and E Martinez (eds), *La Naturaleza con Derechos. De la filosofía a la política* (Abya Yala y Universidad Politécnica Salesiana 2011)

Barie CG, ‘Doce años de soledad de los derechos de la Madre Tierra en Bolivia’ (2022) 4 *Naturaleza y Sociedad. Desafíos Medioambientales* 142

Dalmau RM, ‘El proyecto de Constitución de Ecuador, ejemplo del nuevo constitucionalismo latinoamericano’ (2009) 23 *US Revista del Instituto de Ciencias Jurídicas de Puebla* AC 264

Estermann J, *Filosofía andina, estudio intercultural de la sabiduría autóctona andina* (Editorial Abya Yala 1998), 359

Grijalva Jimenez A, *Constitucionalismo en Ecuador* (Corte Constitucional para el Periodo de Transición 2011)

Gudynas E, ‘La ecología política del giro biocéntrico en la nueva Constitución de Ecuador’ (2009) 32 *Medio Ambiente* 34, 37

Jaramillo JFS, ‘Colombia: La naturaleza como sujeto de derechos entre el activismo y la contención’ (2022) 16(3) *Novum Jus* 189

Kauffman CM and Martin PL, *The Politics of Rights of Nature: Strategies for Building a More Sustainable Future* (MIT Press 2021)

Kotzé LJ and Villavicencio Calzadill P, *Somewhere between Rhetoric and Reality: Environmental Constitutionalism and the Rights of Nature in Ecuador* (CUP 2017), 407–408

Martinez E, ‘Los Derechos de la Naturaleza en los países amazónicos’ in A Acosta and E Martinez (eds), *Derechos de la Naturaleza. El futuro es ahora* (Abya Yala 2009) 85, 85–88

Melo M, ‘Los Derechos de la Naturaleza en la nueva Constitución ecuatoriana’ in Acosta A and Martinez E (eds), *Derechos de la Naturaleza. El futuro es ahora* (Abya Yala 2009) 51, 55–57

Niño WP, Montañez Aldana NP and González Borda JC, ‘Reconocimiento de la Naturaleza como sujeto de derechos en Colombia: Algunos retos de su inserción en el sistema jurídico’ (2022) 33 *Revista Republicana* 21

Pacari N, ‘Naturaleza y territorio desde la mirada de los pueblos indígenas’ in A Acosta and E Martínez (eds), *Derechos de la Naturaleza. El futuro es ahora* (Abya Yala 2009) 34–35

Schembri Peña A, ‘La naturaleza como sujeto de derechos’ (2022) 7(78) *Revista Nova et Vetera* <<https://urosario.edu.co/revista-nova-et-vetera/columnistas/la-naturaleza-como-sujeto-de-derechos>> accessed 31 March 2025

Stone Ch, ‘Should Trees have Standing? Toward Legal Rights for Natural Objects’ (1972) 45 *S Cal L Rev* 450

Tănăsescu M and others, ‘Rights of nature and rivers in Ecuador’s Constitutional Court’ (2024) 28 *The International Journal of Human Rights* 1

Villavicencio Calzadilla P, ‘Los derechos de la naturaleza en Bolivia: un estudio a más de una década de su reconocimiento’ (2022) 13(1) *Revista Catalana de Dret Ambiental* 1

Zaffaroni ER, ‘La Pachamama y el humano’ in A Acosta and E Martínez (eds), *La Naturaleza con Derechos. De la filosofía a la política* (Abya Yala y Universidad Politécnica Salesiana 2011) 112