HOW COURTS ARE DEVELOPING RIVER RIGHTS JURISPRUDENCE: COMPARING GUARDIANSHIP IN NEW ZEALAND, COLOMBIA, AND INDIA

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This article examines recent court rulings recognizing the rights of rivers in Colombia and India, and the unique institutional structures created to protect those rights. The following cases illustrate how court rulings have institutionalized Rights of Nature (RoN) norms that are circulating globally, even in countries that lack law explicitly recognizing RoN. While citing international precedent, judges strategically interpreted existing laws to uphold RoN norms circulating globally. Consequently, the cases show an evolution in the legal doctrines invoked to justify RoN. Judges in both cases based their ruling on New Zealand's model for institutionalizing RoN. This model recognizes an ecosystem as a legal person, establishes a guardian body, and embeds this guardian body within a multi-stakeholder integrated ecosystem management institution. That institution then manages the ecosystem in a way that is consistent with RoN principles. However, the Indian and Colombian cases adapted the New Zealand model to different degrees, partly due to the distinct legal doctrines invoked. This article analyzes the impact of invoking different legal doctrines to establish distinct guardianship arrangements and offers several lessons.

Introduction 261
I. Global Diffusion of Rights of River Norms 265
II. New Zealand's Pioneering Guardianship Model 270
III. Recognizing Rights for the Atrato River, Colombia 273
A. Background of the Atrato River Case 274
B. Courts Justifying Rights for the Atrato River 276
C. Current Status 279
IV.Recognizing Rigts for the Ganga and Yamuna Rivers, India 280
A.Public Interest Litigation to Restore the Ganga 281
B. Courts Justifying Rights for the Ganga and Yamuna Rivers 283
C. Legal Challenge to the UHC Ruling 285
Conclusion 287

INTRODUCTION

The world is undergoing a normative shift in thinking about how we legally define our natural world. Since 2006, governments around the world have adopted legal provisions recognizing Nature as a subject with inalienable rights. Rights of Nature (RoN) legal provisions now exist in Bolivia, Brazil, Colombia, Ecuador, India, Mexico, New Zealand, and the United States (U.S.).[1] International initiatives also exist, including the UN Harmony with Nature Programme,[2] the Universal Declaration of the Rights of Mother Earth,[3] and the proposed International Environment Court.[4]

A desire to protect rivers, seen as the planet's lifeblood, drives many of these initiatives. In Ecuador, the Vilcabamba River became the world's first ecosystem to have its rights defended and recognized by a court.[5] New

1. Craig M. Kauffman & Pamela L. Martin, *Constructing Rights of Nature Norms in the US, Ecuador, and New Zealand*, 18 GLOBAL ENVTL POL. 43, 43 (2018).

2. *Harmony with Nature*, UNITED NATIONS, http://harmonywithnatureun.org (last visited Apr. 22, 2019).

3. *See generally* Universal Declaration of Rights of Mother Earth, World People's Conference on Climate Change and the Rights of Mother Earth, Apr. 22, 2010 (declaring Mother Earth as a living being with rights).

4. Ole W. Pedersen, *An International Environmental Court and International Legalism*, 24 J. ENVTL. L. 547, 547–48 (2012).

5. Craig M. Kauffman & Pamela L. Martin, Can Rights of Nature Make Development More Sustainable? Why Some Ecuadorian Lawsuits Succeed and Others Fail, 92 WORLD DEV. 130, 136 (2017).

Zealand's Whanganui River (Te Awa Tupua) also has legal rights.[6] More recently, court rulings recognized the rights of Colombia's Atrato River in 2016 and of India's Ganga and Yamuna Rivers in 2017.[7] Internationally, a network of lawyers and activists—coordinated by the Earth Law Center—have drafted a Universal Declaration of the Rights of Rivers.[8]

Much attention has been focused on the laws recognizing the rights of rivers in Ecuador and New Zealand. This paper examines the most recent court rulings recognizing the rights of rivers in Colombia and India and specifically the unique institutional structures created to protect those rights. Colombia's and India's RoN legal provisions are distinct from those in countries like Ecuador, Bolivia, New Zealand, Mexico, Brazil, and the U.S. In contrast, Colombia and India do not recognize RoN in their constitutions, national laws, or subnational laws. Rather, judges in Colombia and India issued rulings recognizing the Atrato, Ganga, and Yamuna rivers as legal persons, moving these rivers from "right-less" to "rights-bearing" entities.[9]

The Colombian and Indian cases detailed below illustrate how court rulings have institutionalized RoN norms circulating globally even in countries that lack laws explicitly recognizing RoN. Moreover, our case comparisons illustrate the domestic effects of the transnational diffusion of RoN laws. Specifically, the cases show how judges strategically interpret existing constitutional provisions and laws that do not explicitly recognize RoN to justify court orders that establish natural ecosystems, like rivers, as legal persons with rights.[10] Consequently, this article highlights both the key role of judges in strengthening RoN jurisprudence and the expanding set of legal doctrines used to support RoN worldwide.

The Colombian and Indian judges justified their extraordinary actions by noting the need to address serious threats to important river ecosystems, and the communities that depend on them, in the face of government inaction. The judges also cited RoN laws in other countries as precedent.[11] Our case analyses also show how legislatures and judges combined RoN legal provisions with new governance structures designed to implement more eco-

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6. Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, pt 2, s 14 (N.Z.).

7. Corte Constitucional [C.C.]] [Constitutional Court], Sala Sexta de Revisión de la Corte Constitucional, noviembre 10, 2016, Expediente T-5.016.242, Sentencia T-622/16, Gaceta de la Corte Constitucional [G.C.C.]] (p. 140, 158) (Colom.) [hereinafter *Sentencia* T-622/16]; Mohd. Salim v. State of Uttarakhand, 2017 PIL No. 126 of 2014, 10–11 (India) [hereinafter *Salim* 2017].

8. *Universal Declaration of River Rights*, EARTH LAW CTR., https://www.earthlawcenter.org/river-rights/ (last visited June 23, 2019).

9. Mari Margil, *Court Decisions Advance Legal Rights of Nature Globally*, *in* RIGHTS OF NATURE & MOTHER EARTH: RIGHTS-BASED LAW FOR SYSTEMIC CHANGE 27, 27–28 (Shannon Biggs et al. eds., 2017).

10. *See generally Salim* 2017*, supra* note 7, at 7–9 (showing how to interpret constitutional provisions).

11. *Sentencia* T-622/16, *supra* note 7, at 42, n.87.

centric approaches to solving the challenges of sustainable development in the face of extractive industries.[12] At the center of these new governance structures are guardianship bodies charged with representing rivers and promoting their rights and well-being.[13]

The institutionalization of RoN in Colombia and India is largely based on New Zealand's pioneering model.[14] In addition to establishing the Whanganui River as a legal person, New Zealand's 2017 Te Awa Tupua Act established guardians charged with representing the river's interests.[15] The Act embedded this guardian body within a larger integrated watershed management body charged with sustainably handling the river's resources consistent with the river's status as an integrated, living spiritual being.[16]

While both Colombia's and India's court rulings mimic New Zealand's pioneering model, Colombia follows the New Zealand model more closely than India, in part due to the distinct legal doctrines invoked.[17] Colombia's court ruling created a guardian body comprised of state and civil society representatives.[18] The ruling also restructured government entities and created a new oversight commission to protect and preserve the Atrato River.[19] By contrast, India's court ruling did not incorporate civil society representatives into the guardian body and did not restructure government agencies to manage the river basins in a more integrated way.[20] These differences undermined implementation efforts and revealed challenges that have not been adequately addressed by RoN scholars.[21] Our case comparisons highlight how judges' strategic use of existing legal doctrines to justify RoN can produce unintended complications during implementation. We address this phenomenon and offer some initial lessons learned in the article's final section.

The Colombian and Indian judges used normative arguments circulating globally through networks of environmental lawyers, activists, and social movements to justify their recognition of rivers as rights-bearing legal

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12. *See* Te Awa Tupua Act 2017, *supra* note 6, at pt 2, ss 19–20 (establishing Te Pou Tupua to speak for Te Awa Tupua); *Salim* 2017, *supra* note 7, at 2 (establishing Ganga Management Board); *Sentencia* T-622/16, *supra* note 7, at 153 (establishing a governing body).

13. *Salim* 2017, *supra* note 7, at 11–12; *Sentencia* T-622/16, *supra* note 7, at 140.

14. *See generally* Te Awa Tupua Act 2017, *supra* note 6, at pt 2, ss 14, 18 (granting the river legal personhood to allow guardians to protect the river's interests in court); *Sentencia* T-622/16, *supra* note 7, at 140–42 (using the same principles to declare the Atrato River a legal person); *Salim* 2017, *supra* note 7, at 5–12 (using the same principles to declare the Ganga and Yamuna Rivers as legal persons).

15. Te Awa Tupua Act 2017, *supra* note 6, at pt 2, s 18.

16. *Id.* at pt 2, ss 20, 27–28.

17. *See Sentencia* T-622/16, *supra* note 7, at 153–57 (describing the court's order and reasoning).

18. *Id.* at 140, 153–54.

19. *Id.* at 138–39.

20. *See Salim* 2017, supra note 7, at 11–12 (declaring persons *in loco parentis*).

21. *Id.*at 5–12; *Sentencia* T-622/16, *supra* note 7, at 153–57.

persons.[22] Consequently, their rulings can be considered a result of transnational efforts to strengthen RoN norms internationally.[23] To spur normative and legal change, transnational networks have created new global organizations like the Global Alliance for the Rights of Nature; hosted International RoN Tribunals in Australia, Ecuador, Peru, and Germany; advocated adoption of the Universal Declaration of Rights of Mother Earth in the United Nations; convened global symposia on RoN in Australia, New Zealand, Ecuador, the United States, and elsewhere; developed curricula for teaching RoN in law schools; and established the United Nations Harmony with Nature Programme.[24]

Additionally, the proliferation of domestic RoN legal provisions worldwide has created a diffusion effect, much like the "justice cascade" of prosecutions at domestic levels for violations against the International Declaration of Human Rights.[25] RoN court documents in Pennsylvania, for example, cite the Ecuadorian constitution,[26] while the Indian and Colombian court rulings detailed below cite New Zealand's RoN law as precedent.

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22. *Sentencia* T-622/16, *supra* note 7, at 46–47; *Salim* 2017, *supra* note 7, at 7–10.

23. *See Salim* 2017, *supra* note 7, at 11–12 (granting the Ganga and Yamuna rivers legal personhood); *Sentencia* T-622/16, *supra* note 7, at 42 n.87 (citing to RoN movements in Ecuador, Bolivia, and New Zealand for support).

24. *See About Us*, THE RTS. OF NATURE, http://therightsofnature.org/get-to-know-us/ (last visited Apr. 24, 2019) (describing the Global Alliance for the Rights of Nature); *2nd International Rights of Nature Tribunal–Lima*, THE RTS. OF NATURE, http://therightsofnature.org/lima-2014-tribunal/ (last visited Apr. 24, 2019) (describing the Rights of Nature Tribunal's meeting in Lima, Peru); *1st International Rights of Nature Tribunal–Quito,* THE RTS. OF NATURE, http://therightsofnature.org/rights-of-nature-tribunal-quito/ (last visited Apr. 24, 2019) (describing the Rights of Nature Tribunal's meeting in Quito, Ecuador); *Rights of Nature Australia 2018*, THE RTS. OF NATURE, http://therightsofnature.org/various-events-going-on-in-australia-for-the-rights-of-nature/ (last visited Apr. 24, 2019) (describing a Rights of Nature conference in Australia); *4th International Rights of Nature Tribunal–Bonn,* THE RTS. OF NATURE, http://therightsofnature.org/4th-international-rights-of-nature-tribunal-bonn/ (last visited Apr. 24, 2019) (describing the Rights of Nature Tribunal's meeting in Bonn, Germany); Universal Declaration of Rights of Mother Earth*, supra* note 3 (declaring Mother Earth as a being with rights); Symposium, *Exploring our legal relationship with the living world*, AELA (2018) (describing an international symposium in Brisbane, Australia); Press Release, Women's Earth & Climate Action Network Int'l, Int'l Rights of Nature Symposium in Quito, Ecuador, (Sept. 2, 2018), https://wecaninternational.org/news/1963/press-release_-international-rights-of-nature-symposium-in-quito-ecuador (describing an international Rights of Nature conference in Quito, Ecuador); *1st U.S. Rights of Nature Symposium*, COMMUNITY ENVTL LEGAL DEF. FUND, https://celdf.org/rights-nature-symposium/ (last visited Apr. 24, 2019) (describing a Rights of Nature symposium in Louisiana); Darlene May Lee, *Why Education is Critical to the Earth Law Movement*, MOTHER EARTH NEWS (Nov. 16, 2017), https://www.motherearthnews.com/nature-and-environment/why-education-is-critical-to-the-earth-law-movement-zbcz171 (describing how the Rights of Nature movement focuses on specialized segments of society like law schools).

25. *See generally* KATHERYN SIKKINK, THE JUSTICE CASCADE: HOW HUMAN RIGHTS PROSECUTIONS ARE CHANGING WORLD POLITICS 6 (2011) (discussing the global spread of individual prosecutions for human rights violations after several significant early cases).

26. Intervenor-applicants Little Mahoning Watershed and East Run Hellbenders Soc'y, Inc. reply to Plaintiff's brief in opposition to their motion to intervene at 3, Pa. Gen. Energy Co. v. Grant Twp., 139 F.Supp.3d 706 (W.D. Pa. 2015) (No. 1:14-cv-209).

While the Colombian and Indian court rulings reflect a global movement to institutionalize RoN norms to achieve ecologically sustainable development, they emanated from local communities' struggles. These communities seek to protect their ethnic and cultural identities, the places they hold sacred, and the water on which they depend for life. The rulings do not merely parrot global discourse regarding RoN but instead interpret emerging global norms within the context of domestic law and culture, thus creating unique institutional expressions. In sum, the Colombian and Indian cases demonstrate how normative underpinnings at the local and global levels converge to develop new legal tools and governance structures. These tools and structures are based on the normative assumption that the law should not dominate nature but rather be embedded within in it.[27]

The remainder of this article is organized in four sections. The first section describes the RoN norms circulating globally, particularly as they relate to the rights of rivers and the networks diffusing them. The following section describes New Zealand's law granting rights to the Whanganui River and highlights how this law departed significantly from previous RoN laws to provide a new model for institutionalizing RoN. We then detail the Colombian and Indian court rulings, showing how they draw on existing RoN arguments, especially the New Zealand model, but adapt them to fit domestic conditions by strategically interpreting existing domestic law. The final section notes key similarities and differences between the New Zealand, Colombian, and Indian RoN legal provisions and offers some preliminary lessons to consider.

I. GLOBAL DIFFUSION OF RIGHTS OF RIVER NORMS

Indigenous peoples from around the globe have long advocated norms and governance structures that unite humans and nature. Casey Camp Horinek, a leader of Oklahoma's Ponca Nation, explained her indigenous view of the relationship between nature and people in her opening address at the International Rights of Nature Tribunal held in Quito, Ecuador, in January 2014. She said:

> If you drank the water this morning or liquids, if you ate of the hooded nations or the four legged; if you breathe; if your body became warm from the fires of the earth, then you must recognize and understand that there is no separation between humans and Earth

27. *See* Osprey Orielle Lake, *Recognizing the Rights of Nature and the Living Forest, in* RIGHTS OF NATURE AND MOTHER NATURE: RIGHTS-BASED LAW FOR SYSTEMIC CHANGE 20, 21 (Shannon Biggs et al. eds., 2017) (comparing the current legal framework to the Rights of Nature framework).

> and all that are relatives of Earth and the cosmos, because you live in relation with her as a result of being one with her and there is no separation.[28]

Camp Horinek and others in indigenous communities around the world are working within the Global Alliance for the Rights of Nature (GARN), a transnational RoN network, to codify their understanding of the interdependencies between humans and other elements of nature into new Western legal provisions.[29] This indigenous worldview is often expressed in terms of RoN because of the emphasis on rights in Western legal culture. RoN laws in Ecuador, Bolivia, New Zealand, Columbia, and elsewhere express the efforts of indigenous communities to gain recognition for their understanding of humans' relationship to nature is currently expressed in RoN laws in Ecuador, Bolivia, New Zealand, Colombia, and elsewhere.[30]

Many of the efforts to codify RoN are focused on protecting rivers. This is not surprising given that water is not only biologically necessary, but often considered sacred. Tom Goldtooth of the Indigenous Environmental Network explains that "[w]ater has spirit and water has life – water is life – water has rights that are recognized by Indigenous peoples."[31] For Camp Horinek, Goldtooth, and Patricia Gualinga of the Sarayaku community of Ecuador, there is a "kinship" between people and water, the earth, and non-human creatures. This relationship structures their societies' governance arrangements.[32] Many indigenous communities have governance structures that recognize human and non-human elements of the planet as being equally important and interdependent. The RoN legal provisions in New Zealand and Colombia detailed below similarly call for a restructuring of governance systems to better address the interdependencies between human and non-human members of biotic communities.[33]

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28. Casey Camp Horinek, Tribal Councilwoman, Ponca Tribe of Oklahoma, Opening of the Rights of Nature Tribunal (Jan. 17, 2014), *in* RIGHTS OF NATURE AND MOTHER NATURE: RIGHTS-BASED LAW FOR SYSTEMIC CHANGE 12, 12 (Shannon Biggs et al. eds., 2017).

29. *See generally* RIGHTS OF NATURE & MOTHER EARTH: RIGHTS-BASED LAW FOR SYSTEMIC CHANGE 4 (Shannon Biggs et al. eds., 2017) (compiling articles from various members of indigenous communities and GARN members).

30. *Sentencia* T-622/16, *supra* note 7, at 45–46; CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR DE 2008, title 2, chapter 7; *see also* Documents of the World's People's Conference on Climate Change and the Rights of Mother Earth, Bolivia, April 2010 (calling for the UN to recognize rights of nature); Te Awa Tupua Act 2017, *supra* note 6, at pt 1 s 13 (describing the intrinsic value of Te Awa Tupua).

31. Tom B.K. Goldtooth, *Indigenous Peoples Cosmovision, Conflicts of Conquest and Need for Humanity To Come Back to Mother Earth*, *in* RIGHTS OF NATURE & MOTHER EARTH: RIGHTS-BASED LAW FOR SYSTEMIC CHANGES 15, 15 (Shannon Biggs et al. eds., 2017).

32. *Id.*

33. *See infra*, Parts III, IV.

The normative framework undergirding existing RoN legal provisions (including those in Colombia and India) challenges dominant Western norms regarding humans' relationship to nature. Goldtooth differentiates Western society as one that sees humans as separate from nature, objectifies the natural world, and emphasizes its domination for human use.[34] By contrast, Goldtooth argues the indigenous worldview sees humans as part of nature, an integrated whole in which the component parts have a "harmonious, awake, loving, and intelligent relationship with all other aspects of creation."[35] This harmony between humans and nature is the basis of sumak kawsay, or well-being, an indigenous Quichua principle recognized in the preamble of the Ecuadorian Constitution.[36] The harmony between humans and nature is also reflected in the Iroquois (or Haudenosaunee) normative framework for living called the Good Mind.[37] Other Lakota and Dakota nations refer to this harmonious relationship as Mitakuye Owasin, "All My Relations."[38] Similar concepts exist in other communities around the world.[39]

Non-indigenous communities are now adopting comparable normative frameworks, often to protect the water resources on which they depend. Norms associated with RoN are even transforming conversations and movements in the U.S. For example, citizens in the Pennsylvania townships of Grant and Highland wrote home rule charters recognizing RoN as a tool for protecting their local water ecosystems from wastewater injection wells created by fracking companies.[40] As rural, farming communities that rely on well water, they too are deeply connected to their natural environments. As one Grant Township Board of Supervisors noted, "We understand that an injection well for frack waste is a very bad idea, not only for the people who live here, but for the natural environment."[41] These Pennsylvania townships

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34. *See* Goldtooth, *supra* note 31, at 15 (describing Western Society as seeing humans as having "Dominion over all things").

35. *Id.* at 16.

36. CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR DE 2008, pmbl ("This harmony between humans and nature is the basis of sumak kawsay, or well-being, an indigenous Quichua principle recognized in the preamble of the Ecuadorian Constitution.").

37. *See generally* Jack Manno & Pamela Martin, *The Good Life (Sumak Kawsay) and the Good Mind (Ganigonhi:oh): Indigenous Values and Keeping Fossil Fuels in the Ground*, *in* ENDING THE FOSSIL FUEL ERA 279, 280 (Thomas Princen et al. eds., 2015) (describing the framework of indigenous society).

38. *See* Mark Rumi, *Mit Mitákuye Owás'į (All My Relatives)*; *Dakota Wiconi (Way of Life) and Wicozani Waste (Well-Being)*, *in* 6 ABORIGINAL POL'Y RES. SERIES 187, 187 (2013) (describing origin and meaning of *Mitakuye Owasin*).

39. *See*, *e.g.*, Rickard Lalander, *Rights of Nature and the Indigenous Peoples in Bolivia and Ecuador: A Straitjacket for Progressive Development Politics?*, 3 IBEROAMERICAN J. OF DEV. STUD. 149, 153–54 (2014) (describing "the Good Way of Living" in Bolivia and Equador).).

40. Press Release, Community Envtl. Legal Def. Fund, Despite Court Ruling, Grant Township Bans Fracking Injection Wells Again, Through Municipal Charter (Nov. 3, 2015).

41. Letter from Grant Township to Federal County, PA General Energy, and Those Who Will Stand for What's Right, Pa. Grant Township Board of Supervisors, Community Envtl. Legal Def. Fund (Dec. 2, 2018), https://celdf.org/2018/01/grant-township-pa-sanctions-lawyers-badge-courage/.

are not unique. There are approximately 90 movements in the U.S. dedicated to promoting community rights to a clean environment and to recognizing RoN.[42]

While an indigenous worldview does not drive these U.S. movements, they adopt similar understandings of humans as part of a larger biotic community. Interdependencies and reciprocal relationships characterize these communities. Marsha Buhl of Pennsylvania's Highland Township explains why she and others in the community are including RoN in their township home rule charter:

> …the ecosystem, the animals, the plants, they have, they should have, rights to clean water, clean air, and that's what we're fighting for, our clean water and our clean air. The Pennsylvania constitution says we have the right to clean water and clean air and that's all we're asking for… is rights to clean water and clean air, and the ecosystem should have that right too.[43]

The normative framework undergirding RoN laws is gaining salience in communities around the world, and in international discourse, in large part because of the work of the GARN[44] and other transnational networks. Indigenous organizations, environmental NGOs, environmental lawyers, academics, and other RoN advocates share legal tools and strategies through GARN and other networks like the UN Harmony with Nature Knowledge Network.[45] Increasingly, organizations are holding conferences to provide

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42. *See State & National Networks*, COMMUNITY ENVTL. LEGAL DEF. FUND (Aug. 30, 2015), https://celdf.org/join-the-movement/where-we-work/state-national-networks/ (listing community rights networks); *State Law Center*, COMMUNITY ENVTL. LEGAL DEF. FUND (Aug. 4, 2015), https://celdf.org/law-library/state-law-center/ (describing the Community Rights State Law Center); *Rights of Nature Database*, EARTH L. CTR., https://www.earthlawcenter.org/crestone/ (last visited Apr. 24, 2019) (showing U.S. RoN movements).

43. Telephone interview with Marsha Buhl, Pa. Highland Twp. (Jul. 13, 2017).

44. *See generally Founding the Global Alliance,* THE RTS. OF NATURE, http://therightsofnature.org/founding-meeting/ (last visited Apr. 24, 2019) (explaining GARN's objective as creating a world network to further the implementation of RoN).

45. Leading rights of nature organizations include CELDF, Movement Rights, Earth Law Center, Indigenous Environmental Network, Pachamama Alliance, Women's Earth & Climate Action Network, and many others. *See About,* COMMUNITY ENVTL. LEGAL DEF.FUND (Aug. 4, 2018), https://celdf.org/about/ (describing CELDF); *see also About Us*, MOVEMENT RTS, http://www.movementrights.org/about-us/ (last visited Apr. 24, 2019) (describing Movement Rights training programs); *About Earth Law Center*, EARTH L. CTR., https://www.earthlawcenter.org/about-earth-law-center (last visited Apr. 24, 2019) (describing Earth Law Center's approach); *About*, INDIGENOUS ENVTL. NETWORK, http://www.ienearth.org/about/ (last visited Apr. 24, 2019) (describing history and goals of Indigenous Environmental Network); *Mission & Vision*, PACHAMAMA ALLIANCE, https://www.pachamama.org/about/mission (last visited Apr. 24, 2019) (describing purpose, mission, and values of Pachamama Alliance); *About the Women's Earth & Climate Action Network (WECAN) International*, WOMEN'S EARTH & CLIMATE ACTION NETWORK, https://wecaninternational.org/about (last visited Apr. 24, 2019) (describing the mission and guiding principles of WECAN).

forums for RoN advocates from different countries to share ideas and strategize about local and global actions.[46]

This transnational organizing is giving rise to global expressions of RoN norms and efforts to codify the rights of rivers in international documents. In 2010, a number of civil society organizations adopted the Universal Declaration for the Rights of Mother Earth.[47] Following its adoption, the Earth Law Center coordinated the drafting of a Universal Declaration of River Rights to provide greater protection for the world's rivers. The Declaration recognizes the "vital role of rivers in Earth's hydrologic cycle … and that national and international laws pertaining to waterways are vastly inadequate to protect the integral health of rivers … to ensure current and future generations with adequate supplies of clean water to meet their basic needs."[48] Consequently, the Declaration calls for the recognition of rivers' rights: (1) to flow; (2) to perform essential functions within their ecosystems; (3) to be free from pollution; (4) to feed and be fed by sustainable aquifers; (5) to native biodiversity; and (6) to restoration.[49]

The above anecdotes illustrate how RoN norms are circulating globally and being used to justify new legal provisions and governance structures to protect river ecosystems. Below, we analyze how judges in Colombia and India adopted these norms and strategically interpreted existing laws in their countries. The judges used these norms to justify rulings which recognized river rights and created new governance structures to protect the rights and wellbeing of rivers. The judges based these governance structures on a model New Zealand pioneered. We first summarize New Zealand's law recognizing the rights of the Whanganui River. This provides a basis for analyzing the Colombian and Indian cases and highlighting the diffusion of RoN norms and legal provisions.

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46. *See generally 1st U.S. Rights of Nature Symposium*, COMMUNITY ENVTL. LEGAL DEF. FUND, https://celdf.org/rights-nature-symposium/ (last visited Apr. 24, 2019) (highlighting the proceedings of CELDF's Rights of Nature Symposium); Press Release, Vt. Law Sch., Vt. Journal of Envtl. Law Asks: 'Should Nature Have Its Day in Court?' (Oct. 10, 2018), https://www.vermontlaw.edu/news-and-events/newsroom/press-release/vermont-journal-environmental-law-asks-should-nature-have (describing Vermont Journal of Environmental Law's 2018 Symposium on the Rights of Nature); Press Release, Int'l Rights of Nature Tribunal, Int'l Rights of Nature Tribunal in Bonn Finds Legal Sys. Incapable of Preventing Climate Change and Protecting Nature (Nov. 10, 2017), http://therightsofnature.org/wp-content/uploads/Press-release-Bonn-Tribunal-final-2.pdf (summarizing the proceedings of the 2017 Rights of Nature Tribunal).

47. *See generally* Universal Declaration of Rights of Mother Earth, World People's Conference on Climate Change and the Rights of Mother Earth, Apr. 22, 2010 (declaring Mother Earth as a living being with rights).

48. *Universal Declaration of River Rights*, EARTH L. CTR., https://www.earthlawcenter.org/river-rights (last visted Apr. 24, 2019).

49. *Id.*

II. NEW ZEALAND'S PIONEERING GUARDIANSHIP MODEL

New Zealand's law granting rights to the Whanganui River (the 2017 Te Awa Tupua Act) emerged from treaty settlement negotiations resolving historical Treaty of Waitangi claims of the Whanganui Iwi tribe in relation to the Whanganui River.[50] The Maori of the Whanganui River and the New Zealand government signed the settlement agreement, Tūtohu Whakatupua, on August 30, 2012.[51] The 2017 Te Awa Tupua Act gave the terms of the treaty settlement the force of national law.[52]

In addition to addressing issues of cultural and financial redress, the settlement adopts the Māori view of the river, recognizing the Whanganui River as a living being, Te Awa Tupua, "an indivisible whole incorporating its tributaries and all its physical and metaphysical elements from the mountains to the sea."[53] In describing the river, the agreement details the Whanganui Iwi's relationship to the river:

> Whanganui Iwi have common links in two principal ancestors, Paerangi and Ruatipua. Ruatipua draws lifeforce from the headwaters of the Whanganui River on Mount Tongariro and its tributaries which stretch down to the sea. The connection of the tributaries to form the Whanganui River is mirrored by the interconnection through whakapapa [genealogy] of the descendants of Ruatipua and Paerangi.[54]

To implement the Māori perspective of the river, the Te Awa Tupua Act codifies "the intrinsic values that represent the essence of Te Awa Tupua," or Tupua te Kawa.[55] The Act also recognizes the river as a legal person, Te Awa Tupua, with "all the rights, powers, duties, and liabilities of a legal person."[56] Recognizing the river as a legal person reflects the Whanganui Iwi's view of the river. For the Whanganui Iwi, the river is a living entity with intrinsic value that is "incapable of being 'owned' in an absolute

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50. *See, e.g.,* Te Awa Tupua Act 2017, *supra* note 6, at pt 2, s 11, para 14 (mandating that the Act must further the settlement agreement).

51. Elaine Hsiao, *Whanganui River Agreement*, 42 ENVTL. POL'Y & L. 371, 371 (2012).

52. Isaac Davison, *Whanganui River Given Legal Status of a Person Under Unique Treaty of Waitangi Settlement*, NZ HERALD (Mar. 15, 2017), https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11818858.

53. Hsiao, *supra* note 51, at 374.

54. Record of Understanding in Relation to Whanganui River Settlement, Whanganui Iwi - The Crown, Oct. 13, 2011, cl. 1.1.

55. Te Awa Tupua Act 2017, *supra* note 6, at pt 2, s 13.

56. *Id.* at s 14.

sense."[57] Recognizing the river as a legal person also enables the river to have legal standing in its own right.[58]

New Zealand's Whanganui treaty settlement was pioneering, in part, because it differed greatly from previous RoN laws established in Ecuador, Bolivia, and the U.S. RoN laws in those countries recognized numerous rights of all natural ecosystems, including the rights to exist, maintain their integrity, regenerate their life cycles and functions, and be restored when damaged.[59] By contrast, the Whanganui treaty settlement and Te Awa Tupua Act do not delineate specific rights, but merely recognize the Whanganui River as a legal person.[60] The treaty settlement and Act grant the river procedural access to New Zealand's political, legal, and economic systems.

This different approach stems from the fact that the treaty settlement institutionalized the Māori's connection to the river. In interviews, Māori negotiators explained that "rights" is a foreign concept from the European legal system.[61] Instead of focusing on rights, the Māori emphasize their responsibility of guardianship (rangatiratanga) for the natural entity to which their iwi is tied genealogically.[62] The Māori focus their responsibility on caring for their ancestor to maintain their ties to it. For Whanganui negotiators, the idea of granting their river a legal personality was an imperfect approximation of treating the river as a whole, living, spiritual being, but likely the best that could be done within a European legal framework.[63]

The river's new legal personhood status raised the question of who would speak for the river. Given the Māori emphasis on the responsibility of guardianship, the treaty settlement established a guardian body, Te Pou Tupua, authorized to speak on behalf of Te Awa Tupua and protect its interests.[64] The guardian body has one Whanganui Iwi representative and one Crown representative.[65] Guardians must secure Te Awa Tupua's spiritual

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57. Michael Mountain, *River Recognized as a Legal Person*, EARTH IN TRANSITION (Sept. 10, 2012), https://www.earthintransition.org/2012/09/river-recognized-as-legal-person/.

58. Catherine Iorns Magallanes, *Moving Toward Global Eco-Integrity*, *in* THE EARTH CHARTER, ECOLOGICAL INTEGRITY AND SOCIAL MOVEMENTS 181, 187 (Laura Westra & Mirian Vilela eds., 2014).

59. *E.g.* CONSTITUCION DE LA REPUBLICA DEL ECUADOR DE 2008, arts. 71–72, *translated* (enumerating the basic rights of Pacha Mama (nature) recognized in Ecuador).

60. Te Awa Tupua Act 2017, *supra* note 6, at pt 2, s 14.

61. Interview with Gerrard Albert, Lead Whanganui Negotiator, in Whanganui, N.Z. (Aug. 16, 2016); Interview with Tamati Kruger, Lead Tūhoe Negotiator, in Wellington, N.Z. (Aug. 17, 2016); Interview with Kirsti Luke, Lead Tūhoe Negotiator, in Wellington, N.Z. (Aug. 17, 2016). Interviews with Maori negotiators.

62. *Id.*

63. *Id.*

64. Te Awa Tupua Act 2017, *supra* note 6, at pt 2, ss 18–19.

65. *Id.* at s 20.

and cultural rights, not only its physical and ecological rights.[66] The Act created an advisory group, Te Karewao, to provide advice and administrative support to the guardians.[67] Groups with interests in the river, other than the Whanganui Iwi (e.g., the local government and other iwi), appoint individuals to the three-person advisory group.[68]

The guardian body had another marked difference from existing RoN laws. In Ecuador, Bolivia, and the U.S., RoN laws empower, but do not require, anyone to bring suit to defend the RoN.[69] By contrast, New Zealand's Te Awa Tupua Act created statutory guardians to promote and protect the river's interests and well-being.[70] Although this legal design limits who can represent Nature, advocates argue that the guardianship model is stronger because appointed representatives must protect Nature at all times.[71]

Another unique feature of New Zealand's guardianship-based approach is that it embedded the guardianship body within a collaborative, integrated watershed management body, Te Kōpuka nā Te Awa Tupua.[72] The watershed management body consists of various stakeholders with interests in the river, including multiple iwi, central and local governments, commercial actors, recreational users, and environmental groups.[73] The watershed management body is charged with developing an integrated strategy to ensure the environmental, social, cultural, and economic health and well-being of the Whanganui River.[74] The body is responsible for monitoring the management plan's implementation and for providing a forum to discuss issues related to the health and well-being of Te Awa Tupua.[75]

From the perspective of protecting RoN, this integrated watershed management body is arguably the most important element of the Te Awa Tupua Act. As a legal person, the river itself is a member of the integrated watershed management body, via its guardians, and thus participates directly in watershed management decisions.[76] Moreover, the body is obliged to

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66. *Id.* at ss 18–19.
67. *Id.* at s 27.
68. *Id.* at s 28.
69. Kauffman & Martin, *supra* note 1, at 51.
70. Te Awa Tupua Act 2017, *supra* note 6, at pt 2, ss 18–20.
71. Catherine Iorns Magallanes, *A World Where the Rivers are People Too*, ELGAR BLOG (June 22, 2017), https://elgar.blog/2017/06/22/rivers-as-people/.
72. Te Awa Tupua Act 2017, *supra* note 6, at pt 2, ss 29–30.
73. *Id.* at s 29.
74. *Id.* at s 30.
75. *Id.*
76. *See* Magallanes, *supra* note 71 (describing river's guardians); *see also* Te Awa Tupua Act 2017, *supra* note 6, at pt 2, s 19 (describing the functions of the river's guardianship body).

make decisions with "particular regard to. . .the Te Awa Tupua status" and its intrinsic values.[77]

In sum, New Zealand's law codifies the intrinsic values of the river's ecosystem, recognizes the river as a legal person, and appoints guardians, which embeds the river within a new governance institution.[78] The institution is tasked with managing the river in an integrated way that is consistent with RoN. This system incorporates RoN principles into watershed management decision-making processes, allowing the principles to be addressed proactively. The legal personhood provision allows the river to participate directly in these decision-making processes via its guardians. In comparison, other reactive RoN laws enumerate specific rights of nature but do not require defenders of nature to challenge violations in court.

Because of the transnational RoN networks' promotional efforts, New Zealand's recognition of river rights quickly gained international attention.[79] In the following sections, we show how judges in Colombia and India cited the Te Awa Tupua Act to justify recognizing RoN. These judges replicated key elements of New Zealand's guardianship model in their court decisions. These decisions addressed serious threats to important river ecosystems in the face of government inaction. Although the judges drew on New Zealand's precedent, they also justified their decisions by strategically interpreting domestic laws that do not explicitly recognize RoN. Moreover, the judges adapted the model to match distinct socio-political environments. The concluding analyzes the varying outcomes of these adaptations.

III. RECOGNIZING RIGHTS FOR THE ATRATO RIVER, COLOMBIA

In November 2016, Colombia's Constitutional Court declared the Atrato River Basin a legal person, possessing the rights to "protection, conservation, maintenance, and restoration."[80] Although Colombia's Constitution does not explicitly recognize RoN, Judge Jorge Ivan Palacio ruled that RoN are included in "biocultural rights." Judge Palacio inferred these rights from guarantees in Colombia's Constitution for biodiversity, cultural, and humanitarian protections.[81] The biocultural argument is unique because it

77. Te Awa Tupua Act 2017, *supra* note 6, at pt 2, s 30.

78. *Id.* at ss 14, 18.

79. For example, the Te Awa Tupua treaty settlement and subsequent act were widely publicized by RoN organizations. *See* Shannon Biggs, *When Rivers Hold Legal Rights*, GLOBAL ALLIANCE FOR THE RTS. OF NATURE (Apr. 20, 2017), http://therightsofnature.org/when-rivers-hold-legal-rights/ (describing the Te Awa Tupua and subsequent RoN cases); *New Zealand*, EARTH L. CTR. (Aug. 16, 2016), https://www.earthlawcenter.org/international-law/2016/8/new-zealand (describing the Te Awa Tupua).

80. *Sentencia* T-622/16, *supra* note 7, at 134.

81. *See id.* at 151 (referring to articles 1, 2, 5, 8, 11, 12, 13, 16, 22, 44, 48, 49, 63, 65, 67, 70, 72, 79, 80, 188, 189, 288, 298, 311 339, 356, 357, 365, and 366 of Colombia's Constitution).

bridges the special designation and rights of Colombian indigenous and Afro-Colombian citizens with the ecological diversity of the Choco region and Atrato River. Judge Palacio reasoned that the rights of Choco inhabitants are intertwined with the rights of the Atrato River, thus necessitating both biological and cultural rights.[82]

A. Background of the Atrato River Case

Choco makes up four percent of Colombia's territory and is one of the most biodiverse regions on the planet.[83] Ninety percent of Choco's territory is a special conservation zone that is home to Los Katíos, Ensenada de Utría, and Tatamá National Parks.[84] The Atrato river is located in a large valley, representing 60 percent of the Choco region.[85]

Choco is home to about 500,000 residents.[86] Eighty-seven percent of the residents are of African descent, ten percent are indigenous, and three percent are mestizo.[87] The population is organized into collective institutions, including 600 Afro-Colombian organizations in 70 communities and 120 indigenous organizations.[88] The communities along the Atrato river are agricultural and grow corn, rice, cacao, coconuts, sugar cane, plantains, and other products.[89] These communities also engage in other traditional activities such as fishing and artisanal mining.[90] Most communities are organized in peasant (campesino) collectives that are subsistence communities, which live off the river and land.[91]

Since the rise of armed conflict in the 1970s, Choco community members face greater levels of violence, and many have been displaced.[92] Rich deposits of gold, platinum, and minerals in the river have exacerbated these threats, as armed combatants seek those substances.[93] Despite such natural

82. *Id.* at 65.
83. *Id.* at 2.
84. *Id.*
85. *Id.* at 2–3.
86. *Choco*, COLOM. REP. DATA (Aug. 4, 2018), https://data.colombiareports.com/choco/.
87. *Sentencia* T-622/16, *supra* note 7, at 2.
88. *Id.*
89. *Id.* at 3
90. *Id.*
91. *Id.* at 3–4.
92. *Colombia*, INTERNAL DISPLACEMENT MONITORING CTR., http://www.internal-displacement.org/countries/colombia (last visited Apr. 24, 2019) (noting Columbia has one of the world's most severe internal displacement situations); *see also* Terry Gibbs & Garry Leech, *Colombia: Displacing Development in the Choco*, RELIEFWEB (Oct. 12, 2003) https://reliefweb.int/report/colombia/colombia-displacing-development-choc%C3%B (reporting displacement and conflict in Choco).
93. *Sentencia* T-622/16, *supra* note 7, at 4.

resource wealth, 49 percent of the region's citizens live in extreme poverty and 83 percent do not meet the basic minimum needs for living.[94]

Although mining has been present in Choco for centuries, current large-scale mining and illegal logging practices have severely impacted traditional ways of life for Afro-Colombians and indigenous peoples.[95] Illegal logging has changed the flow of the river, and mining has increased the level of toxic chemicals entering the river system.[96] Logging has also caused sedimentation in the river, which threatens many species.[97]

Chemicals used in illicit mining (e.g., mercury and cyanide) have severely impacted the most vulnerable people in these societies, including children.[98] A 2014 Defensoria del Pueblo (Ombudsman Office) report documented 37 indigenous child deaths and an increase in illnesses such as dengue, malaria, and dysentery.[99] Such public health crises coincide with an increase in large-scale illegal mining.[100]A 2016 study showed that miners in the Choco region are exposed to mercury levels beyond the acceptable levels set by the World Health Organization.[101] According to Mercury Watch, Colombia emits 180 tons of mercury due to gold extraction each year.[102] Because mercury is the most toxic non-radioactive substance in nature, the health impacts on Choco's communities are significant.[103] By the 2000s, the river's level of contamination had negatively impacted food, water, health, and local communities' culture and spiritual places.[104]

In 2011, local communities asked the National Mining Agency to stop illegal activity, producing Decree 4134 to suspend mining concessions.[105] In 2013 and 2014, the National Mining Agency worked in Choco to create

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94. *Id.*
95. *Id.*
96. *Id.* at 6.
97. *Id.*
98. Defensoria del Pueblo de Colombia, Situación de los Derechos Humanos en el Departamento de Cauca (2018).
99. *See Crítica situación de derechos humanos en Chocó por impacto de la minería ilegal y enfrentamientos entre grupos criminales*, DEFENSORIA (Oct. 4,2014), http://www.defensoria.gov.co/...-grupos-criminales-desplazamiento-miner%EDa-ilegal-Autodefensas-Gaitanistas-Alto-Baud%F3--miner%EDa-ilegal.htm (describing increased illnesses in Chocó); *Illegal Mining Would be Responsiblef or the Death of 37 Children in Chocó*, SEMANA SOSTENIBLE (Feb. 5, 2016), https://sostenibilidad.semana.com/medio-ambiente/articulo/mineria-ilegal-seria-responsable-de-la-muerte-de-37-ninos-en-choco/34536 (describing the death of 37 children between 2013-14).
100. *Sentencia* T-622/16, *supra* note 7, at 5–6.
101. *See Sentencia* T-622/16, *supra* note 7, at 95–96 (describing article by Claudia Rojas & Carolina Montes discussing mercury exposure in miners).
102. *Colombia Emite 180 Toneladas Anuales de Mercurio por Mineria*, OBSERVATORIO DE CONDLICTOS MINEROS DE AMERICA LATINA (Feb. 16, 2016), http://www.ocmal.org/colombia-emite-180-toneladas-anuales-de-mercurio-por-mineria.
103. *Sentencia* T-622/16, *supra* note 7, at 94.
104. *Id.* at 95-96.
105. *See id.* at 9 (discussing Decree 4134).

sustainable mining practices with the community.[106] Despite this, in 2014 the Defensoría declared a state of human and environmental emergency in Choco.[107] The Defensoría noted that neither national nor local government agencies had taken action to confront the serious situation threatening the Atrato River, its tributaries, the forest, and the people dependent on them.[108]

In light of these grave circumstances, Colombia formed an inter-governmental panel called the Mesa Minera Interinstitucional (Interinstitutional Mining Working Group) in 2014.[109] However, Choco residents complained that the inter-governmental panel never met and was not effective.[110] Frustrated with the government's failure to take action, community organizations filed a motion for protection in the Administrative Court of Cundinamarca in January 2015.[111] The plaintiffs included the Center for the Study of Social Justice "Tierra Digna," representing the Community Council of Peasants of Alto Atrato (Cocomopoca); the Community Council of the Integral Peasant Association of Atrato (Cocomacia); the Association of Community Councils of Bajo Atrato (Asocoba); and the Inter-Ethnic Forum of Choco Solidarity (FISCH).[112]

On February 11, 2015, the Administrative Tribunal of Cundinamarca decided against protective action for the community.[113] The tribunal argued that the government ministries named in the suit were not competent to provide protection as this did not fall within their prescribed duties under the national law.[114] The Tribunal ordered the inter-institutional working group to meet and create sustainable mining practices and policies.[115] Frustrated with the lack of progress, the plaintiffs brought their case to the Sixth Circuit Constitutional Court for review.[116]

B. Courts Justifying Rights for the Atrato River

Colombia's Constitutional Court found in favor of the Choco residents.[117] Citing the precedent established by New Zealand's RoN laws,[118] the court issued orders to implement provisions that, not coincidentally,

106. *Id.*
107. *Id.* at 6.
108. *Id.*
109. *Id.* at 7.
110. *See id.* (noting Mesa Minera Interinstitucional did not achieve its mission).
111. *Id.* at 7–8.
112. *Id.* at 1.
113. *Id.* at 12.
114. *Id.* at 107.
115. *Id.* at 105-06.
116. *See id.* at 1 (showing date of decision).
117. *Id.* at 153 (recognizing river as having rights, in favor of residents).
118. *Id.* at 140, n.315.

mirror the key provisions in New Zealand's Te Awa Tupua Act.[119] First, the court recognized the Atrato River as a legal person with rights to protection, conservation, maintenance, and restoration by the State and ethnic communities.[120] Additionally, the court ordered the creation of a guardian body—the Commission of the Guardians of Atrato River—within three months of the decision.[121] The commission includes two designated guardians as well as an evaluation team from the Humboldt Institute and World Wild Fund (WWF) Colombia.[122] The court also ordered that a panel of experts convene to assist the guardians.[123] The panel act as auditors to verify that the work to restore the Atrato River is complete, to accompany the guardians, and to supervise such work.[124] This is similar to the role of Te Karewao in New Zealand's Te Awa Tupua Act.[125] The court then embedded the above RoN legal provisions within an integrated watershed management governance body.[126] It ordered the Ministries of Environment, Housing, and Defense, the governments of Choco and Antioquia, the Humboldt Institute, the Universities of Antioquia and Cartagena, the Institute for Environmental Research of the Pacific, WWF Colombia, and other organizations with ethnic community associations to collectively implement an integrated watershed management plan.[127] The plan would reestablish the river channels, eliminate mining activities, and reforest affected areas.[128]

In addition, the court ordered the Ministry of Defense, National Police, Commission Against Illegal Mining, the National Military, the Treasury, and the municipalities of Choco and Antioquia to eradicate illegal mining in the Atrato River.[129] It also ordered the Ministries of Agriculture, Interior, and Housing; the Departments of National Planning, Social Prosperity, and Interior; and municipal governments to create integrated action plans to restore traditional forms of subsistence farming and cleaner food sources.[130] Finally, the court ordered the Ministry of Environment, Ministry of Health, the Humboldt Institute, the University of Antioquia, University of Cartagena, the Institute of Environmental Research of the Pacific, and WWF Colombia

119. *Id.* at 140.
120. *Id.*
121. *Id.*
122. *Id.* at 154.
123. *Id.*
124. *Id.*
125. Te Awa Tupua Act 2017, *supra* note 6, at pt 2, ss 27-28.
126. *See Sentencia* T-622/16, *supra* note 7, at 154 (describing cooperative governance body).
127. *Id.*
128. *Id.*
129. *Id.* at 159.
130. *Id.* at 155.

to initiate epidemiology and toxicology studies to establish a base line of environmental indicators for the region.[131]

The Constitutional Court justified this ruling despite Colombia's Constitution not specifically recognizing RoN. Judge Palacio invoked Article 215 of Colombia's Constitution, which allows the government to declare a "state of emergency" when there is "a grave or imminent" threat to "the economic, social, or ecological order of the country."[132] Judge Palacio also noted that the Constitution recognizes special protection for indigenous and Afro-Colombian ethnic groups, which are culturally distinct from the "dominant culture."[133] The ruling gave the Choco region's ethnic and indigenous organizations the authority to represent the collective will of the peoples.[134]

Judge Palacio then outlined the Constitution's "social state of rights" that encompass human dignity, social justice, well-being, protections for vulnerable peoples, cultural and ethnic diversity, and protection of the environment and natural resources.[135] These Constitutional principles form an Ecological Constitution that justifies the protection not only of a pluralist society with diverse cultures, but also of the environment in which those peoples live.[136] Judge Palacio also noted the spiritual importance of natural resources and the environment for many cultures.[137] He explained that the cultural, economic, social, and environmental rights recognized in the Constitution combine to form a set of biocultural rights.[138] Judge Palacio based his decision to give the Atrato River legal personhood status on this concept of biocultural rights, which emphasizes that the rights of people and nature are inextricably linked.[139] Consequently, Judge Palacio stated that such rights should prevent (or proactively control) environmental destruction and should support conservation, restoration, and sustainable development.[140]

Judge Palacio's decision also recognized that sustainable development solutions require integrated responses and that the State is not structurally organized in an integrated manner to adequately meet the needs presented by the case.[141] Consequently, the ruling restructures the government and

131. *Id.* at 156.
132. *Id. at 151–52; CONSTITUCIÓN POLÍTICA DE COLUMBIA [C.P.] art. 215.*
133. *Sentencia* T-622/16, *supra* note 7, at 145.
134. *Id.*
135. *Id.* at 30-31. The Constitutional Court cited other decisions as providing a foundation for this ruling, including Sentencias T-426/92, T-505/92, SU-747/98, C-1064/01.
136. *Sentencia* T-622/16, *supra* note 7, at 32–33.
137. *Id.* at 49.
138. *Id.* at 44.
139. *Id.* at 43–44.
140. *Id.* at 36.
141. *Id.* at 21.

creations an institutional framework not only for guardianship, but also for the integrated care of the peoples and ecosystems of which they are a part.[142]

In addition to the constitutional provisions discussed above, Judge Palacio justified the ruling by citing Colombia's ratification of international treaties.[143] Judge Palacio noted that these international treaties and New Zealand's RoN laws contributed to the conception of biocultural rights in his decision.[144] Moreover, his orders to restructure governance are meant to fulfill the UN's 2030 Sustainable Development Agenda, which calls for a unified approach to social, economic, and environmental solutions and planning in states.[145]

C. Current Status

In July 2017, Colombia's President appointed the Ministry of Environment as the government's designee to the Guardian Council for the Atrato River, which was formed in May 2018.[146] The Guardian Council also contains 14 community members from the Choco region, including seven permanent members and seven replacements.[147] Representatives of the Chocoano communities chose these guardians based on their leadership in their communities.[148] The Ministries of Environment, Defense, Housing, and Health coordinate and implement policies relating to the river, including de-contamination; eradication of illicit mining; food security; and toxicology and epidemiology studies.[149] Colonel Juan Francisco Pelaez of Colombia's Anti-Illicit Mining Unit says that the constitutional decision to give rights to the Atrato River has improved his coordination with the military and the

142. *Id.* at 158–59.

143. *Id.* at 38, 48–50, 60–61 (discussing the Stockholm Convention (1972); ILO Convention 169 (1989) and prior informed consent to communities regarding activities in their territories; the Convention on Biological Diversity (1994); the UN Declaration for Rights of Indigenous Peoples (2007); the American Declaration on Rights of Indigenous Peoples (2016) and the obligation of states to receive informed consent from indigenous peoples who may be affected by development or resources extraction; and the UNESCO Convention on Cultural Patrimony (2003)).

144. *Id.* at 140, n.315.

145. *Id.* at 60–61.

146. Julian Amorrocho Becerra, *En Marcha la Comision de Guardianes para el Rio Atrato*, EL COLOMBIANO (May 28, 2018), http://wwww.elcolombiano.com/Colombia/minambiente-confirma-puest-en-accion-de-la-conmision-de-guardianes-para-el-rio-atrato-LD8775397.

147. Sergio Silva Nuna, *Los Guardianes Encargados de Salvar el Río Atrato,* EL ESPECTADOR (Nov. 15, 2017), http://www.elespectador.com/noticias/medio-ambiente/los-guardianes-encargados-de-salvar-el-atrato-articulo-723291.

148. *See id.* (describing the guardians).

149. *See Sentencia* T-622/16, *supra* note 7, at 154-57 (instructing the Ministries on their role).

treasury.[150] He also notes that the structural changes provide institutional solutions to these complex problems.[151]

In a December 2017 speech, Judge Palacio explained his decision to give the Atrato River rights: "When protection came to my charge, I knew what the path was. Nature has a right not to be contaminated, not to be destroyed, to be used rationally."[152] Much like the cosmovision of indigenous peoples, Judge Palacio's decision recognizes that humans are part of nature.[153] According to Palacio, the interdependency between humans and other elements means that the dominant anthropocentric approach to development must be replaced with an emphasis on "ecocentrism in which the human is just one more species within nature, like fauna, flora, and other species."[154]

The court ruling recognizing the rights of Colombia's Atrato River shows how normative underpinnings for RoN are diffusing globally. The ruling also shows how states may institutionalize RoN theories in the absence of laws explicitly recognizing these rights.[155] For example, judges can strategically interpret existing domestic laws in light of global RoN norms, expanding the range of legal doctrines judges can invoke worldwide to justify recognition of RoN. Moreover, this Colombian case shows how incorporating RoN legal provisions, like legal personality and guardianship bodies, into new governance structures can give them greater force. These structures are designed to develop new solutions for the difficult and complex challenges of sustainable development in the face of extractive industries.[156]

IV. RECOGNIZING RIGHTS FOR THE GANGA AND YAMUNA RIVERS, INDIA

On March 20, 2017, the Uttarakhand High Court (UHC), in the Indian State of Uttarakhand, issued a ruling declaring that:

> [T]he Rivers Ganga and Yamuna, all their tributaries, streams, every natural water flowing with flow continuously or intermittently of these rivers, are declared as juristic/legal persons/living entities having the status of a legal person with all corresponding rights,

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150. *El Coronel que Protégé el Río Atrato,* SEMANA (Dec.15, 2017), http://semana.com/contendios-editoriales/trato-el-rio-tiene-la-palabra/articulo/coronel-juan-francisco-pelaez-protege-al -rio-atrato/551281.

151. *Id.*

152. *Jorge Iván Palacio: El Centinela del Río Atrato*, EL ESPECTADOR (Dec. 3, 2017), http://www.elespectador.com/noticias/judicial/jorge-ivan-palacio-el-centinela-del-rio-atrato-articulo-726304.

153. *Id.*

154. *Id.*

155. *See generally Sentencia* T-622/16, *supra* note 7 (recognizing RoN, despite a lack of explicit laws).

156. *Id.* at 104.

> duties and liabilities of a living person in order to preserve and conserve [the] river[s] Ganga and Yamuna.[157]

Based on these rights, the court ordered government agencies to take specific actions to "promote the health and wellbeing of these rivers."[158]

A. Public Interest Litigation to Restore the Ganga

The UHC's ruling provides another example of courts acknowledging RoN in the absence of laws explicitly recognizing such rights. The state court's ability to issue such orders stems from India's constitutional provision allowing public interest litigation.[159] India introduced public interest litigation in the 1970s.[160] Justified under Article 32 of India's constitution, this form of litigation offers marginalized groups access to justice when the state fails to address public problems.[161] Public interest litigation allows any party to seek legal remedy from the courts when they can demonstrate that a public interest is at stake and the state has failed to take action.[162] Importantly, parties do not have to be directly affected by an infringement to bring public interest lawsuits.[163] A court may also introduce public interest litigation unilaterally.[164] India has extensively, if inconsistently, used public interest litigation to address environmental harms.[165] Despite this, studies show that the practice is widely accepted and has reduced pollution levels in some cases.[166]

The 2017 UHC ruling came after decades of failed government programs designed to clean up the Ganga River.[167] The Ganga is one of the most sacred

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157. *Salim* 2017, *supra* note 7, at 11.

158. *Id.* at 12.

159. INDIA CONST. art. 39-A.

160. Anuj Bhuwania, *Courting the People: Public Interest Litigation in Post-Emergency India*, 16 INT'L. J. OF CONST. L. 710, 711 (2018).

161. *Id.* at 715.

162. *The PILS Project, What is Public Interest Litigation?*, https://www.pilsni.org/about-public-interest-litigation (last visited June 25, 2019).

163. Bhuwania, *supra* note 160, at 711.

164. *See* Zachary Holladay, *Public Interest Litigation in India as a Paradigm for Developing Nations*, 19 IND. J. OF GLOBAL LEGAL STUD. 555, 559–60 (2012) (describing the court's role as guardians of political, social, and economic rights and its ability to "surely do something' about the problems of the underprivileged").

165. Gitanjali Nain Gill, *Human Rights and the Environment in India: Access Through Public Interest Litigation*, 14 ENVTL. L. REV. 200, 203 (2012).

166 . Michael Faure & A.V. Raja, Effectiveness of Environmental Public Interest Litigation in India: Determining the Key Variables, 21 FORDHAM ENVTL. L. REV. 239, 239 (2010); Geetanjoy Sahu, Public Interest Environmental Litigations in India: Contributions and Complications, 69 INDIAN J. OF POL. SCI. 745, 745 (2008).

167. Pallav Das, *Rights of Nature and the River Ganga,* RADICAL ECOLOGICAL DEMOCRACY (June 27, 2017), https://www.radicalecologicaldemocracy.org/rights-of-nature-and-the-river-ganga/.

rivers for Hindus, believed by many to contain divine properties.[168] Furthermore, many cities are built on its banks, and millions of people depend on it for survival.[169] The Ganga and the Yamuna—the Ganga's longest tributary—are also highly polluted.[170] The government first attempted to restore the Ganga with the 1986 National Ganga Action Plan.[171] The second attempt came from the National Ganga Basin Authority's 2009 mission Clean Ganga.[172] Both attempts were unqualified failures.[173] The latest attempt to restore the Ganga is Namami Gange, "Obeisance to Ganga" in Sanskrit, an initiative launched in 2014 by the Hindu nationalist Bharatiya Janata Party government.[174]

The process leading to the UHC's historic ruling began with Mohammed Salim, a resident of Kuhlal, Uttarakhand. Salim complained to state authorities about encroachments on the banks of a canal connecting to the Ganga in the state capital.[175] The encroachments resulted from illegal private mining and stone crushing operations on land managed by the Uttarakhand Irrigation Department.[176] State authorities ordered the illegal encroachments to be removed and further construction to be stopped.[177] The private actors refused and sought an injunction against the order.[178] They argued that they had purchased the land from the state of Uttar Pradesh, which they claimed owned the land at the time of sale.[179] India's parliament carved Uttarakhand out of Uttar Pradesh as a separate state in 2000.[180] Thus, inter-state disputes over land and the diversion of water from the Ganga complicated the case from the beginning.

Frustrated by the lack of action, Salim filed a public interest lawsuit with the UHC in 2014 to stop the construction and mining, have the encroachments removed, and address the high levels of pollution in the

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168. Mark Cartwright, *Ganges*, ANCIENT HIST. ENCYCLOPEDIA (May 25, 2015), https://www.ancient.eu/Ganges/.

169. SUNITA NARAIN, GANGA: THE RIVER, ITS POLLUTION AND WHAT WE CAN DO TO CLEAN IT 5, 7 (Souparno Banerjee ed., 2014).

170. *Pollution, Solution and Ganga Revolution*, GANGA ACTION PARIVAR, https://www.gangaaction.org/actions/issues/ (last visited Apr. 24, 2019).

171. *Ganga Action Plan*, MADHYA PRADESH POLLUTION CONTROL BOARD, http://www.mppcb.nic.in/gap.htm (last visited Apr. 24, 2019).

172. Das, *supra* note 167.

173. *Id.*

174. *Namami Gange Programme*, NT'L MISSION FOR CLEAN GANGA, https://nmcg.nic.in/NamamiGanga.aspx, (last visited Feb. 12, 2019).

175. Mohd. Salim v. State of Uttarakhand, 2016 PIL No. 126 of 2014, 1–2 (India) [hereinafter *Salim* 2016].

176. *Id.* at 2.

177. *Id.* at 1.

178. *Id.* at 2.

179. *Id.* at 2–3.

180. *State Profile*, GOV'T OF UTTARAKHAND, http://uk.gov.in/pages/display/115-state-profile (last visited Apr. 24, 2019).

Ganga and its tributaries.[181] The lawsuit also called on India's central government to settle the disputes over the distribution of land and water between the two states.[182] The process dragged on for several years, but state authorities took no action to remove the encroachments despite numerous court orders.[183]

B. Courts Justifying Rights for the Ganga and Yamuna Rivers

On March 20, 2017, the UHC issued its ruling ordering the Ganga and Yamuna rivers to be treated as living human entities with all the rights and responsibilities of a legal person.[184] Interestingly, the original lawsuit never asked to declare the rivers legal persons; the judges took this step unilaterally.[185] In justifying this extraordinary step, the court noted: "[t]he extraordinary situation has arisen since [the] Rivers Ganga and Yamuna are losing their very existence. This situation requires extraordinary measures to be taken to preserve and conserve [the] Rivers Ganga and Yamuna."[186]

The court cited as precedent the Whanganui River Settlement, in which New Zealand awarded legal personhood status to the river.[187] Nevertheless, the UHC also had to interpret domestic legal provisions to justify the ruling.[188] The judges noted that the Indian Supreme Court had "held that the concept 'Juristic Person' arose out of necessities in human development—Recognition of an entity as [a] juristic person is for subserving the needs and faith of society."[189] Additionally, the UHC cited previous Indian court rulings establishing that Hindu idols representing deities can have legal personhood status.[190] These idols can sue to protect their interests due to their spiritual role in subserving the needs and faith of the society.[191] The UHC argued that:

> Rivers Ganges and Yamuna are [similarly] worshipped by Hindus. These rivers are very sacred and revered. The Hindus have a deep

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181. *Salim* 2016, *supra* note 175, at 1–2, 8.
182. *Id.* at 1.
183. *Id.*
184. *Id.* at 11.
185. *See* Omair Ahmad, *Can Rivers be Legal Entities?,* THIRD POLE (Mar. 27, 2017), https://www.thethirdpole.net/en/2017/03/27/can-rivers-be-legal-entities/ (discussing the original complaint which eventually led to the UHC ruling).
186. *Salim* 2017, *supra* note 7, at 4.
187. *Uttarakhand High Court Accords Status of 'Living Entities' to Ganga, Yamuna*, TIMES OF INDIA (Mar. 20, 2017), https://timesofindia.indiatimes.com/india/uttarakhand-high-court-accords-status-of-living-entities-to-ganga-yamuna/articleshow/57738570.cms.
188. *Salim* 2017, *supra* note. 7, at 10–11.
189. *Id.* at 7.
190. *Id.* at 5–7.
191. *Id.* at 5.

> and spiritual connection with Rivers Ganges & Yamuna. According to Hindu beliefs, a dip in River Ganga can wash away all the sins…Thus, to protect the recognition and the faith of society, Rivers Ganga and Yamuna are required to be declared as the legal persons/living persons.[192]

The court also argued that "there is utmost expediency to give legal status as a living person/legal entity to Rivers Ganga and Yamuna" because of the government's failure to adequately address Articles 48-A and 51A (g) of the Indian constitution.[193] These articles require the State to "endeavor to protect and improve the environment" and oblige Indian citizens "to protect and improve the natural environment including forests, lakes, rivers and wild life."[194]

After establishing the rivers as legal persons whose wellbeing is threatened due to neglect, the UHC invoked the legal doctrine in loco parentis (Latin for "in the place of a parent") to make a set of government bodies and officers responsible for acting on behalf of the rivers.[195] Courts commonly use in loco parentis to appoint guardians for children or incapacitated people who cannot defend themselves.[196] Adopting the same logic, the UHC appointed the Chief Secretary of Uttarakhand, the Advocate General of Uttarakhand, and the Director of Namami Gange as guardians.[197] These state bureaucrats are "bound to uphold the status" of the rivers and to promoting their health and well-being.[198] The UHC charged the Advocate General with representing the rivers at all legal proceedings.[199]

The UHC ruling ordered several immediate steps to begin restoring the river. First, the court ordered Uttarakhand state authorities to evict the private actors engaged in the mining and stone crushing that prompted the suit.[200] Second, it directed India's central government to make a final decision regarding the division of assets and properties between the states of Uttarakhand and Uttar Pradesh within three months.[201] Third, the court directed the central government to create a Ganga Management Board to

192. *Id.* at 4, 11.
193. *Id.* at 11.
194. INDIA CONST. art. 48-A, 51-A.
195. *Salim* 2017, *supra* note 7, at 12.
196. 67A C.J.S PARENT AND CHILD § 366 (2019).
197. *Salim* 2017, *supra* note 7, at 11.
198. *Id.* at 12.
199. *Id.* at 5–7, 12.
200. *Salim* 2016, *supra* note 175, at 20.
201. *Id.*

develop a coordinated approach to managing the river basin.[202] Finally, the court banned mining in the Ganga's river bed and highest flood plain.[203]

The UHC ruling is similar in several respects to New Zealand's Te Awa Tupua Act. The ruling recognizes the Ganga and Yamuna rivers as living spiritual beings with legal personhood status.[204] It also provides for a guardian body to speak on behalf of the rivers.[205] These provisions tend to receive the most attention by RoN scholars, as these provide the basic framework for RoN.[206] However, the UHC ruling lacks several features of the New Zealand model that are crucial to putting RoN into action. Following the usual procedure of in loco parentis, the court appointed state officials to serve as guardians rather than having local stakeholders nominate guardians.[207] More importantly, the ruling did not embed the guardianship body within a multi-stakeholder, collaborative, integrated watershed-management body.[208] Furthermore, the ruling did not establish a set of principles to guide decision-making based on the character of the rivers as integrated, living, spiritual beings.[209] These differences have undermined efforts to protect the rights of rivers in India compared to similar efforts in New Zealand and Colombia.

C. Legal Challenge to the UHC Ruling

In May 2017, the State of Uttarakhand, India's central government, and others filed a petition with India's Supreme Court to overturn the UHC ruling naming them as the rivers' legal guardians.[210] The primary complaint appears to be that Uttarakhand authorities do not wish to be held accountable for the Ganga and Yamuna rivers. In a press conference, Uttarakhand minister and state government spokesperson Madan Kaushik stated, "[l]et me be very clear that we are not against according living entity status to the two holy rivers Ganga and Yamuna . . . [but] [h]ow can the chief secretary here be held accountable if the river is polluted in West Bengal, Bihar, Jharkhand or

202. *Id.*
203. *Id.*
204. *Salim* 2017, *supra* note 7, at 11.
205. *Id.*
206. *Supra*, Part III (exploring the various RoN provisions scholars focus on).
207. *Salim* 2017, *supra* note 7, at 11–12.
208. *Id.*
209. *See generally id*. (failing to show decision making guidelines based on the river's character).
210. ERIN O'DONNELL, LEGAL RIGHTS FOR RIVERS: COMPETITION, COLLABORATION, AND WATER GOVERNANCE 169–70 (2018).

UP?"[211] More importantly, from the perspective of RoN jurisprudence, the petition complains that if the rivers flood and someone dies—as often happens—victims' families could sue for damages against the Chief Secretary.

The petition asks the Supreme Court to determine whether the state government, as the rivers' legal parents, would be liable to bear the financial burden of harms caused by the river.[212] This concern stems from the use of the in loco parentis doctrine.[213] In conventional applications, such as with children, court-appointed parents do not simply speak for those in their charge; they are also responsible for what their wards do.[214] Making guardians of natural ecosystems liable for incidental damage done to humans is problematic and contradicts the logic behind RoN.[215] Nevertheless, courts must now address the legal question of guardian liability due to the use of in loco parentis to justify RoN legal provisions.

The UHC case illustrates the unintended consequences of RoN jurisprudence that arise from interpreting existing laws to justify recognizing RoN.[216] The petition cites several other objections related to jurisdictional issues resulting from the fact that the river basins span multiple states.[217] Uttarakhand state authorities argue that the UHC does not have the authority to control the actions of other states. If the Supreme Court upholds the UHC ruling, the Court will have to determine a number of jurisdictional questions. Does Uttarakhand's Chief Secretary, as the river's legal parent, have the authority to give orders to other states or to the federal government? Can court cases related to the river only be filed in the name of the Chief Secretary (thus denying this legal authority to other states and the central government)? Since the river basin is one legal person spanning state boundaries, is it possible to file separate litigation in different states? Previously, the National Green Tribunal had jurisdiction to determine cases of encroachment; will the Chief Secretary now have to submit cases before courts of law?[218] India's Supreme Court agreed to hear the petition and temporarily stayed the UHC ruling.[219] At the time of this writing, the court has issued no decision.

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211. *Supreme Court Stays Uttarakhand High Court's Order Declaring Ganga and Yamuna 'Living Entities'*, TIMES OF INDIA (Jul. 7, 2017), https://timesofindia.indiatimes.com/india/supreme-court-stays-uttarakhand-high-courts-order-declaring-ganga-and-yamuna-living-entities/articleshowprint/59489783.cms.

212. O'DONNELL, *supra* note 210, at 169–70.

213. *Salim* 2017, *supra* note 7, at 11–12.

214. 67A C.J.S. Parent and Child § 366 (2019).

215. Sarah Schwemin, *What if we Could Sue the Hurricanes? The Necessity of Recognizing the Rights of Natural Entities*, 11 BARRY L. REV. 95, 110–11 (2008).

216. O'DONNELL, *supra* note 210, at 169–70.

217. *Id.*

218. *Id.*

219. *Id.*

CONCLUSION

RoN activists did not spearhead the lawsuits resulting in court rulings recognizing rights for the Atrato, Ganga, and Yamuna rivers.[220] These lawsuits sought to protect the rivers but did not ask the courts to recognize RoN.[221] The judges deciding these cases unilaterally invoked RoN principles and models circulating globally through networks of environmental lawyers and activists.[222] Specifically, the Colombian and Indian judges cited New Zealand's Te Awa Tupua Act as precedent, and their rulings replicated key elements of New Zealand's guardianship model.[223]

The judges in each case justified their extraordinary rulings by citing the need to address serious problems of environmental degradation that had long been known and acknowledged by governments but were effectively ignored.[224] After repeated orders to clean up the rivers, courts took the extra step of recognizing the rivers' rights only after prolonged government inaction.[225]

Despite citing international precedent, the judges rooted their decisions in domestic law that does not explicitly recognize RoN.[226] In both Colombia and India, judges strategically interpreted constitutional provisions and other domestic laws to justify granting rivers legal personhood.[227] In Colombia, Judge Palacio drew on biodiversity, cultural, and humanitarian guarantees in the Colombian constitution to argue that the rights of the peoples of the Choco region and the Atrato river are intertwined, thus necessitating both biological and cultural rights.[228] In India, the UHC based its ruling on the spiritual significance of the Ganga and Yamuna rivers and cited court rulings establishing legal personhood status for Hindu deities and idols.[229] The UHC also cited constitutional provisions requiring the state to protect and improve the environment.[230]

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220. *Colombia: The Atrato River Legal Decision*, INT'L RIVERS (Mar. 26, 2018), https://www.internationalrivers.org/resources/colombia-the-atrato-river-legal-decision-16827; Omair Ahmad, *Uttarakhand's Case Points to the Challenges of Giving a River the Rights of a Human*, SCROLL.IN (July 5, 2017), https://scroll.in/article/842565/uttarakhands-case-points-to-the-challenges-of-giving-a-river-the-rights-of-a-human.

221. *Salim* 2016, *supra* note 175, at 1.

222. *Salim* 2017, *supra* note 7, at 10–12; *Sentencia* T-622/16, *supra* note 7, at 44–48.

223. *Sentencia* T-622/16, *supra* note 7, at 42, n.87; *Ganges and Yamuna Rivers Granted Same Legal Rights as Human Beings*, THE GUARDIAN (Mar. 21, 2017), https://www.theguardian.com/world/2017/mar/21/ganges-and-yamuna-rivers-granted-same-legal-rights-as-human-beings.

224. *Sentencia* T-622/16, *supra* note 7, at 94, 96, 117, 137; *Salim* 2017, *supra* note 7, at 4.

225. *Salim* 2017, *supra* note 7, at 2, 4; *Sentencia* T-622/16, *supra* note 7, at 6–7, 139–40.

226. *Salim* 2017, *supra* note 7, at 7–9; *Sentencia* T-622/16, *supra* note 7, at 44, 56–57.

227. *Salim* 2017, *supra* note 7, at 11; *Sentencia* T-622/16, *supra* note 7, at 44.

228. *Sentencia* T-622/16, *supra* note 7, at 44.

229. *Salim* 2017, *supra* note 7, at 11.

230. *Id.* at 11.

While both the Colombian and Indian rulings drew on New Zealand's model, they structured guardianship differently. In Columbia, civil society and community groups occupy seven of the eight positions in the Atrato River's guardianship body.[231] As in New Zealand, the state is represented in the guardianship body, but its influence is balanced with civil society participation.[232] Moreover, participating in the guardianship body is voluntary, with stakeholder organizations selecting the individuals to represent them.[233] By contrast, only court-mandated state representatives serve on the Ganga's guardianship body.[234] This situation is problematic given the Indian government's poor record of protecting the river[235].

Attempts by the Ganga's legal guardians to overturn the UHC ruling reveal several dilemmas not previously contemplated by most RoN advocates.[236] These dilemmas include the consequences of guardians not discharging their duties, and whether there should be an oversight system that penalizes negligent guardians.[237] Until recently, people generally assumed that appointed guardians would be willing to protect nature's interests.[238] The Indian case shows this may not always be true. Provisions for dealing with this may need to be built into future RoN laws based on New Zealand's guardianship model.

The Indian case also reveals a second unresolved dilemma inherent in the New Zealand model. The dilemma is that legal personhood status confers not only rights but also responsibilities and liabilities.[239] The idea that rivers could be held liable for damage is something that has largely been ignored by RoN activists but is a topic central to the legal dispute in India.[240] This is largely due to the use of in loco parentis.[241] This doctrine makes the guardians responsible for their wards and forces them to assume any

231. *Sentencia* T-622/16, *supra* note 7, at 140, 153–54.
232. *Id.* at 153–54.
233. *Id.*
234. *Salim* 2017, *supra* note 7, at 11–12.
235. Jason Burke, *Half of India's Rivers are Polluted, Says Government Report*, THE GUARDIAN (Apr. 7, 2015), https://www.theguardian.com/world/2015/apr/07/half-india-rivers-polluted-new-government-report.
236. O'DONNELL, *supra* note 210, at 169–70.
237. Ashish Kothari & Shrishtee Bajpai, *We Are the River, the River Is Us*, 52 ECON. & POL. WKLY. 103, 105 (2017).
238. *Id.*
239. Schwemin, *supra* note 215, at 110.
240. *Compare* Kothari, *supra* note 237, at 103–04 ("For the river to have rights in the eyes of law would mean that a suit could be brought in the name of the river, injury can be recognised, the polluter can be held liable for harming, and the compensation will be paid that would benefit the river.") *with Salim* 2017, *supra* note 7, at 11 ("[T]he Rivers Ganga and Yamuna. . .are declared as juristic/legal persons/living entities having the status of a legal person with all corresponding rights, duties and liabilities of a living person. . . .").
241. *Salim* 2017, *supra* note 7, at 11–12.

liabilities incurred by their charges.[242] When applied to rivers, this may suggest that rivers and their guardians may be liable for damages incurred by people and their property. While RoN advocates have not wanted to focus on this issue, it will have to be addressed to implement and copy the guardianship model in the future.

Finally, the case comparisons highlight the importance of combining guardianship with collaborative integrated management systems when legal personhood status is granted to ecosystems. The Whanganui and Ganga river cases do not delineate an explicit set of rights.[243] Rather, they provide legal standing for the rivers to defend their interests.[244] While guardians can respond to violations by going to court, it is more efficient to proactively address harmful activities through governance arrangements.[245] For this reason, a crucial aspect of the New Zealand and Colombian systems is the involvement of a variety of local stakeholders. This greatly strengthens the guardians' ability "to understand complex issues, to withstand pressure to compromise the river's interests, or reach resolution in the case of disputes."[246] This kind of collaborative, integrated watershed-management body was not part of the UHC order.[247] As Kothari and Bajpai note, however, it could potentially be added "as the operational aspects of the order are worked out" via the Supreme Court's review.[248]

242. *Id.*

243. *Id.* at 11 (designating the means by which the Ganga and Yamuna rivers will be legally recognized); Te Awa Tupua Act 2017, s 14 (recognizing that Te Awa Tupua has rights, without explaining what those rights are).

244. *Salim* 2017, *supra* note 7, at 11; Te Awa Tupua Act 2017, s 14.

245. Kothari, *supra* note 237, at 106.

246. *Id.* at 105.

247. *Salim* 2017, *supra* note 7, at 2.

248. Kothari, *supra* note 237, at 105. . .