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# RIGHTS OF NATURE AND CLIMATE LITIGATION: A GLOBAL PERSPECTIVE



## 1. *Introduction*

Climate law is undergoing considerable reorientation. Its evolution is characterized by a jurisprudential shift from individual rights to the deployment of structural remedies and the recognition of new legal subjectivities. In the present paper, we ask how rights-based legal innovations that move beyond individual claims, and specifically Rights of Nature (RoN) and structural climate litigation, can translate into durable changes in climate governance. We start by noticing that normative frameworks grounded in constitutional and human rights law are increasingly being used both to recognize non-human entities as rights-holders and to compel structural interventions that transcend the redress of discrete harms. These interventions, which start from the formal recognition of nature as a legal person, are the result of theoretical and political developments, particularly in the Global South, that foreground intergenerational equity and Indigenous legal ontologies.

This paper is organized as follows. We begin in the first section with a genealogical analysis of the emergence of the Rights of Nature (RoN) paradigm in climate governance, tracing its intellectual foundations, institutional groundwork, and the theoretical challenge it poses to an "anthropocentric" legal system. We focus on two convergent trajectories: (1) the Rights of Nature paradigm, exemplified by the *Atrato* case and its biocultural co-governance model; and (2) what

Sam Bookman calls "structural climate litigation"[1], where courts impose systemic, often forward-looking obligations on states. In doing so, we present an analysis of five landmark cases that illustrate the spectrum of judicial remedies used by the courts from five different jurisdictions.

We claim that this judicial development is leading to a *right turn* in climate law[2] with the potential to overcome political inertia, but a persistent implementation deficit between doctrinal innovation and efficacy and implementation remains the central challenge. We conclude by synthesizing our findings and by reflecting on how contemporary jurisprudence both retools and departs from the "anthropocentric" architecture of modern law.

## 2. *From Theory to Precedents: the Emergence of the Rights of Nature*

The contemporary legal recognition of Rights of Nature (RoN) is the culmination of several decades of intellectual, social, and institutional groundwork. It is an evolutive trajectory that demonstrates a clear progression from legal theory to (binding) international and domestic law. The intellectual foundations of the modern movement were drawn with the publication in 2003 of Cormac Cullinan's *Wild Law: A Manifesto for Earth Justice*[3]. In this seminal work, Cullinan articulated the necessity of shifting the legal status of natural entities from property to rights-bearing subjects, providing a theoretical framework that would prove highly influential. This academic work fueled and was fueled by the burgeoning international *Rights of Nature*

[1] In this paper, we use "structural" in the sense of Sam Bookman to refer primarily to litigation where the remedy targets national policy architecture and legal frameworks beyond individual projects, typically grounded in constitutional or human-rights law, with or without ongoing judicial supervision. See BOOKMAN, *What Happens When You Win?*, Paper presented at the NYU Hauser Colloquium, 19 September 2024. See also Bookman, *The Puzzling Persistence of Nature's Rights*, in *Utah Law Review,* n. 165, 2025.

[2] Our analysis builds on PEEL & OSOFSKY, *A Rights Turn in Climate Change Litigation?*, in *Transnational Environmental Law*, n. 7(1), 2018, pp. 37-67.

[3] CULLINAN, *Wild law. A manifesto for earth justice*, Vermont, 2003.

*movement* (1999-2008), which successfully began to frame ecosystems and their components as politically relevant subjects deserving legal consideration.

This foundational period also saw the creation of a critical institutional infrastructure. For instance, in the United States, the establishment of the *Community Environmental Legal Defense Fund* in 1995 created a mechanism for local municipalities to enact ordinances recognizing the rights of nature. The movement gained significant international legitimacy with the 2010 *World People's Conference on Climate Change* and the *Rights of Mother Earth* in Cochabamba (Bolivia). This summit produced the *Universal Declaration of the Rights of Mother Earth*[4], a normative document that synthesized legal principles with indigenous worldviews. This momentum was paralleled within mainstream international bodies, as evidenced by the UN General Assembly's resolution recognizing the human right to water that same year[5], which indicates a broader shift towards environmentally linked rights. The creation of the *International Rights of Nature Tribunal* in 2014, during the COP20 in Lima[6], constituted a further step in the institutionalization of RoN, establishing a forum dedicated to adjudicating cases from an "ecocentric" perspective and affirming that nature has the inherent right to exist and regenerate.

From a theoretical standpoint, the recognition of the RoN implies a profound rethinking of the basis of the western legal system. The foundational challenge of RoN, one may argue, is the unstable definition of "Nature" itself. Far from a self-evident concept, anthropological and semiotic studies have shown that "Nature" is a complex cultural construct, fraught with a «polysemic halo»[7] that complicates its translation into a precise juridical subject[8]. Historically, the Greek

[4] World People's Conference on Climate Change and the Rights of Mother Earth, *Declaration of the Rights of Mother Earth, Cochabamba*, 22 April 2010.

[5] United Nations General Assembly, Resolution 64/292, 28 July 2010.

[6] In December 2014, GARN held the second international rights of nature tribunal in Lima. This Tribunal was dedicated to José Tendetza who was originally intended to present the Condor Mirador Case, and who was murdered one week before due to his role as an environmental defender.

[7] See STANO, *Critique of Pure Nature*, Cham, 2023.

[8] ARIAS-MALDONADO, *What is nature?,* In Id., *Environment and Society.*

*physis* (internal principle of motion) denoted dynamic becoming and inherent agency[9]. Aristotle distinguished it from *téchne* (external principle) without a rigid nature against human binary[10]. Roman thought, particularly Cicero's *natura* against *cultura* opposition (and subsequent Christian moralizations), solidified "Nature" as a passive, external realm; a construct later codified in modern law, which has historically been constructed upon "anthropocentric" grammar[11] that interprets the non-human world exclusively through the language of property and resource[12]. Within this framework, nature is rendered a passive, mute object, its value defined solely by its utility to human enterprise[13].

Contemporary scholarship deconstructs this nature/culture dichotomy as a specific Western ontology[14]. For instance, philosopher Merleau-Ponty saw nature as the «soil that carries us»[15], not an object; the anthropologist Philippe Descola identified four distinct systems for organizing the relationship between the "interiority" (mind, soul) and

*Socionatural Relations in the Anthropocene*, Cham, 2015, pp. 17–32.

[9] NADDAF, *The Greek Concept of Nature*, Albany, 2005; Marrone, *Addio alla natura*, Torino, 2011.

[10] DUCARME, COUVET, *What does 'nature' mean?,* in *Palgrave Communications,* n. 6(1), 2020, pp. 1-8.

[11] It is pertinent to address the use of grammar in frameworks, such as philosophy and western law, that are anthropocentric. The premise that a different grammar is not merely possible but indeed desirable is powerfully illustrated by Robin Wall Kimmerer, who posits that Western culture must reconsider its legal grammars taking cues from the "Grammar of Animacy", a principle of the Potawatomi language (an Anishinaabe language). See KIMMERER, *The Democracy of Species*, New York, 2021, pp. 4-24.

[12] See MATTEI, CAPRA*, The Ecology of Law. Towards a Legal System in Tune With Nature and Community*, Oakland, 2015.

[13] One may also recall Heidegger's image of the waterfall, where the western man sees a potential source of electricity to be exploited. See HEIDEGGER, *The Question Concerning Technology and Other Essays*, 2013.

[14] See in particular LATOUR, *We Have Never Been Modern*, Cambridge, 1993. Latour claims that modernity's core fiction is the separation of nature and society. Its "mechanism of translation" involves purification and translation (producing mixed techno-social entities that are then immediately re-categorized into the purified domains, obscuring their interconnectedness).

[15] MERLEAU-PONTY, *Nature: Course Notes from the Collège de France*, Evanston, 2003, p. 4.

"physicality" of beings[16]; also, Viveiros de Castro's Amerindian "multinaturalism" revealed that the Western legal subject is culturally specific[17].

However, this stark difference creates a paradox for RoN, as its proponents must use the very dualistic legal language to grant rights to a subject whose separate existence is conceptually questioned, potentially reifying the very separation it seeks to overcome.[18] The critical task for RoN jurisprudence is to move beyond extending anthropocentric categories and instead foster a truly ecocentric understanding of rights. The latter is exemplified by Indigenous approaches to conservation, which starts from the particular ways these communities engage with the land. One such approach, reflecting a relationship of kinship and reciprocity, is the "Honorable Harvest", an *ethos* and a set of guidelines for responsible and respectful interaction with the natural world from the population of the Potawatomi[19], which is shared by many other tribes and First Nations[20], such as the Wuikinuxv and the Heiltsuk.

[16] DESCOLA, *Beyond Nature and Culture*, Chicago, 2013. Descola demonstrated that "naturalism", the Western model which posits a shared physicality but a radical discontinuity of interiority (granting consciousness and subjectivity only to humans), is just one possibility among many.

[17] In this worldview, culture (a shared, universal interiority) is the common ground, while nature (the diverse bodily forms or clothing that beings inhabit) is the source of particularity. Animals and spirits are considered people who perceive the world from the distinct perspective of their own bodies. See VIVEIROS DE CASTRO, *Cannibal Metaphysics: For a Post-Structural Anthropology*, Minneapolis, 2014.

[18] CASETTA, *Making sense of nature conservation after the end of nature*, in *History and Philosophy of the Life Sciences*, n. 42(18), 2020, pp. 1-23.

[19] KIMMERER, *The Democracy of Species,* cit., pp. 175–85. These principles include prescriptions such as, «Know the ways of the ones who take care of you, so that you may take care of them [...] Never take the first. Never take the last. Take only what you need. Take only that which is given. Never take more than half. Leave some for others [...] Give a gift, in reciprocity for what you have taken» (Ivi, p. 183). The Potawatomi are a Native American tribe, historically located in the Great Lakes region. Their history includes semi-sedentary agricultural practices, involvement in colonial conflicts, and forced displacement during the 19th century.

[20] See EICHLER, BAUMEISTER, *Settler Colonialism and the US Conservation Movement: Contesting Histories, Indigenizing Futures,* in *Ethics, Policy & Environment*, n. 24(3), 2021, p. 213.

The main problem of a paradigm which legally codifies a separation between humanity and nature, which we may call "instrumentalist", is that it has proven structurally incapable of perceiving and responding to systemic ecological degradation. By framing ecosystems as objects, the very language of the law makes their intrinsic needs and distress signals legally illegible until they manifest as quantifiable harm to human interests. The functional inadequacy of this legal model is embodied by the predominantly reactive character of modern environmental law[21]. As has been extensively argued[22], its tendency to operate *ex post*, responding to environmental damage only after it has occurred and is often irreversible, is not an incidental flaw but a systemic consequence of its logic. A legal system that can only see nature as property is inherently blind to the early warnings of ecosystem stress. It can only react to the symptoms of collapse, such as pollution or species loss, because it lacks a mechanism to recognize the health and integrity of the ecosystem as a value in itself. This reactive posture, frequently coupled with a faith in speculative technological solutions, perpetuates a cycle of crisis management.

As a consequence, the objective of the Rights of Nature framework is that of granting legal personality upon natural entities and providing a procedural mechanism for their interests to be represented within the juridical sphere. This conceptual revolution was articulated with remarkable clarity in the dissenting opinion of U.S. Supreme Court Justice William O. Douglas in *Sierra Club vs. Morton* when he stated that

> inanimate objects are sometimes parties in litigation. A ship has a legal personality, a fiction found useful for maritime purposes. The corporation sole – a creature of ecclesiastical law – is an acceptable adversary and large fortunes ride on its cases [...] So it should be as respects valleys, alpine meadows, rivers, lakes,

[21] For a further analysis see CHALABI, *A New Theoretical Model of the Right to Environment and its Practical Advantages*, in *Human Rights Law Review*, n. 23(4), 2023, pp. 1-19.

[22] AMIRANTE, *Costituzionalismo ambientale. Atlante giuridico per l'Antropocene*, Bologna, 2022.

> estuaries, beaches, ridges, groves of trees, swampland, or even air that feels the destructive pressures of modern technology and modern life. The river, for example, is the living symbol of all the life it sustains or nourishes – fish, aquatic insects, water ouzels, otter, fisher, deer, elk, bear, and all other animals, including man, who are dependent on it or who enjoy it for its sight, its sound, or its life. The river as plaintiff speaks for the ecological unit of life that is part of it[23].

Douglas proposed the radical idea that a natural entity could itself be a holder of rights and that its interests could be represented in court. This was a call to expand the legal community to include the non-human, thereby creating a direct channel for the representation of an ecosystem's integrated biological, social, and spiritual values.

Around the same period, Christopher D. Stone's article *Should Trees Have Standing? Toward Legal Rights for Natural Objects* further systematized the argument for extending legal personality to natural entities, explicitly questioning why corporations or ships could be rights-bearers while rivers and forests could not.[24] The debate that followed, including both critical and supportive responses, helped to consolidate a theoretical vocabulary for thinking about nature as a potential subject of rights rather than a mere object of property or regulation[25]. This early Anglo-American discussion is now often read, retrospectively, as a key antecedent of contemporary RoN jurisprudence.

This intellectual and institutional groundwork created the neces-

[23] U.S. Supreme Court, *Sierra Club v. Morton*, 405 U.S. 727, 1972 (Douglas, J., dissenting), at 741-743. The case concerned the Sierra Club's attempt to block a ski resort development in Mineral King Valley. The Supreme Court denied standing to the Sierra Club, ruling that the organization had not shown a direct "injury in fact" to itself or its members. Justice Douglas dissented, arguing that natural objects like valleys and rivers should have legal standing to sue for their own preservation, akin to corporations, to ensure their protection from environmental harm.

[24] Stone, *Should Trees Have Standing? Toward Legal Rights for Natural Objects*, in *Southern California Law Review*, n. 45, 1972, pp. 450–501.

[25] TAKACS, *Standing for Rivers, Mountains – and Trees – in the Anthropocene*, *Southern California Law Review*, n. 95(6), 2023.

sary conditions for the translation of RoN principles into binding legal precedents and legislations across the globe. The 2008 Constitution of Ecuador was the first in the world to include RoN at a national level. The famous *Atrato River* case, which was decided by the Colombian Constitutional Court in 2016, recognized the river a subject of rights, establishing a guardianship model co-managed by government and local community representatives[26]. This case was followed by important legislative action on a global level. New Zealand passed an Act in 2017 that granted legal personality to the Whanganui River[27]; in Australia, the state of Victoria passed a legislation recognizing the Yarra River as a living and integrated natural entity[28]; the High Court of Uttarakhand (India) granted legal personality to the Ganges and Yamuna rivers (2017)[29]; finally, Canada's Magpie River (2021)[30] and Spain's Mar Menor lagoon[31] (2022) were also being granted legal status; Peru's Marañón River (2024) was recognized as holder of rights[32], as in New Zealand with the Mount Taranaki[33]. Other cases are still ongoing, such as the recognition of Rhône River in Switzerland[34] and the Mer de Glace glacier in France (the latter by a non-jurisdictional tribunal)[35].

[26] Constitutional Court of Colombia, Judgment T-622/16, 10 November 2016.

[27] New Zealand Parliament, *Te Awa Tupua Act*, Wellington, 2017.

[28] Parliament of Victoria, *Yarra River Protection Act*, n. 49/ 2017.

[29] High Court of Uttarakhand, *Mohd. Salim v. State of Uttarakhand*, n. 126 of 2014, 20 March 2017.

[30] Two parallel resolutions recognized the Magpie River as a legal person with nine rights (including the rights to flow, to maintain its biodiversity, to be free from pollution, and to sue) and appointed co-guardians from the Innu Council of Ekuanitshit and the Minganie RCM.

[31] Spain's Ley 19/2022 grants legal personhood to the Mar Menor lagoon and its basin – the first such law in Europe – recognizing rights to protection, conservation, maintenance, and restoration, with guardianship involving public administration and scientific committees.

[32] Superior Court of Justice of Loreto, *Marañón River Case*, 2024.

[33] New Zealand Parliament, *Taranaki Maunga Collective Redress Act*, Public Act 1/2025.

[34] See Vallet, *The challenges of operationalizing rivers' legal personhood in a European context: reflections from the Rhône River*, in *Géocarrefour*, n. 98(2), 2024.

[35] International Rights of Nature Tribunal, *Mer de Glace Case*, January 30 2021. In

These results are sometimes the outcome of long-standing conflicts between different conceptions. For instance, the Te Awa Tupua Act followed a conflict that lasted almost 200 years between the Crown and the Whanganui iwi. As articulated by the negotiator Gerrard Albert, the core challenge was to find an approximation in law that could translate this Indigenous ontology into a legally cognizable form[36]. The Act ended up creating a guardianship body that was legally mandated to act as the river's representative. This highlights the importance of legal imagination as a necessary condition to adapt to the climate crisis. As Macfarlane states metaphorically, but equally effectively: «Over the past twenty years, energized by ecological emergency, the young Rights of Nature movement has repeatedly inspired new forms of future dreaming, and unsettled long-held orthodoxies by appealing to imagination as much as to law»[37].

These initiatives, though varied in form, signify the emergence of what has been termed a new systemic constitutionalism, animated by collective actors, which fundamentally reconfigures the question of who, and what, can be a subject of justice[38]. However, the efficacy of

particular, the European Tribunal for the Rights of Aquatic Ecosystems is an initiative of the Global Alliance for the Rights of Nature (GARN) Europe. It is a non-jurisdictional body or "citizens' tribunal" that examines cases of environmental violations and proposes recommendations based on the principles of the Rights of Nature, with the aim of influencing existing policies and laws.

[36] MACFARLANE, *Is a River Alive?*, New York, 2025, pp. 34-37.

[37] Ivi, p. 35.

[38] The concept of systemic constitutionalism draws on Gunther Teubner's theory of reflexive law, which was developed as a response to Niklas Luhmann's doctrine of systemic closure. While Luhmann posited that social subsystems are operationally closed, Teubner argued for the possibility of "communicative coupling", allowing for co-evolution. He theorized that every systemic communication possesses both a system-specific meaning and a general sense that can be processed internally by other systems. This mechanism enables the legal system to reconstruct external irritations, such as claims advanced by social movements or scientific knowledge about ecosystems, within its own logic, thus facilitating mutual influence and adaptation without violating its autopoietic integrity. See TEUBNER, *Substantive and Reflexive Elements in Modern Law*, in *Law & Society Review*, n. 17(2), 1983, pp. 239-286; Teubner, *Law as an Autopoietic System*, Oxford, 1993. For a discussion about this specific topic: SCAMARDELLA, *Frammenti costituzionali: il nuovo costituzionalismo sociale del mondo globalizzato. Riflessioni a partire dall'ultimo contributo di Gunther*

this new legal status hinges on its capacity to move beyond mere proclamation or symbolic recognition. A declaration of rights, in itself, offers no guarantee of protection if it is not accompanied by robust administrative and enforcement mechanisms capable of translating this new status into tangible outcomes[39]. The ultimate test for the RoN paradigm is its ability to challenge and alter the deeply entrenched legal and economic structures that prioritize extractive liberties and property rights over ecological integrity. For this reason, in the next section we turn to analyzing one of the main engines of change in climate governance: climate change litigation.

## 3. *The* Atrato *case: Biocultural Rights and the Co-Governance Model*

Having traced the theoretical and historical emergence of Rights of Nature, we now wish to explore how these novel legal concepts are operationalized on the ground. We do so by looking at a paradigmatic case study: the 2016 ruling by the Colombian Constitutional Court concerning the Atrato River. The river, vital to the indigenous communities of Colombia's region of Chocó, was being severely damaged by illegal gold mining, which caused massive deforestation, mercury poisoning of the water, and profound sociocultural disruption for the communities who depend on it for their livelihoods and way of life. As a consequence, the local communities sued the Colombian government for failing to protect their rights and the environment, arguing that the government's inaction allowed the destruction to continue, violating their fundamental rights to life, health, water, food, and a healthy environment. The Colombian Constitutional Court sided with the communities and, instead of just ordering the government to act, it made two relevant decisions. First, it declared the Atrato River itself a «subject of rights» such as the right to exist, flow, be clean, and be restored. Second, the Court also appointed the affected communities

*Teubner*, in *Sociologia del diritto*, n. 2, 2013, pp. 169-180.

[39] For the critical history of the human rights movement and its limitation see MOYN, *Not enough: human rights in an unequal world,* Harvard, 2019.

and the government as co-guardians of the river, mandating them to work together on its protection and restoration.

The Atrato case is relevant as a case in which the judicial branch deploys a structural, forward-looking remedy to address systemic state failure. Moreover, it moves beyond a purely environmental framing by codifying the concept of what have been called «biocultural rights»[40]: it legally recognizes the indivisible link between the river's health and the cultural survival of the Indigenous communities who live on its banks. These communities acted as "co-creators" of the legal decision itself[41]. Their cosmological visions, which understand the river as an integral and living part of their territory and identity, provided the premise for the Court's recognition. The ruling, therefore, gave formal legal status to a subject that already existed within the communities' vision, which starts from the indivisible unity between an ecosystem and the human cultures that depend upon it[42].

In practice, the post-judgment translation of these rights into governance has been a complex and contested process. The establishment of the Guardian Council has had a significant empowering effect, providing local communities with an unprecedented platform for direct engagement with state institutions and a formal role in the decision-making processes that affect their territory[43]. However, the implementation of the Court's orders has faced substantial obstacles. These include a persistent lack of state capacity, bureaucratic resistance, insufficient funding, and the continued presence of powerful illegal armed and economic actors in the region. Consequently, while the ruling has created a new legal tool, its effectiveness in halting envi-

[40] BAVIKATTE, BENNETT, *Community stewardship: the foundation of biocultural rights*, in *Journal of Human Rights and the Environment*, n. 6(1), 2015, pp. 7-29

[41] GONZÁLEZ-SERRANO, *The Atrato River as a Bearer and Co-creator of Rights: Unveiling Black People's Legal Mobilization Processes in Colombia*, in *Law & Social Inquiry,* n. 49, 2024, pp. 2493–2522.

[42] VARGAS-CHAVES, RODRÍGUEZ, CUMBE-FIGUEROA & MORA-GARZÓN, *Recognizing the Rights of Nature in Colombia: the Atrato River case*, in *Revista Jurídicas*, n. 17(1), 2020, pp. 13-41.

[43] See WESCHE, *Rights of Nature in Practice: A Case Study on the Impacts of the Colombian Atrato River Decision*, in *Journal of Environmental Law*, n. 33, 2021, pp. 531-556.

ronmental degradation remains partial and subject to ongoing political struggle[44].

The analysis of the *Atrato* case provides a blueprint for a new form of ecological governance of a legal pathway grounded in Indigenous collective rights. The biocultural rights framework is part of an emerging legal pathway grounded in Indigenous collective rights, which is founded on the principles of self-determination, territory, and a differentiated relationship to land and waters. At the same time, the Atrato decision also exemplifies a broader trend whereby courts deploy structural, forward-looking remedies to address systemic state failure in the face of ecological crisis. In this sense, it stands at the intersection between RoN and a wider family of "structural" climate cases, in which judges seek to reconfigure the architecture of public policy rather than merely adjudicate isolated harms. It is precisely this second pathway that the next section explores.

## 4. *Structural Climate Litigation: Success in Court, Uncertain in Practice*

Building on the *Atrato* case, which combines a RoN framework with a structural remedy, we now turn to a second, partially overlapping pathway: structural climate litigation. Rather than conferring legal personality on specific ecosystems, this body of case law primarily uses constitutional or human-rights guarantees to challenge the overall architecture of climate governance. Our aim is to show how these two trajectories – RoN and structural climate litigation – share a common ambition to move beyond individualized, ex post compensation and to recast climate change as a systemic, rights-based problem.

In what follows, we examine five landmark structural cases in five different jurisdictions. These cases have been selected for their jurisprudential influence, their geographical diversity, and because they collectively illustrate the primary categories of remedies being deployed globally – ranging from prescriptive and institution-building orders to target-setting obligations. Structural climate litigation is cen-

[44] Ivi, p. 538.

tral because it attempts to target the architecture of national climate policy rather than a single project approval[45], and to "just" challenge a particular high emitting project, such as power plant, coal mine, or oil and gas infrastructure. In other terms, its aim is to rewire the policy regime itself through constitutional or human rights claims and remedies that bind political branches.

A first central case is *Asghar Leghari v. Federation of Pakistan* (2015)[46], where a farmer sued the government for failing to implement Pakistan's National Climate Change Policy and Framework, arguing that this inaction violated his fundamental constitutional rights to life, dignity, and property amid escalating climate impacts. The Lahore High Court agreed, recognizing climate change as a pressing threat and framing the state's adaptation obligations as justiciable duties under constitutional rights and the public trust doctrine. The court used constitutional fundamental rights – especially the rights to life and dignity – to impose an affirmative duty on the state to implement climate policy. In this context, the Court's remedy emphasized *adaptation*: it ordered the government to operationalize the policy and framework, created a Climate Change Commission to monitor and catalyze implementation across ministries and provinces, set timelines and progress reporting, and directed concrete sectoral measures[47].

A second important case, decided in Nepal in 2018, is known as *Shrestha*[48]. Responding to a petition seeking a new consolidated climate law, the Supreme Court of Nepal held that governmental inaction violated fundamental constitutional rights to a dignified life and a healthy environment and then mandated a legislation covering both *mitigation* (emissions reduction) and *adaptation* measures. This case constitutes an important judicial intervention in climate governance because it compelled the state to act through a rights-based frame-

[45] For a discussion of modes of climate change litigation MAXWELL et al., *Standards for Adjudicating the Next Generation of Urgenda-Style Climate Cases*, in *Journal of Human Rights and the Environment*, n. 13(1), 2022, pp. 35–63.

[46] Lahore High Court*, Leghari v. Federation of Pakistan,* n. 25501/2015.

[47] See BIRSHA OHDEDAR, *Climate Change Litigation in India and Pakistan: Analyzing Opportunities and Challenges*, in ALOGNA et al. (eds.), *Climate Change Litigation: Global Perspectives*, Boston, 2021, pp. 103-123.

[48] Supreme Court of Nepal*, Shrestha v. Prime Minister,* Decision n. 10210/2018.

work. The Court also linked Nepal's constitutional duties with its international obligations under the Paris Agreement, thereby broadening the remedy to include reducing fossil fuel consumption, promoting low-carbon technologies, minimizing harms in vulnerable areas, creating compensation mechanisms, and ensuring intergenerational and ecological justice.

In a third case, also from 2018 and known as *Colombia's Future Generations*, the Colombian Supreme Court[49] held that the government's failure to halt Amazon deforestation violated the Constitution, grounding its ruling in a broad constellation of constitutional guarantees, including citing the rights to life, health, a healthy environment, participation, and most importantly the rights of children and future generations. Framing the Amazon as a rights-bearing entity and recognizing the climate and biodiversity stakes, the Court issued structural remedies: it ordered the creation of an "intergenerational pact" to protect the Amazon; it mandated a guardian institution to represent and safeguard the ecosystem; finally, it placed implementation under ongoing judicial supervision to ensure concrete and timely action plans and accountability across national and subnational authorities. This ruling is particularly significant as it bridges the two main strands of our analysis, employing a structural remedy within a Rights of Nature framework.

A fourth case from 2019 is *Urgenda Foundation v. The Netherlands*[50], where the Dutch Supreme Court upheld lower court rulings that the state owed a duty of care under Articles 2 (right to life) and 8 (right to private and family life) of the European Convention on Human Rights to reduce national greenhouse gas emissions by at least 25% by 2020 relative to 1990 levels. In this case, while the Court set the binding outcome target, it deliberately refrained from dictating specific policy instruments, leaving the government discretion to choose among a range of measures to meet the reduction obligation.

The fifth and last case is *Klimaschutzgesetz* decision – international-

[49] Corte Suprema de Justicia, Sala. Civ. abril 5, 2018, L.A. Tolosa Villabona, S.T.C. 4360-201 Colom.

[50] Supreme Court of the Netherlands, *Urgenda Foundation v. State of the Netherlands*, 20 December 2019.

ly known as *Neubauer* – from 2021[51]. In this case, the German Federal Constitutional Court held that postponing substantial emissions reductions into the future disproportionately burdens younger and future generations and thereby threatens their future exercise of fundamental freedoms under Article 2(1) of the *Grundgesetz*, that grants the right to free development of one's personality. The Court found that the statutory framework loaded too little mitigation before 2030, forcing drastic cuts that would have to restrict freedom, therefore violating intertemporal proportionality. It ordered the federal legislature to revise the law, with the specific need to specifying clearer binding reduction pathways for the period after 2030.

Along this path, regional human rights bodies have also contributed to consolidating the rights turn by treating climate risk as a justiciable interference with protected rights and by endorsing structural, forward-looking duties. In Advisory Opinion OC-23/17[52], the Inter-American Court conceptualized the right to a healthy environment as both autonomous and collective, with transboundary implications. It anchors state obligations not only in traditional due-diligence duties, but also in the principles of prevention, precaution and best available science, and it explicitly recognizes the standing of individuals and communities affected by environmental harm originating beyond national borders. This opens the door to structural claims against systemic drivers of climate risk within the Inter-American system.

Moreover, in *KlimaSeniorinnen v. Switzerland*[53], the European Court of Human Rights held that inadequate national mitigation frameworks can breach Article 8 ECHR. The Court required states to adopt coherent, science-based reduction pathways aligned with their fair share of the remaining carbon budget, to ensure effective implementation and regular monitoring, and to guarantee access to court for associations representing vulnerable groups. By doing so, the Court

[51] Constitutional Court of Germany, *Neubauer et al. v. Germany*, 1 BvR 2656/18; 1 BvR 78/20; 1 BvR 96/20; 1 BvR 288/20. Decision of March 24, 2021.

[52] Inter-American Court of Human Rights, Advisory Opinion OC-23/17, 2017.

[53] European Court of Human Rights, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, 2024.

consolidated the "rights turn" at the regional level, while at the same time refraining from prescribing specific sectoral measures.

Most recently, the International Court of Justice's Advisory Opinion on Obligations of States in respect of Climate Change (delivered July 21, 2024) further entrenches this "rights turn" at the global level. Although not explicitly framed in human rights terms, the Court interprets states' obligations under treaties like UNFCCC and customary international law through the lens of intergenerational equity and the protection of vulnerable populations, imposing duties of prevention, due diligence, international cooperation, and assistance to developing states. This reinforces the structural, forward-looking remedies seen in domestic and regional cases, signaling a paradigm shift toward collective ecological responsibilities in international law[54].

### 4.1 *A Right Turn in Climate Governance?*

Building on what Peel and Osofsky have described as a "rights turn" in climate change litigation[55] – namely, the growing use of human and constitutional rights to frame and contest climate harms – we suggest that a parallel movement is underway in climate governance and ecological law more broadly. Our analysis expands their insight in two directions: first, by bringing Rights of Nature and biocultural rights into the picture as part of this rights-based reconfiguration; second, by focusing on the structural remedies and institutional architectures that these cases generate, as well as on their persistent implementation deficits. These headline wins have anchored the "rights turn" in climate law and are frequently invoked as catalysts capable of overcoming political inertia[56].

Yet these very cases foreground the essential question asked by Bookman: *what happens after you win?* Across these cases, courts tai-

[54] International Court of Justice, *Obligations of States in respect of Climate Change, Advisory Opinion, ICJ Reports 2024*, July 21, 2024.

[55] PEEL, OSOFSKY, *A Rights Turn in Climate Change Litigation?*, in *Transnational Environmental Law*, n. 7(1), 2018, pp. 37–67.

[56] BOOKMAN, *Catalytic Climate Litigation: Rights and Statutes*, in *Oxford Journal of Legal Studies,* n. 43(3), 2023, pp. 598–628

lored remedies to the kind of climate failure they diagnosed and to their own theories of institutional competence. Some remedies are prescriptive and institutional, while others are target-based. *Leghari* treated climate inaction as an adaptation governance gap and issued a prescriptive, institutional remedy, operationalizing existing policies through timelines and a Climate Change Commission supervised by the court. *Shrestha* broadened the frame, prescribing the enactment of a consolidated climate law that spans mitigation and adaptation and directing *interim* implementation of existing instruments, but without standing supervisory machinery. *Colombia's Future Generations* targeted mitigation via halting Amazon deforestation and paired detailed orders with institutional innovation: an intergenerational pact, a guardian body, and ongoing judicial supervision. *Urgenda* adopted a target-based remedy, imposing a binding national emissions reduction floor while leaving instrument choice to the political branches; similarly, *Neubauer* set a target-based, temporally structured remedy, ordering legislative recalibration of post-2030 pathways to prevent backloading rather than prescribing sectoral measures.

As Sam Bookman observes[57], there are five reasons why structural decisions are hard to implement. First, courts have thin enforcement muscles and must rely on the very institutions they are correcting. For court decisions to truly make a difference, they need more than just legal orders; they need to be seen as fair and accepted by the public and other institutions. Second, it is intrinsically difficult to translate high-level remedies such as overall emissions-reduction targets or sweeping injunctions like "protect the Amazon" or "reduce emissions by a certain date", into the granular stuff of policy, with its sectors, standards, budgets, timelines, and trade-offs. This is coherent with the systemic analysis of Niklas Luhmann, who had already warned that totalizing problems as ecological danger faces the obstacle of functional differentiation of modern society[58]; it is extremely difficult for society to direct all attention on one single, overreaching issue. Third, litigation can have distributionally regressive effects, with implementation tending to flow along paths of least resistance and thereby entrenching

[57] See *supra*, note 1.

[58] See LUHMANN, *Ecological Communication,* Chicago, 1986.

uneven outcomes[59]. Fourth, recalcitrant or oppositional bureaucracies and political institutions may simply ignore, resist, or slow-walk judicial decisions. Fifth and finally, states may lack the enforcement capacity and resources to carry out the orders even if they are willing.

Taken together, these developments justify speaking of a "right turn" in climate governance and ecological law. There is a discernible and growing trend in which climate change, once treated primarily as a policy or regulatory matter, is increasingly framed and litigated as a violation of fundamental human or constitutional rights. This shift has various consequences: it constitutionalizes climate governance; it expands the circle of right-holders (including collective subjects and, in some jurisdictions, nature itself); finally, it legitimates the structural remedies discussed above. It also entails a more assertive judicial role, with courts exercising ongoing supervision and shaping policy architectures, which can accelerate action but also raises concerns about democratic legitimacy and the risk of judicial overreach.

## 5. *Conclusion*

In this work we have tried to move beyond the confines of the individual-rights paradigm to explore emergent legal strategies for climate governance. We have traced the genealogy and application of two convergent legal pathways: the recognition of the Rights of Nature and the deployment of structural climate litigation. We have argued that while originating from distinct intellectual traditions, both share a common objective: to overcome political inertia and re-situate the ecological crisis within a constitutional framework grounded in collective, intergenerational, and ultimately ecological, rights.

Our analysis has shown that these trajectories are not mere symbolic declarations but function as laboratories of institutional innovation. The examination of emblematic cases, particularly *Atrato* in Colombia, has demonstrated how the integration of Indigenous ontologies and the codification of "biocultural rights" can generate effective and resil-

[59] MAYER, *Prompting Climate Change Mitigation Through Litigation*, in *International and Comparative Law Quarterly*, n. 72(1), 2023, pp. 233-250.

ient governance architectures, giving legal voice and representation to non-human entities. At the same time, we have highlighted that a fundamental challenge remains: the persistent gap between judicial success and effective implementation.

Looking at the future, we believe that climate governance and ecological law will be increasingly conceived not as a static body of rules ultimately inspired by private property, but as a "living jurisprudence": a process continuously co-created through the dialogue between courts, local communities, natural entities, and guardianships institutions. This effort, we believe, requires a legal imagination capable of designing mechanisms of protection that listen to and incorporate the intrinsic logics of ecosystems. The ultimate challenge is not to "grant rights" to Nature, but to rebuild relationships of reciprocity and stewardship between the human and non-human, institutionalizing care for the future as a core principle of governance.

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*Abstract*[*]

*En*

This paper examines the global "rights turn" in climate governance by tracing two convergent pathways: the Rights of Nature (RoN) and structural climate litigation. We reconstruct RoN's intellectual and institutional genealogy and analyze its operationalization through the Atrato River case, which foregrounds biocultural rights and co-governance with Indigenous communities. We then compare landmark structural cases (*Leghari, Shrestha*, *Future Generations/Amazon, Urgenda, Neubauer*) to map remedial designs ranging from institution-building to target-setting. While these approaches potentially retool public law and can overcome political inertia, because of their nature they face a persistent implementation deficit.

*Keywords*: Rights of Nature, Climate Change Litigation, Biocultural Rights, Climate Governance

[*] Articolo sottoposto a referaggio fra pari a doppio cieco (*double-blind peer review*).

*Ita*
Questo documento esamina la "svolta dei diritti" globale nella *governance* climatica tracciando due percorsi convergenti: i diritti della natura (RoN) e il contenzioso strutturale sul clima. Ricostruiamo la genealogia intellettuale e istituzionale dei RoN e ne analizziamo l'operatività attraverso il caso del fiume Atrato, che mette in primo piano i diritti bioculturali e la co-governance con le comunità indigene. Confrontiamo quindi casi strutturali di riferimento (*Leghari, Shrestha, Future Generations/Amazon, Urgenda, Neubauer*) per individuare gli interventi richiesti dalle Corti che vanno dalla creazione di istituzioni alla definizione di obiettivi. Sebbene questi approcci possano potenzialmente stimolare processi riorganizzativi nel diritto pubblico e superare l'inerzia politica, a causa della loro natura devono affrontare un persistente *deficit* di attuazione.

*Parole chiave*: Diritti della natura, contenzioso climatico, diritti bioculturali, *governance* climatica