

# Rights of Wetlands Review

*Draft v2*

2024





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## 1 - Executive summary

The 'Rights of Wetlands Operationalisation for Biodiversity and Community Resilience' project focuses on how to deliver Rights of Wetlands and Rights of Nature in practice. Despite recognition that wetlands deliver multiple benefits, particularly for the poor and marginalized, widespread wetland loss and deterioration continues contributing to climate destabilisation and biodiversity declines. New approaches are required for wetland conservation and to sustain wetland benefits. This project will facilitate the operationalisation of the Rights of Wetlands approach in different country contexts, embedding the right for a wetland to function and exist through community management, legal instruments and governance frameworks leading to successful biodiversity conservation and poverty alleviation.

The Declaration of the Rights of Wetlands declares that wetlands possess rights to:

- exist
- their ecologically determined location in the landscape
- natural, connected and sustainable hydrological regimes
- ecologically sustainable climatic conditions
- naturally occurring biodiversity
- integrity of structure, function and evolutionary processes
- be free from pollution and degradation
- regeneration and restoration

Recognition and implementation of these rights acknowledges a wetland's ecological catchment location and interconnectedness and is seen as an essential step in efforts to stop wetland loss and deterioration.

The project is based in Ecuador, Bolivia, Guyana, Sri Lanka and Kenya and the Rights of Wetlands Project Partnership includes:

- Wetlands International Kenya
- ATAYAK - Asociación de Yachak del Pueblo de Sarayaku
- Cobra Collective
- Community Environmental Legal Defense Fund
- International Water Management Institute
- Sri Lanka Ministry of Environment
- North Rupununi District Development Board
- Practical Action in Bolivia
- Universidad Católica de Bolivia "San Pablo"
- Worcester State University

The project is built on recognition that a Rights of Wetlands cultural and behavioural shift, leading to policy and management implementation, will halt wetland loss and degradation and that healthy wetlands underpin biodiversity conservation and poverty alleviation. This ethical and cultural shift can be disseminated and enacted through capacity and awareness building, policy and legislation changes, establishing governance and communication networks, and local wetland management that fundamentally recognises that wetlands are living entities with rights and that those rights should be maintained.

To deliver change, the project impact plan is:

- Review - contextualisation of Rights of Wetlands in five countries to establish baseline, best practice and shared understanding
- Capacity building – the review will be built upon through training at community, Civil Society Organisation (CSO) and government levels to open individuals and

organisations to a different way of appreciating, interacting with and managing wetlands

- Dialogue - community to community and community to CSO and government dialogues and networks will be established to embed the approach
- Sharing - dissemination and training in Rights of Wetlands and principles, toolkits and other products will provide resources to implement the approach within the five countries and beyond

This publication is the major deliverable under the 'Review' part of the project impact plan. It is a working document that will be further developed throughout the lifetime of the project: 2023 to 2026. It introduces Rights of Wetlands with selected examples of implementation across the world. Reviews of the policy, legislation, governance, communication and management contexts of the five project countries are also provided to illustrate where each country, and their wetland communities, are in terms of delivering a Rights of Wetlands or a Rights of Nature approach.

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## 2 - Introduction to Rights of Wetlands

### 2.1 - Call for Transformative Change

Global leaders including policymakers, governments, Indigenous Peoples and Local Communities, members of the youngest generations, and scientists, as well as ordinary citizens, are calling for transformative change in order to meet the challenge of biodiversity loss, climate change and loss and degradation of critical ecosystems including wetlands and forests. Maria Hernandez Salgar, Chair of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), in the 2021 joint IPBES-IPCC *Biodiversity and Climate Change Workshop Report*<sup>1</sup>, states:

**“Transformative change** in all parts of society and our economy is needed to stabilize our climate, stop biodiversity loss and chart a path to the sustainable future we want. This will require us to address both crises together, in complementary ways.”

In December of 2022, at the 15<sup>th</sup> Conference of the Parties (COP15), the signatories to Convention on Biological Diversity (CBD) representing the majority of the world’s governments, agreed to the *Kunming-Montreal Global Biodiversity Framework*<sup>2</sup>, a document that:

- “sets out an ambitious plan to implement broad-based action to bring about a **transformation in our societies’ relationship with biodiversity by 2030**, in line with the 2030 Agenda for Sustainable Development and its Sustainable Development Goals, and ensure that, by 2050, the shared vision of living in harmony with nature is fulfilled”.
- “aims to catalyze, enable and **galvanize urgent and transformative action**”
- **“recognizes and considers [...] diverse value systems and concepts, including, for those countries that recognize them, rights of nature and rights of Mother Earth**, as being an integral part of its successful implementation”.
- **“Implementation of the framework requires transformative, innovative and transdisciplinary education**, formal and informal, at all levels, including science-policy interface studies and lifelong learning processes, **recognizing diverse world views, values and knowledge systems of Indigenous Peoples and local communities**”.

In a joint statement with scientists and policy specialists<sup>3</sup>, the Kichwa Original Peoples of Sarayaku, Ecuador state:

“Sarayaku’s Living Forest (Kawsak Sacha) Proposal<sup>4</sup> emerges as an alternative solution to the various environmental, social, cultural, and economic problems faced by Original Peoples of the world, humanity, and Mother Earth (Pachamama). In this sense, Kawsak Sacha proposes a **transformation oriented towards a new model of society based on coexistence between living beings and living entities**.

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<sup>1</sup> Pörtner, H.O., Scholes, R.J., Agard, J., Archer, E., Arneth, A., Bai, X., Barnes, D., Burrows, M., Chan, L., Cheung, W.L., Diamond, S., Donatti, C., Duarte, C., Eisenhauer, N., Foden, W., Gasalla, M. A., Handa, C., Hickler, T., Hoegh-Guldberg, O., Ichii, K., Jacob, U., Insarov, G., Kiessling, W., Leadley, P., Leemans, R., Levin, L., Lim, M., Maharaj, S., Managi, S., Marquet, P. A., McElwee, P., Midgley, G., Oberdorff, T., Obura, D., Osman, E., Pandit, R., Pascual, U., Pires, A. P. F., Popp, A., ReyesGarcía, V., Sankaran, M., Settele, J., Shin, Y. J., Sintayehu, D. W., Smith, P., Steiner, N., Strassburg, B., Sukumar, R., Trisos, C., Val, A.L., Wu, J., Aldrian, E., Parmesan, C., Pichs-Madruga, R., Roberts, D.C., Rogers, A.D., Díaz, S., Fischer, M., Hashimoto, S., Lavorel, S., Wu, N., Ngo, H.T. 2021. IPBES-IPCC co-sponsored workshop report on biodiversity and climate change; IPBES and IPCC. DOI:10.5281/zenodo.4782538

<sup>2</sup> Convention on Biological Diversity. 2022. Kunming-Montreal Global Biodiversity Framework. UN Environment Program. <https://www.cbd.int/doc/decisions/cop-15/cop-15-dec-04-en.pdf> .

<sup>3</sup> Unpublished paper. 2023. Transforming Perspectives on Living Beings – A Convergence of Kawsak Sacha and Contemporary Science.

<sup>4</sup> <https://kawsaksacha.org/>

### 2.1.1 - What does transformative change mean? What does transformative change look like?

A Rights of Nature/Rights of Wetlands approach can catalyze transformative change by shifting our mental, ethical, cultural, legal, governance, and land management paradigms. We can remember what we knew as children, and what Indigenous Peoples have known and remembered for millennia – that we, along with all other forms of life and the ecosystems we form, are part of the Web of Life, and as such, all beings have inherent rights. More specifically, as sentient living beings, all species and ecosystems have a right to exist, to have a place to exist, and to participate in Earth processes<sup>5</sup>.

One way of understanding what this paradigm shift feels like is to think about our relationship with other elements of Nature. The dominant global paradigm views Nature as a storehouse, a resource, for human use. This view has led to the current biodiversity collapse and destabilization of the global climate, as well as the destruction of 35% of wetlands since the year 1970. It threatens the continued viability of life on Earth as we know it. The IPBES *Nature's Future Framework Report*<sup>6</sup> identifies this mindset as a “**Living from Nature**” paradigm, whereas other ways of relating to Nature are possible, and offers a paradigm shift that could result in the kind of transformative change that is necessary to change our trajectory. “**Living with Nature**” emphasizes the rights of non-human life. “**Living in Nature**” is centred on the relationship between people, place and identity, and “**Living as Nature**” focuses on a sense of oneness and unity between people and ecosystems/Web of Life/Nature. While we all must, to some extent, live from Nature, a shift in perspective that recognizes the Rights of Nature can change how we relate to Nature. We can also live with, in and as Nature in a more reciprocal, responsible, caring, and generous relationship that recognizes the needs and rights of the Web of Life/ecosystems and their living beings that includes and supports all human life. A Rights of Nature and Rights of Wetlands approach can align our actions more appropriately with ecological and climatic reality, to achieve a better balance between human needs and the needs of the other members of the Web of Life. With such a realignment, we may be able to reverse our current trajectory and live in a way that supports biodiversity, climatic stability, protection and restoration of wetlands, and sustainable human societies.

Along these lines, an emerging biocultural approach integrates Rights of Nature with human rights. This parallels an emerging re-conception of the Ramsar Convention on Wetlands’ “ecological character” towards a “socio-ecological character”<sup>7, 8</sup>, reflecting an understanding of humans as part of the Web of Life. In some cases, connecting human and Nature’s rights has led to court decisions supporting Rights of Nature (e.g. Ecuador and Colombia), as well as tribal law in the United States<sup>9</sup>.

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<sup>5</sup> Berry, T. 2001. The origin, differentiation and role of rights. Paper presented at the Earth Jurisprudence Conference’ 21 –24 April 2001, Warrenton, VA, USA. Available at <https://www.ties-edu.org/wp-content/uploads/2018/09/Thomas-Berry-rights.pdf> [Verified 2023-07-28].

<sup>6</sup> Pereira LM, Davies KK, den Belder, E, et al. 2020. Developing multiscale and integrative nature–people scenarios using the Nature Futures Framework. *People Nat.* 2: 1172– 1195. <https://doi.org/10.1002/pan3.10146>

<sup>7</sup> Kumar R, McInnes R, Finlayson CM, Davidson N, Rissik D, Paul S, Lijuan C, Yinru L, Capon S, Fennessy S. 2020. Wetland Ecological character and wise use: towards a new framing. *Marine and Freshwater Research*. <https://doi.org/10.1071/MF20244>

<sup>8</sup> Kumar R, Horowitz P, Finlayson CM. 2023. Wetlands as social-ecological systems: Bridging nature and society. In: *Ramsar Wetlands: Values, Assessment, Management*. pp. 525-553. <https://doi.org/10.1016/B978-0-12-817803-4.00021-8>

<sup>9</sup> Kauffman CM & Martin PL. 2021. *The Politics of Rights of Nature: Strategies for Building a More Sustainable Future*. The MIT Press. Cambridge, Massachusetts.



## 2.2 - Rights of Wetlands in the Rights of Nature and Earth Law Context

Craig Kauffman and Pamela Martin published the book, *The Politics of Rights of Nature: Strategies for Building a More Sustainable Future* in 2021<sup>10</sup>. This book provides detailed and extensive analysis of the current state of Rights of Nature (RoN), based on years of research. Much of the following section draws on this excellent and highly recommended resource for those wishing to understand the current Rights of Nature movement.

It is important to acknowledge that many Indigenous Peoples have been at the forefront of advancing Rights of Nature. Kauffman & Martin (2021) state, “Indigenous knowledge and governance models recognizing humans as part of Nature have been fundamental in recent efforts to expand the concept of rights beyond humans to include all living things.”

From Kauffman & Martin (2021):

“In passing RoN into Ponca tribal law, for the first time we saw our Indigenous values and rights reflected in Western law. We are not people protecting Nature, we are Nature protecting itself. This is a powerful way to create system change.”

- Casey Camp-Horenik,  
Ponca tribal leader,  
Ponca Nation of Oklahoma

“Drawing on Indigenous knowledge, ecological science, or both, the people in our book recognized that a transformation to ecologically sustainable development would require adjusting human systems to be consistent with the scientific laws governing how natural ecosystems function – that is, to live in harmony with Nature rather than constantly battling it and trying to dominate it. This includes changing legal systems to recognize that humans are part of the ecosystems that provide the conditions for human well-being rather than treating humans as separate and distinct from Nature.”

In recent decades, communities, and the ecosystems that they rely on, have been experiencing unprecedented pressure from unsustainable development and extractive industries, leading to the current climate and biodiversity emergency and ecosystem decline and collapse. Further, communities are experiencing the failure of existing environmental protection laws and governance structures to protect their life-supporting ecosystems from the harms associated with unsustainable development and extractive industries. Since the early 2000’s, Rights of Nature laws have been emerging in disparate areas around the world in response to these environmental and social stressors and the failures of existing governance structures and laws, similar to how species develop similar adaptations to similar evolutionary pressures in geographically separate locations (i.e. convergent evolution) (Kaufman and Martin 2021).

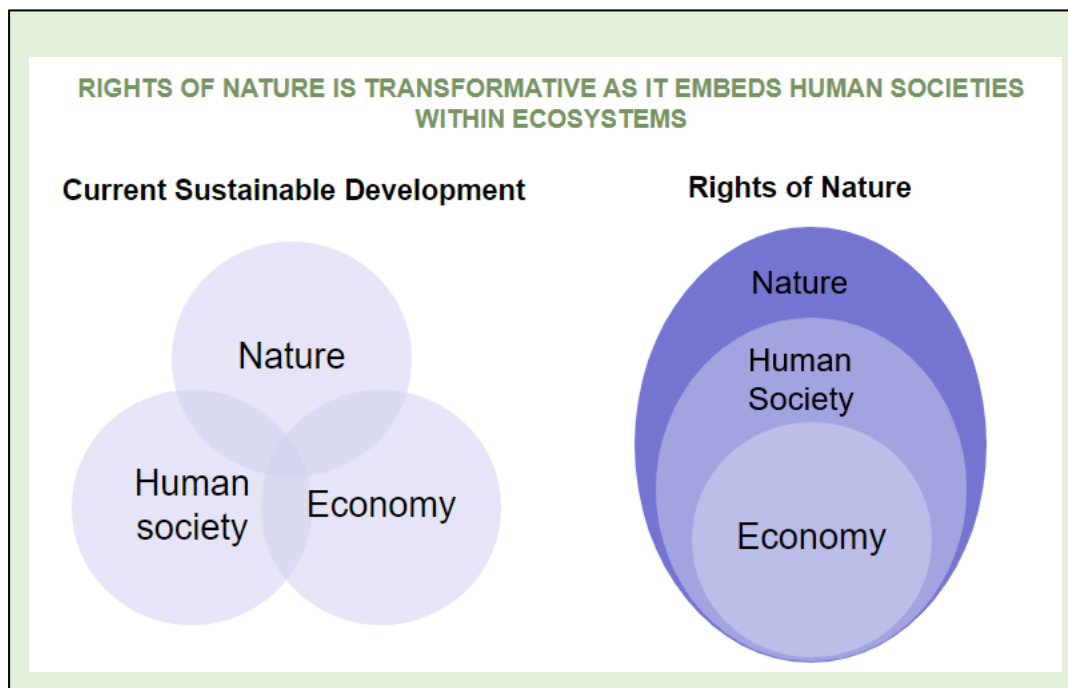
As a result of similar environmental pressures and governance failures, communities in geographically disparate locations have turned to RoN and Earth Jurisprudence as a way of transforming legal systems. These early RoN laws and legal provisions have a lot of variety, reflecting their differing geographical, cultural, political, institutional, legal and ecological settings. Differences include defining Nature differently, granting different rights, integrating Rights of Nature with Indigenous rights or not, and creating different enforcement mechanisms and institutional structures. Some RoN approaches have been more successful than others. Success can be measured in terms of scope (range of rights granted & how

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<sup>10</sup> Kauffman CM & Martin PL. 2021. *The Politics of Rights of Nature: Strategies for Building a More Sustainable Future*. The MIT Press. Cambridge, Massachusetts.

widely the rights are applied) & strength (capacity for laws to be enforced by both formal authorities and also individuals). Norm construction has occurred from local to international levels with influences diffusing in multiple directions, producing transformational changes in legal structures, thus changing the practice of sustainable development (Kauffman and Martin 2021).

Figure 2.1: Rights of Nature Model vs Current Sustainable Development Model, adapted from Kauffman and Martin, 2021.



## 2.2.1 - What are Rights of Wetlands, Rights of Nature, and Earth Law?

### 2.2.1.1 - *Earth Law*

Earth Law, also referred to as Earth Jurisprudence, is a broad philosophy stating that human legal, political, economic & social systems should follow the fundamental laws of Nature, and be consistent with how Nature actually works (a.k.a. ecological reality), rather than exploiting, dominating, and destroying Nature, thereby avoiding environmental, climatic, and biodiversity degradation and destruction that then leads to societal degradation and collapse. It is a philosophy that prioritizes a dynamic balance with healthy ecosystems...living in harmony with Nature. This dynamic balance is achieved by placing the health and well-being of all living beings (including humans) ahead of human self-interest alone (Kauffman & Martin 2021).

The term, “Earth Law” refers to bringing human actions, values, and society into conformance with the Earth’s natural laws, as these natural laws ultimately determine the functionality of ecosystems and the survival of species within those ecosystems, including our own.

“Scientists now understand that the world is not a collection of discrete parts, but rather “a dynamic and fluid interconnected community of life best understood in terms of patterns and relationships” (Ito 2019, 9)...The law must value Nature (understood as nested systems) primarily for its ability to generate the conditions for life rather than for providing stocks of resources to be extracted.” (Kauffman and Martin 2021)

Earth Law provides the philosophical and ethical foundation for Rights of Nature and Rights of Wetlands.

#### 2.2.1.2 - *Science can support an Earth Law approach*

Because Earth Law is a philosophy founded on the idea that society, and society's laws, should conform with the laws of Nature, it comes as no surprise that science-based rationales for supporting an Earth Law/Rights of Nature approach are being made within the scientific community, and that scientists are collaborating across disciplines with lawyers, Indigenous holders of traditional knowledge, policymakers, academics from a range of disciplines, and Rights of Nature activists among others. The *Universal Declaration of the Rights of Wetlands* was drafted by an interdisciplinary group of wetland and climate scientists, policy specialists, and lawyers, and published in an article titled, *Towards a Universal Declaration of the Rights of Wetlands*<sup>11</sup>, that provided the legal, policy, and scientific case for supporting wetlands' inherent rights.

Recent scientific research<sup>12,13,14,15,16</sup> documenting communication between plants and plant behaviour patterns demonstrating cooperation, decision-making, learning, remembering, etc. brings into question previous human concepts of plants as lacking these markers of intelligence<sup>17</sup>, agency, and sentience and supports the idea that the living world, including plants and ecosystems, has inherent rights by virtue of being members of the Earth community. Further, this recent scientific research brings science into greater alignment with many Indigenous People's cosmovisions.

However, Gilbert et al (2023)<sup>18</sup> report that greater engagement of scientists in Rights of Nature research and collaborations with other disciplines is needed, as most of the work to develop Rights of Nature thus far has been conducted by, "...networks of activists, NGOs, lawyers, and policymakers (Kauffman and Martin, 2021)"<sup>19</sup> and informed by local community and Indigenous knowledge.

#### 2.2.1.3 - *Rights of Nature/Rights of Wetlands*

Rights of Nature (including Rights of Wetlands) is an approach that enables Nature, wholly or partly (i.e. ecosystems such as wetlands, or specific species), to have legal rights like those of people and corporations and to put Earth Law into practice in a modern legal system. Typically, Nature's rights include the right to exist, to flourish or thrive, and to

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<sup>11</sup> Davies GT, Finlayson CM, Pritchard DE, Davidson NC, Gardner RC, Moomaw WR, Okuno E, Whitacre JC. 2020. Towards a Universal Declaration of the Rights of Wetlands. *Marine and Freshwater Research*. <https://doi.org/10.1071/MF20219>

<sup>12</sup> Simard, S. 2021. *Finding the Mother Tree*. Alfred A. Knopf. New York.

<sup>13</sup> Wohlleben, P. *The Hidden Life of Trees*. 2015. Greystone Books. Vancouver/Berkeley.

<sup>14</sup> Sheldrake, M. 2020. *Entangled Life*. Random House. New York.

<sup>15</sup> Gagliano, M., Vyazovskiy, V., Borbély A. et al. Learning by Association in Plants. *Sci Rep* 6, 38427. <https://doi.org/10.1038/srep38427>

<sup>16</sup> Garzón, F.C. 2007. The Quest for Cognition in Plant Neurobiology. *Plant Signaling & Behavior* 2:4, 208-211

<sup>17</sup> 1a. the faculty of understanding: capacity to know or apprehend; 2b. ...the...ability...to use one's existing knowledge to meet new situations and solve new problems, to learn, to foresee new problems...to use...relationships, to create new relationships...ability to perceive one's environment.." – Webster's Third New International Dictionary. 1986. Merriam-Webster, Inc. Springfield, MA, USA.

<sup>18</sup> Gilbert J, Soliev I, Robertson A, Vermeylen S, Williams NW, Grabowski RC. 2023. Understanding the Rights of Nature: Working Together Across and Beyond Disciplines. *Human Ecology* 51:363-377. <https://doi.org/10.1007/s10745-023-00420-1>

<sup>19</sup> Gilbert J, Soliev I, Robertson A, Vermeylen S, Williams NW, Grabowski RC. 2023. Understanding the Rights of Nature: Working Together Across and Beyond Disciplines. *Human Ecology* 51:363-377. <https://doi.org/10.1007/s10745-023-00420-1>

regenerate. Establishing these legal rights enables the defence of Nature in court and development of governance models that proactively protect and recognize Rights of Nature, not just for the benefit of people, but for the sake of all of Nature (of which people are a part). A Rights of Nature approach entails a commitment to living in harmony with Nature, respecting Nature, and treating Nature with fairness and gratitude, rather than viewing Nature solely as an objectified resource for humans. A Rights of Nature approach often aligns with the world view of many Indigenous Peoples and Local Communities.

As noted above, human use of Nature, such as fishing or farming, is acceptable as long as the fundamental character of Nature or an ecosystem is not changed or destroyed. The ecosystem has the right to continue to function and to remain healthy, while providing benefits such as food and shelter to various species including humans. There is a balancing of rights and needs, which is the essence of living in harmony, whether it is with our human families and communities or with our broader community of living beings that are the Earth community, the Web of Life. Without the Web of Life, we cannot survive. Ultimately recognizing our duty to support the Rights of Nature enables our own survival over the coming decades and centuries.

A Rights of Nature approach is a tool to achieve Earth Law by enabling Nature to have rights and legal standing like those of people and corporations. These rights can be realised through community action and practice, customary laws, policy, and legislation. Rights of Nature can be achieved by changing governance and management approaches without a change in the law but ideally, to achieve Earth Law, legislation is also changed.

**Earth Law Philosophy:** Laws, politics, economy, and society are changed to be consistent with how Nature works/ecological reality.

**Rights of Nature/Wetlands:** Nature/Wetlands is/are given rights and legal standing; a tool for enacting Earth Law.

**Standard Environmental Laws:** Provides some protection but Nature is viewed as object/property, or a storehouse for human use and fundamental character of Nature is not protected - often Nature continues to be degraded or destroyed.

#### 2.2.1.4 - *Nature's Rights Model or Legal Personhood Model?*

Two different Rights of Nature models have emerged. The Nature's Rights Model grants rights to all of Nature broadly, and anyone can advocate on behalf of Nature (but no one is required to). This model recognizes rights unique to Nature, rather than granting human rights to Nature, which avoids anthropomorphism and avoids assigning inappropriate or useless rights to Nature. Often the rights include the right to exist, to maintain ecological functioning or to flourish/thrive, and the right to restoration and regeneration. Because no one is required to represent or defend Nature, this approach tends to be reactive, rather than proactive, and to be implemented through court cases.

The Legal Personhood Model grants human rights to specific ecosystems, often with specific guardians identified as representatives of the ecosystem. A benefit is that specific people are required to act on behalf of specific ecosystems, making it easier to be proactive, and easier to have clarity regarding who will represent the ecosystem in court. On the other hand,

human rights can be inappropriate for an ecosystem, and can be paired with inappropriate liabilities, such as holding a river responsible for flood damages. Rights that are important to a specific ecosystem or species can be left out, such as a lack of recognition of a wetland's right to a natural hydrologic regime, or a fish's right to swim.

As noted, there are pros and cons to each of these models. Examples of a hybrid approach exist as well, where people have tried to combine the best of both worlds.

Table 2.1: Two models for structuring Rights of Nature Laws (adapted from Kauffman and Martin 2021)

TWO MODELS FOR STRUCTURING RIGHTS OF NATURE LAWS	
The Nature's Rights Model (e.g. Bolivia, Ecuador, & United States)	The Legal Personhood Model (e.g. Colombia, India, & New Zealand)
All Nature (within legal jurisdiction) has rights	Rights of a particular ecosystem are recognized
Unique rights for ecosystems are recognised	Human rights (legal personhood) are extended to ecosystems
Anyone can speak for Nature, but is not obliged to	Specific guardians represent the ecosystem at all times
RoN is protected when violations are reported and upheld	Guardians are embedded in integrated ecosystem management institutions; RoN is reflected in decision making (proactive)

#### 2.2.1.5 - *Hierarchy of Rights*

In establishing recognition of rights for Nature, ecosystems, wetlands, and species, it can be helpful to think of a hierarchy of rights, with the broadest, most general category being rights for Nature or Mother Earth. Such rights often include the following:

- Right to Exist/Right to Be
- Right to Habitat or a Place to Be
- Right to Participate in Earth's Processes
  - Maintain ecological integrity, function, structure
  - Maintain role in Web of Life
  - Participate in evolutionary processes
- Right to Regeneration and Restoration
- Right to Flourish or Thrive

At the World People's Conference on Climate Change and the Rights of Mother Earth in 2010 in Cochabamba, Bolivia, participants issued the *Universal Declaration of the Rights of Mother Earth*<sup>20</sup>, which states, "Mother Earth is a unique, indivisible, self-regulating community of interrelated beings that sustains, contains and reproduces all beings" and outlines twelve general rights that are appropriate for all beings that are part of Mother Earth.

<sup>20</sup> <https://www.garn.org/wp-content/uploads/2024/02/ENG-Universal-Declaration-of-the-Rights-of-Mother-Earth.pdf> (Accessed 2024-03-25)

This declaration also articulates responsibilities that humans have towards Mother Earth and the beings from which she is composed.

Rights of Nature seminal thinkers Christopher Stone (1972)<sup>21</sup> and Thomas Berry (2001)<sup>22</sup> have articulated the need for entity-specific rights, such that:

- Mother Nature has Nature rights
  - Ecosystems have ecosystem rights
    - Wetlands have wetland rights
      - Rivers have river rights
      - Mangroves and salt marshes have mangrove and salt marsh rights
      - Permafrost peatlands have permafrost peatland rights
    - Forests have forest rights
      - Trees have tree rights
    - Soil has soil rights
    - Humans have human rights
    - Wolves have wolf rights
    - Fish have fish rights
    - Wild rice (Manoomin) has wild rice/manoomin rights

As noted by Thomas Berry, the rights are qualitatively different rather than quantitatively different. A bird needs the right to fly, whereas a tree needs the right to healthy soil and water, and rivers need the right to flow. In recent years, a number of declarations have articulated ecosystem-specific rights of Nature, including:

- *Universal Declaration of the Rights of Wetlands*<sup>23</sup>: <https://www.rightsofwetlands.org/>
- *Universal Declaration on the Rights of Rivers*: <https://www.rightsofrivers.org/>
- *The Living Forest Declaration*: <https://kawsaksacha.org/>

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<sup>21</sup> Stone C (1972) *Should Trees Have Standing?: Law, Morality, and the Environment*. Oxford University Press. New York.

<sup>22</sup> Berry T (2001) *The Origin, Differentiation and Role of Rights*. <https://www.ties-edu.org/wp-content/uploads/2018/09/Thomas-Berry-rights.pdf>

<sup>23</sup> Davies GT, Finlayson CM, Pritchard DE, Davidson NC, Gardner RC, Moomaw WR, Okuno E, Whitacre JC. 2020. *Towards a Universal Declaration of the Rights of Wetlands*. *Marine and Freshwater Research*. <https://doi.org/10.1071/MF20219>

## Global support for Rights of Nature and Rights of Wetlands

As of 2021, seventeen countries on five continents have enacted at least 178 Rights of Nature legal provisions, with many more pending (Kauffman & Martin 2021). The table below provides examples of how countries have been recognizing Rights of Nature in a variety of legal frameworks.

Table 2.2: Legal Recognition of Rights of Nature (based on Kauffman and Martin 2021)

LEGAL RECOGNITION OF RIGHTS OF NATURE			
Local Governments & Tribal Authorities' Legal Provisions	National & Tribal Laws	Local & National Court Rulings Recognizing RON	Regulatory Policy
Argentina	Constitution	Bangladesh	Santa Monica, California, USA
Brazil	Ecuador	Colombia	
Colombia		India	
France's Loyalty Islands	National Laws		
India	Bolivia		
Italy	Aotearoa/New Zealand		
Mexico	Uganda		
Netherlands			
USA	Tribal Laws Ho-Chunk Nation, USA Ponca Nations, USA		

As Kauffman and Martin state, there are now many global Rights of Nature organizations, including:

- Community Environmental Legal Defense Fund (CELDF)
- Global Alliance for Rights of Nature (GARN)
- Earth Law Center
- Ecological Law & Governance Organization
- Gaia Foundation
- African Earth Jurisprudence Network
- Movement Rights
- Nature's Rights

Additionally, Rights of Nature is supported and/or referenced in numerous international governance documents (Kauffman and Martin 2021), including:

- Convention on Biological Diversity Zero Draft of the Post-2020 Global Biodiversity Framework (United Nations Environment Program 2020) states that members should: "...consider and recognize, where appropriate, the rights of Nature"
- Convention on Biological Diversity Kunming-Montreal Global Biodiversity Framework (2022) states, "people to live well in harmony with Mother Earth"
- UN Harmony with Nature Programme (created in 2009)
- Convention on Biological Diversity (2012)
- UN 2030 Agenda for Sustainable Development (2015)
- International Union for Conservation of Nature (2016)
- Proposed Univ. Decl. of Rights of Mother Earth (2010)
- Inter-American Court of Human Rights (2017)
- Pope Francis's encyclical letter *Laudata si'* (2015)

The Rights of Wetlands are recognized specifically in the following:

- UN Dep't of Economic & Social Affairs Sustainable Development Rights of Wetlands Partnership (2023): Operationalization of the Universal Declaration of the Rights of Wetlands See: <https://sdgs.un.org/partnerships/operationalization-universal-declaration-rights-wetlands>, which states the following:
  - “Rights of Wetlands is part of a global Rights of Nature movement, which is transformative and shifts the globally-predominant paradigm that is responsible for endangering the wellbeing and existence of Nature. The Rights of Nature paradigm reconfigures the human-wetlands relationship from one of exploitation, extraction, and depletion to one that recognizes the Rights and living beingness of wetlands, and is based on reciprocity, kinship, and gratitude.
  - Rights of Wetlands is about behavioral and systems change through legal frameworks and through how communities and individuals interact with the wetlands they live next to or within.
  - Rights of Wetlands declares that all wetlands are entities entitled to inherent and enduring rights, which derive from their existence as members of the Earth community and should possess legal standing in courts of law.”
- Convention on Wetlands (2021) Global Wetland Outlook Special Edition (as discussed in greater detail in Section 2.3.1)

## 2.3 - Ramsar Convention on Wetlands

This section provides more detailed discussion of Rights of Wetlands in the Ramsar Convention on Wetlands context.

### 2.3.1 - Global Wetland Outlook Special Edition 2021

The Ramsar Convention on Wetlands (the Ramsar Convention) recognizes Rights of Wetlands and of Nature in general as an important dimension of justice and as a means for establishing a healthier relationship with wetlands and Nature in the Ramsar Convention's *Global Wetland Outlook Special Edition 2021*:

“Finally, wetlands play critical spiritual, aesthetic and cultural roles. Ecosystem services encompass far more than strictly utilitarian purposes. For example, thousands of pilgrims each year brave harsh weather to visit the high altitude, Himalayan wetland Mansarovar for spiritual atonement (Verschuuren, 2016), one of innumerable sacred lakes, wells, springs and rivers. An important dimension of justice, for humans and the planet, is the recognition of ‘rights of nature’ within legal frameworks, including proposals for a universal ‘Rights of Wetlands’ statement. This puts the human species in a more respectful relationship with nonhuman nature for effective, sustainable and ethical ‘stewardship of the Earth and the life on it’ (Davies et al. 2020)<sup>24</sup>.

### 2.3.2 - Convention on Wetlands COP14

The Ramsar Convention on Wetlands Conference of the Parties 14 (COP14) included a Side Event titled, *The Universal Declaration of the Rights of Wetlands: A Paradigm Shift to Meet Global Challenges*, co-sponsored by the Society of Wetland Scientists Rights of Wetlands Initiative and Wetlands International. The Side Event was intended to inform future implementation of the Ramsar Strategic Plan (especially paragraph 31 and Target 10) and inform discussions on a number of Draft Resolutions. The Side Event included presentations

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<sup>24</sup> Convention on Wetlands. (2021). *Global Wetland Outlook: Special Edition 2021*. Gland, Switzerland: Secretariat of the Convention on Wetlands. P 33.



that articulated the eight Rights of Wetlands listed in the *Universal Declaration of the Rights of Wetlands* and various case studies; presented a recording of Patricia Gualinga, an Historic Leader of the Sarayaku, a Kichwa speaking people of the Ecuadorian Amazon, who spoke about the Sarayaku world view as it relates to recognition of the living beingness and sentience of the forest and Mother Earth/Pacha Mama; identified how Rights of Wetlands support the Ramsar Convention; discussed legal challenges and opportunities; and included a panel discussion with environmental law, wetland ecology, and conservation practice experts from around the world who discussed approaches to operationalizing the eight Rights at national to community levels.

At the Ramsar Convention COP14, a number of Resolutions were passed that are consistent with a Rights of Wetlands approach, including those that recognize the importance of the *Global Wetland Outlook Special Edition 2021*; of Indigenous Peoples and Local Communities and Traditional Knowledge; and of the importance of the synergies between Multilateral Environmental Agreements. Some of these resolutions are listed below:

**2.3.2.1 - *Resolution XIV.4 Review of the fourth Strategic Plan of the Convention on Wetlands, additions for the period COP14-COP15 and framework for the fifth Strategic Plan***

The Conference of the Contracting Parties:

19. DECIDES that the fifth Strategic Plan will be informed by, *inter alia*, the Special Edition 2021 of the *Global Wetland Outlook*, the Convention Secretariat's analysis of the national reports, as well as key agreed elements external to the Convention including: the SDGs, the Global Biodiversity Framework, wetland contributions to the UNFCCC, the UN Decade on Ecosystem Restoration, and any relevant work of the Intergovernmental Panel on Climate Change (IPCC) and other global programmes relating to wetlands;

20. RECOGNIZES the important role that all partners and stakeholders – individuals, societies and organizations – can play, and the need to enable the contributions in particular of Indigenous Peoples, youth, all women and girls, local communities and the business sector to conserving, restoring and wisely using wetlands and to providing solutions to global environmental, social and economic challenges;

**2.3.2.2 - *Resolution XIV.6 Enhancing the Convention's visibility and synergies with other multilateral environmental agreements and other international institutions***

4. EMPHASIZING the importance of cooperation among all relevant Conventions, organizations and initiatives to contribute to the objectives of the CBD and its post-2020 Global Biodiversity Framework once it is adopted.

9. WELCOMING the memorandum of understanding and the sixth joint work plan between the Convention on Wetlands and the CBD to enhance the conservation and sustainable and wise use of biodiversity, especially in wetlands, helping to ensure the full achievement of the forthcoming Vision, Mission, and Goals of the CBD's post-2020 Global Biodiversity Framework when adopted, and the Mission and Targets of the Convention on Wetlands Strategic Plan 2016-2024, to be signed at the 15<sup>th</sup> meeting of the Conference of the Parties to the CBD;

**2.3.2.3 - *Resolution XIV.12 Strengthening Ramsar connections through youth***

1.ACKNOWLEDGING that continued wetland loss requires inclusive and participatory approaches and diverse voices to raise awareness and strengthen the implementation of the Convention;

9.REAFFIRMING the importance of mainstreaming the participation of under-represented groups in the implementation of the Convention, through: Resolution XIII.15 on *Cultural values and practices of Indigenous Peoples and local communities*; Resolution XIII.18 on *Gender and wetlands*; and Resolution VII.8 on *Guidelines on establishing and strengthening local communities' and indigenous people's participation in the management of wetlands*;<sup>25</sup>

## 2.4 - Convention on Biological Diversity

As mentioned above, the Kunming-Montreal Global Biodiversity Framework (Framework), an agreement signed by the CBD Signatory Parties at the 2022 COP15, established the goals and targets for protecting Nature through 2030, and working towards achieving “living in harmony with nature” by 2050. A number of the Framework’s Resolutions align with and support a Rights of Nature/Rights of Wetlands approach, including:

### 2.4.1.1 - Resolution 4

The Conference of the Parties,

*Urges* Parties and other Governments, with the support of the intergovernmental and other organizations, as appropriate, to implement the Kunming-Montreal Global Biodiversity Framework, and, in particular, to enable participation at all levels of government, with a view to fostering the full and effective contributions of women, youth, Indigenous Peoples and local communities, civil society organizations, the private and financial sectors, and stakeholders from all other sectors, to that end;

### 2.4.1.2 - Resolution 6

*Reaffirms* its expectation that Parties and other Governments will ensure that the rights of Indigenous Peoples and local communities are respected and given effect to [*sic*] in the implementation of the Kunming-Montreal Global Biodiversity Framework;

### 2.4.1.3 - Annex Section C.

### 2.4.1.4 - Considerations for the implementation of the Kunming-Montreal Global Biodiversity Framework

7. The Kunming-Montreal Global Biodiversity Framework, including its Vision, Mission, Goals and Targets, is to be understood, acted upon, implemented, reported and evaluated, consistent with the following:

#### *Contributions and rights of Indigenous Peoples and local communities*

- (a) The Framework acknowledges the important roles and contributions of Indigenous Peoples and local communities as custodians of biodiversity and as partners in its conservation, restoration and sustainable use. The Framework’s implementation must ensure that the rights, knowledge, including traditional knowledge associated with biodiversity, innovations, worldviews, values and practices of Indigenous Peoples and local communities are respected, and documented and preserved with their free, prior and informed consent, including and through their full and effective participation in decision-making, in accordance with the relevant national legislation, international

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<sup>25</sup> 14<sup>th</sup> Meeting of the Conference of the Contracting Parties to the Ramsar Convention on Wetlands, “Wetlands Action for People and Nature”. 2022. Wuhan, China and Geneva, Switzerland.

instruments, including the United Nations Declaration of the Rights of Indigenous Peoples, and human rights law. In this regard, nothing in this framework may be construed as diminishing or extinguishing the rights that Indigenous Peoples currently have or may acquire in the future;

#### *Different value systems*

(b) Nature embodies different concepts for different people, including biodiversity, ecosystems, Mother Earth, and systems of life. Nature's contributions to people also embody different concepts, such as ecosystem goods and services and nature's gifts. Both nature and nature's contributions to people are vital for human existence and good quality of life, including human well-being, living in harmony with nature, and living well in balance and harmony with Mother Earth. **The Framework recognizes and considers these diverse value systems and concepts, including, for those countries that recognize them, rights of nature and rights of Mother Earth, as being an integral part of its successful implementation;**

#### *Formal and informal education*

(o) Implementation of the Framework requires transformative, innovative and transdisciplinary education, formal and informal, at all levels, including science-policy interface studies and lifelong learning processes, recognizing diverse world views, values and knowledge systems of Indigenous Peoples and local communities;

#### *Cooperation and synergies*

(q) Enhanced collaboration, cooperation and synergies between the Convention on Biological Diversity and its Protocols, other biodiversity-related conventions, other relevant multilateral agreements and international organizations and processes, in line with their respective mandates, including at the global, regional, subregional and national levels, would contribute to and promote the implementation of the Framework in a more efficient and effective manner;

#### *2.4.1.5 - Annex Section E. Theory of Change*

9. The Kunming-Montreal Global Biodiversity Framework is built around a theory of change which recognizes that urgent policy action is required globally, regionally and nationally to achieve sustainable development so that the drivers of undesirable change that have exacerbated biodiversity loss will be reduced and/or reversed to allow for the recovery of all ecosystems and to achieve the Convention's Vision of living in harmony with nature by 2050.

#### *2.4.1.6 - Annex Section F. 2050 vision and 2030 mission*

10. The vision of the Kunming-Montreal Global Biodiversity Framework is a world of living in harmony with nature where "by 2050, biodiversity is valued, conserved, restored and wisely used, maintaining ecosystem services, sustaining a healthy planet and delivering benefits essential for all people."

11. The mission of the Framework for the period up to 2030, towards the 2050 vision is: To take urgent action to halt and reverse biodiversity loss to put nature on a path to recovery for the benefit of people and planet by conserving and sustainably using biodiversity and by ensuring fair and equitable sharing of benefits from the use of genetic resources, while providing the necessary means of implementation.

#### 2.4.1.7 - *Annex Section H. Global targets for 2030*

##### TARGET 19

Substantially and progressively increase the level of financial resources from all sources...to implement national biodiversity strategies and action plans, mobilizing at least \$200 billion per year by 2030, including by:

(f) Enhancing the role of collective actions, including by Indigenous Peoples and local communities, Mother Earth centric actions<sup>26</sup> [**see footnote for Framework reference to rights-based approach**] and non-market-based approaches including community based natural resource management and civil society cooperation and solidarity aimed at the conservation of biodiversity;

#### 2.4.1.8 - *Annex Section K. Communication, education, awareness and uptake*

22. Enhancing communication, education, and awareness on biodiversity and the uptake of the Kunming-Montreal Global Biodiversity Framework by all actors is essential to achieve its effective implementation and behavioural change, and to promote sustainable lifestyles and biodiversity values, including by:

(a) Increasing awareness, understanding and appreciation of the knowledge systems, diverse values of biodiversity and nature's contributions to people, including ecosystems functions and services and traditional knowledge and worldviews of Indigenous Peoples and local communities as well as of biodiversity's contribution to sustainable development.

## 2.5 - Case studies – An Overview

Examples of Rights of Wetlands or Rights of Nature have been implemented in countries around the world. Below is a sampling of such cases, with discussion of both the successful aspects of the cases, and the lessons learned. Some of the examples are more successful than others. It is useful to examine these examples to understand both the successes and the lessons learned from less successful cases. These examples are drawn from both Rights of Wetlands cases and broader Rights of Nature cases, as the principles and lessons learned embodied by RON cases can be applied to wetlands scenarios.

### 2.5.1 - Constitution of the Republic of Ecuador

In **2008**, Ecuador became the first country in the world to recognize the Rights of Nature in the national Constitution. By including Rights of Nature in the Constitution, Ecuador has created the overarching legal framework for legal defence of Rights of Nature, which has enabled defence of RON in court cases. However, even if Rights of Nature are successfully defended in court, the implementation of court-ordered remedies/mitigation for harm done to Nature has not always been successful on the ground. Because the Constitutional provisions did not empower local level governance to defend Rights of Nature, specific legislation on RON implementation is still needed to provide a more developed legal structure, and to empower various levels of government to implement the Rights of Nature and court-ordered remedies/mitigation for harms to Nature.

*Constitution of the Republic of Ecuador*

<https://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>

*Preamble*

We women and men, the sovereign people of Ecuador

RECOGNIZING our age-old roots, wrought by women and men from various peoples,

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<sup>26</sup> "Mother Earth Centric Actions: **Ecocentric and rights-based approach** enabling the implementation of actions towards harmonic and complementary relationships between peoples and nature, promoting the continuity of all living beings and their communities and ensuring the non-commodification of environmental functions of Mother Earth."

CELEBRATING nature, the Pacha Mama [Mother Earth], of which we are a part and which is vital to our existence,...

CALLING UPON the wisdom of all the cultures that enrich us as a society,  
AS HEIRS to social liberation struggles against all forms of domination and colonialism  
AND with a profound commitment to the present and to the future,  
Hereby decide to build

A new form of public coexistence, in diversity and in harmony with nature, to achieve the good way of living, the *sumak kawsay*;

### *Title I, Chapter Seven*

#### Rights of nature

Article 71. Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.

Article 72. Nature has the right to be restored. This restoration shall be apart from the obligation of the State and natural persons or legal entities to compensate individuals and communities that depend on affected natural systems.

#### 2.5.1.1 - *Rights of Nature Court cases in Ecuador*

**2011** Vilcabamba River court case (see <https://www.garn.org/vilcabamba-river-1-year-after/>). In this case, the Provincial Court of Justice of Loja ordered remedial actions to be taken after damages to the Vilcabamba River resulted from a road construction project – a legal win for ROW/RON. However, the required remedial actions have not been implemented fully, suggesting that further enforcement of the court decision is necessary.

**2021** Reserva Majagual Mangrove Forest Court Case (see <https://www.earthlawcenter.org/blog-entries/2022/3/hot-ecuadorian-mangrove-news-you-mightve-missed#:~:text=This%20past%20September%E2%80%94after%20a%20legal%20contest%20that%20lasted,that%20interrupted%20mangroves%E2%80%99%20functions%20and%20threatened%20their%20wellbeing.>) The Constitutional Court ruled that activities and infrastructure that threaten the mangrove forest well-being and interrupts its functions are unconstitutional. This mangrove forest is the world's tallest. The consistent involvement of organizations such as the Earth Law Center, who advocate on behalf of ROW/RON in court cases, has led to successful court case outcomes for Nature.

**2021** Los Cedros Cloud Forest Court Case (see <https://www.theguardian.com/environment/2021/dec/02/plan-to-mine-in-ecuador-forest-violate-rights-of-nature-court-rules-aoe> )

Ecuador's Constitutional Court ruled that mining for copper and gold in the Los Cedros Cloud Forest, located in one of the most biodiverse parts of the planet, would violate the Rights of Nature, and therefore are unconstitutional activities in this location. The lawsuit was brought by local communities in the vicinity of the forest, a case that had been unsuccessful in the lower courts. This forest is home to flora and fauna that do not occur anywhere else on the planet.

#### 2.5.2 - The Plurinational State of Bolivia

##### 2.5.2.1 - *2010 Law of Rights of Mother Earth*<sup>27</sup>

This law recognizes the rights of Mother Earth (and all its components, including human communities), and the associated societal and state duties and obligations. This law was strongly influenced by Indigenous Andean spirituality and the recognition of Mother Earth/Pacha Mama as a living entity and equality among all species, including humans.

<sup>27</sup> <http://www.worldfuturefund.org/Projects/Indicators/motherearthbolivia.html>

2.5.2.2 - *2012 Framework Law of Other Earth and Integral Development for Living Well*<sup>28</sup> (Law 300 of 2012)

This law was passed to operationalize the 2010 Law of Rights of Mother Earth. The law establishes:

“...the vision and the fundamentals of integral development in harmony and balance with Mother Earth to live well, guaranteeing the continued capacity of Mother Earth to regenerate natural systems, recuperating and strengthening local and ancestral practices, within the framework of rights, obligations and responsibilities”. The Framework Law sets out the core principles governing its implementation (Article 4) and defines Mother Earth as “...the dynamic living system made up of the indivisible community of all life systems and beings living, interrelated, interdependent and complementary, which they share a common destiny. Mother Earth is considered sacred; feeds and is the home that contains, sustains and reproduces all living beings, ecosystems, biodiversity, organic societies and the individuals that compose it.” (Article 5.1)

In terms of protection of the rights in practice, the Framework Law specifies that an infringement of the rights of Mother Earth constitutes an infringement of the collective and individual rights of the people (Article 38), although standing to bring a claim is restricted to those individuals or groups directly affected by an alleged violation (Article 39).

The law authorised the creation of two new institutions to support the law:

- A Mother Earth Ombudsman’s Office (Defensoria de la Madre Tierra), as a counterpoint to the human rights ombudsman office (Defensoría del Pueblo), to investigate alleged violations of the rights of Mother Earth and issues recommendations to the government; and
- The Plurinational Mother Earth Authority (Autoridad Plurinacional de la Madre Tierra) (APMT) within the Ministry of Environment and Water, as the state entity responsible for much of the development, overseeing and co-ordination of projects, programmes and research relating to climate change.

The Framework Law was an essential step towards the operationalisation of Law 71 of 2010, considered to be the first national environmental law globally to recognise the rights of a natural entity. Further, it sets up an institutional structure to protect these rights in practice and reframes the relationship between humans and the natural world.

The APMT was created by Supreme Decree 1696 in 2013, following various bureaucratic delays and obstacles. However, to date the Mother Earth Ombudsman’s Office has reportedly not been established nor have any cases being investigated or decided with respect to the rights of Mother Earth. Tensions continue between the vision set out in the Constitution of Bolivia and the Framework Law and ongoing extractivism across the country.”<sup>29</sup>

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<sup>28</sup> <https://www.documentcloud.org/documents/7220617-Framework-Law-of-Mother-Earth-and-Integral.html>

<sup>29</sup> <http://files.harmonywithnatureun.org/uploads/upload1131.pdf>

### 2.5.3 - New Zealand

#### 2.5.3.1 - *2017 Aotearoa/New Zealand Te Awa Tupua Act/Whanganui River Claims Settlement Bill*

The Aotearoa/New Zealand government gave legal rights of personhood to the Whanganui River in an agreement with the Māori iwi (tribes) that also gives special recognition to the relationship of the Māori iwi with the river, whom they regard as their ancestor.

Te Awa Tupua is an indivisible and living whole, comprising the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements [*Te Awa Tupua Act*, Subpart 2, Section 12].

Te Awa Tupua is a legal person and has all the rights, powers, duties, and liabilities of a legal person [*Te Awa Tupua Act*, Subpart 2, Section 14].

*‘Ko au te Awa, ko te Awa ko au’*: I am the River and the River is me: The iwi and hapū of the Whanganui River have an inalienable connection with, and responsibility to, Te Awa Tupua and its health and well-being [*Te Awa Tupua Act*, Subpart 2, Section 12].

...we consider the river an ancestor, and always have [Gerrard Albert, Whanganui iwi lead negotiator, quoted in Roy 2017].

We have fought to find an approximation in law so that all others can understand that from our perspective treating the river as a living entity is the correct way to approach it, as in indivisible whole, instead of the traditional model for the last 100 years of treating it from a perspective of ownership and management [Gerrard Albert in Roy 2017].

### 2.5.4 - Colombia

#### 2.5.4.1 - *Columbia Court Cases*

In **2017**, the Colombian Constitutional Court ruled that the Atrato River basin possesses rights to “protection, conservation, maintenance, and restoration”. (See <https://redjusticiaambientalcolombia.files.wordpress.com/2017/05/sentencia-t-622-de-2016-rio-atrato.pdf> )

In **2018**, the Colombian Supreme Court recognized, “the Colombian Amazon as an entity, *subject of rights*, and beneficiary of the protection, conservation, maintenance and restoration<sup>30</sup>” in a case brought by 25 young people aged 7 to 25. (<https://www.iucn.org/news/world-commission-environmental-law/201804/colombian-supreme-court-recognizes-rights-amazon-river-ecosystem> ). The ruling required national and local governments to comply with the national Constitution by providing protection, conservation, maintenance, and restoration of the Colombian Amazon because the Amazon basin is a rights-bearing entity under the Constitution, and provided four specific remedies, including ordering,

“...the creation of an “*Intergenerational Pact for the Life of the Colombian Amazon*” (PIVAC in Spanish) within the next 5 months—also with the “active participation” of the plaintiffs, affected communities, scientific groups, and others (pp. 48-49). Third, municipalities in the Amazon are required to form and begin implementing territorial land use plans<sup>31</sup>.”

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<sup>30</sup> <https://www.cortesuprema.gov.co/corte/wp-content/uploads/2018/04/STC4360-2018-2018-00319-011.pdf>

<sup>31</sup> Breyer N. 2018. Colombian Supreme Court Recognizes Rights of the Amazon River Ecosystem. IUCN website: <https://www.iucn.org/news/world-commission-environmental-law/201804/colombian-supreme-court-recognizes-rights-amazon-river-ecosystem>

## 2.5.5 - United States of America

### 2.5.5.1 - *White Earth Band of Ojibwe, Minnesota, USA*

In **2018**, the White Earth Band of Ojibwe passed the first law to recognize the rights of a plant species when they recognized the rights of manoomin (a.k.a. wild rice), to protect manoomin and freshwater resources for future generations.

Manoomin, or wild rice, within all the Chippewa ceded territories, possesses inherent rights to exist, flourish, regenerate, and evolve, as well as inherent rights to restoration, recovery, and preservation. [Manoomin possesses] The right to clean water and freshwater habitat, the right to a natural environment free from industrial pollution, the right to a healthy, stable climate free from human-caused climate change impacts, the right to be free from patenting, the right to be free from contamination by genetically engineered organisms.

We understand that water is life for all living creatures and protecting abundant, clean, fresh water is essential for our ecosystems and wildlife habitats to sustain all of us and the manoomin [Frank Bibeau, Executive Director of the 1855 Treaty Authority].

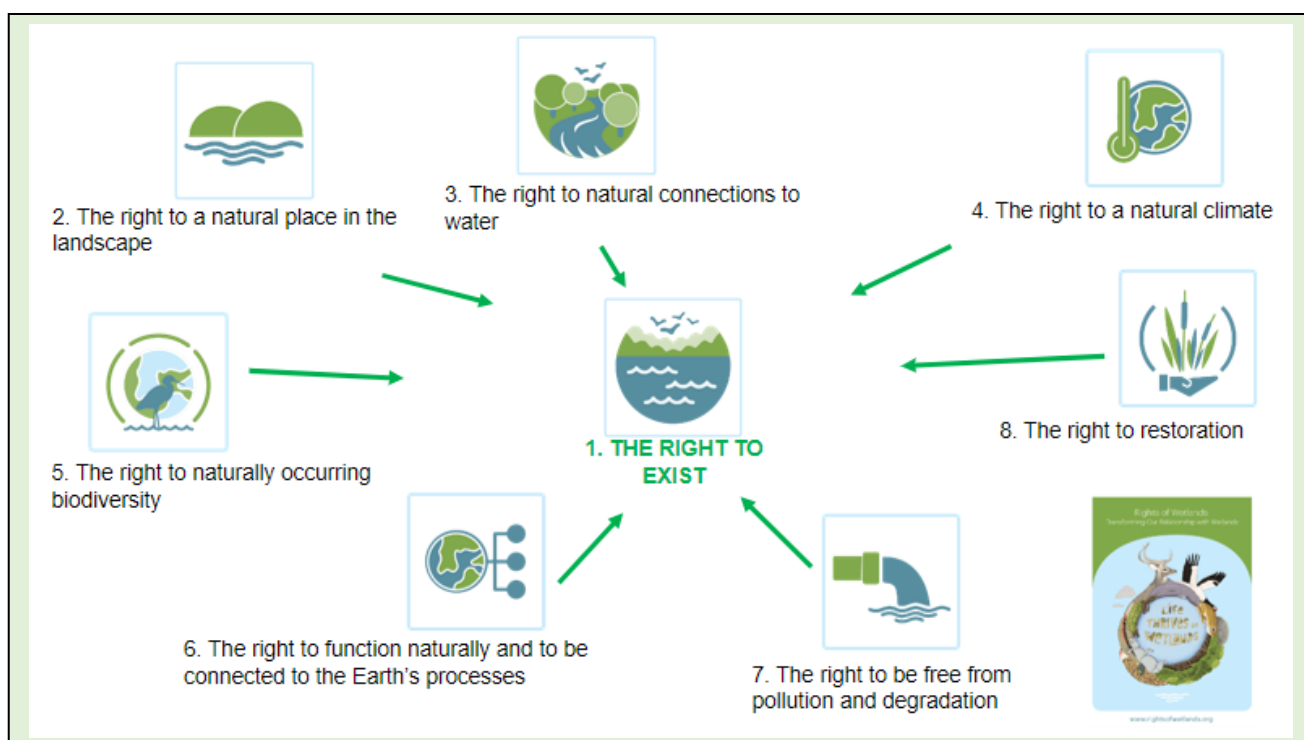
## 2.6 - Considerations when developing Rights of Nature/Wetlands Policy and Law

Countries, people, and organizations wishing to engage in the development of Rights of Nature or Rights of Wetlands policy and law will want to consider a number of factors, including:

- What is the national political setting? Is establishing Rights of Nature/Wetlands policy and/or law feasible at the national level? If not, is it possible at a lower level of government, such as community level government?
  - What set of rights will take precedence: Rights of Nature vs property and corporate rights? Will Rights of Nature supersede/take precedence over other laws, or will it be superseded by property, corporate, or other types of laws?
  - Will Rights of Nature law/governance be reactive (e.g. disputes settled in courts) or proactive (people's behaviour in and towards Nature is proactively managed in a Rights of Nature context, with less need to go to courts)?
- Nature's Rights Model or Legal Personhood Model or Hybrid?
  - Does all of Nature have rights, or just specific ecosystems or specific species?
- Is Nature being given human rights, or are the rights ecosystem/species-specific?
  - If ecosystem or species-specific rights, what are those rights?
  - Who determines what rights the ecosystem or species will have?
  - If Nature is given human rights, do the ecosystems or their guardians have liabilities?
  - Who has legal standing to defend/speak for Nature?
  - Will guardianship for Nature be established? If so, which type?
    - "In loco parentis" guardianship, or
    - "Guarding the relationship between humans and other members of the biotic community", consistent with perspective of some Indigenous Peoples?



Figure 2.2: Rights of Wetlands, consistent with the *Universal Declaration of the Rights of Wetlands*<sup>32</sup>



- Are we managing Nature, or are we managing human behaviour in and towards Nature?
- Who is mobilizing to develop Rights of Nature/Wetlands policy and law? What types of organizations are involved, and what are their motivations and goals? What coalition-building opportunities exist? Are Indigenous Peoples leading, or are there opportunities to partner with Indigenous Peoples?
- What are the cultural and legal contexts for the policies and laws, and for how any new laws will be contested?
  - What is the relationship between Rights of Nature/Wetlands and human rights, including Indigenous People's rights?

## 3 - Bolivia

### 3.1 - Country introduction

#### 3.1.1 - General political context

Bolivia hosts diverse ecoregions and natural environments due to variations in altitude, latitude, mountainous terrain, and climatic factors. These unique conditions have given rise to diverse ecosystems and species. The country also stands out for encompassing the three main subcontinental basins (the Amazon basin, endorheic basin, and Plata basin). Due to its varied geography and climatic conditions, it is recognized by the Convention on Biological Diversity (CBD) as one of the most biodiverse countries. However, these characteristics also make it vulnerable to environmental degradation due to fragile soils, mountainous terrain, and Andean climate, exposing it to risks such as erosion and desertification.

<sup>32</sup> <https://www.rightsofwetlands.org/>

Cultural traditions of communities in Bolivia have been crucial in conserving biodiversity and managing their environment. Despite this, Spanish colonization since the 16th century had a negative impact on the environment, primarily in the Andean region (mining). This resulted in extensive highland tree cover deforestation and soil and water contamination. The colonial system and subsequent states, including the current one, prioritized resource extraction without considering environmental impact. This was evident in mineral and rubber exploitation during colonization and in agribusiness, colonization, and hydrocarbon extraction after independence. These expansions lacked environmental planning and management.

Global environmental mobilization, notably the 1992 Rio Summit, stimulated environmental management in Bolivia. Debates in the 1990s led to the creation of the Environmental Law 1333 in 1992. This led to the formation of the institutional framework, regulations, and technical tools such as the Protected Areas Regulation, Forest Law 1700, and environmental management plans, land-use planning, and soil use, the National Biodiversity Management Strategy, and watershed management plans, among others. The implementation of Law 1333 included the creation of the National System of Protected Areas, which encompasses 22 crucial areas for biodiversity.

The Political Constitution of the State (CPE) of 2009 marked a significant milestone in environmental management in Bolivia. During its drafting in the Constituent Assembly, social participation was prioritized. Article 9.6 stands out, establishing the state's responsibility to promote responsible exploitation of natural resources and environmental preservation for present and future well-being. Article 342 emphasizes the conservation and sustainable use of resources and biodiversity by the state and the population. Furthermore, Article 345 underscores the need for participatory environmental planning and management, environmental impact assessment, quality control, and liability for damages with corresponding sanctions. The CPE also recognizes the basic right of the population to a healthy environment (Article 33) and provides the basis for natural resource management, defining the responsibilities of territorial administration levels in environmental management.

Building on the strong foundation of the CPE, Bolivia has signed more than 20 international conventions related to environmental management, offering opportunities for collaboration with other states. The Escazú Agreement, ratified in 2018, is notable, aiming to ensure the rights to access to information, public participation, and justice in environmental matters in Latin America and the Caribbean. Bolivia also joined the Ramsar Convention in 1990 and ratified it through law in 2002.

### 3.1.2 - Context in relation to Rights of Nature / Wetlands

Bolivia is a country with abundant hydrological and biological wealth (80% of its territory consists of complex aquatic ecosystems). Bolivia is part of the hotspots of biodiversity, and it currently leads the list of 168 countries in the Ramsar Convention, with 11 designated wetlands equivalent to 14.8 million hectares in surface area, reaching 13% of the country's territory.

According to the Strategy for the Integrated Management of Wetlands in Bolivia, wetlands are defined as "ecosystems in which the hydrological cycle is the fundamental factor that, conducts, and sustains ecological dynamics between soil, biodiversity, and their relationship with the human population. Wetlands are considered essential components of life systems, reserves, and fundamental sources of freshwater for development and the survival of life and for productive processes that ensure food security, also constituting symbolic spaces of national identity."

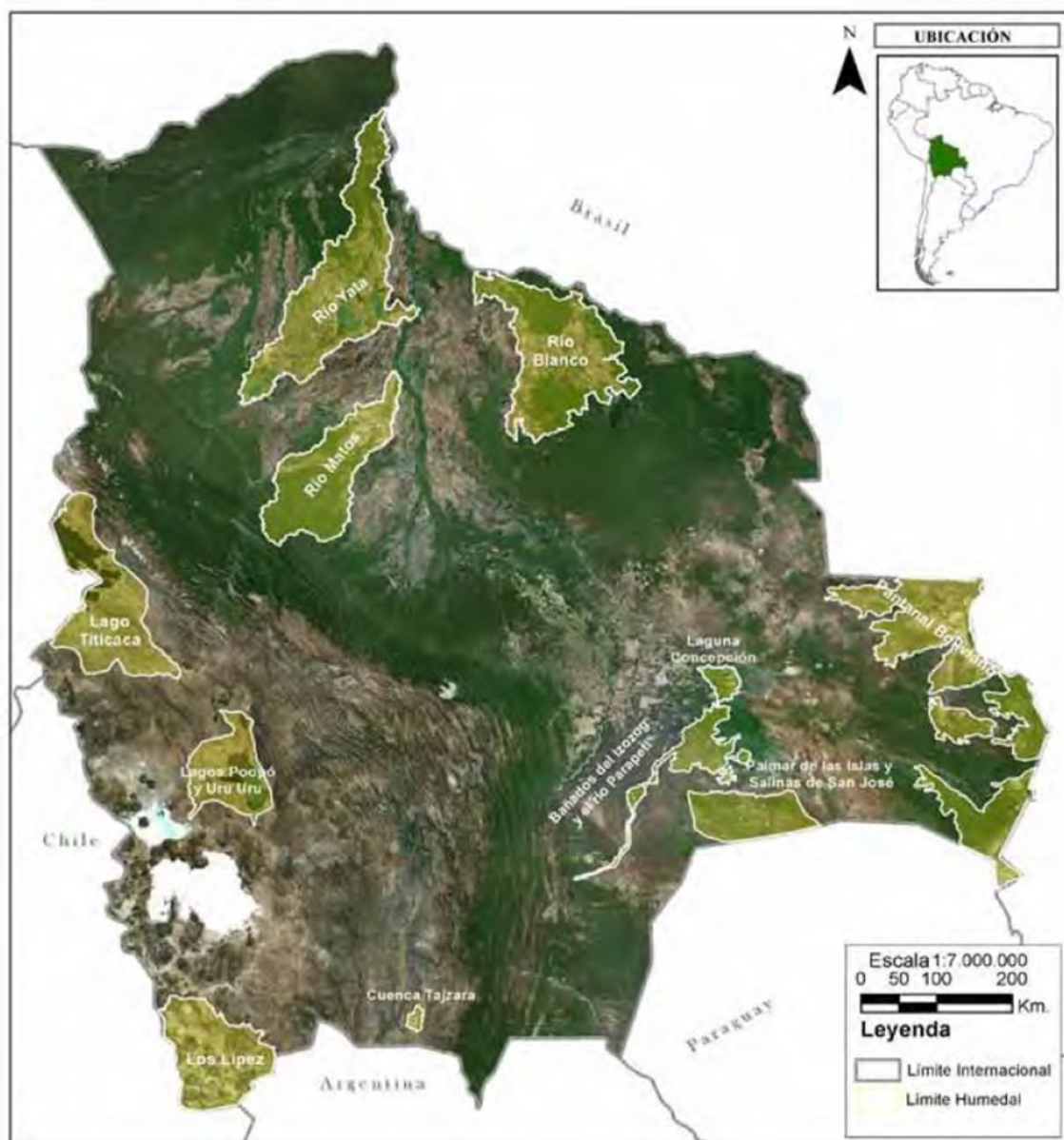
Table 3.1 Prioritized RAMSAR Sites in Bolivia and the Number of Municipalities within Them.

Basin/water shed	Surface area per basin in hectares	RAMSAR sites	Date of designation	Surface area per wetland (hectares)	Number of municipalities
<b>Cuenca Endorreica</b>	15.417,62	Los Lipez (Laguna Colorada)	27-Jun-90	1.424.068	5
		Lago Titicaca	11-Sept-98	1.861.266	44
		Lagos Poopó y Uru Uru	11-Jul-02	968.484	16
<b>Cuenca del Plata</b>	22626,82	Cuenca de Tajzara	13-Jun-00	46.622	5
		Palmar de las Islas Y las Salinas de San José	17-Sept-01	857.778	1
		Pantanal Boliviano	17-Sept-01	3.368.658	9
<b>Cuenca Amazónica</b>	71.813,70	Bañados de Izozog y el río Parapetí	17-Sept-01	626.577	3
		Laguna Concepción	6-May-02	159.992	2
		Río Blanco	2-Feb-13	2.398.156	9
		Río Matos	2-Feb-13	1.729.788	6
		<b>Río Yata</b>	<b>2-Feb-13</b>	<b>2.813.230</b>	<b>6</b>

*Highlight: Ramsar Site Selected for Project Intervention.*

Source: Estrategia para la Gestión Integral de Humedales de Bolivia (Strategy for the Integrated Management of Wetlands in Bolivia)

Figure 3.1 Prioritized Ramsar Sites in Bolivia.

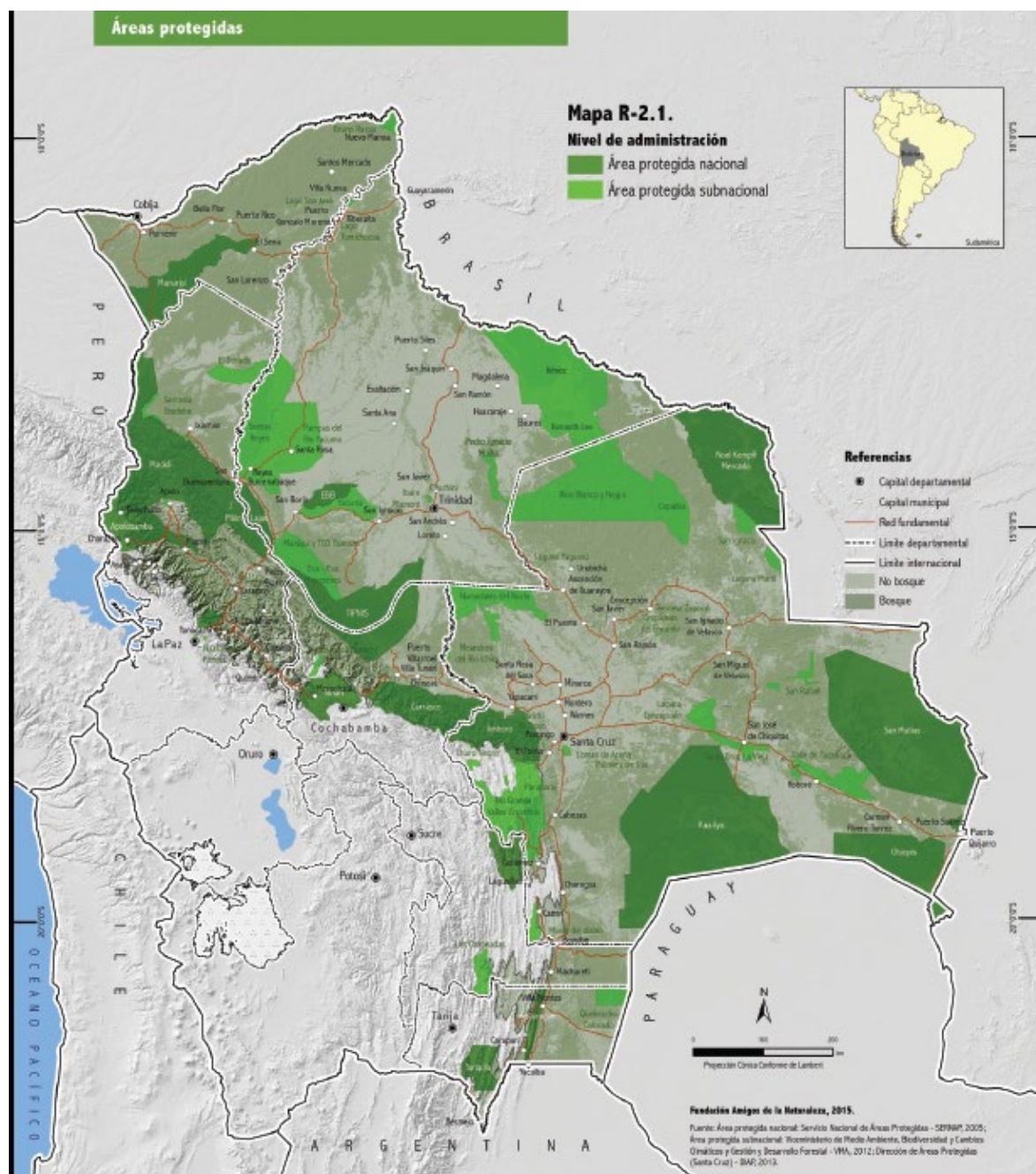


*In a circle: Ramsar Site Selected for Project Intervention.*

Source: Estrategia para la Gestión Integral de Humedales de Bolivia (Strategy for the Integrated Management of Wetlands in Bolivia)

On the other hand, national, departmental, and municipal protected areas (PAs) have been established. Currently, there are 22 national PAs, 25 departmental PAs, and 83 municipal PAs, totalling 130 PAs covering 23% of the national territory. There are also PAs in the process of creation and some of them are privately owned. Among these, at least 8 nationally protected areas have Ramsar sites or overlap with each other.

Figure 3.2 National and subnational protected areas in Bolivia.



*In a circle: Municipal PA of Pampas de Yacuma in the municipality of Santa Rosa, which overlaps with the Ramsar site selected for the project intervention.*

Source: <https://www.cfb.org.bo/noticias/medioambiente/experto-destaca-aporte-de-areas-protegidas-de-bolivia-contra-cambio-climatico>

## 3.2 - Legislation and policy

### 3.2.1 - Review of relevant social and environmental legislation that are particularly related to or impact on wetlands, Indigenous Peoples and local communities

#### National framework

<p><b>Constitución Política del Estado (CPE) of 2009.</b></p> <p><b>Political Constitution of the State of 2009</b></p>	<ul style="list-style-type: none"> <li>• It establishes that the State must promote the responsible use of natural resources and environmental preservation for present and future well-being. Both the State and the population have the responsibility to conserve, protect, and sustainably use natural resources, biodiversity, and maintain environmental balance (Articles 9 and 342).</li> <li>• It indicates that natural resources, including biodiversity, are strategic and of public interest for the country's development (Article 348). It establishes that renewable resources must be used sustainably, respecting the peculiarities of each ecosystem. Rights to use and exploit natural resources must adhere to what is established in the Constitution and the Law.</li> <li>• It guarantees Indigenous Originario Campesino Nations and Peoples the exclusive right to use and exploit renewable natural resources in their territory, without affecting the legitimate rights of third parties (Article 30)</li> </ul>
<p><b>Agenda Patriótica al 2025.</b></p> <p><b>Patriotic Agenda to 2025.</b></p>	<p>In 2025, Bolivia will celebrate its bicentennial of foundation. In commemoration of this event, 13 pillars have been established to build a more inclusive, participatory, democratic, and discrimination-free society and state. Two of them are of environmental and social relevance:</p> <ul style="list-style-type: none"> <li>• Pillar 9. Environmental sovereignty with integral development, respecting the rights of Mother Earth.</li> <li>• Pillar 10. Complementary integration of peoples with sovereignty.</li> </ul>
<p><b>Plan de Desarrollo Económico y Social 2021-2025.</b></p> <p><b>Economic and Social Development Plan 2021-2025.</b></p>	<p>Define the country's direction for any development initiative such as working with wetlands and natural resources. The most relevant goals are:</p> <ul style="list-style-type: none"> <li>• Goal 4. Promote the system of protected areas, wetlands, and marshlands as part of the country's natural heritage. 4.6. Implement the Integrated and Sustainable Wetlands Management Program.</li> </ul>

#### Environmental legal framework

<p><b>Ley N° 071</b></p> <p><b>Derechos de la Madre Tierra</b></p> <p><b>21/12/2010</b></p> <p><b>Law No. 071 Rights of Mother Earth 12/21/2010</b></p>	<p>To recognize the rights of Mother Earth, as well as the obligations and duties of the Plurinational State and society to ensure the respect of these rights.</p>
<p><b>Ley N° 300</b></p> <p><b>Marco de la Madre Tierra y Desarrollo Integral para Vivir Bien</b></p> <p><b>15/10/2012</b></p>	<p>To establish the vision and foundations of integral development in harmony and balance with Mother Earth for Living Well, ensuring the continuity of the regenerative capacity of the components and Life Systems of Mother Earth, recovering and strengthening local knowledge and ancestral wisdom, within the framework of the complementarity of rights, obligations, and duties. Also, to outline the objectives of integral development as a means to achieve Living Well,</p>

<p><b>Law No. 300 Framework for Mother Earth and Integral Development for Living Well</b> 10/15/2012.</p>	<p>providing the basis for planning, public management, investments, and the strategic institutional framework for its implementation.</p>
<p><b>Ley N° 1333</b> <b>Medio Ambiente</b> 26/04/1992</p> <p><b>Law No. 1333 Environment</b> 04/26/1992.</p>	<p>Protection and conservation of the environment and natural resources, regulating human actions in relation to nature, and promoting sustainable development with the goal of improving the quality of life of the population.</p>
<p><b>Ley N° 1700</b> <b>Ley Forestal y de Saneamiento Forestal</b> 12/07/1996</p> <p><b>Law No. 1700 Forest Law and Forest Sanitation</b> 07/12/1996.</p>	<p>It regulates the sustainable use of forest resources, which may be relevant for protected areas with forests and wetlands. In some cases, forestry extraction and timber activities may conflict with the conservation objectives of protected areas and impact aquatic ecosystems.</p> <p>Within this law, there are provisions to protect and rehabilitate watersheds, prevent and halt land erosion and the degradation of forests, meadows, soils, and waters, and promote afforestation and reforestation.</p>
<p><b>Ley N° 3760</b> <b>Ley de Biodiversidad y Recursos Genéticos</b> 07/11/2007</p> <p><b>Law No. 3760 Biodiversity and Genetic Resources Law</b> 11/07/2007.</p>	<p>It establishes rules for access to and use of genetic resources present in protected areas and other environments. Its impact on wetlands, Indigenous Peoples, and local communities may depend on how access and shared benefits derived from genetic resources are regulated. In some cases, there may be challenges in ensuring that local communities and Indigenous Peoples receive fair benefits from the use of these resources.</p>
<p><b>Ley N° 3058</b> <b>Ley de Hidrocarburos</b> 17/05/2005</p> <p><b>Law No. 3058 Hydrocarbons Law</b> 05/17/2005.</p>	<p>It captures the mandate and binding nature by providing a lucid synthesis in Article 3 of everything mentioned so far: "To develop measures for the integral management of life systems, with an emphasis on the protection of environmental functions, soil preservation, water sources, biodiversity protection, and community management."</p>
<p><b>Política Plurinacional de Cambio Climático (PPCC)</b> 31/07/2023</p> <p><b>Plurinational Climate Change Policy (PPCC)</b> 07/31/2023.</p>	<p>It aims to promote the management of the climate crisis at all levels of the state, which implies promoting mitigation, adaptation, and resilience actions, as well as measures to respond to the impacts, damages, and losses caused by such a crisis, all within the framework of integral development for "Vivir Bien" in harmony with Mother Earth. It also establishes that the Plurinational Mother Earth Authority (APMT) is responsible for the execution and compliance with the PPCC.</p>

## Social and Governance Regulatory Framework.

<p><b>Ley N° 031</b></p> <p><b>Ley Marco de Autonomías y Descentralización “Andrés Ibáñez” (19/07/2010)</b></p>	<p><b>Framework Law on Autonomy and Decentralization ‘Andrés Ibáñez’ No. 031 (19/07/2010)</b> The Law addresses environmental rights and outlines various responsibilities and competencies related to environmental management and protection. Autonomous territorial entities, such as 9 departments and 339 municipalities, are responsible for developing development plans that incorporate environmental considerations. This involves integrating policies and actions aimed at the conservation and protection of the environment into their strategic plans. Also, autonomous territorial entities have competence in the management of natural resources within their jurisdictions. This includes sustainable management of land, water, forests, and other natural resources. Autonomous territorial entities are responsible for assessing and controlling activities that may have a significant environmental impact within their territories. This involves regulating and supervising projects and activities that could affect the environment. Autonomous territorial entities have the responsibility to take measures for the conservation and protection of the environment, including the preservation of natural areas and the promotion of sustainable practices. The law also emphasizes the importance of public participation in making decisions related to the environment. This means that local communities have the right to participate in the planning and decision-making processes regarding environmental matters affecting their areas. Autonomous territorial entities must coordinate with national environmental authorities to ensure consistency and effectiveness in environmental management. Promoting environmental education is another key responsibility. Autonomous territorial entities should work to raise awareness and educate the population about the importance of environmental protection.</p>
<p><b>Ley N° 777</b></p> <p><b>Sistema de Planificación Integral del Estado (SPIE)</b></p> <p><b>21/01/2016</b></p> <p><b>Law No. 777 Comprehensive State Planning System (SPIE) 01/21/2016.</b></p>	<p>It is an articulated set of regulations, processes, and mechanisms for short, medium, and long-term planning to achieve Living Well objectives through integral development in harmony with Mother Earth. This 2016 law operationally incorporates Long-Term Planning Instruments (PGDES) and medium-term planning with a 5-year horizon (PDES, PSDI, PTDI, PGTC, PEI, EDI). Particularly, the Comprehensive Territorial Development Plans (PTDI) become a very concrete and relevant vehicle to channel public plans, actions, and resources for the preservation and management of wetlands.</p>
<p><b>Decreto Supremo N° 1696</b></p> <p><b>Reglamento de la Autoridad Plurinacional de la Madre Tierra</b></p> <p><b>14/08/2013</b></p> <p><b>Supreme Decree No. 1696 Regulation of the Plurinational Mother Earth Authority 08/14/2013.</b></p>	<p>To regulate the operation of the Plurinational Mother Earth Authority, its operational mechanisms, and the trust modality of the Plurinational Mother Earth Fund.</p>
<p><b>Ley N° 338</b></p> <p><b>Organizaciones Económicas Campesinas,</b></p>	<p>To regulate sustainable family farming and diversified family activities carried out by Community Economic Organizations (OECAS), Communal Economic Organizations (OECOM), and Indigenous</p>



<p><b>Indígenas Originarias y Organizaciones Económicas Comunitarias 26/01/2013</b></p> <p><b>Law No. 338 Peasant, Indigenous Originario, and Community Economic Organizations 01/26/2013.</b></p>	<p>Originario Campesino, intercultural, and Afro-Bolivian producer families organized in sustainable family farming, based on the use and utilization of Mother Earth's components, in accordance with their vocation and productive potential in the various ecological zones throughout the country and with varying degrees of linkage to local, regional, national, and international markets, to contribute to food sovereignty.</p>
<p><b>Ley N° 144</b></p> <p><b>Revolución productiva comunitaria agropecuaria 26/06/2011</b></p> <p><b>Law No. 144 Community Agricultural and Livestock Productive Revolution 06/26/2011.</b></p>	<p>To establish the institutional, policy, and technical, technological, and financial mechanisms for the production, transformation, and commercialization of agricultural and forestry products by various actors in the plural economy, prioritizing organic production in harmony and balance with the blessings of Mother Earth.</p>
<p><b>Ley N° 1551</b></p> <p><b>Ley de Participación Popular 1993</b></p> <p><b>Law No. 1551 Law of Popular Participation 1993.</b></p>	<p>It laid the foundations for citizen participation at the local and municipal levels. Although this law focuses more on decentralization and the transfer of competencies to municipal governments, it establishes some important foundations for citizen participation in public management.</p>
<p><b>Ley N° 341</b></p> <p><b>Ley de Participación y Control Social 2013</b></p> <p><b>Law No. 341 Law of Participation and Social Control 2013.</b></p>	<p>This law promotes citizen participation in decision-making and public policy management, which can be relevant for the management and protection of wetlands and the participation of local communities. In the context of protected areas, this law could influence how local communities and Indigenous Peoples are involved in decision-making regarding conservation policies, the implementation of sustainable development programs, and the mitigation of potential conflicts between conservation objectives and community needs. The law could encourage the creation of spaces for dialogue and consultation, as well as ensure that the voices and knowledge of local communities are considered in the planning and management of protected areas.</p>
<p><b>Ley N° 969</b></p> <p><b>Ley de Consulta Previa, Libre e Informada a los Pueblos Indígenas 2017</b></p> <p><b>Law No. 969 Law of Prior, Free, and Informed Consultation with Indigenous Peoples 2017.</b></p>	<p>This law ensures the right of Indigenous Peoples to be consulted before carrying out projects that may affect their territories and natural resources, which could apply in relation to activities in and around wetlands. In other words, it seeks to ensure that decisions that may have a significant impact on Indigenous communities are made in an informed and consensus-based manner. This includes projects in protected areas, development projects, and other plans that may affect the environment and the rights of Indigenous communities.</p>
<p><b>Ley N° 755</b></p>	<p>This law regulates waste management and environmental protection in general, which can have an impact on the conservation of wetlands. In</p>

<p><b>Ley de Gestión Integral de Residuos</b> <b>2018</b></p> <p><b>Law No. 755 Comprehensive Waste Management Law 2018.</b></p>	<p>other words, it has implications for solid waste management throughout the country, including protected areas and wetlands. Inadequate waste management can negatively affect aquatic ecosystems and biodiversity, as well as the local communities that depend on these resources.</p>
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### 3.2.2 - Review of Rights of Nature / Wetlands legislation and policy

<p><b>Ley N° 2066</b> <b>Ley de Recursos Hídricos</b> <b>2000</b></p> <p><b>Law No. 2066 - Water Resources Law (2000)</b></p>	<p>This law regulates the comprehensive management of water resources in Bolivia. Wetlands are aquatic ecosystems and, therefore, are related to water resource management. This law can have implications for the conservation and sustainable use of wetlands and water bodies in the country. Additionally, the law has provisions aimed at ensuring the conservation of aquatic ecosystems, including rivers, lakes, and wetlands. These ecosystems are fundamental for biodiversity and for maintaining the water cycle.</p>
<p><b>Estrategia para la Gestión Integral de los Humedales y Sitios Ramsar en Bolivia</b> <b>2017</b></p> <p><b>Strategy for the Integral Management of Wetlands and Ramsar Sites in Bolivia (2017)</b></p>	<p>It is a planned and structured approach to the conservation and sustainable management of wetlands in the country, especially those designated as Ramsar sites of international importance. This strategy aims to address challenges related to the protection, conservation, and sustainable use of wetlands and their resources in Bolivia. It recognizes that wetlands play a crucial role in maintaining biodiversity, the water cycle, and other essential ecosystem services. The strategy seeks to balance the conservation of these ecosystems with the sustainable use of their resources by local communities and other stakeholders.</p>
<p><b>Plan Plurinacional de Recursos Hídricos</b> <b>2021-2025</b></p> <p><b>Plurinational Water Resources Plan 2021-2025</b></p>	<p>It constitutes the main policy of the Water Resources sector, promoting and guiding the development of a new culture of management, conservation, and protection of water and water resources in Bolivia with a focus on livelihoods and resilience to climate change. It promotes the principle of recognizing the social value of water as a natural, integrating, and strategic element of the State, which transcends environmental aspects and extends to interrelations and contributions to health, social, economic, and cultural domains.</p> <p>As part of Component 1, it includes the consolidation of guidelines and instruments that establish clear procedures through the development of guides and agreements that facilitate the generation of standards for the census and monitoring of reservoirs and, later on, allow the integration of a single national monitoring system for wetlands, glaciers, and aquifers.</p>
<p><b>Decreto Supremo N° 24781 Reglamento General de Áreas Protegidas</b> <b>31/07/1997</b></p>	<p>To regulate the management of Protected Areas and establish their institutional framework, in accordance with the provisions of Law No. 1333 (Environmental Law of April 27, 1992, and the Convention on Biological Diversity ratified by Law No. 1580 of June 15, 1994).</p>

<p><b>Supreme Decree No. 24781 - General Regulation of Protected Areas (07/31/1997)</b></p>	
<p><b>Política y Estrategia Plurinacional para la Gestión Integral y Sustentable de la Biodiversidad 2019-2030</b></p> <p><b>Plurinational Policy and Strategy for Integral and Sustainable Biodiversity Management 2019-2030</b></p>	<p>It is an instrument of policy and strategic planning aimed at promoting and guiding the Comprehensive and Sustainable Management of Biodiversity through actions that develop, encourage, and strengthen conservation, sustainable use, and the development of interdisciplinary knowledge. In such a way that sustainable and compatible productive systems are consolidated, maintaining environmental functions, recognizing the economic and social development of the stakeholders, their knowledge, and traditional wisdom.</p> <p>Strategic Objective 2.2. Strengthen the territorial management instruments of biodiversity in protected areas, forests, wetlands, and others, as mechanisms for articulating the priorities of the State, the rights of Mother Earth, and the Bolivian population.</p>
<p><b>Ley N° 284 Ley de declaración al Bufo o Delfín de Agua Dulce (Inia boliviensis) como Patrimonio Natural del Estado Plurinacional de Bolivia 21/09/2012</b></p> <p><b>Law No. 284 - Law declaring the Bufo or Freshwater Dolphin (Inia boliviensis) as a Natural Heritage of the Plurinational State of Bolivia (09/21/2012)</b></p>	<p>To prioritize the protection and conservation of the freshwater dolphin or Pink Dolphin and its habitat, through short, medium, and long-term policies, programs, and projects, in coordination between the Executive Body of the Central Level of the State and the Autonomous Territorial Entities.</p>
<p><b>Ley N° 404 Prioridad de la recuperación, conservación, uso y aprovechamiento sustentable de los bofedales 18/09/2013</b></p> <p><b>Law No. 404 - Priority for the Recovery, Conservation, Sustainable Use, and Management of Bofedales (09/18/2013)</b></p>	<p>Declare the recovery, conservation, sustainable use, and exploitation of bofedales (high-altitude wetlands) as a priority of the Plurinational State, with the purpose of safeguarding the Life Systems dependent on this special resource.</p>
<p><b>Ley N° 459 Ley de Medicina Tradicional Ancestral Boliviana 19/12/2013</b></p> <p><b>Law No. 459 - Law on Ancestral Bolivian Traditional Medicine (12/19/2013)</b></p>	<p>Promote and contribute to the development of policies, plans, programs for the protection, conservation, sustainable use, and rational use of biodiversity related to the exercise and practice of traditional ancestral Bolivian medicine (Title IV, Article 26).</p>

<p><b>Resolución Administrativa VMABCCyGDF N° 013/2015</b>  <b>Lista Oficial de animales para la caza o pesca con fines de control poblacional</b></p> <p><b>Administrative Resolution VMABCCyGDF No. 013/2015</b>  <b>- Official List of Animals for Hunting or Fishing for Population Control Purposes</b></p>	<p>Protect the national native ichthyofauna and control the population of Arapaima gigas (Paiche), Zenaida auriculata (Totakis), and Columba picazuro (Torkazas). For this purpose, technical regulations subject to the technical considerations established in the technical analysis conducted herein must be established.</p>
<p><b>Decreto Supremo N° 3048</b>  <b>Comercio Internacional de Especies Amenazadas de Fauna y Flora Silvestres</b>  <b>11/01/2017</b></p> <p><b>Supreme Decree No. 3048 - International Trade in Endangered Species of Wild Fauna and Flora (01/11/2017)</b></p>	<p>Establish administrative procedures for the protection of wildlife within the framework of the Convention on International Trade in Endangered Species of Wild Fauna and Flora - CITES, ratified by Law No. 1255 of July 5, 1991.</p>
<p><b>Ley N° 938</b></p> <p><b>Pesca y acuicultura sustentables</b>  <b>03/05/2017</b></p> <p><b>Law No. 938 - Sustainable Fishing and Aquaculture (05/03/2017)</b></p>	<p>Regulate, promote, encourage, and manage the exploitation of fishery and aquaculture resources in the national territory, with the aim of integral and sustainable development of Fishing and Aquaculture.</p>
<p><b>Plan de Manejo del Sitio Ramsar – Reserva de Vida Silvestre Laguna Concepción 2011</b></p> <p><b>Management Plan for the Ramsar Site – Concepción Lagoon Wildlife Reserve 2011</b></p>	<p>This document was prepared within the framework of the Strategic Plan for the Integral Development of the set of Protected Areas of the Environment Component funded by the European Union for the Santa Cruz - Puerto Suárez Road Corridor. With the support of the Foundation for the Conservation of the Chiquitano Forest (FCBC), SAVIA Foundation, MHNKM, and FUAMU. The process of preparing the Management Plan has been led by a team of consultants who worked closely with the Promoting Committee, made up of the Management Committee of the protected area, representatives of the park's inhabitants and its area of influence, and other community stakeholders.</p>
<p><b>Plan de Manejo del Área Protegida Municipal Pampas del Yacuma 2016-2025</b></p> <p><b>Management Plan for the Municipal Protected Area of Pampas del Yacuma 2016-2025</b></p>	<p>In 2007, the Municipal Government of Santa Rosa del Yacuma decided to create a municipal protected area (APM). The main reason was to protect the area where the already important tourism activity was taking place, with around 5,000 visitors per year. In the perception of the Municipal Government, tourism should become one of the fundamental pillars of municipal development, so its main tourist attraction, the Yacuma River, needed to be protected. Part of the Pampas del Yacuma APM is part of one of the Areas of Importance for the Conservation of Birds in Bolivia (AICA 36: Lagunas Rogagua and Rogaguado).</p>

### 3.3 - Governance and communication

Bolivia is a unitary state consisting of nine geographical departments. Departments are subdivisions of Bolivia and possess certain rights under the Constitution of Bolivia and received greater autonomy under the Administrative Decentralization law of 1995. Within departments there are 331 municipal districts and Indigenous autonomous districts. Departments and municipal and autonomous districts share responsibilities for environmental protection.

In 2016, the Integral State Planning System Law (Law No. 777, January 2016) was approved, which determines the planning of integral development. It establishes that the Integral State Planning System (SPIE) and its subsystems are "the organized and articulated set of rules, subsystems, processes, methodologies, mechanisms, and procedures for the integral long-term, medium-term, and short-term planning of the Plurinational State. This system allows achieving the objectives of Living Well through integral development in harmony and balance with Mother Earth, for the construction of a just, equitable, and solidarity society, with the participation of all levels of government of the State" (Article 2).

The SPIE must integrate social, cultural, political, economic, ecological, and affective dimensions in the "harmonious and metabolic encounter between the set of beings, components, and resources of Mother Earth to Live Well with oneself, with others, and with nature" (Article 10, Par. I).

The SPIE promotes the integral management of Systems of Life, aiming to simultaneously and complementarily achieve sustainable productive systems, eradicate extreme poverty, and conserve environmental functions in different territorial and jurisdictional areas as appropriate (Article 10, Par. II). It is also worth mentioning that the SPIE integrates Risk Management, Climate Change Management, and Sustainable Management of Systems of Life, seeking to strengthen the resilience capacities of society and nature (Article 10, Par. III).

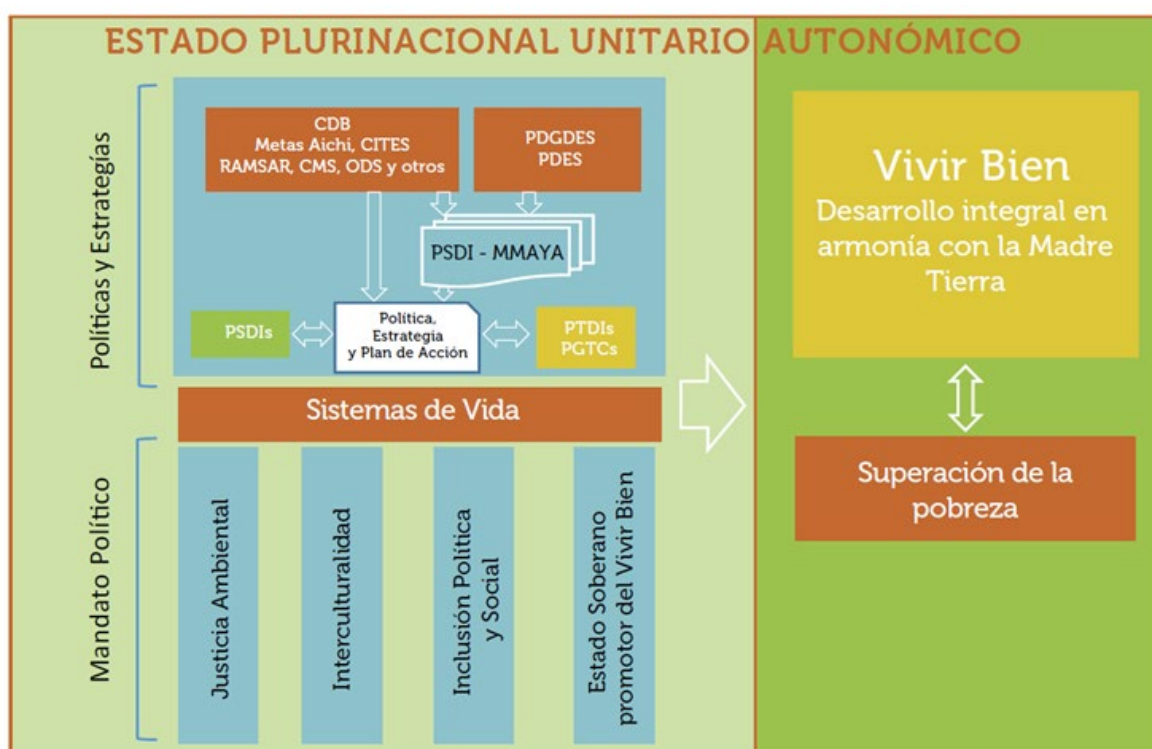
On the other hand, since its creation in 2006, the Ministry of Water, later renamed the Ministry of Environment and Water (MMAyA), has focused on protecting the environment by promoting balanced development with nature. Its objective is to oversee the integral management of water resources and the preservation of ecosystems. Through the Directorate-General for Biodiversity and Protected Areas, this entity leads strategies to safeguard, preserve, and advance sustainably in natural resources such as wetlands. Among the MMAyA's powers, it is cited: To formulate, execute, evaluate, and oversee policies and plans for drinking water and basic sanitation, irrigation, integral basin management, and forest rehabilitation of degraded basins and areas, as well as the sustainable use of water in all its forms, be they surface or underground, fossil, glacial, wetlands, minerals, medicinal.

According to the Organizational Structure of the Plurinational State, the Vice Ministry of Environment, Biodiversity, Climate Change, and Forest Management and Development (VMA), which is part of the MMAyA, has among its attributions to contribute to and coordinate the formulation and implementation of norms and policies for protected areas, biodiversity corridors, and special ecosystems, within the framework of sustainable use of natural resources, conservation, and protection of the environment, as well as the promotion of economic and social development of populations linked to protected areas. This power to design policies and regulations for the management of protected areas and special ecosystems (such as wetlands) is carried out through the General Directorate of Biodiversity and Protected Areas (DGBAP), as the operational entity.

Thus, both the Plurinational Policy and Strategy for Integral and Sustainable Biodiversity Management and the National Strategy for Integral Wetland Management seek to operationalize the Sectoral Plan for Integral Development of the Ministry of Environment and Water, promote the achievement of the goals of the General Plan for Economic and Social Development (Agenda 2025), and contribute to the implementation of the Rights of Mother

Earth and Living Well in harmony with Mother Earth. Figure 3.3 illustrates this scenario within the political-constitutional framework and planning regulations of the SPIE.

Figure 3.3 Position of the National Strategy for Integral Wetland Management.



Source: Política y Estrategia Plurinacional para la Gestión Integral y Sustentable de la Biodiversidad 2019 - 2030. (Plurinational Policy and Strategy for Integral and Sustainable Biodiversity Management 2019-2030)

### 3.3.1 - Review of governance models and communication frameworks related to wetlands

According to the Plurinational Policy and Strategy for Integral and Sustainable Biodiversity Management 2019-2030, unlike the declaration of protected areas, the inclusion of wetlands on the Ramsar list does not seek to limit uses but aims to build territorial management models based on social agreements and state support. The types of permitted uses are constructed and agreed upon by all social and economic actors who require the use and exploitation of different wetland resources.

The management processes of Ramsar-listed wetlands should also help generate management processes in other similar ecosystems at the national level, contributing to and complementing national water policies. These policies should not only ensure human access to water but also provide access to water for production and guarantee the availability of water resources for natural ecosystems. Therefore, the care of water sources and wetland complexes is central to this national policy priority.

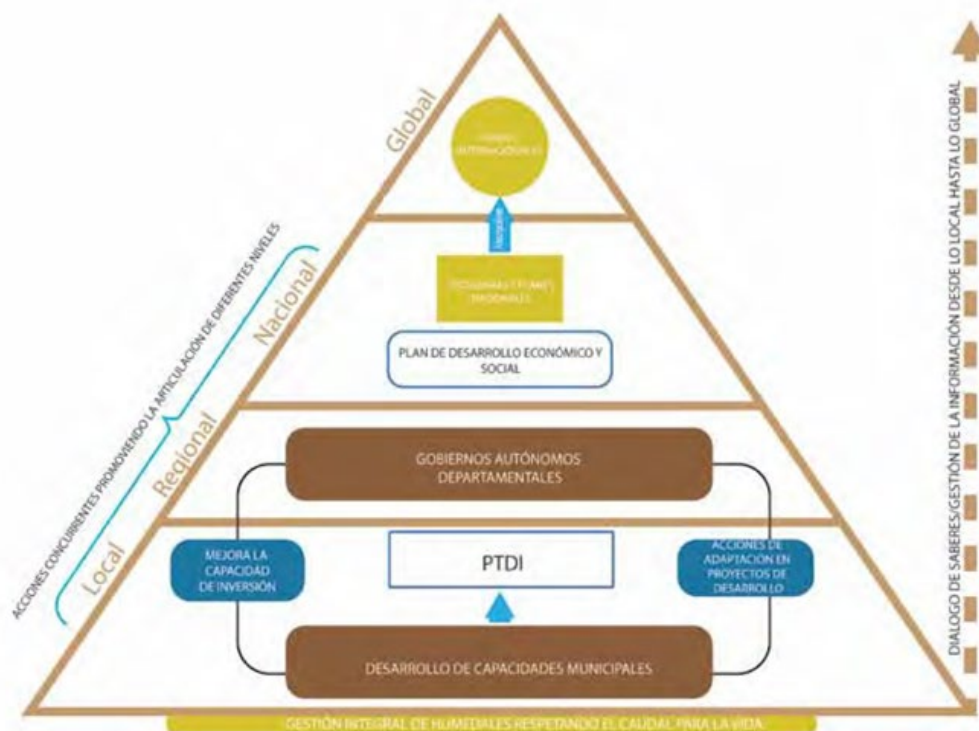
The strategy for the integral management of wetlands in Bolivia proposes a governance model based on three pillars:

- A. Work oriented and induced by the people at the local level up to the global level,** where dialogue of knowledge and information management in two dimensions of relationships and articulations prevail: horizontal (among local actors, among

municipal actors, among sectors of the central government, and to some extent among subregional governments for shared wetlands) and vertical (coordinated and concerted participation of all levels, local, regional, national). At the local level, priority will be given to training and capacity-building of existing human resources, identifying potential leadership, especially in terms of gender and generation, around wetland valuation and management issues and the socio-environmental functions they fulfill. At this level, efforts will also be made to strengthen social, productive, and other organizations, such as committees, councils, and platforms that show interest and commitment to the agendas related to intelligent wetland management and water sources.

- B. Municipal capacity development**, by influencing both regulatory aspects that favor and strengthen technical work and management with wetlands and leveraging funds, the concurrence of investments, and the inclusion of budgets sensitive to the integral management of wetlands, where PTDI (Territorial Integral Development Plans) are a very important tool. It is expected that in this process, social organizations, training and research institutions, private partners, will play a very important role as allies to the municipality in generating information and strengthening local capacities comprehensively.
- C. Concurrent public investments and common and articulated agendas to facilitate access to other global resources.** Seeking the impact of the Wetlands Strategy at the Meso-Macro and Global levels by managing resources (conventional and unconventional) based on the identification of alignments, convergences, and articulations between global policies and existing National and Regional socio-economic plans. Starting from concurrent investment, more efficient and effective use of resources could be made, from municipalities and departments, for the management of existing financing from national programs such as the national watershed program or the Plurinational Mother Earth Fund, among others. On the other hand, if this is accompanied by common agendas, the possibilities of applying for international funds such as the Green Climate Fund or the Adaptation Fund are expanded.

Figure 3.4 Intervention Strategy in Bolivia.



Source: Estrategia para la Gestión Integral de Humedales de Bolivia. (Strategy for the Integral Management of Wetlands in Bolivia)

### 3.3.2 - Review of Rights of Nature / Wetlands specific governance and communication

The 2010 Mother Earth Law marks the initiation of nature's rights in Bolivia. It hinges on the notion that nature is not merely an object but a subject entitled to rights, and these rights are exercised through human actions. The Bolivian government's rationale for these rights rests on the idea of a harmonious relationship with the environment of indigenous communities, where the unsustainable exploitation of natural resources is absent. Conversely, this vision opposes the concept of a green economy, which the government perceives as a form of green capitalism and extractive policies.

What makes this proposal for nature's rights unique, as asserted by the Bolivian government's supporters, is its roots in the practices of Indigenous Peoples. It draws strength from traditional local knowledge, the responsible management of natural resources by indigenous communities, and communal stewardship.

In a broader context, the governance of Mother Earth revolves around acknowledging and restoring the life principles of Indigenous Peoples prior to European colonization. The concept of "living well" has become fundamental to Bolivia, emerging from the indigenous identity. In essence, one could say that the model for governing natural resources is primarily based on decentralized community management.

The legal framework, starting with the Law of Popular Participation (1996) and the Law of Decentralization and Autonomies from 2010, lays the groundwork for implementing natural resource management, including forests and wetlands, with active community involvement.

Governance principles:

- **Community and Participatory Governance:**

In many cases, local communities and Indigenous Peoples play a key role in wetland management. Collaborative decision-making and community participation in the planning and execution of conservation and sustainable use activities are encouraged.

- **Conservation and Sustainable Use Approach:**

This model seeks to balance wetland conservation with sustainable use by local communities. Rules and regulations are established to allow responsible resource exploitation while ensuring long-term preservation of the ecosystems.

- **Interinstitutional Collaboration:**

Wetland governance often involves cooperation between various government entities, non-governmental organizations, research institutions, and local communities. Coordination and collaboration are promoted to address environmental and social challenges comprehensively.

As for communication frameworks, there can be up to five spaces:

- **Environmental Education:**

Environmental education programs are essential for raising public awareness about the importance of wetlands and promoting conservation practices. These programs can target students, local communities, and wetland visitors.

- **Participatory Communication:**

Two-way communication and consultation with local communities are critical for the success of conservation efforts. Communication frameworks should involve stakeholders in decision-making and ensure that their voices are heard.



- **Media and Awareness Campaigns:**

Media outlets, such as television, radio, and social media, can play a significant role in disseminating information about the importance of wetlands, the challenges they face, and conservation measures.

- **Digital Participation:**

In the digital age, online platforms and social media can be used to disseminate information, engage communities, and promote citizen participation in wetland management.

- **Knowledge Exchange:**

Communication frameworks should facilitate the exchange of knowledge among scientists, conservation experts, local communities, and other stakeholders. This can help inform evidence-based decision-making.

### 3.4 - Community management approaches and worldview

#### 3.4.1 - Review of community management approaches and worldviews in relation to wetlands

In Bolivia, community-based wetland management involves a variety of approaches and worldviews influenced by cultural, social, and environmental perspectives of both local communities and Indigenous Peoples. These approaches and worldviews are shaped by historical interactions between people and their environment and their relationship with wetlands. Here is a general analysis of some of the approaches and worldviews in community-based wetland management in Bolivia:

- **Cultural and Spiritual:**

Many indigenous communities in Bolivia consider wetlands as sacred and spiritual places with a deep connection to their beliefs and worldviews. They often promote harmony between humans and nature and aim to maintain wetland health as an integral part of human existence.

- **Traditional Knowledge:**

Local communities and Indigenous Peoples have accumulated profound knowledge of wetlands over generations. This traditional knowledge encompasses the observation of natural cycles, weather patterns, species behaviour, and sustainable management practices.

- **Sustainable Use:**

Many communities have practiced sustainable use of wetland resources, such as fishing, agriculture, and medicinal plant harvesting, for centuries. This approach seeks to balance human needs with ecosystem conservation and biodiversity.

- **Community Participation:**

Community-based wetland management is based on the participation and decision-making of local communities. It involves fostering self-management and cooperation among communities to effectively conserve and manage wetlands.

- **Autonomy and Indigenous Rights:**

Many indigenous communities seek to exercise their rights and autonomy in managing their territories, including wetlands. It is crucial to respect self-determination and traditional governance systems of these communities.

- **Climate Change Adaptation:**

Given current and future threats, communities are adopting climate change adaptation approaches to ensure wetland resilience and the continuity of their ways of life.

- **Education and Awareness:**

Community-based wetland management often involves educating new generations about the importance of wetlands and their conservation.

These diverse approaches and worldviews reflect the rich cultural and ecological tapestry of wetland management in Bolivia and underscore the importance of collaborative and inclusive strategies for sustainable wetland conservation.

### 3.4.2 - Review of Rights of Nature / Wetlands specific community management approaches and worldview

The community-based approaches and worldviews specific to the rights of nature and wetlands in Bolivia are deeply rooted in the cultural beliefs, values, and practices of local communities and Indigenous Peoples. These approaches are based on the fundamental idea that nature and wetlands have intrinsic rights and should be treated with respect and fairness. Based on this understanding, it is possible to categorize these approaches as follows:

- **Ancestral and Spiritual Worldview:**

Many indigenous communities in Bolivia view wetlands as living and sacred beings with which they share a spiritual and reciprocal relationship. These approaches are grounded in the belief that wetlands have their own "voice" and should be treated as entities with rights and dignity.

- **Rights of Nature:**

Approaches based on the rights of nature recognize that wetlands and other elements of nature have legal rights and must be protected and respected as living entities. These approaches align with Bolivian legislation, such as the "Law of Mother Earth's Rights," which acknowledges the rights of nature.

- **Autonomy and Self-Governance:**

Some communities practice self-governance and self-management systems in the management of their wetlands. These approaches are rooted in the idea that communities have the right to decide how to manage and protect their own territories and natural resources.

- **Traditional Knowledge:**

Local communities and Indigenous Peoples have accumulated extensive traditional knowledge about wetlands and their natural cycles. These approaches incorporate ancestral practices and techniques into the sustainable management of wetlands.

- **Community Participation and Consultation:**

Community-based wetland management is based on community participation and the principle of free, prior, and informed consent of local communities and Indigenous Peoples. These approaches aim to ensure that decisions about wetlands are made collectively and respect local perspectives and knowledge.

- **Reciprocity and Harmony:**

These approaches emphasize the importance of maintaining a balance and a relationship of reciprocity with wetlands and nature in general. Practices for the use and management of wetlands are based on the belief that proper care of nature will ensure the prosperity of communities.

### 3.5 - Initial assessment about the likelihood of Bolivia to adopt a Rights of Wetlands approach

The probability of Bolivia adopting a wetland rights approach is significant due to its existing legal and political framework, as well as community participation and environmental awareness. However, implementation, coordination, and communication challenges must be effectively addressed to achieve successful adoption and sustainable wetland management. It's important to highlight that political will and commitment from multiple stakeholders are essential to translate these approaches into concrete actions and positive outcomes.

#### - **Legislation:**

Undoubtedly, the existence of the "Law of Mother Earth's Rights" in Bolivia demonstrates a legal commitment to recognizing the rights of nature. This provides a basis for adopting a similar approach regarding wetlands. However, the effective implementation of existing legislation can be a challenge due to the need to establish clear mechanisms for enforcement. The lack of financial and human resources could hinder effective implementation.

#### - **Policy:**

In this area, the country has shown an interest in biodiversity conservation and sustainable management of natural resources through environmental policies and programs. Although the adoption of a wetland rights approach may compete with other pressing political concerns such as the economy, health, and infrastructure.

#### - **Governance:**

Bolivia's experience in community-based natural resource management, such as indigenous territory management, provides valuable lessons on how communities can play an active role in wetland conservation and sustainable management. However, effective coordination between different levels of government is essential to ensure consistency in policy and approach implementation. The need to build capacity in communities for effective management is a significant challenge.

#### - **Communication and Media:**

Bolivia has a rich diversity of cultures and communities with active and visible voices in society. Direct communication and participation of these communities are essential for the success of a wetland rights approach. However, linguistic and cultural diversity can hinder effective communication, so national-level education and awareness are necessary to secure support and understanding of these approaches.

#### - **Political Realities and Media Environment:**

The history of social movements and increased public awareness of the rights of nature in Bolivia indicate potential receptivity to such approaches. However, it's important to consider that political tensions and shifting priorities can divert attention from environmental issues. Media coverage can influence public opinion, so a positive and accurate narrative is essential.

## 4 - Ecuador

### 4.1 - Country introduction

Ecuador ratified the Ramsar Convention (Ramsar, 1971) in 1991. It has a list of 19 sites totalling 2,630,390 acres. **In September 2008 Ecuador became the first country in the world to declare constitutional rights to nature and codify a new system of environmental protection.** Reflecting the beliefs and traditions of the Indigenous Peoples of Ecuador, the constitution declares that nature “has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution.” This right, the constitution states, “is independent of the obligation on natural and juridical persons or the State to indemnify the people that depend on the natural systems.”. The 2008 constitution redefined people’s relationship with nature by asserting that nature is not just an object to be appropriated and exploited by people but is rather a rights-bearing entity that should be treated with parity under the law. This provision in the constitution, has however been largely ignored by successive governments who have pursued economic policies largely based on the extraction of natural resources.

The Socio-Bosque initiative is a governmental program which has tried to foster conservation amidst a national economy based on the extraction of natural resources. This program has set agreements with private landowners and communities with title to their land. The program offers the poorest private and communal forest landowners annual payments for each hectare of forest cover maintained. The program has made strides in conserving forest and delivering vital economic benefits to some communities and households but has had mixed acceptance and results because it has been mired on the ground by administrative and legal constraints. Many Indigenous Peoples including the Sarayaku, have rejected the program because it is also seen as a threat to indigenous cultures and autonomy.

The territory of **Sarayaku** has since its existence been conserved by its residents who define themselves as Kichwa of the Ecuadorian Amazon. Historically Sarayaku’s territory has been under threat of appropriation by colonizing incursions. In 1979 the territory was organized into a guild system as the Centro Alama Sarayaku recognized by the Ministry of Social Welfare.

Since then, the Kichwa People of Sarayaku has engaged in a series of forceful actions and measures to defend their territory and the rights of nature to conserve the wealth of biodiversity, from extractivist expansion driven by the State and successive governments which granted oil and mining concessions in their territory. The Sarayaku people have expelled oil companies’ successive attempts to enter their territories without previous consultation and consent in violation of their rights.

Today, Sarayaku has become a national and international reference for its resistance and fight for the rights of nature, rights to territory and rights to life. Under this vision of conserving and strengthening natural rights, Sarayaku has been weaving and proposing alternative concrete solutions to resolve social conflicts, which in a global manner can benefit different indigenous nationalities and the country as a whole.

This context generated a need for Sarayaku to create a set of sustainable proposals for conscious management of its Territory, a whole Living Plan, and a transformative approach entitled Kawsak Sacha (Living Forest) and Sumak Kawsay (Harmonious Living) as real foundations contributing to the struggle against global warming.

## 4.2 - Legislation and policy

### 4.2.1 - Review of relevant social and environmental legislation that are particularly related to or impact on wetlands, Indigenous Peoples and local communities

On June 5, 2018 three major Ecuadorian environmental trade organizations, the Coordinadora Ecuatoriana de Organizaciones para la Defensa de la Naturaleza y Ambiente, la Asociación Animalista Libera Ecuador and Acción Ecológica started a legal process claiming that mangroves were being threatened by some provisions of the nation's Organic Environmental Code. Three years later on September 8, 2021 Ecuador's Constitutional Court ruled that four articles of the code were unconstitutional because they were in violation of the Rights of Nature consigned in the constitution.

On December 16 2021, Ecuador's Constitutional Court ruled that gold mining operations in the Los Cedros Biological Reserve violated the rights of the reserve to exist and flourish. In his writing of the majority decision Judge Agustín Grijalva Jiménez stated that "[T]he risk in this case is not necessarily related to human beings...but to the extinction of species, the destruction of ecosystems or the permanent alteration of natural cycles...". This ruling also affirmed that the Rights of Nature is applicable throughout Ecuador and not just within already legally protected areas. "The rights of nature, like all the rights established in the Constitution Ecuadorian law, have full normative force. They are not only ideals or rhetorical statements, but legal mandates," Jiménez wrote.

The Sarayaku people consider their territory to be both a physical and a geographical place and also an emotional space where they establish and maintain elevated connections with the world of elemental protective beings. This relationship with unseen beings established in the physical territory allows the Sarayaku to reproduce their economic systems, technologies, knowledge and science, as well as their social cultural and spiritual life, and to organize social structures and political systems to autonomously build their future, decide their destiny and ensure their continuity as an indigenous people. In sum the Forest is important for the people because it is their living space and also the habitat of the protective beings maintaining the entire ecosystem. Sarayaku's zoning regulations manage the conscious use of resources as well as the coexistence of humans with unseen protective natural beings. In this context wetlands are of great importance to the Sarayaku indigenous community for several fundamental reasons:

- **Natural Resources:** Wetlands are ecosystems rich in biodiversity that provide essential natural resources for the subsistence of communities, including food such as fish and waterfowl, medicinal plants, and traditional construction materials.
- **Water Regulation:** Wetlands act as natural sponges that retain and gradually release water. This is vital to regulate river flow, prevent floods and droughts, and maintain a constant water supply for the community, agriculture and wildlife.
- **Water Filtration:** Wetlands purify water by acting as natural filtration systems. This is essential to maintain the quality of water used for drinking and other household needs.
- **Habitat for Biodiversity:** The loss of wetlands can lead to the extinction of species and the loss of traditional knowledge. Wetlands in Sarayaku are home to a large number of species of plants, animals and microorganisms, many of which are essential for the subsistence and culture of the Sarayaku community. The preservation of these wetlands, thus is essential for the survival of Sarayaku's culture and traditional way of life, as well as for the conservation of the region's rich biodiversity. Additionally, Sarayaku's fight to protect its wetlands is also part of a broader effort for Amazon conservation and climate change mitigation, as the degradation of these ecosystems could have significant global impacts.

- **Culture and Spirituality:** Wetlands often have deep cultural and spiritual meaning for indigenous communities such as the Sarayaku. Several wetlands in Sarayaku territory are linked to traditions, myths, and spiritual practices that core to their cultural identity.
- **Resilience to Climate Change:** Wetlands are vital for mitigation and adaptation to climate change. They help reduce erosion, capture carbon and regulate local temperatures.
- **Sustainable Tourism:** Wetlands also have an economic value to the Sarayaku people because they can generate income as sites for sustainable tourism, playing a fundamental role in their subsistence and in the protection of their ancestral territory.

#### 4.2.2 - Review of Rights of Nature / Wetlands legislation and policy

The Rights of Nature recently gained a new social and political momentum in Ecuador. In a national referendum taken in August of 2023, 60% of Ecuadorians voted in favour of halting oil drilling in the Yasuní National Park, one of richest biodiversity hubs in the world and a sacred area for the two isolated indigenous groups inhabiting the region. The referendum leaves 726 million barrels of oil on the ground, protecting a large network of rivers, lakes and wetlands and impeding the release of about 345 tons of Carbon. This decision by the Ecuadorian people constitutes a firm social, economic and cultural ground supportive of future actions protecting the rights of nature and wetlands. More widely the referendum also sets a global precedent for the right of citizens worldwide to decide matters pertaining to resource extraction and the protection of wetlands and related ecosystems.

### 4.3 - Governance and communication

#### 4.3.1 - Review of governance models and communication frameworks related to wetlands

The government of Ecuador is engaged in two noteworthy initiatives pertinent to the rights of nature and the protection of wetlands. The first is a proposal of the outgoing government of President Guillermo Lasso, for a new Water Resources Law (Propuesta de Ley Orgánica de Recursos Hídricos). This proposal which-includes 205 articles and 639 contributions from roughly 10.000 individuals and 5.000 grassroots organizations-seeks to replace an older 2014 law deemed unconstitutional and also protect the human right to water, the quality of water and the rights of nature consigned in the Ecuadorian constitution (Source: Ecuadorian Ministry of the Environment, Water and Ecological Transition 2022). Given that a new centrist government is about to be formed, it is unclear what form the new law will take.

The second initiative is the Amazon Cooperation Treaty Organization (ACTO) an intergovernmental body dating back to 2002 which brings together the eight member countries of the Amazon Basin (Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela) to a body to “develop a Strategic Action Plan among the 8 member countries for an integrated and sustainable management of transboundary water resources of the Amazon Basin, and create a favorable environment for future implementation, through a comprehensive engagement process with key stakeholders in the Basin”. At their latest meeting of August 2023 in Belém, Brazil, the member countries signed the Belém Declaration listing four objectives to be achieved jointly in relation to water resources. “The first of these seeks to ensure the population’s right to drinking water and sanitation; the second is aimed at improving the integrated management of water resources; the third is to ensure the sustainability of water systems in the face of the impacts of natural disasters and climate change; the fourth and final objective is to promote and strengthen actions that guarantee the quality of water for human consumption, which is threatened by illegal mining activities and other related crimes.” To this effect ACTO has implemented a monitoring and surveillance program of water resources. “The objective of promoting the strengthening of actions to monitor the quality of water for human consumption includes joint technical-scientific studies

and research into exposure to mercury and other hazardous substances derived from mining, particularly when Indigenous Peoples and local and traditional communities are affected. (Source ACTO Website). Together these two initiatives provide Ecuador with solid national and international frameworks for the protection of wetlands, the rights of nature and the rights of Indigenous Peoples.

#### 4.3.2 - Review of Rights of Nature / Wetlands specific governance and communication

Ecuador has an economy dependent on extractivism and on government policies defaulting to the extraction of various natural resources which pose a constant threat to the rights of nature and wetlands. This fact notwithstanding, events in the last two decades also show that the country also has a robust legal framework, a citizenry and a national culture that is aware and highly protective of the rights of nature and wetlands. The country also unveiled a plan to scale up the tourism industry and reach 2 million visitors by 2025. This economic shift provides further support for the protection of wetlands and the rights of nature.

### 4.4 - Community management approaches and worldview

#### 4.4.1 - Review of community management approaches and worldviews in relation to wetlands

In its fight for socio-economic rights and to overcome institutional marginalization and policy postponements of successive governments and ministries, Sarayaku was forced to develop its own Conscious Management Plan for its territory. This planning resulted from a long process based on Sarayaku's traditional knowledge named SACHA RUNA YACHAY (Knowledge of the inhabitants of the Jungle) with the intent to create Sumak Kawsay (Good Living) and strengthen Sumak Allpa (Fertile Land).

Sarayaku's Management Plan has three components aimed at defending and protecting the territory: (1) Territorial Zoning, (2) Community Regulations and (3) Programs. These three ensure the administration, management, care and control of ancestral territories, protect biodiversity, manage social and environmental heritage, implement the sustainable use of living assets and plan development actions compatible with their worldview to achieve the well-being of their people and future generations. This management plan is compatible with Sarayaku's Cosmivision and establishes Sarayaku's direction and horizon to achieve in the coming years its objectives and vision of a Life Plan.

Sarayaku's territory is zoned for areas of hunting, fishing, agricultural, human settlement and also other areas that are left untouched due either to their sacred nature and/or their biodiversity potential to regenerate fauna and flora. These activities are subject to various specific rules and regulations to ensure sustainable harvest and rational use of nature's living goods. The zoned areas are also monitored by a team of forest keepers to ensure compliance with the rules adopted by the community. Violations of the use of the forest commons can be sanctioned by fines, community work and in extreme cases expulsion from the community.

#### 4.4.2 - Review of Rights of Nature / Wetlands specific community management approaches and worldview

The governance models in indigenous territories such as Sarayaku are often based on traditional decision-making systems and participatory approaches based on self-management and a focus on the protection of wetlands. Indigenous communities often manage their natural resources and territory according to their own traditions and values. This involves collective decision-making and the active participation of all community members. These governance models are rooted in their cultural traditions and values, and are often combined with modern

sustainable management approaches. Some of the governance models and approaches found in Sarayaku include:

1. **Traditional Indigenous Governance:** The Sarayaku community follows a traditional indigenous governance system based on collective decision making and participation of all members. The council of elders or traditional leaders plays an important role in decision-making, and decisions are often made in community assemblies.
2. **The New Constitution of Nature:** Sarayaku is known for its "Constitution of Nature," which is a legal document created by the community to grant legal rights to nature and territory. This constitution recognizes nature as a subject of rights and commits the community to protect and preserve its territory and wetlands as an integral part of its worldview.
3. **Alliances with Environmental and Human Rights Organizations:** Sarayaku has established alliances with national and international organizations that work on human rights and environmental issues. These alliances provide them with support in promoting their rights and protecting their wetlands at the national and international levels.
4. **Monitoring and Sustainable Management:** The community has implemented environmental monitoring systems to closely monitor the state of the wetlands and their biodiversity. They have also developed sustainable natural resource management practices, including fishing and agriculture, to ensure the long-term health of wetlands.
5. **Legal Defense and Social Mobilization:** Sarayaku has used legal action and social mobilization to protect its wetlands and territory from external threats, such as oil exploitation and land invasion. They have brought cases before the Inter-American Court of Human Rights to assert their rights.
6. **Education and Awareness:** The Sarayaku community also emphasizes education and awareness about the importance of wetlands and environmental conservation among its members and in society at large.

#### 4.5 - Initial assessment about the likelihood of Ecuador to adopt a Rights of Wetlands approach

The Rights of Nature article in the Ecuadorian Constitution reflects the beliefs and traditions of the Indigenous Peoples of Ecuador, declaring that nature "has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution." This right, the constitution states, "is independent of the obligation on natural and juridical persons or the State to indemnify the people that depend on the natural systems." While various governments have largely ignored the rights of nature in favor of extractive policies the Rights of Nature article in the Ecuadorian Constitution exerts practical jurisdiction over all natural elements and it is especially protective of vulnerable ecosystems.

The rulings of the Constitutional Court regarding the rights of mangroves and the Los Cedros bioregion to exist in-of-themselves independently of the services they may offer human communities is a case-in-point, which set a new legal, political and cultural environment that is fully supportive of initiatives based on a Rights of Wetlands approach. This pro-nature legal environment has also been strengthened by the fact that in the last few years more than 75 laws and regulations in Ecuador have been amended to incorporate the rights of nature and that a dozen court cases have addressed these rights.

The Sarayaku people have also made a significant contribution to Ecuador's pro-nature legal environment. As a result of incursions into their territory by Ecuador's military in support of an oil company in 2004, the Sarayaku people in an unprecedented move brought the government of Ecuador the Interamerican Court for Human Rights for violation of their human rights and territorial sovereignty. In 2012 the Court found the Ecuadorian government guilty, sanctioning it to pay a million US dollars in reparations for damages to the Sarayaku. This case also set



a precedent in international law for the right of Indigenous Peoples to provide previous and informed consent prior to the incursions of any entities into indigenous territories. Ecuador's legal framework supports actions protective of the Rights of Wetlands and the rights of Indigenous communities to make decisions about the bodies of water within their territories. The recent referendum banning oil drilling in the Yasuní National Park is a clear indication that the Ecuadorian civil society has engaged in a robust dialogue about the Rights of Nature and Water both in mainstream media and alternative media venues.

## 5 - Guyana

### 5.1 - Country introduction

Guyana is a country located in the north-eastern corner of South America. [It is bordered by the Atlantic Ocean to the north, Brazil to the south and southwest, Venezuela to the west, and Suriname to the east.](#) The country is about 80% forested with the remaining main geological features being the intermediate and inland savannas. The Forested areas are divided into the highland region, hilly white sand region and coastal plains. The main economic activities of Guyana lie within the extractive industries - logging, mining, oil and gas. There is also agricultural related activities - sugar, rice and fisheries. [The country's population is made up of people from various ethnic backgrounds including Indian, African, Multiracial, Indigenous, European, Chinese, 80% of whom reside within the coastal belt. The remainder of the population is scattered throughout the hinterland region.](#)

Guyana has a long history of environmental management. By design or accident, the state of Guyana's ecological landscape remains mainly intact as means to access resource rich locations were limited until approximately 20 - 30 years ago. Policies such as the Forestry Act and associated guidelines limited harvesting of timber to selective logging and over the years the Forestry Commission has embarked on promoting reduced impact logging. In addition, previous political stances left Guyana isolated but also some of the requests during negotiation to access resources turned investors away. It was not until the late 1980s that Guyana took a more free market approach and opened the extractive industry to a wider investor pool.

Guyana is purported to have gotten its name from the Amerindian word that translates to "land of many waters". As the name suggests, Guyana has an extensive and complex system of rivers, creeks, lakes, waterfalls and other water bodies within the country's borders. It is one of eight countries sharing the Amazon Basin and is also a part of the wider Guiana Shield Highlands. Its main river, the Essequibo, is one of the principal rivers of South America and is connected to the Amazon River system via the Rio Negro. Much of the hinterland area is drained directly or by major tributaries of the Essequibo. The other main river systems found in Guyana are the Demerara and Berbice Rivers. These river systems are responsible for the wide array of wetlands that can be found throughout the country. In addition to the naturally formed wetlands like the Rupununi Wetlands, Guyana also has a complex drainage and irrigation network encapsulating three water conservancies established to capture, store and distribute rainfall water from the Guyana's Highlands to the coast to support its varied agricultural endeavour.

As referenced below the protection and conservation of Guyana's natural environment is enshrined in the National Constitution. These paragraphs provide the guiding principles under which actions should be taken. According to the Environmental Protection Agency (EPA), the principles of environmental management in Guyana include sustainable development, polluter pays, precautionary principle, public participation, and integrated management:

1. The sustainable development principle aims to balance economic, social, and environmental objectives to ensure that the needs of the present generation are met without compromising the ability of future generations to meet their own needs
2. The polluter pays principle states that those who cause pollution or environmental damage should bear the costs of remediation and cleanup
3. The precautionary principle is a risk management strategy that aims to prevent harm to the environment or human health in situations where there is scientific uncertainty
4. The public participation principle recognizes that public involvement in decision-making processes is essential for effective environmental management. It provides opportunities for stakeholders to participate in decision-making processes and ensures that their views are taken into account
5. The integrated management principle recognizes that environmental problems are complex and interconnected. It aims to manage natural resources in a holistic manner,

taking into account the interrelationships between different components of the environment

These are the basis of which Guyana's environmental laws and policies are framed.

## 5.2 - Legislation and policy

### 5.2.1 - International agreements

There are several international agreements that Guyana is signature to that aims to protect the rights of nature. These include:

1. Convention on Biological Diversity (CBD): The CBD is a legally binding treaty that aims to promote the conservation of biodiversity, the sustainable use of its components, and the fair and equitable sharing of benefits derived from genetic resources. It recognizes the intrinsic value of biological diversity and the rights of nature to exist, evolve, and fulfil its own evolutionary potential. At the national level Guyana has done some work in meeting the requirements of this convention. This includes drafting the National Biodiversity Strategic Action Plan. The most recent version came due in 2020 and is up for revision. The Environmental Protection Agency, the focal agency, is responsible for the revision of the document.

- a) The Nygoya Protocol - Guyana has accomplished two major actions as it relates to this agreement.
  - i. The first action is setting up of a national system to permit and track research related to biodiversity by national and international scientist. This includes protecting Indigenous communities who may be part of the research being done. Researchers have to submit an application to carry out research to the EPA. Each project has to gain informed consent from communities to participate in their research and this has to be signed off by the Ministry of Amerindian Affairs. The Ministry is also exploring systems to ensure that communities have a more formal agreement with researchers to ensure that they are getting more tangible benefits.
  - ii. Second action was a regulation that was drafted as it pertains to access and benefit sharing of genetic resources in 2013. However, the legislation has not been tabled and more recent efforts at consultations and moving the legislation forward has not provided results so far.

2. United Nations Framework Convention on Climate Change (UNFCCC): The UNFCCC is an international treaty that addresses climate change and its impacts. While not explicitly focusing on the rights of nature, it emphasizes the need to protect ecosystems and reduce greenhouse gas emissions to prevent dangerous human interference with the climate system.

3. The Universal Declaration of Human Rights (UDHR): While primarily focused on human rights, the UDHR recognizes the interconnectedness between humans and the environment. It states that everyone has the right to live in a healthy environment and that people have a responsibility to protect and preserve the natural world. The sentiments inherent in these words are enshrined in the preamble and paragraphs 25, 36 and 149j of the Constitution of Guyana. Which states respectively:

#### Preamble

Acknowledge the aspirations of our young people who, in their own words, have declared that the future of Guyana belongs to its young people, who aspire to live in a safe society which respects their dignity, protects their rights, recognises their potential, listens to their voices, provides opportunities, ensures a healthy environment and encourages people of all races to

live in harmony and peace and affirm that their declaration will be binding on our institutions and be a part of the context of our basic law; Demonstrate our commitment to protect our natural environment and endowment;

25. Every citizen has a duty to participate in activities designed to improve the environment and protect the health of the nation.

36. The well-being of the nation depends upon preserving clean air, fertile soils, pure water and the rich diversity of plants, animals and eco-systems.

149J. (1) Everyone has the right to an environment that is not harmful to his or her health or well-being.

(2) The State shall protect the environment, for the benefit of present and future generations, through reasonable legislative and other measures designed to –

(a) prevent pollution and ecological degradation;

(b) promote conservation; and

(c) secure sustainable development and use of natural resources while promoting justifiable economic and social development.

(3) It shall not be an infringement of a person's rights under paragraph (1) if, by reason only of an allergic condition or other peculiarity, the environment is harmful to that person's health or well-being.

Guyana has attempted to fulfil these declarations with creating the Environmental Protection Agency and its associate Act and regulations. It has also attempted to bring in line its economic development to reflect a more environmentally centred approach through the drafting of policies such as the Green State Development Strategy (2015 - 2020) and the Low Carbon Development Strategy (2020 to 2030) which is particularly useful in helping to fulfil its obligations to the UNFCCC.

4. United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP): UNDRIP recognizes the rights of Indigenous Peoples, including their rights to their lands, territories, and resources. By protecting indigenous rights, it indirectly contributes to the protection of nature, as many indigenous communities have a deep connection to and dependence on their natural environments. While non-binding this instrument provide the basis for setting national policies for Indigenous development.

#### 5.2.2 - Review of relevant social and environmental legislation that are particularly related to or impact on wetlands, Indigenous Peoples and local communities

##### 5.2.2.1 - *National legislation*

In Guyana, the laws that protect water and wetlands include:

1. The Environmental Protection Act (1996): This is a comprehensive legislation that establishes the Environmental Protection Agency (EPA) as the primary regulatory body responsible for the protection and management of the environment, including water resources and wetlands. The EPA is expected to review application for large scale activities to be implemented within the wetlands and provide an environmental permit with stipulations for ensuring these activities are environmentally safe and that mitigating measures are in place for any disaster. The issuing of environmental permits are not always done and there are instances especially in the North Rupununi Wetlands where there is concern about agricultural projects being developed.

2. The Water and Sewerage Act (2002): This act provides for the management, control, and protection of water resources in Guyana. It outlines the responsibilities of the Guyana Water Incorporated (GWI) in supplying and managing water resources, including the protection of wetlands. More emphasis has been placed on ensuring potable water is distributed to communities and ensuring that standards are maintained for the building of septic tanks. The GWI has little input on management of inland wetland systems. They are more likely to sit on any national committee that oversees the management of the East Demerara Conservancy.

3. The Protected Areas Act (2011): This act is specifically focused on the establishment, management, and protection of protected areas, which may include wetlands. It provides legal mechanisms to conserve and sustainably manage these areas. There are 5 protected areas declared in Guyana. They are all in some way connected to water source or wetland system. These are the Shell Beach Protected Area, Iwokrama Forest, Kaieteur National Park, The Kanuku Mountains Protected Area and the Kanashen Amerindian Protected Area (KAPA). KAPA lies at the headwaters of the Essequibo River and thus helps to protect the integrity of the Essequibo source. The Kanuku Mountains and Iworkama Forest are connected to the Rupununi Wetlands during the rainy season.

4. The Wildlife Conservation and Management Act (2016): This act primarily emphasizes the conservation and protection of wildlife and their habitats, including wetlands. It regulates activities that may impact wetland ecosystems and establishes penalties for violations. The role the WCMC plays in the management of the wetland ecosystem is minimal and is left mainly to the EPA for providing guidance.

5. The Environmental Impact Assessment (EIA) Regulations (2000): The EIA regulations require developers to assess and evaluate the potential environmental impacts of proposed projects, including those that may affect water and wetlands. It ensures that necessary measures are taken to avoid or mitigate adverse effects. This regulation, however, is rarely applied to large scale agricultural development in the hinterland.

6. The Fisheries Act (2002): This act aims to protect and manage the fisheries resources of Guyana, including freshwater systems, rivers, and wetlands. It regulates fishing activities to ensure sustainable use and conservation of aquatic ecosystems. The Fisheries Department is now working on inland fisheries regulation that would help with the management of fish species and its habitat. They are also working to have better co-management agreements with communities for the management of fish resources.

7. The Amerindian Act (2006): This act provide guidance for the management of Amerindian title lands including the use of their natural resources in a way that lends support to the concept of sustainability. Within the Amerindian Act, Village Council working on majority decision can set aside parcels of their titled land for conservation. Communities in the Rupununi Wetlands are also exploring ways to better monitor their lands to maintain ecosystem integrity and manage resources.

8. Mining Act: This Act provides rules relative to prospecting, quarrying and mining of minerals. The Act also regulates the exportation of radioactive minerals and safeguards rights of Amerindians in respect of land and restricts rights of Amerindians to take minerals.

### 5.2.3 - Review of Rights of Nature / Wetlands legislation and policy

There is no legislation that directly protect wetlands in Guyana. There are a number of Acts that helps to promote the sustainable use of wetlands and policies that direct actions to protect

the integrity of wetlands. The onus lies with the stakeholders to interpret, operationalise and implement activities that would see the protection of Guyana's wetlands.

At its core Guyana's environmental legislation and policies are people centred. Actions to be implemented are so done to ensure that humans are comfortable as indicated in the Constitution - the people have a right to live an environment that is free of pollution....

## 5.3 - Governance and communication

### 5.3.1 - Review of governance models and communication frameworks related to wetlands

Governance and communication regarding the wetlands involve various stakeholders, including government agencies, local communities, non-governmental organizations (NGOs), and international partners especially where funding is concerned. Some key aspects of wetland governance and communication in Guyana include:

1. **Government Policies and Institutions:** The government of Guyana plays a crucial role in wetland governance through the formulation and implementation of policies and regulations. The Environmental Protection Agency (EPA) is responsible for overseeing environmental management, Protected Areas Commission (PAC) for environmental conservation potentially including wetlands. Other government agencies, such as the Guyana Forestry Commission, Guyana Geology and Mines Commission, Fisheries Department, Wildlife Conservation and Management Commission also contribute to inland wetland governance.

2. **Legislation and Regulations:** Guyana has laws and regulations in place to protect the environment which would include the wetlands. The Environmental Protection Act, Wildlife Conservation and Management Act, and other relevant legislation provide a legal framework for wetland conservation and management. These laws aim to prevent habitat destruction, regulate activities, and ensure sustainable use of the environment including wetlands.

3. **Stakeholder Engagement:** Engaging local communities, NGOs, and other stakeholders is crucial for effective wetland governance. The community representative groups usually collaborates with these entities to raise awareness, involve communities in decision-making processes, and develop sustainable management approaches. Local communities often use their traditional knowledge and practices to contribute to wetland conservation efforts.

4. **Communication and Awareness:** Communication plays a vital role in raising awareness about the importance of wetlands and their rights. Communities have attempted to use the various communication channels, such as public campaigns, workshops, and educational programs, to engage the public, stakeholders, and decision-makers. NGOs and international partners also contribute to communication efforts by organizing awareness campaigns and disseminating information on wetland conservation especially on research being done to continue building local and national understanding of the system and how it functions.

5. **International Cooperation:** Guyana actively participates in international initiatives and collaborations related to wetland governance through local partnerships formed with international organisations. International partners share experiences, access funding opportunities, and work with communities to explore the best ways to implement best practices for wetland conservation.

6. **Monitoring and Enforcement:** Monitoring the condition of wetlands and enforcing regulations are crucial for effective governance. This is still an area that communities are battling to gain

some recognition for the immediate need. There is a lack of resource both locally and nationally for monitoring and providing some level of enforcement. Communities working with partners are exploring options to develop cheap but effective methods and build capacity to ensure their ability to better monitor their environment.

### 5.3.2 - Review of Rights of Nature / Wetlands specific governance and communication

The NRDDDB and South Central District Council have been the driving force for actions in protecting and conserving the Rupununi Wetlands. They have been supported by WWF Guyana and Conservation International Guyana through project funding within these institutions or projects being implemented within their own organisations. These organisations have carried out research activities that would provide better understanding of how the Rupununi Wetlands work and have helped create educational and awareness materials that would bring better focus to the needs of the communities for safeguarding their homeland. They have collectively or individually attempted to advocate to the Government the need for action for better planning and consultations for the use of the landscape.

## 5.4 - Community management approaches and worldview

### 5.4.1 - Review of community management approaches and worldviews in relation to wetlands

Communities have always used their resources based on their traditional knowledge and practices within their cultural norms. Governmental policies have now been added to the mix. They therefore seek ways to mesh traditional practices and policies driven by a more scientific approach. The communities have always acknowledge the values, significance and economic benefits that wetlands provide.

**Indigenous Knowledge and Traditional Practices:** Indigenous communities in Guyana know and understand the landscape within which they dwell. They have sought to maintain traditional practices that would promote sustainable use employing practices such as rotational farming and fishing techniques, allowing wetlands to regenerate and maintain their ecological balance. It, however, cannot be denied that recent changes in Indigenous lifestyle may impact the landscape within which they live if care is not taken.

**Community-Based Natural Resource Management (CBNRM):** CBNRM approaches involve local communities in the management and decision-making processes of their natural resources, including wetlands. In Guyana, several community-led initiatives have been successful in conserving wetlands through sustainable practices such as selective logging, controlled hunting, and regulated fishing. These approaches empower communities to take ownership of their resources and promote the long-term conservation of wetlands. Projects implement by the NRDDDB and other partners help to ensure that these initiative are successful.

**Integrated Water Resource Management (IWRM):**IWRM approaches recognize the interconnectedness of water resources, including wetlands, and promote their sustainable management. In Guyana, indigenous communities are calling for better management of water ways especially where mining is concerned. The government, through its agencies like Guyana Geology and Mines Commission attempt to monitor and curtail dangerous practices. Communities are also taking the initiative to begin monitoring and planning for better uses of their water resources and implementing systems that would help protect their ability to use the wetlands and ensure their long-term ecological integrity.

Eco-tourism and Sustainable Livelihoods: Recognizing the economic potential of wetlands, community-based eco-tourism initiatives have emerged in Guyana. These approaches encourage sustainable livelihoods by providing opportunities for local communities to engage in tourism activities, such as bird-watching, sport fishing, and nature tours. By generating income through eco-tourism, communities are motivated to protect wetlands and their associated biodiversity.

Education and Awareness: Promoting environmental education and raising awareness about the value of wetlands are crucial community management approaches. There is a recognition of a community leadership ladder that stems from youths being involved in environmental education and awareness programmes through their wildlife clubs. Many of these young people have gone on to serve in leadership positions in local organisations, community projects and their village councils. These programmes promoted the importance of environmental conservation and their role in ensuring an intact environment is there for the next generation. The work therefore, fosters a sense of environmental stewardship, which will contribute to the long-term protection of the wetlands.

#### 5.4.2 - Review of Rights of Nature / Wetlands specific community management approaches and worldview

There is no approach or worldview working within the communities to manage their resources from a RoW approach. Communities lack the capacity to plan resource use and management from that standpoint. In addition, there is a drive both within the communities and as part of government policy to drive economic development. There is little thinking or understanding of what steps are required to ensure economic activities will be sustainable.

#### 5.5 - Initial assessment about the likelihood of Guyana to adopt a Rights of Wetlands approach

Guyana has shown a commitment towards the protection and conservation of its environment through the various international agreements and national legislation and policies developed over the years. The country does recognise the importance of the ecosystems and their ecological value to fighting climate change. In the long run these actions will ensure that the integrity of these systems may remain intact but more work would have to be done to ensure that objective is met. It would require a willingness to communicate and act with necessary stakeholders.



## 6 - Kenya

### 6.1 - Country introduction

Wetlands as defined by the Ramsar Convention, 1971, include a wide variety of habitats such as marshes, peatlands, floodplains, rivers and lakes, and coastal areas such as saltmarshes, mangroves, and seagrass beds, but also coral reefs and other marine areas no deeper than six metres at low tide, as well as human-made wetlands such as waste-water treatment ponds and reservoirs. The National Wetlands Conservation and Management Policy, 2015 for Kenya Kenya defines wetlands as areas permanently or seasonally flooded by water where plants and animals have become adapted and include swamps, marshes, bogs, shallow lakes, oxbow lakes, dams, river meanders and floodplains, as well as riverbanks, lakeshores and seashore where wetland plants grow. It also includes marine and intertidal wetlands such as deltas, estuaries, mud flats, mangroves, salt marshes, sea grass beds and shallow reefs.

Wetlands are highly productive ecosystems critical in controlling floods, thus buffering surrounding communities from the effects of disasters. Important functions of wetlands include: regulation of microclimates; provision of livelihood support options such as fishing; prevention of natural disasters such as droughts and floods; groundwater recharge; act as natural filters and improve water quality; provision of rich habitats for fish, mammals, birds, reptiles and amphibians, and for many rare and threatened species; and provision of tourism/recreation opportunities.

Kenya has a variety of wetlands around its six water basins: Lake Victoria North, Lake Victoria South, Rift Valley, Ewaso Nyiro, Tana and Athi, that stretch from coastal and marine wetlands to inland freshwater lakes, rivers, dams and swamps, constructed wetlands, mountain bog, peat and glacier lakes (Table 6.1). These wetlands are classified into riverine, lacustrine, palustrine, estuarine, marine, and constructed wetlands. Table 6.2 outlines the detailed classification of the wetlands.

Table 6.1 The Six Water Resource Authority Basins (Kenya Wetlands Atlas 2012)

Wetlands Basins	Major Wetlands
Lake Victoria North Basin Wetlands	Lake Victoria River Yala Yala Swamp Lake Kanyaboli River Nzoia Sio-Siteko
Lake Victoria South Basin Wetlands	Lake Victoria River Nyando Migori River Lake Simbi River Sondu-Miriu
Rift Valley Basin Wetlands	Lake Nakuru Lake Naivasha Lake Baringo Lake Turkana Lake Magadi Turkwel River
The Tana River Basin	Tana River Tana River Delta Seven Forks hydropower dams
Ewaso Ng'iro North Basin	Lorian Swamp Ewaso Ng'iro rivers Lake Ol Bolosat Shompole swamp

	Amala river Habasweni swamp
The Athi River Basin	Athi River Ramisi River Nairobi River Lake Amboseli
Rift Valley Basin Wetlands	Lake Nakuru Lake Naivasha Lake Baringo Lake Turkana Lake Magadi Turkwel River

Table 6.2 Classification of Kenya's Wetlands (Kenya Wetlands Atlas 2012)

Formation	System	Sub - system	Hydrology	Description
Natural	Coastal and Marine	Marine	Subtidal	Shallow marine waters
				Marine aquatic beds
			Coral reefs	
			Intertidal	Rocky marine shores
		Sandy beaches		
		Estuarine	Subtidal	Estuarine waters
			Intertidal	Intertidal mudflats
				Salt marshes
		Lacustrine	Permanent/seasonal	Brackish/saline lagoons
	Coastal fresh lagoons			
	Inland	Riverine	Perennial	Permanent rivers
				Inland delta
				Intermittent river
			Intermittent	Flood plain wetlands
		Lacustrine	Permanent/Seasonal	Permanent/seasonal freshwater lakes
			Permanent/Seasonal	Permanent/seasonal saline lakes and marshes
		Palustrine	Permanent	Permanent freshwater ponds and marshes
Open peat bogs, fens				
Shrubs dominated swamps				
Freshwater swamp forests				
Peat swamp forests				
Seasonal	Fresh spring oasis			
	Seasonal freshwater marshes			
Geothermal		Geothermal wetlands		
Man made	Agriculture		Fishponds, small tanks	
			Irrigated land, rice fields	
			Seasonally flooded arable land	

		Aquaculture		Fishponds
		Salt exploitation		Salt pans
		Urban and Industrial		Reservoirs
				Gravel pits
				Sewage treatment plants

Some of these wetlands are recognised as important conservation areas such as National parks, National reserves, Ramsar sites, Important Bird Areas and World Heritage Sites. Apart from being biodiversity hotspots, the wetland resources are equally crucial for income generation and a source of livelihood and well-being of the communities.

## 6.2 - Legislation and policy

6.2.1 - Review of relevant social and environmental legislation that are particularly related to or impact on wetlands, Indigenous Peoples and local communities

6.2.1.1 - *Global Relevant Multilateral Environmental Agreements (MEAs) for Wetlands and Biodiversity Management*

### 1. The Ramsar Convention on Wetlands of International Importance, 1971

The Ramsar Convention provides guidelines for the sustainable use, management and governance of wetlands. It seeks to provide the framework for international action and cooperation for the conservation and wise use of these areas and their resources. The Convention calls for international cooperation between contracting parties and individual countries to formulate national policies on wetlands. It provides for the establishment of national wetlands committees to assist in its implementation at the national and grassroots levels to the stakeholders who are the primary dependents on wetlands. The Convention was ratified by Kenya in 1990. Since then, six wetlands have been designated as Ramsar sites, including the Tana Delta.

### 2. 2030 Sustainable Development Goals

Wetlands are critical in meeting most of the 17 United Nations Sustainable Development Goals (SDGs) and the 169 associated targets, focusing on poverty, hunger, health, energy, consumption and climate change. SDG 15 specifically calls for the conservation and sustainable use of “inland freshwater ecosystems and their services”. SDG 6 focuses on water and sanitation with a target relating to trends in water-related ecosystems such as wetlands. The major weakness of the SDGs is how to integrate wetland conservation, wise use and restoration into SDG planning and implementation. There is a challenge in including wetlands in national SDGs and ensuring that progress reports reflect the contributions of wetlands so that their conservation, wise use and restoration can directly link to the sustainable development agenda.

### 3. Convention on Biological Diversity (CBD), 1992

The CBD prioritises the protection of ecosystems such as wetlands, which are species-rich and are important for endemic and threatened species and obligates states to develop national strategies, plans or programs for conservation and sustainable use of biological diversity and to integrate them into sectoral or cross-sectoral plans, programs and policies. Kenya ratified the CBD in 1992.

#### 4. Paris Agreement of 2015

Through the Paris Agreement, 196 governments including Kenya agreed to an ambitious programme of climate change mitigation and adaptation under the UNFCCC. The Agreement calls on States to develop Nationally Determined Contributions (NDCs) to address climate change, with nature-based solutions as a key component, including from wetlands. These have a critical role in both adaptation and mitigation through carbon storage and sequestration, particularly in peatlands. However, despite the increased recognition of safeguarding wetlands as key natural climate buffers in landscapes, very few climate initiatives have identified the need to protect, restore and sustainably manage these ecosystems.

#### 6.2.2 - National policy and legislative framework for wetlands management

Kenya has a comprehensive Wetlands Policy. However, various other policies and legislation relate to wetlands conservation and management. This has partly led to institutional conflicting mandates and overlaps and consequently degradation of wetlands ecosystems and biodiversity therein. There is a need for an inter-sectoral coordinated approach to achieve sustainable use and management of wetlands in the country. Additionally, there is a need to finalise the review of Wetlands Regulations to comply with the Environmental Management and Coordination (Amendment) Act, 2015 and the Constitution of Kenya, 2010. This will help in compliance and enforcement of the Regulations.

The Table below highlights key policies and laws relevant to wetland conservation and management in Kenya.

<b>Policy and legal framework</b>	<b>Relevance</b>
Kenya Vision 2030	Makes a strong case for sustainable management of natural resources (including wetlands). It identifies key projects to ensure achievement of the sector's goals such as improved water resource information and management.
National Environment Policy, 2014	Aims to ensuring sustainable management of the environment and natural resources, such as unique terrestrial and aquatic ecosystems (wetlands and mangroves), for national economic growth and improved livelihoods. It provides mechanisms for ensuring the protection of wetlands and riverbanks from unsustainable practices and recommends the development of a wetlands policy and management plans and the rehabilitation of degraded wetlands.
National Wetlands Conservation and Management Policy, 2015	Its goal is to ensure wise use and sustainable management of wetlands in order to enhance sustenance of their ecological and socio-economic functions for the present and future generations of Kenya. Recommends development and implementation of appropriate management plans through a participatory process for establishment of wetland conservation areas such as parks and reserves to ensure that they are adequately protected.
Draft Integrated Coastal Zone Management (ICZM) Policy and Action Plan, 2013	The draft Integrated Coastal Zone Management (ICZM) Policy and the Action Plan have identified various measures and strategies for implementation to reverse environmental degradation and promote sustainable utilization of coastal and marine resources. The Policy provides for preservation, protection and restoration of the integrity of estuaries and deltas through <i>inter alia</i> promoting integrated river delta planning and management to rationalize diversion, damming of rivers and flood control and to ensure environmental flows are maintained.

National Wildlife Conservation and Management Policy, 2017	Defines Wetlands under Section 2 which is borrowed from the Ramsar Convention. It mandates the Cabinet Secretary to declare a wetland that is important for habitat or ecosystem for wildlife conservation a protected wetland. Further in consultation with the community and relevant stakeholders they shall prepare an Integrated Wetland Management Plan for the protected wetland.
Forest Policy, 2014	Recognises coastal and mangrove forests as part of Kenya's forest ecosystems and that these forests have high species richness and endemism, which has made the country be classified as mega diverse. They rank high as the country's natural asset, due to their environmental, life supporting functions, and the provision of diverse good and services.
National Land Policy, 2009	Offers a framework of policies and laws to ensure maintenance of a system of land administration and management to provide efficient and effective utilisation of land and land-based resources including wetlands. One of the policy principles is that of conservation and management of land based natural resources, the principle of protection and management of fragile and critical ecosystems including wetlands.
National Land Use Policy, 2017	Recommends that protected areas and areas of high intrinsic value such as habitat for endangered biodiversity and wetlands shall not be allocated for private use or degazetted. To address the problem of cultivation on marginal lands and fragile ecosystems, the government shall among other interventions, increase public awareness on the dangers of farming in marginal lands like wetlands as a routine activity by extension service providers.
Kenya National Biodiversity Strategy and Action Plan (2019 –2030)	The NBSAP 2019-2030 is a road map to achieving biodiversity conservation targets in the country while also fulfilling international and regional obligations. The action plan sets the time required to realize the action, performance and verifiable indicators and allocates responsibilities for implementation to different institutions.
National Spatial Plan, 2015 - 2045	Recognises the functions and importance of wetlands, noting that wetlands cover about 3% to 4% of the land. It further acknowledges that wetlands provide important ecosystem services such as filtering and storing water and as wildlife habitats. The Plan proposes policy statements to address wetlands management challenges including preparing integrated wetlands management plans to promote their sustainable use and empower communities in the management of wetland ecosystems.
National Water Master Plan 2030	Seeks to have improved water and sanitation services available and accessible to all by 2030. The plan notes that the water deficits would require promotion of water resources (including wetlands) development to the maximum in order to meet future water demand.
Constitution of Kenya, 2010	Constitution of Kenya, 2010 reaffirms the government commitment on sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and ensures the equitable sharing of the accruing benefits. This includes enactment of legislation related to conservation and management of wetlands in the country.
Environmental Management and Coordination (Amendment) Act, 2015	Section 42 provides for protection of wetlands including prohibition in carrying out of various activities on a wetland without prior approval of NEMA. The Act provides for declaration of a wetland to be a protected area and impose such conditions necessary to protect the wetland from degradation. Further, the Act obligates NEMA to undertake a survey of the coastal zone and prepare the State of the Coast Report every two years.

The Wildlife Conservation and Management Act, 2013	Defines wetlands under Section 2, which is borrowed from the Ramsar Convention. It provides for declaration of a wetland that is important for habitat or ecosystem for wildlife conservation as a protected wetland and for preparation of Integrated Wetland Management Plans for the protected wetland. The Act mandates Kenya Wildlife Service (KWS) to enter into agreements with other competent Authorities for the protection of wildlife and their habitats. A number of mangrove forests fall within Marine Protected Areas (MPAs) under the jurisdiction of KWS.
Water Act, 2016	Provides for the management, conservation, use and control of water resources including wetlands and for acquisition and regulation of rights to use water.
Forest Conservation and Management Act, 2016	Provides for the development and sustainable management, including conservation and rational utilisation of all forest resources for the socioeconomic development of the country and for connected purposes
The Fisheries Management and Development Act, 2016	Provides for the conservation, management and development of fisheries and other aquatic resources to enhance the livelihood of communities dependent on fishing and to establish the Kenya Fisheries Services
Agriculture, Fisheries and Food Authority (Amendment) Act, 2013	The Act under Section 22 provides for formulation of land development guidelines in respect of any category of agricultural land to be implemented by the respective county governments considering the circumstances of the respective areas under their jurisdiction, which may include wetlands.
County Governments Act, 2012	Requires county governments to deal with planning and development where they manage and regulate the activities that occur within their counties such as wetlands cultivation and restoration of degraded wetlands
National Lands Commission Act, 2012	The National Lands Commission (NLC) is mandated to carry out the implementation of Articles 60 and 67 of the Constitution as well as ensure the national land policy is implemented. Wetlands are public land that should be administered on behalf of the communities therein by the NLC.
The Community Land Act, 2016	Provides for the recognition, protection and registration of community land rights, management and administration of community land and the role of county governments in relation to unregistered community land. Although not very explicit, the Community Land Act is relevant to wetlands management because various wetlands are located on community land.
Physical and Land Use Planning Act, 2019	Provides for the planning, use, regulation and development of land and for connected purposes.
Irrigation Act, 2019	Provides for mainstreaming irrigation related statutory obligations such as those that relate to the environment, water and health.
Environmental Management and Coordination (Wetlands, Riverbanks, Lake Shores and Sea Shore Management) Regulations, 2009	Provide for the conservation and sustainable use of wetlands to ensure they provide social, economic and ecological benefits to the society. Regulation 10 notes that an inventory of the wetlands should be carried out and that wetland management plans should be developed. Regulation 5 (1) (d) provides that sustainable use of wetlands shall be integrated into the national and local land use plans to ensure sustainable use and management of the resources.
National Mangrove Ecosystem	The Plan proposes six programmes for effective management of mangroves including; forest conservation and utilization; fisheries

Management Plan (2017 – 2017)	development and management; community; tourism development; research and education; and human resource and operations. These programmes prescribe measures for rehabilitation, conservation, and sustainable management of mangrove ecosystems in Kenya.
Draft Wildlife Conservation and Management (Protected Wetlands) Regulations, 2016	The draft Regulations aim to implement the Wildlife Act, 2013. Provide for declaration of a wetland that is an important habitat or ecosystem for wildlife conservation a protected wetland. Further, the Regulations mandates KWS in collaboration with the person or community holding a legal or communal interest in the wetland and the relevant lead agencies, to prepare an Integrated Wetland Management Plan for the conservation and management of the protected wetland through a public consultative process.

## 2.2 Review of Rights of Nature

In Kenya, wetlands are managed in relation to property rights and land tenure system in the country. Under the Constitution of Kenya 2010, Kenya has three land tenure systems: public land, private land and community land. For wetlands that occur on private land, their conservation and utilisation are governed by the rights that a private landowner in which the property exists and the manner those rights are regulated.

The state has residual powers for regulating property rights on land. The two most common tools for such regulation are the tools of police power and eminent domain. In the Power of Eminent Domain, the State holds radical title to all land within its territory. This power is provided under Section 75 of the Constitution. The Land Act, 2012 provides for the sustainable administration and management of land and land-based resources. It also provides for compulsory acquisition of land. The National Land Commission, established by Article 67 of the Constitution manages public land on behalf of the national government and county governments and prescribes guidelines for the management of public land by all public agencies, statutory bodies and state corporations in actual occupation or use of public land. It is also mandated to take appropriate action to maintain public land that has among other things, critical habitats or protected areas, identify ecologically sensitive areas that are within public lands and make Rules and Regulations for the sustainable conservation of land-based natural resources such as wetlands. The Commission may reserve public land and water bodies for purposes of public interest, including conservation.

Police Power refers to the power of the State to regulate land use in public interest, in order to secure proper management. Further, it is an incidence of state sovereignty exercised to protect social interests including health, safety and public morality. Police power may be invoked to secure proper wetlands management. In Kenya it is provided for in a few laws, such as the Public Health Act; Agriculture, Fisheries and Food Authority Act; the Local Government Act; the Physical Planning Act and the Water Act. One advantage of police power over eminent domain is that the state has no obligation to pay compensation to landowners for regulating land use. However, land use control measures must be applied with caution as excessive land-use regulations may be seen to amount to compulsory acquisition of the land.

Reliance on the above tools can help regulate the rights of wetlands in Kenya, however, neither has been effectively utilised. Eminent domain has been relied on largely when land is required for public construction and in several instances to take land and give it to private individuals and very rarely for environmental sustainability. Neither has police powers been effectively used for wetlands management. This is due to the lack of comprehensive wetlands legislation which would prescribe that need for wetlands to be regulated to ensure sustainability even if they occur in private or community land.

## 6.3 - Governance and communication

### 6.3.1 - Review of governance models and Communication Frameworks related to Wetlands

For a long time, Kenya has lacked a holistic institutional framework for the conservation and management of wetlands. Consequently, different agencies handle various aspects of wetland conservation, contributing to ongoing wetland loss and degradation. Only recently in January 2023, the President issued Executive Order No. 1 of 2023, establishing the State Department for Environment and Climate Change. This order solidified the government's commitment to protecting Kenya from the adverse effects of global warming and assigned the responsibility for wetland conservation and protection to the National Environment Management Authority (NEMA).

**NEMA**, as the primary agency mandated by the Environmental Management and Coordination Act No. 8 of 1999 (EMCA), plays a key role in wetland conservation in Kenya. It regulates and monitors activities in and around wetlands to ensure compliance with environmental laws and policies, maintaining field offices at the sub-national (county) level. EMCA has also set up County Environment Committees (CECs) to advise NEMA on environmental matters at the county level and facilitate public participation in environmental decision-making. Comprising representatives from various sectors, including government, private sector, and civil society, CECs actively contribute to local environmental governance.

Furthermore, the National Wetlands Conservation and Management Strategy has recommended the creation of a National Wetlands Steering Committee (NWSC) to supervise the implementation of the National Wetland Conservation and Management Policy. However, as of now, the committee has not been formed.

The **Water Resources Authority (WRA)** is a state corporation that is responsible for safeguarding the right to clean water by regulating the management and use of water resources, including those that may impact wetlands. This involves overseeing activities such as pollution control, drainage management and development in freshwater wetlands such as those found in river deltas and lake shores. The Water Act of 2016 established **Basin Water Resources Committees (BWRCs)** and **Water Resource Users Associations (WRUAs)** as associations for the collective management of water resources at the basin and sub-basin levels. WRA works with WRUAs to promote collaborative management of water resources and conflict resolution through formulation and implementation of catchment and sub-catchment management plans that propose actions for the management of water resources at regional and local levels.

Mangroves are recognised as wetland ecosystems both by definition and in practice. Specifically in Kenya, mangroves are designated as integral components of government forest reserves. The governance and management of mangrove wetlands in the country are guided by two key legislations: the Forest Conservation and Management Act of 2016 and the Wildlife Conservation and Management Act of 2016. These laws classify mangrove wetlands either as public forests or as Marine Protected Areas, conferring respective institutional authority to the Kenya Forest Service (KFS) and the Kenya Wildlife Service (KWS).

The **Kenya Forest Service (KFS)** functions as the primary government agency entrusted with the conservation and management of forests across the nation. When it comes to mangrove governance, community involvement and initiatives assume a pivotal role. The forest laws acknowledge and encourage community engagement through the establishment of **Community Forest Associations (CFAs)**, fostering collaborative forest management. Within Tana River County, for instance, there exist five active CFAs. These associations play a crucial role in the planning and management of mangrove wetlands at the local level.



On the other hand, the **Kenya Wildlife Service (KWS)** serves as the central authority for the implementation of the Ramsar Convention on Wetlands in Kenya. Under its jurisdiction, KWS is responsible for protecting wetlands within designated protected areas, many of which are recognised as wetlands of national and international importance. KWS also oversees the development of management plans for Ramsar sites including the Tana Delta. To facilitate collaboration between government agencies, NGOs, and local communities involved in wetland management within Ramsar sites, KWS has established Ramsar Sites committees.

**At the sub-national level**, county governments in Kenya are vested with a significant role in wetland conservation within their jurisdictions. Their authority and capacity extend beyond oversight, allowing them to proactively and effectively safeguard wetlands. By exercising their legislative powers, they can enact by-laws and regulations specific to local wetlands. This includes soil and water conservation which are devolved water resources management functions. This localised approach ensures that wetland conservation efforts are not only comprehensive but also responsive to the specific needs and conditions of wetlands.

From the above, it is evident that there is a need to improve the governance and communication structures and frameworks for wetland conservation in Kenya, as well as coordination between key public institutions such as NEMA, WRA, KFS, KWS, and the county governments. These governance models and communication frameworks need to work together to ensure effective wetland conservation in Kenya by involving various stakeholders, raising awareness, and promoting collaborative efforts

### 6.3.2 - Governance structure of wetlands management in Kenya

#### 6.3.2.1 - *Communication Frameworks for Wetland Conservation in Kenya*

In alignment with Kenya's National Wetlands Conservation and Management Policy 2015, enhancing communication, education, and public awareness among stakeholders to encourage active participation in wetland conservation is a key objective. This objective is also reflected in the Ramsar Convention's Communication, Education, Participation, and Awareness (CEPA) Programme, promoting the wise use principle. The **National Museums of Kenya (NMK)** represents the government in implementing CEPA activities, while Community Action for Nature Conservation (CANCO) serves as the NGO representative. Investing in CEPA is anticipated to increase the number of well-informed advocates, actors, and networks engaged in wetland-related issues, ultimately fostering an informed decision-making public. The CEPA framework in Kenya could be one of the mechanisms through which the Rights of Wetlands approach can be socialised.

Moreover, various platforms facilitate stakeholder collaboration, discussion of wetland management issues, information sharing, and joint efforts on conservation projects, including the **Kenya Wetlands Forum**—a multi-institutional stakeholder consortium dedicated to promoting wetland conservation and wise use in Kenya. This forum engages in advocacy, research, and community outreach, playing a key role in advocating for policies like the National Wetlands Conservation and Management Policy of 2015.

Additionally, community-based organisations actively participate in wetland conservation efforts, collaborating with government agencies and NGOs to protect and sustainably utilise wetlands all over the country. They organise community dialogues and forums which provide a space for residents to voice their concerns, share traditional knowledge, and contribute to wetland management decisions.

In articulating the rights of wetlands, essential tools such as **Environmental Impact Assessments (EIAs)** and Environmental Audits (EAs) not only provide a structured framework but also represent an example of effectively communicating the rights inherent to wetlands. EMCA makes provision for EIA in sections 58 and 59 thereof. Section 58 inter alia obliges the proponent of a project to undertake or cause to be undertaken at his own expense an EIA study and prepare a report thereof. A proponent must not implement a project likely to

have a negative environmental impact or for which an EIA is required under the Act or Regulations unless an EIA has been concluded and approved by NEMA. At the end of the environmental impact assessment study process, an environmental impact assessment study report is produced. The mandatory public participation and communication process of evaluation and analysis provides for the preservation of wetland rights. While there have been contestations around EIAs (see [here](#) and [here](#)).

### 6.3.3 - Review of Rights of Nature / Wetlands specific governance and communication

It took over four decades for Kenya's supreme legislation to explicitly recognise environmental rights and fundamental freedoms when the Constitution of Kenya was promulgated in 2010. This constitution has been lauded as being progressive in its presentation of the provisions for environmental management, including those that touch on the right to a clean and healthy environment and sustainable development. Article 42 in particular recognises that everyone has the right to a clean and healthy environment, which includes the right to protect it for both present and future generations, and the right to enforce these rights by seeking redress in a court of law. Its implementation is discussed below through a lens of rights of nature with specific examples on wetlands.

Firstly, the recognition of wetlands as crucial water sources, storing and supplying water and making it available during the dry seasons, is explicitly stated in *Article 43*, which upholds the **Human Right to Water** and Sanitation. This article not only emphasises the right to access clean and safe water in sufficient quantities and quality but also places a responsibility on citizens to hold the government accountable for water provision and resource conservation. To enforce this provision, various institutions were established under the Water Act, 2016 including the Water Services and Regulatory Board (WASREB) and WRA which are responsible for regulating water supply and resource use and allocation in the country respectively. Soil and water conservation as well as the provision of Water, Sanitation and Hygiene services are devolved functions implemented by County governments. However, coordination and collaboration among these sector players is lacking. This deficiency can be attributed to the protection of self-interests, inadequate understanding of sector mandates and inadequate financial capacity to facilitate cross-learning, sharing and joint planning. The hydrological alteration of the Tana River and its impacts in the Lower Tana Basin including water resource use conflicts between upstream and downstream users is a clear example of how the rights of wetlands to maintain natural, connected and sustainable hydrological regimes are not being violated.

Secondly, in line with the fundamental principles of the Rights of Wetlands approach, wetlands inherently possess the right to their ecologically designated location in the landscape as well as the right to exist. A pertinent example is the Tana Delta wetland, which has long been subjected to reclamation for agricultural and commercial purposes. Kenya's environmental regulatory regime - the Environmental Management and Coordination Act of 1999 (EMCA) amended in 2015 along with its subsidiary legislations such as the Environmental Management and Coordination (Wetlands, Riverbanks, Lakeshores and Seashore Management Regulations) of 2009 provides guidelines for use of riparian land and application of easements to protect the functioning of wetland services. The implementation of these guidelines is overseen by NEMA. However, an important aspect to note is the existing overlap with the Agriculture Act, Cap 318, which also offers directives on the use and management of riparian land. This inconsistency often results in contradictions and conflicts within the regulatory landscape, making enforcement of these regulations challenging and subject to interpretation. Unfortunately, this regulatory inconsistency has contributed to the normalisation of reclamation and encroachment into wetland areas.

Thirdly, Article 48 of EMCA the Constitution of Kenya, 2010 recognises the rights of indigenous communities and their traditional interests in forest use. This recognition is further emphasised in Article 69 of the Constitution, which calls for the protection and enhancement of intellectual

property and indigenous knowledge of biodiversity and genetic resources of communities. However, the implementation of these rights is consistently embroiled in controversy, where the struggle between power and interests takes centre stage, often leading to the neglect of local communities' voices. This violates the rights of wetlands to fulfil ecological and cultural roles.

To enhance the implementation of governance and communication frameworks linked to the rights of nature and fundamental freedoms, there is a need for the following:

- **Facilitate vertical policy integration processes** to ensure sector players better collaborate and coordinate in the implementation of the law. This can be through joint planning and budgeting processes and will help to deliver sustainable wetland use and management.
- **Enhance meaningful public participation of citizens:** By recognising the different roles of actors, institutions and representations in the policy processes for better decision-making and sustainable implementation.
- **Strengthen institutional capacities** by revising fragmented and outdated legal and regulatory frameworks to ensure coherence and enforceability. The establishment of the National Wetlands Steering Committee should also be prioritised.
- **Improve communication and awareness about wetlands:** Every citizen should be aware of their rights and responsibilities to a clean and healthy environment. This helps them hold duty bearers to account in the implementation of these rights, and further, ensures responsiveness in compliance by citizens and enforcement by duty bearers. This can be done through education, outreach, and media engagement.

## 6.4 - Community management approaches and worldview

### 6.4.1 - Review of community management approaches and worldviews in relation to wetlands

Wetlands support valuable biodiversity including large numbers of mammals, reptiles, fishes, and birds as well as plant communities. Despite their richness to biodiversity, local and national economy, wetlands face degradation mainly from anthropogenic activities such as encroachment by agriculture, industry and urban developments, all of which have led to the draining of wetlands to create land. Threats arising from mining, harvesting of firewood and medicinal plants, grazing and hunting have also had profound consequences on wetlands.

In Kenya threats to wetlands include reclamation, pollution from waste and agriculture runoff, overexploitation of wetland resources, eutrophication and salinisation, industrialisation and urbanisation, and invasion by alien species. Rapid economic development in Kenya has led to deforestation of watersheds, increased water abstraction, impoundment of rivers and reclamation of wetlands. Over the past decade, wetlands have been prime targets for development activities, primarily because of their fresh water, forage for livestock and fertile soil for agriculture. In addition, there has been a growing population of subsistence and commercial farmers as well as traders in emerging urban centers.

The local communities living within and around wetlands have a deep relationship with them and utilise their resources to support their socio-cultural and economic needs. Communities amass valuable resources such as biomass cropping for livestock pasture, water supply, agriculture, fisheries and subsistence hunting of wildlife. They have also utilised their indigenous knowledge, taboo and belief systems and cultural practices to conserve, manage and utilise wetlands and their resources to support local development. Lack of appreciation for the ecological values and functions of wetlands coupled with their continued degradation is undermining their capacity to provide environmental goods and services that are vital to humankind and other organisms, as well as their sustainability.

These events called for concerted efforts to promote sustainable wetland management and rural development. Community was identified to play a key role in wetlands management, however lack of community participation in land use planning and in resolving resource ownership and land-tenure rights have led to alienation of local communities in wetlands conservation. Similarly, the open access nature of wetland resources in dry areas of Kenya as well as limited awareness of the full range benefits and functions of wetland ecosystems have all contributed to poor community participation in wetland management and the unsustainable use of natural resources in general.

Sustainable wetland management through local community involvement promotes development. There are strategies to promote local community involvement in sustainable management of wetlands and the associated biodiversity and determine threats and their impacts.

#### 6.4.2 - Review of Rights of Nature / Wetlands specific community management approaches and worldview

Wetlands constitute an important resource for riparian communities and therefore it is important that they participate in their management. Community participation in natural resource management has evolved from the realisation that people living with natural resources should be responsible for their management and benefit from using the resources. However, participation of local communities in seeking solutions to wetlands resources use remains a grave challenge as managers of participation processes engage in low level consultations that do not empower them to co-manage these resources alongside government agencies mandated to do so. This range from passive participation, where people are told what is to happen and act out predetermined roles, to self-mobilisation, where people take initiatives largely independent of external institutions.

The Kenya National Wetlands Conservation and Management Policy, 2015 Policy, Statement II, encourages community participation through the establishment of local management institutions and structures. Underpinned in the Kenya Water Act 2016, Water Resource Authority (WRA), a state corporation, is mandated to safeguard water resources on behalf of the National government. Local management requires Water Resource Authorities to establish Water Resource Users Association (WRUA). Water Resource Users Association is an association of water users, riparian landowners and other stakeholders who have formally and voluntarily associated for the purposes of co-operatively sharing, managing and conserving common water resources.

Through these local management structures, measures have been adopted among them awareness creation, stakeholder involvement in wetland conservation activities, benefit sharing, co-management, and creation of partnerships between and among stakeholders. These efforts are aimed at sensitising local communities and other stakeholders to adopt sustainable wetland utilisation practices that can ease pressure on wetlands and their resources and promote wetland sustainability and development. Specifically, WRUAs

- Promote controlled and legal water use activities
- Promote good management practices to make efficient and sustainable use of the water resource
- Promote water conservation practices to ensure sufficient practices that meet the demands of the environment, the wildlife, the livestock and all the communities who rely on the water resource
- To work towards reducing conflict in the use of water resources and participate in solving other conflicts that arise
- Promote catchment conservation measures to improve water quantities and quality

## 6.5 - Initial assessment about the likelihood of Kenya to adopt a Rights of Wetlands approach

Lack of a holistic institutional framework has affected wetland management in Kenya as noted in the Environment Policy and the Wetlands Policy. Different aspects of wetland conservation and management are handled by different agencies. This has therefore meant that no single agency is in charge of overall coordination. This has contributed to massive wetland loss and degradation. The Kenyan Government has undertaken reforms aimed at conservation of environmental resources including wetlands. Two key institutions charged with mandates to manage wetlands are the National Environment Management Authority (NEMA) and the Kenya Wildlife Service (KWS).

Opportunities for adoption of Rights of Wetlands approach include the requirement under The Environment Management and Coordination (Conservation and Management of Wetlands) Amendment Regulations, 2017 that provide for the development of Integrated Wetlands Management Plans to prevent and control further degradation of wetlands in Kenya. Mainstreaming RoW in the Regulations will ensure adoption of the RoW in the Country.

Compliance and enforcement of EIA/EA Regulations provides opportunities for realising the RoW in Kenya. Furthermore, the Wetlands Policy for Kenya is due for review. It is critical to ensure that the RoW is embedded within the Policy during the review.

## 7 - Sri Lanka

### 7.1 - Country introduction

Sri Lanka is an island nation of 65,556 km<sup>2</sup> situated in the middle of the Indian Ocean, rich in biodiversity with varied climatic zones, ecosystems, and topography<sup>33</sup>. The country contains wetlands of varying extent and type, which play a vital role in ensuring human and ecosystem well-being. Inland (freshwater) wetlands (e.g., rivers, streams, marshes, swamp forests, and “villus”), marine and coastal wetlands (e.g., lagoons, estuaries, mangroves, sea grass beds and coral reefs) and human-made wetlands (e.g., tanks, reservoirs, rice fields and salterns) are spread across the country.

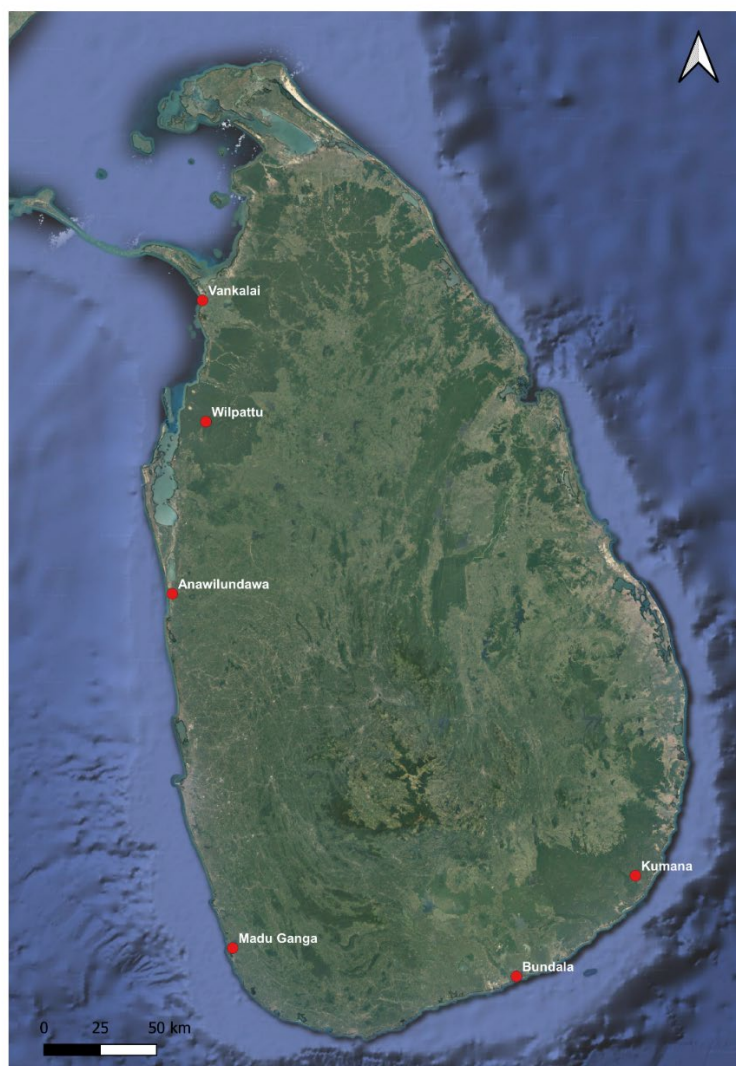


Figure 7.1: Location of Ramsar sites in Sri Lanka

These wetlands are recognised and valued for the various benefits or ecosystem services generated, including flood regulation, natural defence from storm surges, fishery resources, water purification, hydropower from larger reservoirs, tourism, recreational and educational opportunities, among other benefits. Wetland ecosystems are home to many flora and fauna including species that are endemic to Sri Lanka<sup>34</sup>. The rich biodiversity is vital in the functioning

<sup>33</sup> <https://www.cbd.int/countries/profile/?country=lk>

<sup>34</sup> CBD. Country Profile: Sri Lanka (<https://www.cbd.int/countries/profile/?country=lk>) [August 2023]

and wellbeing of these ecosystems. Sri Lanka has six sites recognized and declared as Wetlands of International Importance under the Ramsar Convention of 1971, namely, Bundala, Wilpattu, Kumana, Anavilundava, Vankalei, and Madu Ganga<sup>35</sup> (Figure 7.1). In 2018, the city of Colombo received the Ramsar Wetland City accreditation to promote the conservation and wise use of urban wetlands by recognising the interdependencies of humans and ecosystems<sup>36</sup>.

Wetland ecosystems in Sri Lanka are facing destruction and degradation due to various reasons, including rapid and unplanned development, encroachment, overexploitation, land and water pollution, spread of invasive alien species and decline in biodiversity, and climate change related impacts such as temperature changes, sea level rise, floods and droughts. Over the years conservation and management of wetlands have taken various forms such as fortress conservation stemming from the colonial period, participatory approaches, ecosystems approach, among others, and were implemented by various actors including local government, central government, NGOs/INGOs and communities.

The objective of this report is to evaluate the understanding and occurrence of the rights of wetlands (ROW) concept within the current legal, policy framework and governance in Sri Lanka. This review is considered an initial step to determine the potential to adopt the rights of wetlands concept for more effective conservation through the recognition of wetland intrinsic values.

## 7.2 - Legislation and policy

### 7.2.1 - Review of relevant social and environmental legislation that are particularly related to or impact on wetlands, Indigenous Peoples and local communities

#### 7.2.1.1 - *The Constitution of Sri Lanka*

The Constitution of Sri Lanka carries some provisions which can be relevant for the conservation of wetlands. Article 27(14) of the Constitution imposes a duty on the State to “*protect, preserve and improve the environment for the benefit of the community*” and Article 28(f) imposes a duty on the people of Sri Lanka “*to protect nature and conserve its riches*”. Nevertheless, in terms of Article 29 of the Constitution, none of these provisions are enforceable before any court or tribunal. However, the judiciary in Sri Lanka has invoked these provisions to establish a shared responsibility of the State and people to protect the environment,<sup>37</sup> a stance that could extend to the conservation of wetlands.

Even though there is no explicit reference of right to a healthy environment, nor to the “*right to life*”, under the fundamental rights section of the constitution, legal cases pertaining to environmental matters have been increasingly becoming the focus of fundamental rights litigation in Sri Lanka<sup>38</sup>. Article 126 of the Constitution outlines that every person shall be entitled to take remedial action if they face infringement or imminent infringement of a fundamental right by executive or administrative action<sup>39</sup>. This has been the grounding principle in which fundamental right violations due to environmental issues have been presented in courts either in person or by an Attorney-at-Law on behalf of affected person. Additionally, Article 12 assures “*Right to Equality*” identifies that “*all persons are equal before*

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<sup>35</sup> Ramsar Convention. Country Profile: Sri Lanka (<https://www.ramsar.org/country-profile/sri-lanka>) [August 2023]

<sup>36</sup> Ramsar Convention. Wetland City Accreditation. (<https://www.ramsar.org/our-work/activities/wetland-city-accreditation>) [August 2023]

<sup>37</sup> *Bulankulama v Secretary, Ministry of Industrial Development (Eppawela case)* (2000) 3 Sri LR 243, 256-257.

<sup>38</sup> UNEP (2009) Judges and environmental law—a handbook for the Sri Lankan Judiciary. Environmental Foundation Limited, Colombo. (<https://www.ajne.org/sites/default/files/event/2040/session-materials/judges-environmental-law-a-handbook-for-the-sri-lankan-judiciary-2009.pdf>) [August 2023]

<sup>39</sup> Article 126(2) of the Constitution of Sri Lanka

*the law and are entitled to the equal protection of the law*". This Article (12), in its own or in conjunction with other rights such as Article 14 (i.e., freedom of speech, assembly, association, occupation, movement), is frequently invoked in fundamental rights cases projecting the threats to the environment and subsequent impacts on living beings. Thus, fundamental right could be invoked to protect wetlands by asserting that the damage inflicted upon a wetland ecosystem constitutes a violation of the human right to a clean and healthy environment.

Apart from the above specific Articles, Public Trust Doctrine, which imposes accountability upon the government to manage the environment for the sole interest of the citizens, is a commonly applied legal norm in such cases<sup>40</sup>. Under the directive principles of state policy and fundamental duties (Chapter VI), 27(e) states that "*the equitable distribution among all citizens of the material resources of the community and the social product, so as best to subserve the common good*". The 9<sup>th</sup> schedule of the constitution contains the Provincial Council list where "*environmental health*" (under public health services) and "*protection of the environment*" is included as responsibilities of the provincial council. The National Land Commission is responsible for the national policy on land use which is based on technical aspects (not communal or political), such as soil, climate, rainfall, soil erosion, forest cover, environmental factors, economic viability etc.

Some of the landmark public litigation cases, that were filed as fundamental rights (FR) violations, highlighting public trust doctrine in relation to natural resources are provided in Annex I. The judgements from these cases illustrate that while the Constitution does not explicitly stipulate a right to the environment, the judiciary has definitively affirmed the existence of an implied environmental right within the constitutional framework.

#### 7.2.1.2 - *National legislation on natural resource governance*

Apart from the Constitution, several legislations in Sri Lanka provide for the protection of wetlands. All the Ramsar wetland sites in Sri Lanka are declared as National Parks, Reserves and Sanctuaries under the Fauna and Flora Protection Ordinance No. 2 of 1937 as amended (hereinafter referred to as FFPO). The regulatory framework under FFPO accordingly encompasses several key provisions aimed at preserving and conserving the wetlands. Section 3(A) establishes a strict prohibition on constructing tourist hotels within a one-mile radius of National Reserves. Sections 6(1), 6(2), 6(3), and 6(A) outline a range of prohibited activities within protected areas. Furthermore, Section 7 provides a set of regulations for permissible activities within designated sanctuaries. Sections 9(A) and (B) impose rigorous restrictions on development activities within a one-mile radius of the National Reserves.

In addition, the legal framework entailed in the umbrella environmental legislation in Sri Lanka; the National Environmental Act, No. 47 of 1980 (hereinafter referred to as NEA), encompasses several provisions addressing land use and natural resource management which also involves the protection of wetlands. Section 15 outlines the principles of land use management while section 16 introduces a land use scheme. Section 17 underscores effective management and conservation of natural resources. Additionally, Section 18 outlines a management policy dedicated to fisheries and aquatic resources, including the rational exploitation of fisheries as outlined in Section 19. Wildlife management also holds a prominent place, articulated in Section 20. Furthermore, Section 23 (G) is dedicated to the restriction, regulation, and control of pollution of inland waters, while Section 23 (H) specifically addresses the critical issue of pollution of inland waters within the bounds of Sri Lanka. These collective measures

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<sup>40</sup> Siriwardana, G.J.H.K., 2015. The application of public trust doctrine as a mechanism to ensure environmental protection by means of law: a comparative analysis between Sri Lankan and Indian legal context.



encapsulate a holistic approach to natural resource management and environmental preservation including the wetlands.

Another important legal tool provided in the NEA for the protection of wetlands is the Environmental Impact Assessment (hereinafter referred to as EIA). EIA is the process of recognizing the potential environmental impacts of a proposed development or industrial activity. The NEA Amendment Act, No. 56 of 1988 introduced the EIA process in Part IVC entitled the *approval of projects*. The EIA process is mandated only for large-scale development projects or projects located in environmentally sensitive areas. The types of projects which require EIA have been prescribed in the Gazette Notification No. 772/22 of 24 June 1993. The list of prescribed projects mentioned in the Gazette was slightly amended by the Gazette Notification No. 1104/22 dated 05 November 1995. EIA makes the decisions affecting or concerning wetlands more transparent and provides to mitigate the negative environmental impacts of development projects on wetlands.

One significant feature of the EIA process is public participation. The NEA makes it mandatory to keep the EIA reports open for public inspection and comment for a period of 30 days. The significance of public participation in EIA and Initial Environmental Examination (IEE) processes was clearly elaborated by Jayawardena J in the *Chunnakam Power Plant case* stating:

*Giving the public an opportunity to make their comments and, where required, be heard, prior to the grant of approval for the implementation of a 'prescribed project' is an essential safeguard put in place by the NEA to ensure that the possible adverse environmental effects of 'prescribed projects' are ascertained and minimized.<sup>41</sup>*

Indeed, public participation allows communities including those considered indigenous to be involved in and to influence the decision-making processes by articulating the environmental values held within such communities.

In furtherance to these provisions, the Fisheries and Aquatic Resources Act, No. 02 of 1996, the Coast Conservation Act, No.57 of 1981, and the National Aquaculture Development Authority of Sri Lanka Act, No. 53 of 1998 contain provisions that indirectly contribute to the protection of wetlands. A non-exhaustive list of key national legislation that is applicable for wetland conservation and wise use is provided in Table 7.1.

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<sup>41</sup> *Ravindra Gunawardena Kariyawasam v Central Environmental Authority and others* (2019) SC (FR) Application No. 141/2015, 49.

Table 7.1 List of laws pertaining to conservation, regulation and development of natural resources in Sri Lanka<sup>42,43</sup>

Act	Original year	Brief description	Mandated authority	Wetland related provisions
National Environmental Act No. 47 of 1980 (as amended)	1980	Establishes the Central Environmental Authority (CEA) and defines its powers, functions and duties. Provides overall environmental protection legislation, including licensing procedures, environmental standards and project approval procedures.	Central Environmental Authority	Provisions to declare important wetland ecosystems as Environmental Protection Areas (EPAs) and provide legal protection. Provisions for environmental assessment for developments, issuing of licenses, pollutant control to aquatic systems, etc. Establishment of environmental council and Central Environmental Authority has resulted in enforcing environmental impact assessments for all prescribed developments in wetlands.
Fauna and Flora Protection Ordinance No. 2 of 1937 (as amended)	1937	Provides for the conservation of plants and animals, which have been declared as protected species. Empowers the Minister to declare any area of State Land as a National Reserve or Sanctuary	Department of Wildlife Conservation Director General of Wildlife Conservation	Any state land can be declared as a specifically protected area as mentioned in the Act As the management authority of Ramsar Convention, any selected wetland is declared as a Ramsar site Provisions are present for species management, ecosystem management, participatory management, preparation of management plans and environmental impact assessment for specified developments Per the amendment of s 14, Act No 22 of 2009, S9 A restricts the development activities within one mile of a national reserve The Act enables the use of rights acquired by people by virtue of laws customs, usages or traditional practices in or over any land situated within the limits of national parks, nature reserves, marine national parks, jungle corridors or in or over any state land in any sanctuary

<sup>42</sup> UNEP (2009) Judges and environmental law—a handbook for the Sri Lankan Judiciary. Environmental Foundation Limited, Colombo.[www]. <https://www.ajne.org/sites/default/files/event/2040/session-materials/judges-environmental-law-a-handbook-for-the-sri-lankan-judiciary-2009.pdf>, (19 Aug 2023)

<sup>43</sup> Jayakody, S., Amaratne, M., Arachchige, G., Fernando, A. W. (2020). Gap assessment on mainstreaming the conservation and sustainable use of wetlands and their resources into national planning processes in Sri Lanka. Report prepared as part of the Ramsar Contract Number 442. [www]. [https://www.ramsar.org/sites/default/files/documents/library/mainstreaming\\_wetlands\\_into\\_national\\_planning\\_sri\\_lanka.pdf](https://www.ramsar.org/sites/default/files/documents/library/mainstreaming_wetlands_into_national_planning_sri_lanka.pdf), (21 Aug 2023)

Act	Original year	Brief description	Mandated authority	Wetland related provisions
Forest Ordinance No. 16 of 1907 (as amended)	1907	Consolidates the laws relating to forests and to the felling and transportation of timber. Empowers the Minister to declare any area of State land as a Reserved Forest, Conservation Forest or a Village Forest.	Forest Department Conservator General of Forests	Conservation forests, reserved forests and village forests can be declared as PAs, which can also include important wetlands Provides regulations to protect wetlands (several mangrove ecosystems are conserved through this act) Provisions are also present for encouraging participatory management planning (S64 (g)). S20 of the act prohibits activities such as blocking any waterways within any forest and making clearings
Mahaweli Authority of Sri Lanka Act No. 23 of 1979 (as amended)	1979	Established the Mahaweli Authority of Sri Lanka and provides for the conservation and maintenance of the physical environment of Mahaweli Areas, including watershed management, soil erosion and the protection of reservation areas.	Mahaweli Authority of Sri Lanka	S12 to conserve and maintain the physical environment within any Special Area (Mahaweli River and associated tributaries) The authority is empowered to acquisition lands in any special area for the purposes related S13 S13(1) ) to construct, maintain and operate such dams, channels, drainage systems, and other irrigation works and structures for the purpose of achieving its objects; S13(3) to take such measures as may be necessary for water-shed management and control of soil erosion ;
State Lands Ordinance No. 8 of 1947 (as amended)	1947	Provides for how State Lands and their resources, including lakes, rivers and streams, should be allocated, used and managed. Also provides for the declaration of State reservations.	Ministry of Agriculture District Secretaries	Part VI, S49 of the law allows declaration of reservation areas for the protection of springs, tanks, reservoirs, lakes, ponds, lagoons, creeks, canals, aqueducts, elas channels (whether natural or artificial), paddy fields and land suitable for paddy cultivation; The law also grants state /crown land that is declared as protected areas to be given on lease and grant for development activities under specific conditions. This law can negate the protection given to state lands

Act	Original year	Brief description	Mandated authority	Wetland related provisions
Mines and Minerals Act No. 33 of 1992.	1992	Regulates mining, exploitation, processing, trading and export of minerals. Established the Geological Surveys and Mines Bureau	Geological Surveys and Mines Bureau	S35(4)(c) that the licensee shall in the exercise of his rights under the license, comply with all written laws relating to the protection of the environment, health and safety standards and the protection of natural resources; S61 The holder of the license shall restore and rehabilitate the land on which such exploration or mining had been carried out
Irrigation Ordinance No. 32 of 1946 (as amended)	1946	Deals with environmental aspects of water, irrigation and land use in irrigated agricultural activities.	Irrigation Department	Recognises traditional irrigation practices, and prescribe the rates for water extraction, especially for paddy cultivation
Water Resources Board Act No. 29 of 1964 (as amended).	1964	Establishes the Water Resources Board and sets out its duties, which include promotion of afforestation, preventing the pollution of rivers, streams and other water courses, and formulation of national policies relating to the control and use of water resources of the country	Water Resources Board	Related to protection of groundwater resources
Coast Conservation Act No. 57 of 1981 (as amended)	1981	Identifies Coastal Zones and regulates activities within such zones.	Coast Conservation Department Ministry of Fisheries and Aquatic Resources	Special provision to declare and manage SAM (Special Area of Management) is an important provision to manage marine ecosystems and the human activities in such declared areas Section 16 provides revisions for EIA (the development activities, which is interpreted in the Act as any activity likely to alter the physical nature of Coastal Zone and includes any construction of buildings and works deposit of waste or other material from outfalls, vessels or by other means, removal of sand, sea shells, natural vegetation, sea grass and other substances, dredging and filling, land reclaiming and mining or drilling for minerals)

Act	Original year	Brief description	Mandated authority	Wetland related provisions
Marine Pollution Prevention Act No. 35 of 2008	2008	Provides for the prevention, reduction, and control and management of marine pollution in the Territorial Waters of Sri Lanka, any other maritime zone, the foreshore and the coastal zone of Sri Lanka. Also provides for the establishment of the Marine Environment Protection Authority.	Marine Environment Protection Authority	For this purpose the Act established the Marine Pollution Prevention Authority. The Act has provisions for managing (Part IX S34(2)) (a) marine, coastal, port activities including fisheries activities (b) tourism and the preservation and development of tourist attractions in Sri Lanka waters or on the fore-shore including beaches and coral reefs (c) the health of the coastal population and their well- being (d) the protection and conservation of living marine resources and of wild life
Fisheries and Aquatic Resources Act No. 2 of 1996 (as amended).	1996	Makes provision to protect and conserve fisheries and aquatic biodiversity in marine and freshwater areas, for the declaration of fisheries reserves and imposes licensing and registration requirements with regard to fishing. Defines the terms 'Sri Lankan Waters'.	Ministry of Fisheries and Aquatic Resources, Director of Fisheries and Aquatic Resources	Part IV prohibits illegal and harmful methods of fishing S36 contains the legal provision for the recognition of fisheries reserves which can be used for the protection of fisheries and aquatic resources The Act also provides for the director general to designate any area of water and adjacent land as Fisheries Management Areas (FMAs) (S31)
National Aquatic Resources Research and Development Agency Act No. 54 of 1981 amended by Act No 32 of 1996	1996	Act established the National Aquatic Resources Research and Development Agency charged with the responsibility of carrying out and research, development management and conservation activities on the subject of aquatic resources, hydrographic surveying and nautical charting, hydrographic surveying and nautical charting	National Aquatic Resources Research and Development Agency (NARA)	The Aquatic Resources Management and Development Plan and Research Plan can be used as a tool to conserve species and habitats of fish, including wetlands NARA promotes and conducts research activities directed towards the identification, assessment, management, conservation and development of aquatic resources, and in particular to provide advisory and consultancy services on scientific, technological and legal matters relating to the exploitation, management, conservation and development of aquatic resources; etc.

Act	Original year	Brief description	Mandated authority	Wetland related provisions
National Heritage Wilderness Areas Act No. 3 of 1988.	1988	Provides for the declaration, protection and preservation of any area of State land with unique ecosystems, genetic resources or outstanding natural features as National Heritage Wilderness Areas.	Forest Department, Ministry of Agriculture	S4 outlines the activities prohibited within National Heritage Wilderness Areas, which cover a range of activities that disturb the environment. The provisions under the Act can be used to enable protection of wetlands
Soil Conservation Act No. 25 of 1951 (as amended)	1951	Provides for the conservation of soil resources, mitigation of soil erosion and the protection of lands against flood and drought.	Ministry of Agriculture	Erodible areas can be declared by the minister. By the amendment Act of 1996 the Soil Conservation Board was established to take measures to enhance sustenance of productive capacity of soil, restoration of productive capacity and protection of land and conservation of water and watersheds and to prevent soil erosion resulting from non-agricultural activities Areas can be declared by the minister as conservation areas under this Act
Plant Protection Act No. 35 of 1999.	1999	Provides for the prevention of wild plants, weeds and plant diseases and controls the introduction of new plant species.	Department of Agriculture	Introduction of invasive to wetlands is controlled and monitored at the ports of entry by this act The provisions are used to prohibit and quarantine harmful plants and their pests and varieties that would threaten the biodiversity
Felling of Trees (Control) Act No. 9 of 1951 (as amended)	1951	Provides for the prohibition, regulation and control of the felling of specified tree species, including cultivated tree species	Forest Department Ministry of Agriculture Agrarian Services	This Act can be used for the protection of selected tree varieties in wetlands
Flood Protection Ordinance No. 4 of 1924 (as amended)	1924	Provides for the protection of areas from flood damage and empowers the Director of Irrigation to declare any area as a flood area.	Ministry of Irrigation and Water Management Director General of Irrigation	The provisions are available for maintenance of the drainage patterns in the area and for conducting activities required to protect the flood prone areas, which can include wetland conservation and restoration in watersheds

Act	Original year	Brief description	Mandated authority	Wetland related provisions
Water Hyacinth Ordinance No. 4 of 1909	1909	Provides for preventing the importation, introduction into and dissemination in Sri Lanka of the plant known as Water Hyacinth	Department of Agriculture Sri Lanka Customs	This law can also be used to protect wetlands against the spreading of water hyacinth in wetlands
Control of Pesticides Act No. 33 of 1980 (as amended)	1980	Provides for the licensing and regulation of the import, packing, labelling, storage, formulation, transportation, sale and use of pesticides.	Registrar of Pesticides	Have provisions to regulate the use of pesticides in wetlands
Health Services Act No. 12 of 1952 (as amended)	1952	Provides for the regulation of the environmental aspects of human health.	Department of Health Services	
Municipal Councils Ordinance No. 29 of 1947 (as amended)	1947	Provides for the establishment of Municipal Councils and outlines their powers, duties and responsibilities in relation to the built environment and matters such as waste disposal and sanitation.	Municipal Councils	Regulate pollution. Discharges into waterways and pollution caused by factories can be imposed with fines
Urban Councils Ordinance No. 61 of 1939 (as amended)	1939	Provides for the establishment of Urban Councils and outlines their powers, duties and responsibilities in relation to the built environment and matters such as waste disposal and sanitation.	Urban Councils	Regulate pollution. Discharges into waterways and pollution caused by factories can be imposed with fines

Act	Original year	Brief description	Mandated authority	Wetland related provisions
Pradeshiya Sabha Act No. 15 of 1987 (as amended)	1987	Provides for the establishment of Pradeshiya Sabhas and outlines their powers, duties and responsibilities in relation to the built environment and matters such as waste disposal and sanitation.	Pradeshiya Sabhas	Regulate pollution. Discharges into waterways and pollution caused by factories can be imposed with fines
Urban Development Authority Law No. 41 of 1978 (as amended)	1978	Empowers the Urban Development Authority (UDA) to regulate and manage the urban environment	Urban Development Authority (UDA)	Part 2 S8(b) has provisions for developing environmental standards and preparing environmental improvement schemes in urban areas
Sri Lanka Land Reclamation and Development Corporation Act No. 15 of 1968 (as amended)	1968	Empowers the Sri Lanka Land Reclamation and Development Corporation (SLLR&DC) to reclaim low-lying lands and wetlands.	SLLDC	The two main objectives of the Act are to reclaim and develop marshy and low-lying areas under S2 of the Act and to retain the custody, management and control of such vested land
Agrarian Development Act No. 46 of 2000	2000	Provides for the utilisation of agricultural lands in accordance with agricultural policies, having regard to natural resources.	Commissioner General of Agrarian Development	Have provisions for paddy cultivation and promote mixed crop agriculture
National Aquaculture Development Authority of Sri Lanka Act No.	1998	Establishes the National Aquaculture Development Authority of Sri Lanka and provides for the development of aquatic resources.	National Aquaculture Development Authority (NAQDA)	Has a demand for wetland resources for fisheries development but S11(i) has identified one of the functions of NAQDA to be conserving biodiversity



Act	Original year	Brief description	Mandated authority	Wetland related provisions
53 of 1998 (as amended)				
Sri Lanka Sustainable Energy Authority Act No. 35 of 2007	2007	Establishes the Sri Lanka Sustainable Energy Authority and provides for the development of renewable energy sources and the implementation of energy efficiency measures and conservation programmes.	Sri Lanka Sustainable Energy Authority	Has a demand for wetland resources for hydropower generation
Nuisances Ordinance No. 15 of 1862 (as amended)	1862	Provides for the preservation of public health and the suppression of various types of nuisances.	Urban Council Municipal Council Pradeshiya Sabhas Police	Has provisions for the preservation of public health and the suppression of nuisances. This Ordinance provides that other Acts or omissions which are deemed to be nuisances in other laws can be prescribed under the Ordinance. A Complaint under this Ordinance must be made to the Magistrate within 3 months after the commission of the offence

Act	Original year	Brief description	Mandated authority	Wetland related provisions
Town and Country Planning Ordinance No.13 of 1946 (as amended)	1946	An Ordinance to authorize the formulation and implementation of a national physical planning policy; the making and implementation of a national physical plan with the object of promoting and regulating integrated planning of economic, social, physical and environmental aspects of land in Sri Lanka; to provide for the protection of natural amenities, the conservation of natural environment, buildings of architectural and historic interest and places of natural beauty; to facilitate the acquisition of land for the purpose of giving effect to such plan and to provide for matters incidental to or connected with the matters aforesaid		
River Valleys Development Board Act No 4 of 1975 (as amended)	1975	This Act established the River Valleys Development Board for the Development of the Gal Oya Valley and other areas which were brought under the control of the Board.	S3(1) - The Board shall consist of four members appointed by the Minister, one of whom shall be a person nominated for the purpose by the Minister in charge of the subject of Finance)	Applicable to the management and regulation of activities in the wetlands in Gal Oya valley

### 7.2.1.3 - *National policies on natural resource governance*

The legislative framework for enforcing environmental conservation and sustainable development is further strengthened by several key policies. The main policy that has direct relevance to wetland management is the National Wetland Policy and Strategy (2006), which recognized the growing pressures on wetlands from reclamation, pollution, overexploitation, and invasion by exotic species and was developed as a dedicated instrument for wetland ecosystem management. It is the first policy to define the importance of wetland inventorying and classification based on ecological, functional, international, national, and local significance. The policy directions emphasise the importance of integrating wetland management into land use planning and prioritize wetland ecosystem restoration. Further, it highlights the significance of active and informed participation of civil society in the conservation of wetlands and the need to sustainable business models for wetland wise use. The policy also signifies the establishment of local Wetland Management Committees with the assistance of state agencies and the multi-stakeholder National Wetland Steering Committee to facilitate policy implementation.

The National Wildlife Policy (2000) also encompasses the directives, strategies, and guidelines pertaining to the conservation of Sri Lanka's Fauna and Flora, including migratory waterbirds and wetlands. The policy highlights the importance of protected area management, considering the ecological, social, and economic links between natural and human systems to ensure sustainable use and equitable sharing of benefits. Provided that all the Ramsar wetlands in the country are legally protected and under the jurisdiction of the Department of Wildlife Conservation (DWC), the wildlife policy provides directions for conserving and utilizing biodiversity resources within Ramsar wetlands. DWC regulates harvesting of biological resources within protected areas but allows traditional livelihood practices with minimal impacts.

The National Forest Policy of Sri Lanka (1995) was drawn with the objectives of conserving forests for posterity (regarding biodiversity, soils, water and historical, cultural, religious and aesthetic values), meeting the needs of present and future generations for forest products and services and increase the contribution of forestry to the wellbeing of the rural population. The policy emphasises the importance of community participation in decision making for forestry development and conservation, and further highlights that the co-existence between forests and people, and that their cultural and spiritual ties with forest landscape, must be respected (S2.2). This can be considered as one of the exceptional occasions where the harmonious relationship between nature and humans has been looked beyond the provisional value of natural resources within a national policy.

The Land Use Policy (2007) has the main goal of rationalizing utilization of lands as a resource, in the national interest, to ensure food security, a high quality of life, equity and ecological sustainability. The policy prioritizes agriculture-based land use and promotes the use of underutilized land for income generating activities. It also encourages land use that minimises environmental impact and decreases the vulnerability to natural and anthropogenic hazards. Conservation of biodiversity, soil, water, including conservation and management of wetlands are accounted for within the policy. The main principle under the policy also provides direction for all the institutions engaged in land related activities to adopt an integrated approach to land management.

A list of policies that are directly and indirectly relevant to natural resource governance, and thereby, wetland protection and management, are provided in Table 7.2.

*Table 7.2 List of main policies pertaining to conservation, regulation and development of natural resources in Sri Lanka*

Name of the Policy	Year	Agency	Relevance to wetlands
National Wetland Policy and Strategy (2006)	2006	Ministry of Environment	<p>Policy objectives include,</p> <ol style="list-style-type: none"> <li>1. To promote the sound management of Sri Lanka's environment in its entirety without compromise, balancing the needs for social and economic development and environmental integrity, to the maximum extent possible while restricting inimical activities</li> <li>2. To manage the environment by linking together the activities, interests and perspectives of all groups, including the people, non-government organizations and government at both the central and the local levels</li> <li>3. To assure environmental accountability</li> </ol>
Wildlife Policy (1994)	1994	Department of wildlife conservation	<p>Policy objectives include,</p> <ol style="list-style-type: none"> <li>1. To conserve wildlife resources, through protection, research, education, sustainable use and benefit sharing, for the benefit of present and future generation</li> <li>2. To maintain ecological processes and life-sustaining systems, with particular regard to primary production, hydrological balance, nutrient cycles, and prevention of erosion, siltation, drought and flood</li> <li>3. To manage all components of genetic diversity, as resources to improve crop plant and farm animal, and to develop in a fair and equitable manner new product and processes through bio-prospecting</li> <li>4. To ensure sustainable use and equitable sharing of benefits, arising from the direct and indirect use of wildlife resources and ecosystems</li> <li>5. To conserve native and endemic species and their habitats, so as to maintain the overall species richness and ecological integrity of the country</li> <li>6. To encourage the development of biological repositories, for the purposes of conservation education and science</li> <li>7. To encourage the private sector and communities to join as a full partners in all aspects of the wildlife-conservation process</li> </ol>
National Forest Policy of Sri Lanka	1995	Forest Department	<p>The policy was drawn up to provide clear directions for safeguarding the remaining natural forests of the country in order to conserve biodiversity, soil and water resources. In accordance with the policy, the forests under the jurisdiction of the FD is being reclassified and placed under four management systems ranging from strict conservation, non-extractive use, management of multiple use forests for sustainable production of wood and management of forests with community participation</p>

Name of the Policy	Year	Agency	Relevance to wetlands
The National Policy on Invasive Alien Species (IAS) in Sri Lanka (2016)	2016	Ministry of Environment	Policy objectives, 1. To minimize the risks of IAS on the biodiversity, ecosystems, economy and society thus promoting the sustainable economic development 2. To update all the stakeholders on the national position and priorities and promote their participation in dealing with IAS related issues 3. To contribute to global efforts to control IAS through nationwide operations
National Fisheries and Aquaculture Policy (2018)	2018	Ministry of Fisheries	No direct objectives related to wetlands but include wetland based resource harvesting and development, 1. Sustainable management of resources using science-based information 2. Compliance with regional and international obligations 3. Increased marine fisheries production 4. Increased aquaculture and inland fisheries production 5. Minimized post-harvest losses and increased value addition 6. Increased per capita consumption of fish 7. Increased export earnings 8. Improved opportunities for leisure, employment and enterprises development 9. Improved socio-economic conditions of the fisher community

Name of the Policy	Year	Agency	Relevance to wetlands
National Climate Change Policy	2012	Ministry of Environment	<p>No direct objectives related to wetlands but mitigation and adaptation to climate change by protecting and stabilising ecosystems are highlighted</p> <ol style="list-style-type: none"> <li>1. Sensitize and make aware the communities periodically on the country's vulnerability to climate change.</li> <li>2. Take adaptive measures to avoid/minimize adverse impacts of climate change to the people, their livelihoods and ecosystems.</li> <li>3. Mitigate greenhouse gas emissions in the path of sustainable development.</li> <li>4. Promote sustainable consumption and production.</li> <li>5. Enhance knowledge on the multifaceted issues related to climate change in the society and build their capacity to make prudent choices in decision making.</li> <li>6. Develop the country's capacity to address the impacts of climate change effectively and efficiently.</li> <li>7. Mainstream and integrate climate change issues in the national development process.</li> </ol>
National Land Use Policy of Sri Lanka (2007)	2007	Ministry of Lands	<p>No direct objectives are given for wetlands but safeguarding of environment and biodiversity have been recognized by some of the objectives</p> <ol style="list-style-type: none"> <li>VI. Protect, conserve and manage all sources of water on state as well as private lands</li> <li>XI. Take steps to minimize the vulnerability of land to natural and human induced hazards</li> <li>XII. Promote land uses that minimize environmental hazard</li> <li>XIII. Promote gender equity in the ownership, utilization and conservation of lands</li> <li>XIV. Conserve bio-diversity</li> <li>XV. Conserve soil &amp; water</li> <li>XVI. Preserve historical, cultural, religious, and aesthetic values associated with lands</li> </ol>
Sri Lanka National Agriculture Policy (2007)	2007	Ministry of Agriculture	<p>No direct reference to wetlands but goals and objectives include adoption of technologies in farming that are environmentally friendly and harmless to health. Water and soil conservation practices are promoted and use of bio-pesticides and bio-fertilizers is encouraged.</p>
National policy and strategy on cleaner production for	2012	Ministry of Agriculture and	<p>No direct objectives relevant to wetlands but under section 5.2 of this policy, ecologically sound agricultural practices are promoted</p> <ol style="list-style-type: none"> <li>5.2 To promote ecologically sound agricultural practices</li> </ol>

Name of the Policy	Year	Agency	Relevance to wetlands
agriculture sector (2012)		Ministry of Environment	
National Policy on Protection and Conservation of Water Sources, their Catchments and Reservations in Sri Lanka (2014)	2014	Ministry of Lands	Wetlands are directly benefited by the objective of this policy. Protection and conservation of all the water sources, their reservations and closest catchment area is the main objective of this policy The main objective of this policy is to protect and conserve all the water sources their reserves and closest catchment areas to ensure the existence of the water sources in Sri Lanka
National Policy on Disaster Management (2010)	2010	Ministry of Disaster Management	Adaptation to climate change is mentioned under Integrated systems to reduce disaster risk "Disaster risk reduction activities should integrate climate change adaptation" including "Protecting Sri Lanka's people, property and environment from disaster"
National policy on conservation and sustainable utilisation of mangrove ecosystems in Sri Lanka	2020	Ministry of Environment	Main policy goals include, <ul style="list-style-type: none"> <li>1) Human and ecological well-being is established in areas where mangroves are present and mangrove ecosystems including living and non-living resources and their interactions function optimally through conservation</li> <li>2) Concerns regarding mangrove ecosystems are applied into policies, legislation, plans, programmes and projects through which efficient resources are established to minimize adverse environmental impacts to mangrove ecosystems</li> <li>3) Traditional knowledge is protected and social capital for mangrove conservation is empowered through mutually beneficial multi-stakeholder partnerships between local communities, public agencies, academic and research community, investors and multilateral and bilateral partners hence equitable access to mangrove ecosystems inter and intra generationally is established</li> </ul>
National policy and strategies on traditional knowledge and	2020	Ministry of Environment	Main policy goal of "Conservation of traditional knowledge and practices within the sustainable development framework and thereby manage the use of natural resources and ensure the upliftment of

Name of the Policy	Year	Agency	Relevance to wetlands
practices related to biodiversity			the life pattern of the local people.”
National policy on access to biological material and fair and equitable benefit sharing	2020	Ministry of Environment	Main policy goal of “Ensuring the fair and equitable sharing of benefits arising from biological material, while securing ownership of such material and associated traditional knowledge among the people of Sri Lanka, with appropriate public participation, to support conservation and sustainable use of biological material in the country.”



### 7.2.2 - Review of Rights of Nature/Wetlands legislation and policy

The existing legislative body carries several provisions and mechanisms for the protection of wetlands and nature as described in the preceding section, however it does not explicitly provide for a recognition of the rights of wetlands/nature, and neither does it reflect suggestions for intrinsic value of such ecosystems. The words such as ‘natural resources’ repeatedly used in the NEA signals that the Act considers nature for the well-being of human beings.

The verdicts from the example legal action cases (Annex I) further depict that the human right to a clean and healthy environment is adopted within the constitutional framework, although it is not explicitly recognized. Over the years, the judiciary of Sri Lanka has recognized the need for conservation and better management of the environment and thereby, has set precedence for recognizing the human right to natural environment. This standpoint is anthropocentric, rather than recognizing the importance of protecting the environment for its own intrinsic value and ecosystem wellbeing.

The shift from anthropocentric governance systems to eco-centric ones, is realised by the Government of Sri Lanka where the Ministry of Environment has recently commenced the drafting of a National Policy on Living Entities with the main aim of recognising the rights of the upper watersheds where all 103 major rivers in the country originate from. This policy targeted at protecting the watersheds will also include wetlands (e.g., streams, freshwater marshes/ swamp forests, montane bogs/ swamps/ marshes) and recognition of their rights as part of units within the terrestrial landscape. The main three proposed sites to be declared as ‘living entities’ under this policy include selected upper catchments with unique biodiversity, namely the Peak Wilderness Nature Reserve, Horton Plains and Sinharaja Forest Reserve (Figure 7.2).

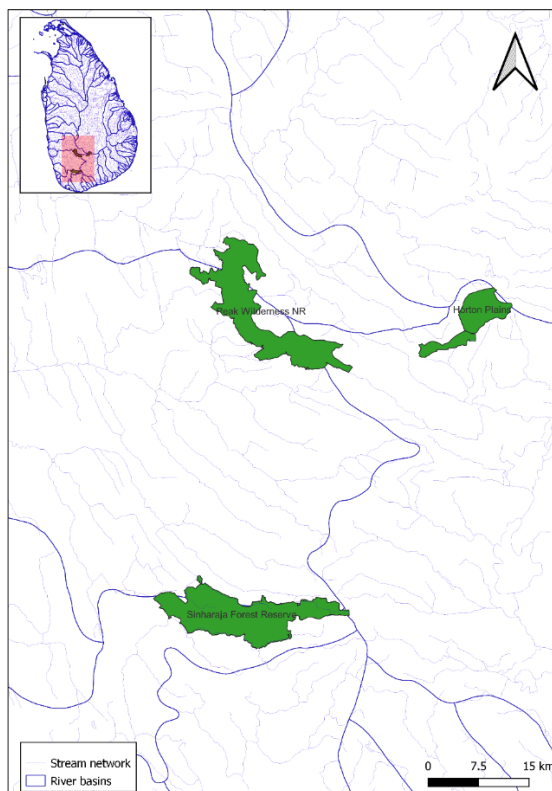


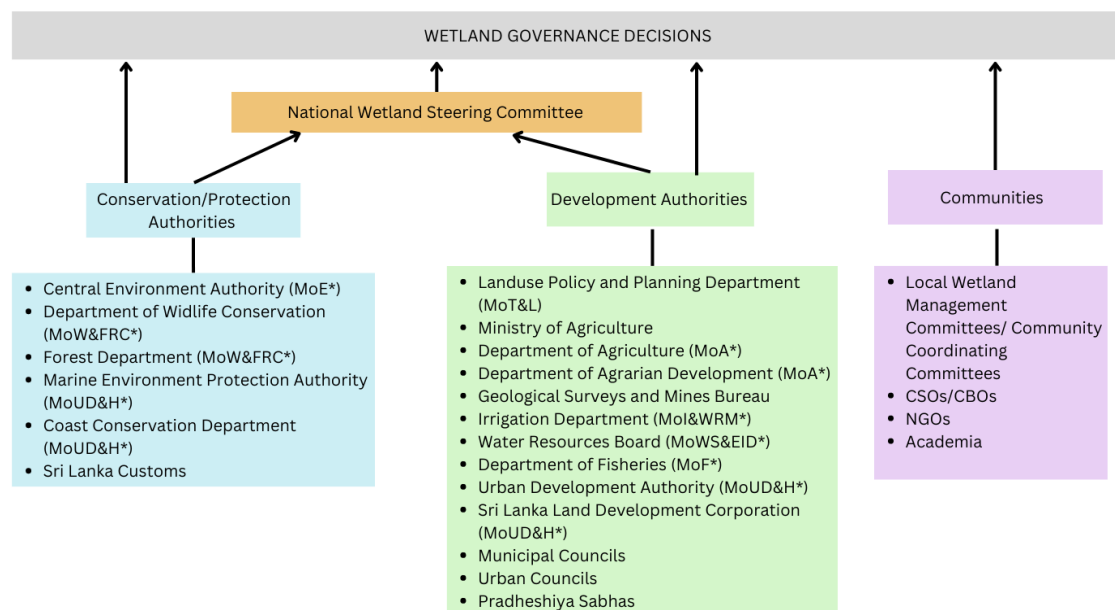
Figure 7.2: Proposed sites to be declared as ‘living entities’ under the National Policy on Living Entities

## 7.3 - Governance and communication

### 7.3.1 - Review of governance models and communication frameworks related to wetlands

Wetland related management decision makers, including influencers, can be roughly categorized into three broad units consisting of conservation or protection-focused authorities, development-focused authorities, and communities (Figure 7.3). However, there may be overlap between the development and conservation categories as several agencies have included conservation, wise use and sustainability aspects within their policies and activities. For example, the wetland unit within the SLLDC. The main government agencies that are responsible for legal protection of wetland areas are the Department of Wildlife Conservation (DWC), Forest Department (FD) and Central Environmental Authority (CEA). Other state agencies such as the Marine Environment Protection Authority (MEPA), Coast Conservation Department (CCD) and Sri Lanka Customs play a critical role in regulating pollution, construction, and introduction of invasive species and thereby, contributing to the maintenance of wetland functions.

Sri Lanka's wetland governance is also shaped by the Multilateral Environmental Agreements that the country is a signatory party to. As the two main MEAs that are governing wetland management, DWC plays a crucial role in monitoring and reporting progress towards commitments under the Ramsar Convention when the country became a signatory to the Convention on 22 June 1990, while the Biodiversity Secretariat (under the Ministry of Environment) is the appointed national focal point for the Convention on Biological Diversity when the country ratified the Convention on 23 March 1994.



*Figure 7.3 Governance structure related to wetland conservation and management (MoE=Ministry of Environment, MoW&FRC = Ministry of Wildlife and Forest Resource Conservation, MoUD&H = Ministry of Urban Development and Housing, MoT&L= Ministry of Tourism and Lands, MoA = Ministry of Agriculture, MoI&WRM =Ministry of Irrigation and Water Resources Management, MoWS&EID = Ministry of Water Supply and Estate Infrastructure Development, MoF = Ministry of Fisheries)*

The agencies listed as development authorities are key decision makers that are reliant on natural resources for the advancement of development initiatives in the country. Land use planning, agriculture, irrigation, and fisheries have a strong focus of augmenting the goods and services provided by ecosystems. This is generally associated with significant

modification to the natural environment without giving due consideration to the long-term impacts of habitat alteration. Continuing threats to wetlands from illegal landfilling for construction (e.g., Muthurajawela<sup>44</sup>), for aquaculture production (e.g., Anawilundawa<sup>45</sup>, Vidatthalthivu<sup>46</sup>) and from pollution (e.g. Mulleriyawa-Kotikawatte<sup>47</sup>) indicate the increased demand for wetland resources and the resulting detrimental impacts.

The lack of effective coordination mechanisms between the conservation and development agencies to allocate resources wisely under a growing population and a changing climate is a significant gap that affect both, social well-being, and environmental health. In terms of wetland management, this gap was addressed by setting up the National Wetland Steering committee (NWSC) in 1990 through a cabinet approval<sup>48</sup>. The NWSC consisted of key agencies from both conservation and development sectors but faced many challenges in continuing committee due to frequent changes in key staff of the constituent state agencies<sup>49</sup>. The committee was revived in 2003 and the members gather periodically to review and discuss progression towards wetland-based initiatives conducted by each constituent agency. However, the discussions are mostly on issues pertaining to the urban wetlands in the Western Province, which can be an indication of the lack of adequate communication between main ministerial agencies and local agencies.

Common citizens as advocates for equitable sharing of resources and right to a healthy environment, also play an important role in governing day-to-day decisions on how they choose to interact with the environment and influence high level decisions. Certain management structures within agency plans also directly have the community members involved as guardians of the ecosystem. For instance, Special Coastal Management Area (SCMA) plan (previously called Special Area Management or SAM plan) developed by the Coast Conservation Department (CCD), is a localized participatory approach that promotes the management of natural resources with the active involvement of the local community as the main stakeholder group. It identifies the local community to be the “custodians” of the resources and promotes the co-management of resources where the decision-making, responsibility, and authority in respect to natural resource use and management are shared between the government and the local resource users<sup>50</sup>.

### 7.3.2 - Review of Rights of Nature/Wetlands specific governance and communication

Other than the policy drafting that has been just commenced by the Ministry of Environment (mentioned in Section 7.2.2), where the committee appointed also include representatives from different agencies, this is not explicitly observed.

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<sup>44</sup> The Morning LK. The legal quagmire over the Muthurajawela marshes. (<https://www.themorning.lk/articles/175887>) [August 2023]

<sup>45</sup> The Sunday Times. Wetlands again ravaged for illegal prawn farming. (<https://www.sundaytimes.lk/200830/news/wetlands-again-ravaged-for-illegal-prawn-farming-414564.html>) [August 2023]

<sup>46</sup> Roar Media. This mangrove forest survived a war, but may not survive a shrimp farm. (<https://roar.media/english/life/environment-wildlife-life/this-mangrove-forest-survived-the-war-but-may-not-survive-a-shrimp-farm>) [August 2023]

<sup>47</sup> EFL. Garbage dumping in environmentally sensitive areas. (<https://efl.lk/portfolio/garbage-dumping-in-environmentally-sensitive-areas/>)

<sup>48</sup> IUCN Sri Lanka. 2004. Wetland Conservation in Sri Lanka. Proceedings of the National Symposium on Wetland Conservation and Management: Sri Lanka; iii+75pp

<sup>49</sup> DO

<sup>50</sup> Rajarathna, W.N.S. and Nianthi, K.R., 2019. Special coastal management area concept experience in Sri Lanka. In Coastal Management (pp. 5-20). Academic Press.

## 7.4 - Community management approaches and worldview

### 7.4.1 - Review of community management approaches and worldviews in relation to wetlands

A review of the existing academic literature reveals that the community views and management approaches of wetlands in Sri Lanka are largely understudied. Only a few studies have explicitly examined community perceptions towards wetland management. A focused study conducted in Muthurajawela observed that the communities preferred conservation over development<sup>51</sup>. However, this was primarily based on the need for protection of mangroves (and fish stocks) and purification of water as the communities' livelihoods depended on it.

While it is important to ascertain the Sri Lankan worldview regarding wetlands, this greatly varies from one local community to another. A worldview is a fundamental way of understanding the world; the belief systems, interpretations, and values which construct one's reality. 'It is a paradigm by which the individual or the group interprets reality and acts upon life'.<sup>52</sup> In Sri Lanka, views on the environment (and wetlands) may vary between ethnic, religious, and social groups, as well as based on livelihood, educational background, and location factors.

#### 7.4.1.1 - Historical, cultural, and religious views on the natural environment

While the Western worldview on environment has been criticised for being anthropocentric<sup>53</sup>, there is evidence to suggest that Sri Lankans have historically lived in a deep connection with nature. These connections may have been influenced by different religions and cultures where Sri Lankan communities respected, co-existed, valued, and treasured natural ecosystems.<sup>54</sup> With industrialisation, the influence of colonialism and Western ideologies, the connections between humans and nature within Sri Lanka were somewhat divided or lost. However, different local communities continue to uphold some of the sacred and spiritual practices and ancestral connections once shared with nature and the land.

A historical example of ecocentrism can be traced back to as early as 247 – 207 BC, when Arahata Mahinda (son of Emperor Asoka of India) preached a Buddhist sermon to King Devanampiya Tissa, who was on a hunting trip. The sermon alluded that other organisms too have a right to live, which prompted the King to open sanctuaries for the protection of wildlife<sup>55,56</sup>. Further, there are religious teachings from the Dhammapada (main scriptures of Buddhism) that refer to the peaceful co-existence between nature and humans where nature is not harmed at the expense of one's well-being. The main precept of Buddhist preaching is do no harm to others, where intentionally killing living beings is considered a sin.

One more recent/current example would be the practice of giving Upasampada (ordination) to trees in Sri Lanka which is rooted in Buddhist tradition and beliefs. This ritual involves a

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<sup>51</sup> Wattage, P. and Mardle, S., 2005. Stakeholder preferences towards conservation versus development for a wetland in Sri Lanka. *Journal of environmental management*, 77(2), pp.122-132.

<sup>52</sup> Naji Abi-Hashem, 'Worldview' in David A Leeming (eds), *Encyclopaedia of Psychology and Religion* (Springer, 2020) 1, 1.

<sup>53</sup> See, eg, Peter Burdon, 'Eco-centric Paradigm' in Peter Burdon (ed), *Exploring Wild Law* (Wakefield Press, 2011) 85; Stephan Harding, 'Gaia and Earth Jurisprudence' in Peter Burdon (ed), *Exploring Wild Law* (Wakefield Press, 2011) 79; Peter Burdon, 'Great Jurisprudence' in Peter Burdon (ed), *Exploring Wild Law* (Wakefield Press, 2011) 59; Peter Burdon, 'A Theory of Earth Jurisprudence' (2012) 37 *Australian Journal of Legal Philosophy* 28.

<sup>54</sup> See, eg, Asanka Edirisinghe and Michelle Lim, 'A Plea for Survival: Can the Return to Eco-centrism Strengthen the Legal Protection of Nature in Sri Lanka?' (2021) 24(2) *Asia Pacific Journal of Environmental Law* 149.

<sup>55</sup> The Mahavansa, Chapter XIV.

<sup>56</sup> UNEP (2009) Judges and environmental law—a handbook for the Sri Lankan Judiciary. Environmental Foundation Limited, Colombo.[www]. <https://www.ajne.org/sites/default/files/event/2040/session-materials/judges-environmental-law-a-handbook-for-the-sri-lankan-judiciary-2009.pdf> (19 Aug 2023)

symbolic act of conferring monastic status upon trees, treating them with reverence and respect similar to that given to Buddhist monks. Certain tree species, such as the Bodhi tree (*Ficus religiosa* or sacred fig) where Lord Buddha attained enlightenment, is worshipped with holy offerings and bathed with water as a tribute, and there is an understanding that these trees (wherever rooted) will not be cut down.

Another example is a ritual performed by communities that express deep connection with water. They perform a ritual called 'diya kapeema' (water-cutting ceremony) on an annual basis in several of the major rivers in the country such as Mahaweli, Kelani and Manik. During this event, the Diyawadana Nilame, who serves as the chief lay custodian of the relevant Temple (or Devalaya) cuts the water of the river with a sword, and the water is collected into a pot before the river water gathers back together after being divided by the sword. This ritual is perceived as a way of paying tribute to the river for sustaining the lives of the people in the community and invoking blessings for a prosperous life in the coming year.<sup>57</sup> From these examples, the former depicts a form of rights of nature where a tree is provided monastic status and the latter, albeit signifying a connection with water, depicts the benefits (blessings) that the community receives from the river.

The other predominantly practiced religions in Sri Lanka have fundamentals focused on the intricate relationship between humanity, the environment and in the theistic religions with God Himself<sup>58</sup>. For instance, the bible contains several verses that refer to the protection of the environment and humans as stewards of God's creation<sup>59,60</sup>; Hinduism considers the essence of earth, air, water, the tree, the cow, and humans the same divine spirit manifesting in different forms<sup>61</sup>; in Islam the Quran illustrates that humans should leave a negligible footprint and not extract resources to depletion<sup>62</sup>.

Additionally, Sri Lanka's indigenous populations, who refer to themselves as Wanniya-laeto ('people of the forest') or Vedda, have an intimate relationship with the forest habitats. 'Vedda', term meaning 'the person who uses bows and arrows', refer to their practices of shifting cultivation, hunting, and trapping and of collecting forest products. The Vedda community is defined by their own unique culture, behaviour, and lifestyle. They consider themselves to be the guardians of the forest as they believe their ancestors spirit belong to the forests. This demonstrates a significant human-nature connection, the dependence of the Vedda community on natural resources (or benefits) and may not explicitly indicate the right of the forests on its own.

Similarly, there are many local customs, rituals, and functions associated with different components of nature which showcase the deep, sacred, and spiritual values the communities hold in nature. In addition to the historic, religious, and cultural aspects there are several other key factors such as social and economic considerations which may affect the views and management approaches adopted by communities. The worldviews that they hold regarding wetlands could however only be ascertained through empirical research with these

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<sup>57</sup> Sanjeewa Uderathne, 'Kandy Perahera: Exploring the Significance of Diya Kapeema' *Kandy Perahera 2023* (Blog Post, 1 April 2023) < <https://kandyperahera2023.com/kandy-perahera-exploring-the-significance-of-diya-kapeema/>>.

<sup>58</sup> Weeramantry, C.G., 2009. *Tread Lightly on the Earth: Religion, the Environment, and the Human Future: a Report for the World Future Council*. Stamford Lake.

<sup>59</sup> Edirisinghe, A. and Lim, M., 2022. A plea for survival: Can the return to eco-centrism strengthen the legal protection of nature in Sri Lanka?. *Asia Pacific Journal of Environmental Law*, 24(2), pp.149-181.

<sup>60</sup> <https://www.unep.org/about-un-environment-programme/faith-earth-initiative/religions-and-environmental-protection>

<sup>61</sup> Coward, H., 2003. Hindu views of nature and the environment. In *Nature across cultures: Views of nature and the environment in non-Western cultures* (pp. 411-419). Dordrecht: Springer Netherlands.

<sup>62</sup> Weeramantry, C.G., 2009. *Tread Lightly on the Earth: Religion, the Environment, and the Human Future: a Report for the World Future Council*. Stamford Lake.

communities. Such research will make a substantial contribution towards bridging the notable gap in current knowledge concerning perceptions related to wetlands in Sri Lanka.

#### 7.4.1.2 - *Community management approaches to wetlands and natural ecosystems*

Farmer Organizations (FOs) and Fisheries Cooperative Societies (FCS) are two of the main community organizations that are directly involved in wetland resource use in the dry zone of Sri Lanka. Given that the country has over 10,000 tanks with 17,000 ha of perennial reservoirs, the utilization and management of these tanks for irrigation and inland fisheries are endowed upon the user communities.

The FOs play a significant role in governing water associated with reservoirs feeding a command area of <80 ha, which are considered “small tanks”<sup>63</sup>. These small tanks are organized in cascades that connect small to vast reservoirs through a series of feeder canals that deliver irrigation to land under paddy cultivation and resulting in village tank cascade systems<sup>64</sup>. These cascade systems were constructed over a few millennia and are still irrigating 35% of the irrigated paddy lands in the country. The Board members of Farmer Organizations are annually elected by the members and consist of a president, vice president, secretary, deputy secretary, treasurer, and an advisory committee of six members<sup>65</sup>. A historical post of “Vel Vidane” (community headman of the irrigation system) has been replaced by the post of the water controller, whose responsibilities are limited to the operation of the sluice gate and distribution of the irrigation water. Communication in Farmer Organizations is mainly organized through meetings where they conduct seasonal meetings (kanna rasweema) to develop the irrigation strategy for the season. Decisions related to the use of irrigation water, seed types, cultivation periods, fertilizer benefits and loan schemes for farmers are taken at seasonal meetings, following consultation with the government officials from the Department of Agrarian Services and Irrigation Department. There is often a competition for water between agriculture and fisheries sectors as increased demand for irrigation water for agriculture (i.e., paddy) reduces the water level below the minimum desirable level of fisheries. In certain areas, the FOs manage both agriculture and fisheries and the collective decisions on water allocations are derived amenable, while when the two organizations are separate, this can often lead to conflicts<sup>66</sup>.

FSC are common in coastal areas as fisheries and aquaculture are the predominant livelihoods of local communities. The management of the co-operative society is carried out by an executive committee or a board of directors consisting of seven members (inclusive of a president, vice-president, secretary, and treasurer)<sup>67</sup>. They are elected by the members of the society at the annual general meeting and the committee members hold their office for a period of one year. The role of the FSCs is to promote marketing activities, supply fishing gear and fingerlings, provide credit to members, advise on financial matters, and conduct social welfare activities. In rare events, FCS members are actively involved in carrying out surveillance to detect the use of any illegal fishing gear to prevent unauthorized fishing by providing information on such instances to relevant law enforcement authorities.

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<sup>63</sup> Jayasiri, M.M.J.G.C.N., Dayawansa, N.D.K. and Yadav, S., 2023. Assessing the roles of farmer organizations for effective agricultural water management in Sri Lanka. *Agricultural Systems*, 205, p.103587.

<sup>64</sup> Panabokke 2009

<sup>65</sup> Abeywardana, N., Schütt, B., Wagalawatta, T. and Bebermeier, W., 2019. Indigenous agricultural systems in the dry zone of Sri Lanka: Management transformation assessment and sustainability. *Sustainability*, 11(3), p.910.

<sup>66</sup> Ranasinghe, R.D.A.K., Gunasekara, W.P.U. and Korale Gedara, P.M., (2021). Diversity of the Management of Inland Reservoir Fisheries in Sri Lanka: Review of Existing Literature. *Proceedings of the Cascade Ecology & Management Conference*.

<sup>67</sup> Wimalasena, H.D. and Rupamoorthy, K., 2005. A review of the present status of fishermen's co-operatives of Sri Lanka.

As observed, the community organizations involved in wetland use are primarily focused on managing the extraction of resources for their livelihoods. Although many indigenous practices exist for agriculture and fisheries, these are conducted mainly with the aim of increasing the productivity and yield.

#### 7.4.2 - Review of Rights of Nature / Wetlands specific community management approaches and worldview

As described above, elements of rights of nature can be found within the historic, cultural, and religious views and aspects of communities in Sri Lanka, however this is interlinked with human connection to nature. The distinction between connectedness and rights of nature may need to be identified and articulated for further clarity and research in the feasibility of RON/ROW in Sri Lanka.

Individuals within local communities may recognise the intrinsic value of wetlands/nature and the importance of wetland ecosystems for survival of species other than humans, as found through discussions with community members in the Darwin project on *Increasing biodiversity and livelihood resilience in Colombo's wetlands*, however this may not translate to the current management approaches adopted by the community. As depicted above, the farmer and fisher groups adopt management of natural systems mainly from a livelihood enhancement perspective.

#### 7.5 - Initial assessment on the likelihood of Sri Lanka to adopt a Rights of Wetlands approach

Recognizing the rights of wetlands in Sri Lanka could present a certain degree of challenge, although it may not be an exceedingly formidable task. The rights of nature concept is deeply embedded in varying extents in Sri Lankan culture, history and religious groups. Hence, integrating this concept into the legal and policy framework governing Sri Lanka's wetlands may not encounter substantial criticism. Nevertheless, as this is an initial desk-based review, further research is needed to understand the differences between communities and their views on rights of nature/wetlands and the factors that may influence these views.

Sri Lanka has multiple legislations that contain provisions for the protection of the wetlands, there is no single legislative provision that explicitly recognizes wetlands, or selected wetlands to be legal persons with corresponding rights. While the discourse surrounding the rights of nature is surfacing in Sri Lanka, there lacks any authoritative legal instrument—whether constitutional, legislative, judicial, or otherwise—that acknowledges any aspect of nature, or nature in its entirety, as possessing inherent legal rights.

Upon initial review, there may be potentially two places within the legal framework where the rights of wetlands dialogue could be incorporated. First, the prevailing constitutional provisions, which assign a shared duty to both the state and the community, hold the potential for a comprehensive interpretation. This interpretation could extend beyond safeguarding the utilitarian aspects of nature to encompass its inherent worth, as well as the profound relational significance that diverse communities attribute to nature, inclusive of wetlands. Second, the public participation element in the EIA could provide an opportunity to integrate alternate worldviews into the decision-making process of the country including the personhood and rights of nature. Nevertheless, further analysis is required to understand the effect of RON/ROW on the dynamics of communities given the diversity in views, as well as the practicality in implementation with regard to sectoral laws and policies.

## 7.6 - ANNEX I: Public litigation cases

***Bulankulama Vs. Ministry of Industrial Development (Eppawala Case) (2000)*** involved a proposed mineral exploration and extraction agreement between a foreign company and the Sri Lankan government to conduct phosphate mining activities in the finite phosphate deposit in Eppawala. The petitioners filed a fundamental rights (FR) case based on the perceived impacts of the proposed activity. The investigations found that the mining activities will affect more than 2000 families due to the water and air pollution, result in the formation of pits that will aid mosquito breeding, and cause damage to the temples and sites of archaeological value. It was further argued that the project did not conduct an Environmental Impact Assessment (EIA) as required by law and that the depletion of the phosphate deposit at the planned extraction rates will deny its use by future generations<sup>68</sup>. The court held that there was an imminent infringement of fundamental rights of the petitioners and further ordered the State parties to refrain from entering into any contract until they had carried out comprehensive assessments. In this instance, Justice Amerasinghe held that,

“Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature (Principle 1, Rio De Janeiro Declaration). In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it. (Principle 4, Rio De Janeiro Declaration). In my view the proposed agreement must be considered in the light of the foregoing principles”

***Ravindra Gunawardena Kariyawasam Vs. Central Environment Authority and Others (Chunnakam Power Station Case) (2019)*** involved the petitioner filing an FR case presenting the threats perceived from the usage of “heavy oil” to power the generators in the Chunnakam power station and the hazardous disposal of petroleum wastage that results in the pollution of groundwater, wells and other drinking water sources. The Court stipulated that the defendants should financially compensate the affected people residing within a 1.5 km radius of the powerplant, whose wells are contaminated with oil, grease or other toxic compounds. This was a historic judgment in Sri Lankan judicial history, that defined the ‘Right to be Free from Degradation of the Environment’ as a Fundamental Right<sup>69</sup>. Here, Justice Jayawardena held that,

“... access to clean water is a necessity of life and is inherent in Article 27 (2) (c) of the Constitution which declares that the State must ensure “the realization by all citizens of an adequate standard of living for themselves and their families, including adequate food, clothing and housing, the continuous improvement of living conditions and the full enjoyment of leisure and social and cultural opportunities”. It is public knowledge that the majority of the people of our country have ready access to clean water which is provided by the apparatus of the State. It is also undisputed that prior to the pollution of groundwater in the Chunnakam area referred to earlier, the residents of that area had clean water. Thus, the pollution referred to earlier has deprived the residents of the Chunnakam area of access to clean water. They have, thereby, been placed at a significant disadvantage when compared to residents elsewhere in the country.”

***Watte Gedara Wijebanda Vs. Conservator General of Forests and Others (Watte Gedara Wijebanda Case) (2007)*** involved the petitioner instigating legal action for the violation of his fundamental rights when he was refused a permit for quarry mining of silica quartz deposit in the Kiriwalhena area located less than a mile away from the protected Girithale Minneriya

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<sup>68</sup> <https://efl.lk/portfolio/eppawala-phosphate-extraction-case/>

<sup>69</sup> Amarasinghe, K., 2022. Right to be Free from Degradation of the Environment in Sri Lanka: A Review of the Chunnakam Power Station Case. [www]. [http://192.248.16.117:8080/research/bitstream/70130/6885/1/SAJELP%20CR1\\_Rev\\_CG.pdf](http://192.248.16.117:8080/research/bitstream/70130/6885/1/SAJELP%20CR1_Rev_CG.pdf)



National Reserve and in proximity to Sigiriya archaeological area. The petitioner claimed that the State acted in a discriminatory manner and had denied him his right to equal treatment because it refused to grant him a mining permit but granted it to one of its competitors. The court upheld the decision to refuse granting permits for quarry mining in the area due to the impacts of mining on wildlife and water resources, including the potential alteration of water courses to historical sites. The court further directed that “no further mining activities take place on the said land and that suitable and immediate measures to be taken to restore the concerned land back to its original position” by those that were holding permits that were wrongfully granted. The judgement by Justice Thilakaratne encompassed that,

“The right of all persons to the useful and proper use of the environment and the conservation thereof has been recognized universally and also under the national laws of Sri Lanka. While environmental rights are not specifically alluded to under the fundamental rights chapter of the Constitution, the right to a clean environment and the principle of inter-generational equity with respect to the protection and preservation of the environment are inherent in a meaningful reading of Article 12(1) of the Constitution.”

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**About IWMI** The International Water Management Institute (IWMI) is an international, research-for-development organization that works with governments, civil society and the private sector to solve water problems in developing countries and scale up solutions. Through partnership, IWMI combines research on the sustainable use of water and land resources, knowledge services and products with capacity strengthening, dialogue and policy analysis to support implementation of water management solutions for agriculture, ecosystems, climate change and inclusive economic growth. Headquartered in Colombo, Sri Lanka, IWMI is a CGIAR Research Center with offices in 13 countries and a global network of scientists operating in more than 30 countries.

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