

# **Recognizing and Safeguarding the Rights of Nature for Sustainability**

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## **Recognizing and Safeguarding the Rights of Nature for Sustainability**

**Kariuki Muigua\***

### **Abstract**

*This paper critically examines the need to recognize and safeguard the rights of nature. The paper argues that nature has rights which must be recognized and safeguarded. It further posits that recognizing and safeguarding these rights is key in fostering harmony between nature and humanity towards sustainability. The paper defines and conceptualizes the rights of nature. In addition, it examines some of the efforts made towards recognizing and safeguarding the rights of nature and challenges thereof. The paper further offers suggestions towards recognizing and safeguarding the rights of nature for sustainability.*

### **1.0 Introduction**

Nature comprises of everything that naturally occurs on the planet<sup>1</sup>. It includes the animals, plants, events, processes, and products of the earth that are not made by human beings<sup>2</sup>. Nature encompasses the physical world and everything that lives in it<sup>3</sup>. The United Nations Environment Programme (UNEP) notes that nature underpins the functions and health of the planet and thereby the existence and health of humankind<sup>4</sup>. Nature is humanity's lifeline<sup>5</sup>. Human health, food, economies and well-being all depend on nature<sup>6</sup>.

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\* PhD in Law (Nrb), FCI Arb (Chartered Arbitrator), OGW, LL. B (Hons) Nrb, LL.M (Environmental Law) Nrb; Dip. In Law (KSL); FCPS (K); Dip. in Arbitration (UK); MKIM; Mediator; Consultant: Lead expert EIA/EA NEMA; BSI ISO/IEC 27001:2005 ISMS Lead Auditor/ Implementer; ESG Consultant; Advocate of the High Court of Kenya; Professor of Environmental Law and Conflict Management at the University of Nairobi, Faculty of Law; Member of the Permanent Court of Arbitration (PCA) [July, 2024].

<sup>1</sup> What is Nature., Available at <https://neprimateconservancy.org/what-is-nature-introduction/> (Accessed on 18/07/2024)

<sup>2</sup> Ibid

<sup>3</sup> Ibid

<sup>4</sup> United Nations Environment Programme., 'About Nature Action' Available at <https://www.unep.org/explore-topics/ecosystems-and-biodiversity/about-nature-action> (Accessed on 18/07/2024)

<sup>5</sup> United Nations Environment Programme., 'Spotlight on Nature and Biodiversity' Available at <https://www.unep.org/news-and-stories/news/spotlight-nature-and-biodiversity> (Accessed on 18/07/2024)

<sup>6</sup> Ibid

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Nature is at the heart of sustainability<sup>7</sup>. Sustainability entails creating and maintaining the conditions under which humanity and nature can exist in productive harmony to support present and future generations<sup>8</sup>. It has been noted that nature offers solutions to many of our most pressing global challenges, from climate change mitigation and adaptation to disease and food insecurity towards sustainability<sup>9</sup>.

Despite its vital importance, nature is facing increased threats as a result of human activities<sup>10</sup>. It has been noted that humanity is facing multiple interlinked environmental challenges including the climate change crisis, pollution, biodiversity loss and the extinction of species, deforestation, land degradation, and increased incidents of environmental disasters<sup>11</sup>. The triple planetary crisis of climate change, pollution and biodiversity loss is a major threat to both nature and humanity<sup>12</sup>. UNEP points out that we are experiencing a dangerous decline in nature and humans are causing it<sup>13</sup>. This decline in nature has far-reaching consequences. Damaged ecosystems exacerbate climate change, undermine food security and put people and communities at risk<sup>14</sup>.

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<sup>7</sup> United Nations Environment Programme-World Conservation Monitoring Centre., 'Nature-Based Solutions' Available at <https://www.unep-wcmc.org/en/nature-based-solutions> (Accessed on 18/07/2024)

<sup>8</sup> United States Environmental Protection Agency., 'What is Sustainability.' Available at <https://www.epa.gov/sustainability/learn-about-sustainability> (Accessed on 18/07/2024)

<sup>9</sup> Ibid

<sup>10</sup> United Nations Development Programme., 'Triple Planetary Crisis' Available at <https://www.undp.org/sites/g/files/zskgke326/files/2022-11/UNDP-Triple-Planetary-Crisis-Infographic.pdf> (Accessed on 18/07/2024)

<sup>11</sup> Ibid

<sup>12</sup> United Nations Climate Change., 'What is the Triple Planetary Crisis?' Available at <https://unfccc.int/news/what-is-the-triple-planetary-crisis> (Accessed on 18/07/2024)

<sup>13</sup> United Nations Environment Programme., 'Facts about the Nature Crisis' Available at <https://www.unep.org/facts-about-nature-crisis> (Accessed on 18/07/2024)

<sup>14</sup> Ibid

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In light of the foregoing challenges, it is now urgent to forge harmony between nature and humanity<sup>15</sup>. The *2030 Agenda for Sustainable Development*<sup>16</sup> seeks to achieve this harmony by protecting the planet from degradation including through sustainable consumption and production, sustainably managing its natural resources, and taking urgent action to confront climate change so that the planet can support the needs of the present and future generations. It also seeks to ensure that economic, social, and technological progress occurs in harmony with nature<sup>17</sup>. It has been noted that one of the most effective ways of achieving harmony between nature and humanity is by recognizing and honoring that nature has rights<sup>18</sup>.

This paper critically examines the need to recognize and safeguard the rights of nature. The paper argues that nature has rights which must be recognized and safeguarded. It further posits that recognizing and safeguarding these rights is key in fostering harmony between nature and humanity towards sustainability. The paper defines and conceptualizes the rights of nature. In addition, it examines some of the efforts made towards recognizing and safeguarding the rights of nature and challenges thereof. The paper further offers suggestions towards recognizing and safeguarding the rights of nature for sustainability.

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<sup>15</sup> International Science Council., 'Sustainable Human Development means Living in Harmony with Nature' Available at <https://council.science/blog/sustainable-human-development-means-living-in-harmony-with-nature/> (Accessed on 18/07/2024)

<sup>16</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Available at <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> (Accessed on 18/07/2024)

<sup>17</sup> Ibid

<sup>18</sup> Global Alliance for the Rights of Nature., 'What are the Rights of Nature?' Available at <https://www.garn.org/rights-of-nature/> (Accessed on 18/07/2024)

## **2.0 The Rights of Nature**

The concept of rights has for a long time been understood to only cover human beings<sup>19</sup>. Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status<sup>20</sup>. They include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, the right to property among others<sup>21</sup>. Everyone is entitled to these rights without discrimination<sup>22</sup>.

It has been observed that in most countries, the law considers nature as property<sup>23</sup>. Something that is considered property confers upon the property owner the right to use, damage or destroy it in whichever way<sup>24</sup>. Therefore, those who 'own' wetlands, forestland, and other ecosystems and natural communities, are largely permitted to use them however they wish, even if that includes destroying the health and wellbeing of nature<sup>25</sup>. This approach has subjected nature to human exploitation and misuse resulting in some of the environmental challenges being experienced throughout the world including environmental degradation, biodiversity loss, pollution, and climate change<sup>26</sup>. As a result of the property approach towards nature, species extinction is accelerating, the climate crisis is worsening, deforestation continues around the world, and overfishing in the world's rivers, lakes, and oceans has caused the collapse of many fisheries<sup>27</sup>.

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<sup>19</sup> United Nations., 'Human Rights' Available at <https://www.un.org/en/global-issues/human-rights#:~:text=Human%20rights%20are%20rights%20inherent,and%20education%2C%20and%20many%20more>. (Accessed on 19/07/2024)

<sup>20</sup> Ibid

<sup>21</sup> Ibid

<sup>22</sup> Ibid

<sup>23</sup> International Joint Commission., 'Rights of Nature' Available at <https://www.ijc.org/system/files/commentfiles/2019-10-Nicolette%20Slagle/FAQ.pdf> (Accessed on 19/07/2024)

<sup>24</sup> Ibid

<sup>25</sup> Ibid

<sup>26</sup> Ibid

<sup>27</sup> Ibid

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In light of the foregoing challenges, it has been noted that in order to ensure an environmentally sustainable future, human beings must reorient themselves from an exploitative and ultimately self-destructive relationship with nature, to one that embraces harmony and honours the deep interrelation of all life and contributes to the health and integrity of the natural environment<sup>28</sup>. In order to achieve this goal, it is necessary to create a system of jurisprudence that sees and treats nature as a fundamental, rights bearing entity and not as mere property to be exploited at will by humanity<sup>29</sup>. According to the Global Alliance for the Rights of Nature (GARN), breaking out of the human-centered limitations of our current legal systems by *recognizing, respecting and enforcing* the rights of nature is one of the most transformative and highly leveraged actions that humanity can take to create a sustainable future for all(Emphasis added)<sup>30</sup>.

The idea of rights of nature means recognizing that ecosystems and natural communities are not merely property that can be owned and exploited by human beings<sup>31</sup>. It acknowledges that nature has an independent and inalienable right to exist and flourish<sup>32</sup>. This concept is therefore a framework that recognizes the intrinsic rights of nature, including ecosystems and species, and holds them to the same standards of protection granted to natural and juristic persons<sup>33</sup>. GARN notes that the rights of nature is the recognition that our ecosystems – including trees, oceans, animals, mountains – have rights just as human beings have rights<sup>34</sup>. This concept involves balancing what is

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<sup>28</sup> Global Alliance for the Rights of Nature., 'The Rights of Nature' Op Cit

<sup>29</sup> Ibid

<sup>30</sup> Ibid

<sup>31</sup> International Joint Commission., 'Rights of Nature' Op Cit

<sup>32</sup> Ibid

<sup>33</sup> Sartika. P., 'Recognizing the Rights of Nature (RoN)' Available at <https://greennetwork.asia/featured/recognizing-the-rights-of-nature-ron/#:~:text=Instead%20of%20becoming%20property%2C%20the,rights%20on%20behalf%20of%20ecosy stems> (Accessed on 19/07/2024)

<sup>34</sup> Global Alliance for the Rights of Nature., 'What are the Rights of Nature?' Op Cit

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good for human beings against what is good for other species<sup>35</sup>. It is the holistic recognition that all life, all ecosystems on our planet are deeply intertwined<sup>36</sup>.

The Rights of Nature has been hailed as a groundbreaking concept that is revolutionizing humanity's approach to environmental conservation<sup>37</sup>. It is an innovative approach which challenges the traditional notion of nature as a mere resource for human consumption and instead recognizes it as a living entity with inherent rights<sup>38</sup>. This concept is vital in fostering legal recognition and protection for ecosystems, and other natural entities such as rivers and forests, through a similar approach to human rights<sup>39</sup>. It aims to restore the intrinsic connection between humanity and the environment<sup>40</sup>.

Recognizing and safeguarding the rights of nature marks a significant turning point in our relationship with the environment<sup>41</sup>. It provides an invaluable opportunity to preserve biodiversity, safeguard Indigenous knowledge, mitigate the effects of climate change and promote Sustainable Development<sup>42</sup>. With the world struggling with numerous environmental challenges, adopting this new paradigm is not only a legal and ethical necessity, but also a pragmatic step towards a more harmonious coexistence with nature<sup>43</sup>. It is therefore necessary to recognize and safeguard the rights of nature for sustainability.

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<sup>35</sup> Ibid

<sup>36</sup> Ibid

<sup>37</sup> Peluso. C., 'What are the Rights of Nature?' Available at <https://www.populationmedia.org/the-latest/what-are-the-rights-of-nature> (Accessed on 19/07/2024)

<sup>38</sup> Ibid

<sup>39</sup> Ibid

<sup>40</sup> Ibid

<sup>41</sup> Singhe. IC., 'The implications of recognizing the Rights of Nature in Africa' Available at <https://observatoirenature.org/observatorio/en/2024/03/16/the-implications-of-recognizing-the-rights-of-nature-in-africa/> (Accessed on 19/07/2024)

<sup>42</sup> Ibid

<sup>43</sup> Ibid



### **3.0 Recognizing and Safeguarding the Rights of Nature: Progress and Setbacks**

One of the major progress towards recognizing and safeguarding the rights of nature has been the development and adoption of environmental rights including the right to a clean, healthy, and sustainable environment<sup>44</sup>. It has been noted that human rights and the environment are intertwined<sup>45</sup>. Human rights cannot be enjoyed without a safe, clean and healthy environment<sup>46</sup>; and sustainable environmental governance cannot exist without the establishment of and respect for human rights<sup>47</sup>. It has been noted that environmental rights have grown more than any other human right and are now enshrined many national constitutions<sup>48</sup>. For example, the *Constitution of Kenya*<sup>49</sup> enshrines the right to a clean and healthy environment<sup>50</sup>.

It has been noted that environmental rights are composed of substantive rights (fundamental rights) and procedural rights (tools used to achieve substantial rights)<sup>51</sup>. Substantive environmental rights are those in which the environment has a direct effect on the existence or the enjoyment of the right itself<sup>52</sup>. They comprise of: *civil and political rights*, such as the rights to life, freedom of association and freedom from

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<sup>44</sup> United Nations Environment Programme., 'Advancing the Right to a Healthy Environment' Available at <https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-right-healthy-environment#:~:text=UNEP%20supports%20the%20recognition%2C%20advancement,protect%20and%20respect%20human%20rights> (Accessed on 19/07/2024)

<sup>45</sup> United Nations Environment Programme., 'What are Environmental Rights?' Available at [https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/what?\\_ga=2.38457899.943902575.1721310289-2011603003.1721310289&\\_gac=1.207185319.1721312927.EAIAIQobChMIzvu2kOawhwMVv6ODBx1G5x37EAAYASAAEgK2tvD\\_BwE](https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/what?_ga=2.38457899.943902575.1721310289-2011603003.1721310289&_gac=1.207185319.1721312927.EAIAIQobChMIzvu2kOawhwMVv6ODBx1G5x37EAAYASAAEgK2tvD_BwE) (Accessed on 19/07/2024)

<sup>46</sup> Ibid

<sup>47</sup> Ibid

<sup>48</sup> International Institute for Sustainable Development., 'UNEP Launches Environmental Rights Initiative' Available at <https://sdg.iisd.org/news/unep-launches-environmental-rights-initiative/> (Accessed on 19/07/2024)

<sup>49</sup> Constitution of Kenya., 2010., Government Printer, Nairobi

<sup>50</sup> Ibid, article 42

<sup>51</sup> United Nations Environment Programme., 'What are Environmental Rights?' Op Cit

<sup>52</sup> Ibid

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discrimination<sup>53</sup>; *economic and social rights* such as rights to health, food and an adequate standard of living<sup>54</sup>; *cultural rights* such as rights to access religious sites<sup>55</sup>; and *collective rights* for those affected by environmental degradation, such as the rights of indigenous peoples(Emphasis added)<sup>56</sup>. On the other hand procedural rights prescribe formal steps to be taken in enforcing legal rights<sup>57</sup>. Procedural rights include fundamental access rights: access to information, public participation, and access to justice<sup>58</sup>. Achieving environmental rights is key in recognizing and safeguarding the rights of nature.

The right to a clean, healthy, and sustainable environment is a key environmental right<sup>59</sup>. This right includes substantive elements such as clean air; a safe and stable climate; access to safe water and adequate sanitation; healthy and sustainably produced food; non-toxic environments in which to live, work, study and play; and healthy biodiversity and ecosystem<sup>60</sup>s. The procedural elements under this right include access to information, the right to participate in environmental decision-making, and access to Justice and effective remedies, including the secure exercise of these rights free from reprisals and retaliation<sup>61</sup>. Further, it has been argued that realizing the right to a healthy environment also requires international cooperation, solidarity and equity in environmental action, including resource mobilization, as well as recognition of extraterritorial jurisdiction over human rights harms caused by environmental degradation<sup>62</sup>. A clean, healthy, and sustainable environment is necessary for the full

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<sup>53</sup> Ibid

<sup>54</sup> Ibid

<sup>55</sup> Ibid

<sup>56</sup> Ibid

<sup>57</sup> Ibid

<sup>58</sup> Ibid

<sup>59</sup> United Nations Environment Programme., 'In Historic Move, UN Declares Healthy Environment a Human Right' Available at <https://www.unep.org/news-and-stories/story/historic-move-un-declares-healthy-environment-human-right> (Accessed on 19/07/2024)

<sup>60</sup> United Nations Development Programme., 'What is the Right to a Healthy Environment?' Available at <https://www.undp.org/publications/what-right-healthy-environment> (Accessed on 19/07/2024)

<sup>61</sup> Ibid

<sup>62</sup> Ibid

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enjoyment of a wide range of human rights, such as the rights to life, health, food, water and sanitation and development, among others<sup>63</sup>.

The *Stockholm Declaration*<sup>64</sup> was the first legal instrument to recognize the link between the health of the environment and human well-being. It affirms that all human beings have the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and that they bear a solemn responsibility to protect and improve the environment for present and future generations<sup>65</sup>. It further provides that the natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations<sup>66</sup>.

The *Rio Declaration on Environment and Development*<sup>67</sup> further sets out the need to recognize and safeguard the right of nature. It acknowledges that human beings are at the centre of concerns for Sustainable Development and are entitled to a healthy and productive life in harmony with nature<sup>68</sup>. The Rio Declaration further states that the right to development must be fulfilled so as to equitably meet developmental and *environmental needs* of present and future generations(Emphasis added)<sup>69</sup>.

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<sup>63</sup> Ibid

<sup>64</sup> Declaration of the United Nations Conference on the Human Environment., Available at [https://www.google.com/url?sa=i&url=https%3A%2F%2Fwww.ipcc.ch%2Fapps%2Fnlite%2Fsrex%2Fnj-lite\\_download.php%3Fid%3D6471&psig=AOvVaw298xNxlI4VKv04zwnR1MAT&ust=1721313471695000&source=images&cd=vfe&opi=89978449&ved=0CAYQrpoMahcKEwjA1dTBpq6HAxUAAAAAHQAAA-AAQBA](https://www.google.com/url?sa=i&url=https%3A%2F%2Fwww.ipcc.ch%2Fapps%2Fnlite%2Fsrex%2Fnj-lite_download.php%3Fid%3D6471&psig=AOvVaw298xNxlI4VKv04zwnR1MAT&ust=1721313471695000&source=images&cd=vfe&opi=89978449&ved=0CAYQrpoMahcKEwjA1dTBpq6HAxUAAAAAHQAAA-AAQBA) (Accessed on 19/07/2024)

<sup>65</sup> Ibid, Principle 1

<sup>66</sup> Ibid, Principle 2

<sup>67</sup> United Nations General Assembly., Rio Declaration on Environment and Development., A/CONF.151/26 (Vol. I), Available at [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_CONF.151\\_26\\_Vol.I\\_Declaration.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf) (Accessed on 19/07/2024)

<sup>68</sup> Ibid, Principle 1

<sup>69</sup> Ibid, Principle 3

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The human right to a clean, healthy and sustainable environment has also been recognized by the United Nations General Assembly as a fundamental human right<sup>70</sup>. It has been noted that the recognition of the right to a clean, healthy, and sustainable environment will have a trickle-down effect, prompting countries to enshrine the right to a healthy environment in national constitutions and regional treaties, and encouraging states to implement those laws<sup>71</sup>. In addition, this recognition is poised to give environmental campaigners more ammunition to challenge ecologically destructive policies and projects towards safeguarding the rights of nature<sup>72</sup>. Upholding the right to a clean, healthy, and sustainable environment is therefore key in recognizing and safeguarding the rights of nature for sustainability.

Another key approach towards recognizing and safeguarding the rights of nature has been through giving legal status to nature including trees, rivers, and mountains<sup>73</sup>. It has been noted that as the scale of environmental crisis becomes clear at the global, regional, and national levels, countries are giving parts of the natural world legal rights which allow people to go to court on their behalf<sup>74</sup>. In order to effectively enforce the rights of nature, it has been argued that natural objects, such as trees, should be bestowed with legal rights through the appointment of special guardians who are designated to protect the 'voiceless' elements in nature<sup>75</sup>. Further, courts have been urged to acknowledge and protect the legal rights of nature including threatened forests, rivers and endangered species by granting standing to objects and species themselves, as opposed to humans<sup>76</sup>.

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<sup>70</sup> United Nations General Assembly (UNGA)., 'The Human Right to a Clean, Healthy and Sustainable Environment.' UNGA Resolution 'A/76/L.75

<sup>71</sup> United Nations Environment Programme., 'In Historic Move, UN Declares Healthy Environment a Human Right' Op Cit

<sup>72</sup> Ibid

<sup>73</sup> World Economic Forum., 'Trees, Rivers and Mountains are Gaining Legal Status - Is this a Promising Approach to Protect Nature?' Available at <https://www.weforum.org/agenda/2023/08/legal-rights-nature-environmental-protection/> (Accessed on 19/07/2024)

<sup>74</sup> Ibid

<sup>75</sup> Stone. C., 'Should Trees Have Standing?' *Oxford University Press*, 2010,

<sup>76</sup> Ibid

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Some countries have embraced the need to give legal status to nature by recognizing the right of any person or organization to defend, protect, and enforce rights on behalf of nature, and for payment of recovered damages to government to provide for the full restoration of nature<sup>77</sup>. Such persons have the legal authority and responsibility to enforce rights on behalf of ecosystems<sup>78</sup>. The ecosystem itself is often named as the injured party, with its own legal standing in cases alleging rights violations of the rights of nature<sup>79</sup>. This approach has given ecosystems such rivers, lakes, and mountains legal personalities and the right to defend themselves in court against environmental harm including pollution and environmental degradation caused by a specific development project or even by climate change<sup>80</sup>. It has been noted that recognizing the rights of nature would allow natural resources to sue on their own behalf, potentially leading to greater protection and restoration of ecosystems<sup>81</sup>. The goal of conferring rights to nature is to secure the highest level of environmental protection under which an ecosystem can thrive and whose rights are not violated<sup>82</sup>. Giving legal status including *locus standi* to nature is therefore vital in recognizing and safeguarding the rights of nature.

Development of the law on ecocide is another avenue that is important in recognizing and safeguarding the rights of nature in international law<sup>83</sup>. Ecocide has been defined as unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts<sup>84</sup>. There is a campaign underway to include ecocide as an international crime

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<sup>77</sup> International Joint Commission., 'Rights of Nature' Op Cit

<sup>78</sup> Global Alliance for the Rights of Nature., 'What are the Rights of Nature?' Op Cit

<sup>79</sup> Ibid

<sup>80</sup> Challe. T., 'The Rights of Nature – Can an Ecosystem Bear Legal Rights?' Available at <https://news.climate.columbia.edu/2021/04/22/rights-of-nature-lawsuits/> (Accessed on 19/07/2024)

<sup>81</sup> Ibid

<sup>82</sup> Ibid

<sup>83</sup> Gilbert. J., 'The Rights of Nature as a Legal Response to the Global Environmental Crisis? A Critical Review of International Law's 'Greening' Agenda' *Netherlands Yearbook of International Law.*, volume 52, pp 47-74

<sup>84</sup> Nature's Rights Go to Court., Available at <https://www.bsr.org/en/emerging-issues/natures-rights-go-to-court> (Accessed on 19/07/2024)

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under the Rome Statute<sup>85</sup>. It has been argued that the adoption of ecocide as an international crime will shift the manner in which humans consider their relationship with nature driven by the global climate, biodiversity, and pollution crisis<sup>86</sup>. Ecocide will bolster the conservation of nature by making it a criminal offence to damage natural infrastructure<sup>87</sup>. Making ecocide a crime creates an arrestable offence<sup>88</sup>. This will extend liability to individuals who are responsible for acts or omissions that lead to severe environmental harm<sup>89</sup>. Such individuals could face criminal prosecution under the crime of ecocide<sup>90</sup>. It is therefore necessary for the international community to adopt and enforce the crime of ecocide in order to recognize and safeguard the rights of nature through criminal law.

Despite some of the attempts made towards recognizing and safeguarding the rights of nature, it has been noted that environmental challenges including pollution, biodiversity loss and the extinction of species, deforestation, and land degradation are mounting all over the world<sup>91</sup>. Further, the consequences of climate change are becoming increasingly evident threatening the attainment of the Sustainable Development agenda<sup>92</sup>. It has been argued that by acknowledging the rights of nature, humanity can redefine its relationship with the environment and embrace a sense of responsibility towards preserving the planet for future generations<sup>93</sup>. It is therefore vital to recognize and safeguard the rights of nature for sustainability.

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<sup>85</sup> Nature Finance., 'The Rights of Nature: Developments and Implications for the Governance of Nature Markets' Available at <https://www.naturefinance.net/wp-content/uploads/2023/03/TheRightsOfNature.pdf> (Accessed on 19/07/2024)

<sup>86</sup> Ibid

<sup>87</sup> Ibid

<sup>88</sup> Ibid

<sup>89</sup> Ibid

<sup>90</sup> Ibid

<sup>91</sup> Peluso. C., 'What are the Rights of Nature?' Op Cit

<sup>92</sup> Ibid

<sup>93</sup> Ibid

#### **4.0 Conclusion**

It is imperative to recognize and safeguard the rights of nature. It has been correctly observed that the rights of nature can be a powerful tool to protect the environment and advance the Sustainable Development agenda<sup>94</sup>. The concept of Rights of Nature seeks to recognize nature and its elements as rights holders, providing them with a voice through representation, and reorienting law around principles of relationship, interconnection, reciprocity, responsibility, and the recognition that all the planet's beings, ecosystems, and components have fundamental rights to exist, thrive, and evolve<sup>95</sup>. Rather than treating nature as property under the law, the idea of rights of nature acknowledges that nature in all its life forms has the right to exist, persist, maintain and regenerate its vital cycles<sup>96</sup>. Recognizing and safeguarding the rights of nature is therefore necessary in achieving sustainability.

In order to achieve this goal, it is necessary to adopt new legal structures recognizing the rights of nature<sup>97</sup>. It is necessary for countries to revise their laws to embrace the fact that ecosystems and natural communities have the right to exist and flourish<sup>98</sup>. Further, laws should also acknowledge that people, communities, and governments have the authority to defend rights of nature on behalf of ecosystems and natural communities<sup>99</sup>.

In addition, it is necessary to grant legal status to nature and ecosystems including trees, rivers, and mountains<sup>100</sup>. Granting legal status to nature allows the rights of nature to be

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<sup>94</sup> Sartika. P., 'Recognizing the Rights of Nature (RoN)' Op Cit

<sup>95</sup> United Nations., 'Rights of Nature: A Catalyst for the implementation of the Sustainable Development Agenda on Water' Available at <https://sdgs.un.org/partnerships/rights-nature-catalyst-implementation-sustainable-development-agenda-water> (Accessed on 19/07/2024)

<sup>96</sup> Global Alliance for the Rights of Nature., 'What are the Rights of Nature?' Op Cit

<sup>97</sup> International Joint Commission., 'Rights of Nature' Op Cit

<sup>98</sup> Ibid

<sup>99</sup> Ibid

<sup>100</sup> World Economic Forum., 'Trees, Rivers and Mountains are Gaining Legal Status - Is this a Promising Approach to Protect Nature?' Op Cit

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protected through available legal channels including courts<sup>101</sup>. There has been progress towards realizing this goal through a number of key cases and initiatives that have advanced the cause of the rights of nature in recent years. For example, in 2017, the Whanganui River in New Zealand became the first river in the world to be granted legal personhood by recognizing its rights to exist, flourish, and naturally evolve<sup>102</sup>. Further, a Bill of Rights for Lake Erie, in Ohio in the United States of America was adopted in 2019, recognizing the lake's rights to exist, flourish, and naturally evolve<sup>103</sup>. It is vital for other countries to follow suit and grant legal status to ecosystems such as rivers, lakes, forests, and mountains<sup>104</sup>. This approach is important since it grants such ecosystems legal personalities and the right to defend themselves in court against environmental harm including pollution, environmental degradation, and climate change<sup>105</sup>.

Further, there is need to fast-track the adoption of ecocide as an international crime<sup>106</sup>. Recognizing and safeguarding the rights of nature also implies stopping the massive damage and destruction of ecosystems that is taking place around the world<sup>107</sup>. It has been noted that at present, in most parts of our planet, no-one is held accountable for this damage<sup>108</sup>. Introducing and prosecuting ecocide as an international crime will strengthen environmental protection through criminal law by imposing an international and trans-boundary duty of care on any person or persons exercising a position of superior responsibility, without exemption, in either private or public capacity to prevent the risk

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<sup>101</sup> Ibid

<sup>102</sup> Environmental Law Foundation., 'The Rights of Nature: A New Era of Environmental Protection' Available at <https://elflaw.org/news/the-rights-of-nature-a-new-era-of-environmental-protection/> (Accessed on 19/07/2024)

<sup>103</sup> Ibid

<sup>104</sup> Ibid

<sup>105</sup> Challe. T., 'The Rights of Nature – Can an Ecosystem Bear Legal Rights?' Op Cit

<sup>106</sup> Stop Ecocide International., 'New Ways to Protect the Earth: Ecocide Law and Rights of Nature' Available at <https://www.stopecocide.earth/events/new-ways-to-protect-the-earth-ecocide-law-and-rights-of-nature> (Accessed on 19/07/2024)

<sup>107</sup> Ibid

<sup>108</sup> Ibid



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of and/or actual extensive damage to or destruction of or loss of ecosystem(s)<sup>109</sup>; and creating a law with criminal sanctions when the actions of individuals or corporations create a risk of and/or actual extensive damage to or destruction of or loss of ecosystem(s)<sup>110</sup>. It is thus imperative to adopt and prosecute ecocide as an international crime in order to recognize and safeguard the rights of nature.

Through the foregoing measures, it becomes possible to recognize and safeguard the rights of nature. Recognizing and safeguarding the rights of nature is therefore an agenda that should be prioritized in order to foster harmony between nature and humanity for sustainability.

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<sup>109</sup> Higgins. P., Short. D., & South. N., 'Protecting the Planet after Rio - The Need for a Crime of Ecocide' Available at <https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/09627251.2012.751212.pdf> (Accessed on 19/07/2024)

<sup>110</sup> Ibid

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