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# Reimagining riverine rights: a socio-legal analysis of the legal status and governance models of Te Awa Tupua, the Turag River, and Birrarung

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## ABSTRACT

Despite the growing recognition of the rights of nature, little attention has been given to how innovative legal frameworks, such as granting legal personhood and appointing guardians for nature, actually impact ecological protection on the ground. This article addresses this gap by examining the legal status of rivers and the governance structures established to uphold riverine rights, focusing on three case studies: Te Awa Tupua (Whanganui River) in New Zealand, the Turag River in Bangladesh, and Birrarung (Yarra River) in Australia. The article explores the dynamics of legal frameworks and their implementation in different social, historical, and cultural contexts. The findings reveal that while granting legal status for rivers contributes to addressing past wrongs and power imbalances for both humans and rivers, the impact of these legal outcomes is shaped by broader governance structures and their capacity to translate laws into tangible actions. Additionally, this article considers that recognising rivers as living entities, regardless of their legal person status, presents an opportunity to reconcile relationships among riverine life.

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## Introduction

Historically, nature has been perceived as a resource for human exploitation. With the rise of the Westphalian system, states asserted absolute sovereignty over natural resources, often disregarding nature's inherent value.<sup>1</sup> In recent years, however, this exploitative relationship has been increasingly challenged. In 2006, the rights of nature were first incorporated into a legal framework, marking the beginning of a global phenomenon.<sup>2</sup> Notable legal provisions primarily emerged in Latin America and

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<sup>1</sup>Gilbert and others, 'The Rights of Nature as a Legal Response to the Global Environmental Crisis? A Critical Review of International Law's 'Greening' Agenda' in Daniëlla Dam-de Jong and Fabian Amtenbrink (eds), *Netherlands Yearbook of International Law 2021: A Greener International Law—International Legal Responses to the Global Environmental Crisis* (TMC Asser Press 2023), 51-52.

<sup>2</sup>See Tamaqua Borough Sewage Sludge Ordinance No 612 (Tamaqua Borough Mun Code).

the United States, with growing efforts seen across South Asia, Africa, and Europe.<sup>3</sup> In 2008, Ecuador became the first country to enshrine the constitutional rights of Mother Earth, recognising its right to exist, maintain, regenerate, and be restored.<sup>4</sup> Others have also followed with legislative and judicial decisions of similar constitutional significance.<sup>5</sup> According to a 2022 quantitative study, over 400 legal initiatives across 39 countries have occurred, including court decisions, legislations, constitutional amendments, international documents, and policy recommendations.<sup>6</sup> While variations exist, common elements are granting nature legal personhood and appointing guardians to represent its interests.<sup>7</sup>

Amid the growing legal development concerning nature, relational ontology has emerged as a key philosophical concept to explain the interconnectedness between humans and nature. Escobar, emphasising his concept of the ‘pluriverse’ – the world with multiple reals that are all equally valid and interrelated – calls for defining things and beings through their relations that constitute them.<sup>8</sup> Rooted in Indigenous peoples’ worldviews, relational ontology highlights that all living beings exist within a web of interrelationships, where each entity’s existence depends on its interactions with others.<sup>9</sup> This perspective does not require a divide between humans and nature but acknowledges the interconnectedness and interdependence of all life within a dynamic and evolving web of existence.<sup>10</sup> For instance, in the riverine world, life takes shape and comes into being through countless interactions among various beings such as water, minerals, fishery communities, and trees. Relational ontology offers a new understanding of beings not as mere passive existences, but as active living entities that shape and thrive within relational worlds.

Lately, legal frameworks have begun incorporating relational ontology to recognise harm to nature. In 2023, Colombia’s Special Jurisdiction for Peace charged several Revolutionary Forces of Colombia members with war crimes for harming nature.<sup>11</sup> Despite differing opinions, Magistrate Óscar Parra Vera viewed the decision through a relational ontological lens, acknowledging the inseparable and complementary relationship between Indigenous communities and nature, in which territory is seen as a living being.<sup>12</sup> Nevertheless, as legal systems remain largely anthropocentric, overcoming the human-nature dichotomy and integrating interconnectedness into laws remains a challenge. Despite its strong alignment with relational ontology, the rights of nature movement is forced to contend with Westernised, human-centred modern legal systems.

<sup>3</sup>Craig M Kauffman, ‘Mapping Transnational Rights of Nature Networks & Laws: New Global Governance Structures for More Sustainable Development’ (International Studies Association Annual Conference, Toronto, March 2020).

<sup>4</sup>Constitution of the Republic of Ecuador 2008 (EC) arts 71–74.

<sup>5</sup>Mihnea Tănăsescu, ‘Rights of Nature, Legal Personality, and indigenous Philosophies’ (2020) 9 *Transnational Environmental Law* 429, 430, fn 12.

<sup>6</sup>Alex Putzer and others, ‘Putting the Rights of Nature on the Map. A Quantitative Analysis of Rights of Nature Initiatives Across the World’ (2022) 18 *Journal of Maps* 89, 90–93.

<sup>7</sup>Gabriel Eckstein and others, ‘Conferring Legal Personality on the World’s Rivers: A brief Intellectual Assessment’ (2019) 44 *Water International* 1, 21.

<sup>8</sup>Arturo Escobar, ‘Thinking-feeling with the Earth: Territorial Struggles and the Ontological Dimension of the Epistemologies of the South’ (2016) 11 *Revista de Antropología Iberoamericana* 12, 18.

<sup>9</sup>*ibid* 17–18.

<sup>10</sup>*ibid*.

<sup>11</sup>Auto SRVR No 01 de 2023 (CO); Auto SRVR No 03 de 2023 (CO).

<sup>12</sup>Aclaración de voto del Magistrado Óscar Parra Vera, Auto SRVR No 01 de 2023 (CO) para 57.

While there is growing scholarly attention on the legal theories and implications of granting legal personhood and guardianships to nature, the actual impact of these legal mechanisms in protecting nature remains unclear.<sup>13</sup> Law, situated within broader social, cultural, and political contexts, operates beyond legal texts, influencing society in various ways. This article argues for a deeper focus in legal scholarship on the governance models that operationalise the rights of nature, examining how these rights can be better protected and translated into effective actions. By considering the legal aspects of nature's rights within a broader context, nature can be perceived as active living entities, interconnected with various beings.

## Analysing legal status and governance models in broader contexts

Focusing on riverine rights, this article examines the legal status of rivers and the governance structures institutionalised following the recognition of the rights of rivers. Key questions addressed include: What legal statuses are granted to rivers, and how are they implemented? How do governance mechanisms established for protecting riverine rights operate in different historical, social, and cultural contexts? In what ways can rivers be revitalised?

To address the research questions, this article will first provide an overview of riverine rights, comparing the different legal statuses granted to rivers. It will then critically examine the concept of 'person' in law in shaping riverine rights. Then, this article will present three river case studies, analysing legislative and judicial outcomes as well as the governance models derived from those legal decisions. By unpacking the historical, social and cultural contexts surrounding these laws, this article will assess the impact on enforcing riverine rights and explore ways to better protect rivers and their ecosystems. The findings can contribute to a conceptual critique of the legal status of rivers and enhance the analysis of various governance models. Additionally, this article can offer insights into how relational ontology can be applied in the three river case studies and implications of relational ontology for ecological protection.

This article adopts a socio-legal approach to address the research questions. As Bradshaw notes, socio-legal research 'considers the law and the process of law beyond legal text'.<sup>14</sup> The rationale for using this method aligns with Thomas's argument that '[e]mpirically, law is a component part of the wider social and political structure, is inextricably related to it in an infinite variety of ways, and can therefore only be properly understood if studied in that context'.<sup>15</sup> The author of this article, with an academic background in both political science and law, employs an interdisciplinary perspective aimed at understanding legal texts and judicial decisions within their broader social, cultural, and historical frameworks. The author has no direct or indirect connection to the three case-study rivers, except for having lived for one year in Dhaka, Bangladesh, for reasons unrelated to this research. Adopting an objective stance, the author sought to understand the deeper social, cultural, and historical contexts behind legislation and

<sup>13</sup>Philipp Wesche, 'Rights of Nature in Practice: A case Study on the Impacts of the Colombian Atrato River Decision' (2021) 33 *Journal of Environmental Law* 531, 533.

<sup>14</sup>Alan Bradshaw, 'Sense and Sensibility: Debates and Developments in Socio-Legal Research Methods' in Phillip Thomas (eds), *Socio-Legal Studies* (Aldershot: Ashgate-Dartmouth) op. cit., 99.

<sup>15</sup>Phil Harris, 'Curriculum Development in Legal Studies' (1986) 20 *The Law Teacher* 110, 112.

judicial decisions relating to the three rivers and to focus on governance mechanisms to examine how laws are being implemented.

Due to constraints related to funding, time, and logistics, field research could not be conducted, nor was primary data collection carried out through methods such as individual interviews or focus group discussions. Consequently, this article is limited in its ability to engage in a fully grounded analysis, which would have enabled a more detailed socio-legal examination of the legislative and judicial impacts on ecological protection in practice.

Despite these limitations, this article employs other qualitative research methods. First, it is based on a comprehensive literature review of diverse sources, including scholarly works, legislation, judicial decisions, legal dictionaries, practitioner reports, news articles, and blogs. A case study approach is adopted to address the research questions within their specific contexts. The three selected case studies are Te Awa Tupua (Whanganui River) in New Zealand, the Turag River in Bangladesh, and Birrarung (Yarra River) in Australia. These cases were used to compare the different legal statuses granted to the rivers and the governance structures established in each context. As no primary data collection was conducted, this article relies on documentary analysis. Therefore, in examining these case studies, careful attention has been paid to the selection of documents that are relied on for empirical data. Priority was given to reviewing primary sources, as well as local data and analyses. These include legislation and judicial decisions concerning the three rivers studied, official annual reports, strategic plans, and implementation documents published by appointed or designated bodies under relevant laws, and academic journals authored primarily by local scholars.

Following Macpherson and others, this article uses the term ‘riverine rights’ broadly to refer to the rights that rivers possess under their respective legal statuses, while acknowledging the conceptual and practical differences across contexts.<sup>16</sup> Additionally, the term ‘case’ refers to each river example examined, encompassing legislative actions, judicial decisions, and both legal and social aspects. Furthermore, the article uses both Indigenous and English names of rivers, legal mechanisms, and governance models recognised in legislation interchangeably.

## **When rivers become persons**

### ***Overview of riverine rights***

In recent years, a growing number of claims and legal declarations from various regions have signalled a global shift toward recognising the right of nature. Many of these legal innovations have focused on water bodies, particularly rivers, which often hold deep genealogical and cultural significance for Indigenous peoples.<sup>17</sup> In a landmark 2016 ruling, the Colombian Constitutional Court recognised the Atrato River as a subject of rights in response to the harm caused by illegal mining.<sup>18</sup> This was followed in 2017 by New Zealand’s granting of legal personhood to Te Awa Tupua, the first river in the

<sup>16</sup>See Elizabeth Macpherson and others, ‘Where Ordinary Laws Fall Short: ‘Riverine Rights’ and Constitutionalism’ (2021) 30 Griffith Law Review 438, 439.

<sup>17</sup>Tănăsescu (n 5) 431.

<sup>18</sup>T-622 (Constitutional Court Decision, 10 November 2016) (CO) (Atrato Case).

world to be recognised by legislation as a legal person.<sup>19</sup> By the time of writing, Argentina, Australia, Bangladesh, Brazil, Canada, Colombia, Ecuador, India, New Zealand, Peru, and the United States have recognised the rights of rivers, either through court rulings, national laws, or local regulations.<sup>20</sup>

While the recognition of legal rights of rivers under various domestic laws has generated excitement, it is important to acknowledge the challenges involved. Although rivers are easier to geographically identify due to their historically established boundaries from riverbed to riverbank, defining them as legal subjects is not always straightforward.<sup>21</sup> As dynamic, flowing systems, rivers interact with numerous non-human and human beings, often crossing multiple jurisdictions. Even when rivers are recognised as legal subjects, challenges arise in determining who can represent them, which rights and interests should take precedence, and how to effectively implement these legal measures.<sup>22</sup>

## ***Legal status of rivers***

### ***Riverine rights and legal status of rivers***

Riverine rights are established by either granting specific rights to rivers or recognising them as legal persons or entities. Legal personhood confers three specific rights: the right to enter and enforce contracts; the right to own property; and the right to sue and be sued in court, known as legal standing.<sup>23</sup> This means that rivers can take legal action on their own behalf, without having to demonstrate harm to humans in relation to the river.<sup>24</sup> However, these rights are only effective if they can be enforced.<sup>25</sup> This requires appointing legal representatives, such as an individual or an organisation, to act on the rivers' behalf, along with adequate resources including time, funding, and expertise to support both legal enforcement and practical implementation.<sup>26</sup> The question that still remains is how rivers can consent to the appointment.

### ***Four types of legal status for rivers***

Broadly, the legal status granted to rivers can be categorised into four types: legal person, legal entity, legal subject, and living entity. In most cases, rivers are assigned one specific type of legal status. For example, the Whanganui River in New Zealand is declared to be 'a legal person and has all the rights, powers, duties, and liabilities'.<sup>27</sup> The Atrato River in Colombia is recognised as 'an entity that is the subject of rights to protection, conservation, maintenance, and restoration'.<sup>28</sup> Muteshekau-shipu in Canada is identified as 'a

<sup>19</sup>Te Awa Tupua (Whanganui Claims Settlement) Act 2017 (NZ) (Te Awa Tupua Act) s 14.

<sup>20</sup>United Nations, 'Harmony with Nature' (United Nations, 2024) <<http://www.harmonywithnature.un.org/rightsOfNature>> accessed 20 June 2024.

<sup>21</sup>Cristy Clark and others, 'Can You Hear the Rivers Sing? Legal Personhood, Ontology, and the Nitty-Gritty of Governance' (2019) 45 Ecology Law Quarterly 787, 791.

<sup>22</sup>Eckstein and others (n 7) 4.

<sup>23</sup>Erin O'Donnell and Julia Talbot-Jones, 'Legal Rights for Rivers: What Does This Actually Mean?' (2017) 32 Australian Environment Review 159, 159–60.

<sup>24</sup>Erin O'Donnell and Julia Talbot-Jones, 'Creating Legal Rights for Rivers: Lessons from Australia, New Zealand, and India' (2018) 23 Ecology and Society, 2.

<sup>25</sup>ibid.

<sup>26</sup>ibid 1–3.

<sup>27</sup>Te Awa Tupua Act (n 19).

<sup>28</sup>Atrato Case (n 18).

legal person with nine rights'.<sup>29</sup> In contrast, rivers in India and Bangladesh have been granted multiple legal statuses. Although later diverted, the Ganges and Yamuna Rivers in India, along with all their tributaries and streams, were declared 'juristic, legal persons, living entities having the status of a legal person with all corresponding rights, duties, and liabilities of a living person'.<sup>30</sup> The Turag River in Bangladesh, along with all other rivers flowing inside and through the country, was declared to hold rights as legal persons, legal entities, and living entities.<sup>31</sup>

In the context of living entities, recognising a river as a living entity does not necessarily confer any legal rights or duties.<sup>32</sup> For instance, under the Yarra River Protection Act 2017 (Yarra River Act), Birrarung in Australia is recognised as 'one living and integrated natural entity', but without any accompanying legal rights.<sup>33</sup> On the other hand, Martuwarra in Australia is recognised as a living ancestral being with a right to life.<sup>34</sup> However, this explicit acknowledgement of rights exists solely within the jurisdiction of the Traditional Owners and is not incorporated into state law.<sup>35</sup> O'Donnell pointed out that rivers with multiple legal statuses, such as those in Bangladesh and India that combine legal person and living entity statuses, could be understood as embodying both the legal aspect of persons with rights and the moral significance of living beings.<sup>36</sup>

The term 'living entity' is distinct from other legal statuses, but 'legal entity', 'legal person', and 'legal subject' are often used interchangeably in academic and judicial texts, leading to confusion due to their overlapping usage.<sup>37</sup> Black's Law Dictionary defines 'legal entity' as a 'body other than a natural person that can function legally, sue or be sued, and make decisions through agents' and provides a corporation as a typical example of a legal entity.<sup>38</sup> Lindroos-Hovinheimo notes that the law recognises legal entities in various forms, including legal person and legal subject, which are two fundamental categories in Western legal thought.<sup>39</sup> In fact, 'legal person' is primarily used in common law jurisdictions, reflecting both legalist flexibility – since anything can become a legal person – and the essentialist moral significance of legal personality.<sup>40</sup> In contrast, 'legal subject' is more prevalent in civil law jurisdictions, referring to a subject of legal rights, allowing courts or legislatures to articulate specific rights.<sup>41</sup> In this sense, legal subject can be both more flexible yet more specific than legal person.<sup>42</sup>

To avoid confusion, this article adheres to the aforementioned definitions of each term while using the terms according to their original sources. However, given the importance

<sup>29</sup>Alliance Muteshekau-shipu, Announcement of Legal Personhood of Magpie River in Quebec Canada, 23 February 2021.

<sup>30</sup>*Mohd Salim v State of Uttarakhand and Others* (2017) Uttarakhand HC 126 (IN).

<sup>31</sup>*Human Rights and Peace for Bangladesh (HRPB) v Government of Bangladesh and Others* (2016) HCD Writ Petition No 13989 of 2016, judgement declared on 3 February 2019 (BD), translation from Bangla by MS Islam, Dir 2.

<sup>32</sup>Erin O'Donnell, 'Rivers as Living Beings: Rights in Law, but No Rights to Water?' (2020) 29 Griffith Law Review 643, 650.

<sup>33</sup>Yarra River Protection (Wilip-gin Birrarung murrn) Act 2017 (Vic) (Yarra River Act), s 1(a).

<sup>34</sup>Fitzroy River Declaration (Traditional Owners of the Fitzroy River, 2016).

<sup>35</sup>O'Donnell (n 32) 651.

<sup>36</sup>*ibid.*

<sup>37</sup>Tănăsescu (n 5) 438 fn 57.

<sup>38</sup>Bryan A Garner (ed), *Black's Law Dictionary* (12th edn, Thomson Reuters 2024) 'Legal Entity'.

<sup>39</sup>Susanna Lindroos-Hovinheimo, 'Private Selves – An Analysis of Legal Individualism' (2017) *Legal Personhood: Animals, Artificial Intelligence and the Unborn* 29, 30.

<sup>40</sup>O'Donnell (n 32) 649.

<sup>41</sup>*ibid.*

<sup>42</sup>*ibid.*



of understanding how different legal statuses shape riverine rights and governance structures in relation to protecting rivers, the following section will clarify what it means to personify rivers in law.

### ***Critical perspectives on personifying rivers in law***

There have been intellectual divisions in legal thought regarding the nature of legal personality. Previously dominated by the notion of corporate personality, the legal person has been viewed as a construct – a person without any inherent moral status.<sup>43</sup> Conversely, debates around corporate liability have introduced an anthropomorphising effect, where corporations are personified.<sup>44</sup> The recognition of nature as legal persons, due to their sentient qualities or close association with human communities, has intensified existing debates about the moral and legal conceptions of personhood.<sup>45</sup>

### ***Legal person: legal abstract vs moral humanity***

Naffine classifies theorists into three groups based on their understanding of the law's person.<sup>46</sup> For clarity and simplicity, this article reorganises them into two groups, following Lindroos-Hovinheimo's approach to applying Naffine's classification.<sup>47</sup> The first group rejects the metaphysical idea of personhood, considering law's person as a purely legal and abstract concept without moral or empirical significance.<sup>48</sup> From this perspective, anything can be deemed a legal person because its status is established through legal definitions that explicitly recognise it as such.<sup>49</sup> The legal system can recognise nature's legal personhood, along with its rights and duties, and the ability to enter into legal relations with humans or other entities.<sup>50</sup> Nevertheless, these rights must be enforced by humans or representatives acting on behalf of nature.<sup>51</sup> For this group, being a legal person requires no inherent characteristic or status as a living being.<sup>52</sup> The other group, however, argues that law should be grounded in the objective conditions of personhood, shaped by the fundamental moral and political principles tied to human beings.<sup>53</sup> As Fagundes notes, the term 'person' is sometimes used to refer to a human being and, at other times, to a formal legal device, with jurists often shifting between these interpretations without clearly indicating the different underlying metaphysical assumptions they are assigning.<sup>54</sup>

Naffine aligns with the first group, suggesting that a legal person should be understood as a legally endowed entity with the capacity to engage in legal relations, thus bearing

<sup>43</sup>Ngairé Naffine, 'Who are Law's Persons? From Cheshire Cats to Responsible Subjects' (2003) 66 *The Modern Law Review* 346, 348.

<sup>44</sup>*ibid.*

<sup>45</sup>*ibid.*

<sup>46</sup>*ibid.* 350.

<sup>47</sup>See Lindroos-Hovinheimo (n 39) 30.

<sup>48</sup>Naffine (n 43) 351.

<sup>49</sup>*ibid.*

<sup>50</sup>*ibid.* 351.

<sup>51</sup>*ibid.*

<sup>52</sup>*ibid.* 352.

<sup>53</sup>*ibid.* 357–65.

<sup>54</sup>Dave Fagundes, 'Note, What We Talk About When We Talk about Persons: The Language of a Legal Fiction' (2001) 114 *Harvard Law Review* 1745, 1768.



rights and duties.<sup>55</sup> The legal person exists through its legal role or relation, independent of any physical human form or mental attributes.<sup>56</sup> Building on this, Tănăsescu suggests distinguishing between the concepts of a legal person and a legal entity, interpreting the recognition of rights of nature as the creation of a new legal entity.<sup>57</sup> According to Tănăsescu, defining nature as a legal entity shifts the focus from human dominance toward the representation of nature, whereas viewing nature as a legal person with specific rights reinforces human centrality and misinterprets Indigenous ontological commitments.<sup>58</sup>

### *Position of this article on personifying river*

Building on the views of Naffine and Tănăsescu, this article begins by decoupling the concept of law's person from its metaphysical understanding. However, this does not imply a complete disclosure of other aspects. Adopting a purely legal definition of law's person, such as viewing the personification of rivers as a tool for legal actions, allows a broader understanding of rivers from different angles. By situating the legal personification of rivers in the wider context, greater attention can be given to their existence within ecosystems and their relationships with both human and other non-human beings. This perspective views rivers not as static entities confined to a legal framework, but as dynamic and living entities that interact with and influence human communities and other natural elements. The living entity status of some rivers can potentially factor into such considerations. Therefore, while separating the metaphysical notion from the legal definition of 'person', this article rejects the idea that law can be completely set apart from moral theory and other social, cultural, and historical disciplines. This position will be explored through a relational ontological approach in the analysis of the three river cases.

The next two parts will introduce the three rivers from New Zealand, Bangladesh, and Australia. The first part will cover the factual foundations of the relevant Acts and legislative decisions. It will explore the legal institutions and governance structures established, including the legal status of and guardianship models for the rivers. Then, the second part will analyse the effects of the legal outcomes and their associated social, cultural, and historic dynamics. It will also examine the relationship between humans and rivers, offering a preliminary assessment of each model's potential impact on riverine rights and ecological protection based on currently available resources.

## **Part I: what laws say for rivers**

### *New Zealand: Te Awa Tupua (Whanganui River Claims Settlement) Act 2017*

#### *Te Awa Tupua: an indivisible and living whole before a legal person*

As a result of the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (Te Awa Tupua Act), the Whanganui River, known as Te Awa Tupua, was declared a legal person, with all the rights, powers, duties, and liabilities that come with this status.<sup>59</sup> The Te Awa Tupua Act recognised Te Awa Tupua as an 'indivisible and living whole, comprising the Whanganui River from the mountains to the sea, incorporating all its physical and

<sup>55</sup>Naffine (n 43) 366.

<sup>56</sup>*ibid.*

<sup>57</sup>Tănăsescu (n 5) 438.

<sup>58</sup>*ibid.*

<sup>59</sup>Te Awa Tupua Act (n 19) s 14(1).

metaphysical elements'.<sup>60</sup> Meaning 'the supernatural river' in the language of the Whanganui Iwi,<sup>61</sup> Te Awa Tupua sustains and supports the well-being of the Iwi and other lives within and around, embodying the deep spiritual and physical connection between the river, peoples, and others.<sup>62</sup>

Discussions on the Te Awa Tupua Act often focus on the recognition of Te Awa Tupua as a legal person. However, another significant aspect of the statute is its recognition of Te Awa Tupua as an indivisible and living whole. Importantly, the Iwi's value-based Indigenous law, Kawa, had long recognised Te Awa Tupua as an indivisible and living whole before the enactment of the Act.<sup>63</sup> On the statute, Te Awa Tupua is granted legal person status only after its totality as an indivisible and living whole is established.<sup>64</sup> As such, the Te Awa Tupua Act reflects not only a legal person model, but also deeper Indigenous cultural, social, and historical narratives surrounding Te Awa Tupua.

### *Te Pou Tupua: human face of the river*

Unlike Ecuador and Bolivia, where any individual can sue on behalf of nature, the Te Awa Tupua Act establishes Te Pou Tupua as a designated entity to represent Te Awa Tupua, serving as the 'human face of the river'.<sup>65</sup> Comprising one appointee from the Indigenous group and one from the government, Te Pou Tupua acts and speaks on behalf of Te Awa Tupua, ensuring the river's status and intrinsic value.<sup>66</sup> Te Pou Tupua is granted 'full capacity and all the powers reasonably necessary to achieve its purpose'.<sup>67</sup>

### *Te Pā Auroa nā Te Awa Tupua: governance framework*

The legal recognition of Te Awa Tupua and the appointment of Te Pou Tupua can be understood within a broader framework. Te Awa Tupua Act gives effect to Te Pā Auroa nā Te Awa Tupua (Te Awa Tupua Framework), which governs statutory functions, powers, and duties related to Te Awa Tupua, as well as activities within its catchment that impact the river.<sup>68</sup> This framework is grounded in Tupua te Kawa, the intrinsic values of Te Awa Tupua, representing the indivisible link between health and well-being of the river and the Iwi connected to it.<sup>69</sup> This framework signifies the principles and governance mechanisms for Te Awa Tupua and involves a diverse range of entities including iwi, hapū, government, local authorities, community members, industry stakeholders, and recreational interests.<sup>70</sup>

<sup>60</sup>Te Awa Tupua Act (n 19) s 12.

<sup>61</sup>John Moorfield (ed), *Te Aka Māori Dictionary* (Te Aka 2025) 'Te' 'Awa' 'Tupua' <<https://maoridictionary.co.nz>> accessed 6 May 2025.

<sup>62</sup>Ngā Tāngata Tiaki o WHANGANUI, 'He Awa Ora - Living River' (*Ngā Tāngata Tiaki*, 2023) <<https://www.ngatangatatiaki.co.nz/for-your-information/news-and-events/he-awa-ora-living-river-exhibition-opens/>> accessed 1 August 2024.

<sup>63</sup>Miriama Cribb, Elizabeth Macpherson and Axel Borchgrevink, 'Beyond Legal Personhood for the Whanganui River: Collaboration and Pluralism in Implementing the Te Awa Tupua Act' (2024) *The International Journal of Human Rights* 1, 15.

<sup>64</sup>Miriama Cribb, Jason Paul Mika and Sarah Leberman, 'Te Pā Auroa nā Te Awa Tupua: the new (but old) consciousness needed to implement Indigenous frameworks in non-Indigenous organisations' (2022) 18 *AlterNative: An International Journal of Indigenous Peoples* 566, 568.

<sup>65</sup>Te Awa Tupua Act (n 19) s 18(2).

<sup>66</sup>*ibid* s 20.

<sup>67</sup>*ibid* s 18(3).

<sup>68</sup>*ibid* s 11(1).

<sup>69</sup>*ibid* s 13.

<sup>70</sup>Cribb, Mika and Leberman (n 64) 568.

The governance structure of the Te Awa Tupua Framework includes Te Karewao (advisory group), Te Kōpuka (strategy group), and Te Heke Ngahuru (strategy). Te Karewao, composed of three persons, advises and supports Te Pou Tupua, ensuring alignment with Te Awa Tupua's interests as recognised by the Te Awa Tupua Act.<sup>71</sup> Te Kōpuka, with up to 17 members, develops and approves Te Heke Ngahuru and collaboratively advances Te Awa Tupua's well-being.<sup>72</sup> These bodies operate with limited liability, provided they act in good faith.<sup>73</sup> Additionally, Te Pou Tupua has the authority to generate income and incur expenses beyond governmental funding from Te Korotete o Te Awa Tupua.<sup>74</sup>

### *More than riverine rights*

Since its enactment in 2017, the Te Awa Tupua Act has received global attention for its legal functions and governance mechanisms, serving as a benchmark for recognising Indigenous worldviews.<sup>75</sup> The Iwi's role in protecting Te Awa Tupua has inspired other Indigenous communities along the Atrato River in Colombia, Martuwarra in Australia, and Muteshekau-shipu in Canada.<sup>76</sup>

The significance of the Act extends beyond the conferral of legal personhood. It represents a formal recognition of Indigenous rights and authority by the state through the integration of Tupua te Kawa at the heart of the legislation.<sup>77</sup> Framed as four core principles, Tupua te Kawa embodies the essence of Te Awa Tupua and is brought into effect through the Te Awa Tupua Framework.<sup>78</sup> For the Crown, recognising Te Awa Tupua as a legal person was a means to understand and incorporate Indigenous perspectives into the legal system.<sup>79</sup> In addition, the Te Awa Tupua Framework not only privileges the Iwi ways of knowing, being, and doing concerning the river but also imposes obligations on others to take responsibilities for the river and its peoples.<sup>80</sup>

### *Bangladesh: Human Rights and Peace for Bangladesh v Government of Bangladesh and Others (2016)*

In 2019, the Bangladesh Supreme Court's High Court Division granted legal personhood to the Turag River following a petition by the NGO Human Rights and Peace for Bangladesh (HRPB).<sup>81</sup> Citing severe environmental degradation and government inaction, the Court extended the decision for the Turag River to all rivers flowing in and through Bangladesh.<sup>82</sup> While influenced by international precedents, Bangladesh's approach to riverine rights are distinguished from others.

<sup>71</sup>Te Awa Tupua Act (n 19) s 27.

<sup>72</sup>ibid ss 29, 30, 32, 35.

<sup>73</sup>ibid s 21(1).

<sup>74</sup>ibid s 25(2).

<sup>75</sup>Toni Collins and Shea Esterling, 'Fluid Personality: Indigenous Rights and the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 in Aotearoa New Zealand' (2019) 20 Melbourne Journal of International Law 1, 17–18.

<sup>76</sup>ibid.

<sup>77</sup>Cribb, Macpherson and Borchgrevink (n 63) 2.

<sup>78</sup>Te Awa Tupua Act (n 19) ss 10, 13.

<sup>79</sup>Cribb, Mika and Leberman (n 64) 568.

<sup>80</sup>ibid 571.

<sup>81</sup>HRPB (n 31).

<sup>82</sup>ibid 227–78, Dir 2; Mohammad Sohikul Islam and Erin O'Donnell, 'Legal rights for the Turag: Rivers as Living Entities in Bangladesh' (2020) 23 Asia Pacific Journal of Environmental Law 160, 162, 166.

### *Turag River as legal persons, legal entities, and living entities*

Like the Indian High Court's ruling on the Ganga and Yamuna rivers,<sup>83</sup> the Bangladeshi Court recognises rivers as legal persons, legal entities, and living entities, allowing prosecution for harms as if one 'harmed their own mother'.<sup>84</sup> Ironically, this raises concerns about liability, including potential accountability for damages caused by rivers to humans.<sup>85</sup> In India, such uncertainties led to the overturning of its declaration of the Ganga and Yamuna rivers as juristic, legal persons, and living entities.<sup>86</sup> While Bangladesh's decision remains in effect, its vague definition of the scope and contours of the rights may pose challenges in its implementation.<sup>87</sup>

### *Legal reasoning*

In India's case, Hindu beliefs significantly influenced the legal recognition of rivers, elevating the spiritual relationship between Hindu believers and the rivers.<sup>88</sup> In contrast, the Bangladeshi Court adopted a rights-duty approach, drawing on the public trust doctrine, the polluter pays principle, and the precautionary principle.<sup>89</sup>

Relying on the public trust doctrine, the Court determined that the government had breached citizens' judicially enforceable constitutional rights by failing to protect the health of rivers.<sup>90</sup> Moreover, the Court stressed the supremacy of the law of nature and highlighted human's dependency on the environment.<sup>91</sup> At the same time, the Court articulated human's obligation 'to protect, preserve, and develop nature as a guardian of a child strives for its utmost betterment'.<sup>92</sup> As a result, the Court issued 14 directives to the government, including appointing the National River Protection Commission (NRPC) as a legal guardian and amending the NRPC Act 2013 to empower the NRPC.<sup>93</sup>

### *NRPC as a legal guardian*

Bangladesh adopted the *parens patriae* doctrine, enabling state to act as a guardian by assigning river protection to appointed government bodies.<sup>94</sup> The NRPC as a legal guardian is therefore mandated 'to free all rivers of pollutions and encroachment and ensure their natural navigability along with their protection, conservation, beautification and associated development'.<sup>95</sup> Similar to India, Bangladesh established a paternal

<sup>83</sup> Mohd Salim (n 30).

<sup>84</sup> Ashley Westerman, 'Should Rivers Have Same Legal Rights as Humans? A Growing Number of Voices Say Yes' (NPR, 3 August 2019). <<https://www.npr.org/2019/08/03/740604142/should-rivers-have-same-legal-rights-as-humans-a-growing-number-of-voices-say-ye>> accessed 15 July 2024.

<sup>85</sup> O'Donnell (n 32) 658.

<sup>86</sup> BBC, 'India's Ganges and Yamuna Rivers Are Not Living Entities' (BBC, 7 July 2017) <<https://www.bbc.com/news/world-asia-india-40537701>> accessed 30 July 2024.

<sup>87</sup> Stellina Jolly and Gayathri D Naik, 'Rivers as Legal Personalities in India and Bangladesh from an Eco-Centric Perspective: Balancing Developmental Needs and Environmental Protection' (2022) 6 Chinese Journal of Environmental Law 253, 266.

<sup>88</sup> Erin O'Donnell and others, 'Stop Burying the Lede: The Essential Role of Indigenous law(s) in Creating Rights of Nature' (2020) 9 Transnational Environmental Law 403, 421.

<sup>89</sup> HRPB (n 31); Jolly and Naik (n 87) 263.

<sup>90</sup> Ibid 270; Islam and O'Donnell (n 82) 165.

<sup>91</sup> Ibid 258; ibid.

<sup>92</sup> Ibid 272; ibid 166.

<sup>93</sup> HRPB (n 31) 278–81; Islam and O'Donnell (n 82) 163.

<sup>94</sup> Jolly and Naik (n 87) 264.

<sup>95</sup> Islam and O'Donnell (n 82) 278–79.

relationship between the guardian and their rivers. The recognition of all rivers as legal persons, legal entities, and living entities was the last resort after the previous protection measures have failed.<sup>96</sup> The Court's decision clearly aimed to establish a legal framework through the guardianship model and ensure the role of a state-appointed guardian for river protection.<sup>97</sup>

### **Only a half success**

The Supreme Court of Bangladesh rejected a civil petition for leave to appeal but it downgraded several directives to opinions or suggestions, including the amendment granting the NRPC legal authority.<sup>98</sup> As a result, the government is no longer obligated to grant the NRPC legal powers to act on behalf of rivers.<sup>99</sup> Given the failure of past measures, the Court's decision could have been more effective had it not made the amendment. Retaining the original directives would have strengthened enforcement, potentially preventing further wrongdoings and ensuring the proper implementation of the Court's ruling on the ground.

### **Australia: Yarra River Protection (Wilip-gin Birrarung murrnun) Act 2017**

As a result of the Yarra River Act, the Yarra River became the first river in Victoria to be legally recognised as a 'living and integrated natural entity', aligning with the Woi-wurrung Traditional Owners' longstanding view and spiritual connection with the river.<sup>100</sup> However, the river's role shifted with the European settlement in the nineteenth century, leading to significant pollution.<sup>101</sup> Enacted in 2017, Wilip-gin Birrarung murrnun – meaning 'keep the Birrarung alive' – aims to restore the river's status as a living being, signifying its cultural, social, environmental and amenity values within the landscape.<sup>102</sup>

### **Birrarung without legal rights**

The Yarra River Act begins with a preamble that explicitly acknowledges the Woi-wurrung Traditional Owners' deep connection to Birrarung and its Country.<sup>103</sup> It recognises Traditional Owners as the custodians of Birrarung and sets a clear objective to keep the river alive and healthy for all, including future generations.<sup>104</sup> Notably, the decision to recognise the river as a living entity does not grant any legal rights to the river. Without such rights, powers, duties, and liabilities that come with legal personhood, the river's status as a living entity may be seen largely symbolic.<sup>105</sup> However, the legal recognition as a living entity elevates the river beyond a mere object, making it harder to ignore Birrarung's health and wellbeing.<sup>106</sup>

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<sup>96</sup>O'Donnell and others (n 88) 420.

<sup>97</sup>*ibid.*

<sup>98</sup>O'Donnell (n 32) 654.

<sup>99</sup>*ibid.*

<sup>100</sup>Yarra River Act (n 33) s 1(a).

<sup>101</sup>State Government of Victoria, *Protecting the Yarra River (Birrarung) Discussion Paper* (State Government of Victoria 2016) 9.

<sup>102</sup>Yarra River Act (n 33) preamble.

<sup>103</sup>*ibid* 5(a)(i).

<sup>104</sup>*ibid.*

<sup>105</sup>O'Donnell (n 32) 650.

<sup>106</sup>*ibid* 651.

### *One living and integrated natural entity*

First, the Yarra River Act challenges the Western segmented views of rivers by declaring Birrarung as one living and integrated natural entity. The Act extends protection beyond the waterway to ‘certain public land in its vicinity’, defining ‘Yarra River Land’ as the area adjacent to the river or within 500 metres of its banks and designating the ‘Greater Yarra Urban Parklands’ as a state-significant urban natural entity.<sup>107</sup> The Act shifted the legal perspective from treating the river as a collection of separate features to viewing it as a whole integrated entity including waterway, riverbed, soil, banks, and surrounding land.<sup>108</sup> This holistic perspective transforms the river from a resource for exploitation to a living entity deserving protection.<sup>109</sup>

However, the Yarra River Act excludes privately owned land, municipal council land, river-mouth land within the Port of Melbourne as defined by the Port Management Act 1995, and land within special water supply catchments under the Catchment and Land Protection Act 1994.<sup>110</sup> Clark and others highlight the challenges of overcoming this fragmentation when examining land areas outside the scope of the Yarra River Act.<sup>111</sup> The tensions between protection and land development planning persist among ongoing politics of place surrounding the recognition of Birrarung as one living and integrated natural entity.<sup>112</sup>

### *Acknowledging traditional owners’ values and their roles*

Considering Australia’s historical resistance to acknowledging and integrating First Peoples’ languages, cultures, and laws into its institutions, the Yarra River Act marks a significant shift by challenging the traditional perception of the river as mere property.<sup>113</sup> For the first time, Victorian state law includes Woi-Wurrung language in both the Act’s title and preamble, demonstrating its commitment protecting the river while acknowledging the deep relationship between the river and Traditional Owners.<sup>114</sup>

The Yarra River Act was established through extensive consultations with legislators and communities, demonstrating a collaborative approach to river governance. For instance, it outlines the Yarra Protection Principles – general, environmental, social, recreational, cultural, and management principles – which guide responsible entities’ actions in river governance and management, reflecting the core values of the communities connected to the river.<sup>115</sup>

### *Yarra Strategic Plan*

Although the Yarra River Act does not grant full legal personhood, it establishes governance frameworks akin to New Zealand’s Te Awa Tupua model. O’Donnell highlights

<sup>107</sup>Yarra River Act (n 33) s 14(a).

<sup>108</sup>O’Donnell (n 32) 651; Jane Gleeson-White, ‘It’s Only Natural: the Push to Give Rivers, Mountains and Forests Legal Rights’ (*The Guardian*, 1 April 2018) <<https://www.theguardian.com/australia-news/2018/apr/01/its-only-natural-the-push-to-give-rivers-mountains-and-forests-legal-rights>> accessed 1 July 2024.

<sup>109</sup>Erin O’Donnell, *Legal Rights for Rivers: Competition, Collaboration and Water Governance* (Routledge 2018).

<sup>110</sup>Yarra River Act (n 33) ss 3(1)(a)–(b), 14(3)(c)(i)–(iii).

<sup>111</sup>Clark and others (n 21) 826.

<sup>112</sup>*Ibid.*

<sup>113</sup>*Ibid* 824; O’Donnell (n 32) 660.

<sup>114</sup>Commissioner for Environmental Sustainability Victoria, ‘Landmark Legislation to Protect the Yarra River’ (*Commissioner for Environmental Sustainability Victoria*, 22 June 2017) <[https://www.ces.vic.gov.au/news/landmark-legislation-protect-yarra-river?utm\\_source=chatgpt.com](https://www.ces.vic.gov.au/news/landmark-legislation-protect-yarra-river?utm_source=chatgpt.com)> accessed 1 July 2024.

<sup>115</sup>Yarra River Act (n 33) ss 7–13.

that the Act prioritises river land-use planning and management through the Yarra Strategic Plan.<sup>116</sup> The legislation mandates the creation of this plan to guide future activities related to the river and the land associated.<sup>117</sup> The plan must include a land-use framework to plan for the designated Yarra Strategic Plan Area.<sup>118</sup> Additionally, the plan must incorporate a long-term community vision, developed through a community participatory process involving diverse stakeholders' participation and co-design.<sup>119</sup>

### *Birrarung Council acting on behalf of the river*

The Birrarung Council is a responsible public entity established to act on behalf of the river and advocates for its protection and preservation.<sup>120</sup> Appointed by the Environment Minister for a four-year term, its members include at least two Traditional Owners representatives but no government representatives.<sup>121</sup> This composition aims to ensure the Council offers independent advice to the Minister and advocate effectively for Birrarung.<sup>122</sup> While the Birrarung Council plays a key advisory role, it lacks decision-making authority or legal standing to take action against harm. Since the Act does not assign the Birrarung Council as a legal guardian, it serves as an independent voice for Birrarung, providing recommendations and advocacy without a legally enforceable mandate.

The Council's advisory function does not include managing waterways or environmental water allocations, which are handled by Melbourne Water and the Victorian Environmental Water Holder (VEWH).<sup>123</sup> Kahui and others consider the VEWH to be an indirectly appointed guardian acting on behalf of rivers in Victoria, a body corporate established to enact environmental protection by acquiring water entitlements under the Water Act 1989.<sup>124,125</sup> While the appointment of the VEWH as a legal person does not equate to granting legal rights to the rivers themselves, it is understood to act indirectly on behalf of Victoria's rivers, including Birrarung.<sup>126</sup>

Overall, the Birrarung model in the Yarra River Act lacks explicit enforcement mechanisms, making its impact uncertain and reliant on voluntary implementation, while its strength lies in a well-structured governance framework, promoting cooperation among government authorities, Traditional Owners, local communities, and other stakeholders. The impact of the Act will be explored further in the next part.

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<sup>116</sup>O'Donnell (n 32) 653.

<sup>117</sup>Yarra River Act (n 33) ss 20–21.

<sup>118</sup>Ibid s 19(1).

<sup>119</sup>Ibid ss 17, 23–34.

<sup>120</sup>Ibid s 5(d).

<sup>121</sup>Yarra River Act (n 33) ss 49, 51, 52.

<sup>122</sup>Katie O'Bryan, 'New Law Finally Gives Voice to the Yarra River's Traditional Owners' (*The Conversation*, 25 September 2017) <<https://theconversation.com/new-law-finally-gives-voice-to-the-yarra-rivers-traditional-owners-83307>> accessed 15 August 2024.

<sup>123</sup>O'Donnell (n 32) 654.

<sup>124</sup>Water Act 1989 amended on 24 May 2023 (Vic), ss 33DB–33DE.

<sup>125</sup>Viktoria Kahui, Claire W Armstrong and Margrethe Aanesen, 'Comparative Analysis of Rights of Nature (RoN) Case Studies Worldwide: Features of Emergence and Design' (2024) 221 *Ecological Economics* 108193 1, 3.

<sup>126</sup>Ibid.



## Part II: turning laws into actions for rivers

### *New Zealand: a story of reconciliation*

#### *Historical resistance for their living ancestor*

Examining the impact of the Te Awa Tupua Act and the Te Awa Tupua Framework requires understanding the colonial and post-colonial history between the Whanganui Iwi and the British Crown. Te Tiriti o Waitangi (Treaty of Waitangi), signed by around 540 Māori chiefs and the Crown in 1840, is a founding document of New Zealand but remains contested due to differences between its Māori language and English versions, particularly concerning Māori sovereignty, land, and cultural rights.<sup>127</sup> The incompatibility of two sides especially on human relationships with nature reflects conflicting interests and expectations.<sup>128</sup>

For the Whanganui Iwi, Te Awa Tupua is a living ancestor.<sup>129</sup> According to their customary law, rivers are regarded as treasures, and the water, riverbed, and surrounding land are seen as one connected whole, shared and managed by iwi, not owned by individuals.<sup>130</sup> However, British colonisation disrupted this ecosystem, using the river for steamer service and mineral extraction.<sup>131</sup> In response, the Iwi began petitioning Parliament in 1873 and 1887, challenging the Treaty breach and asserting their rights and relationships with the river over the next 150 years.<sup>132</sup>

In response to longstanding grievances, the Treaty of Waitangi Act was passed in 1975, establishing the Waitangi Tribunal to investigate the claims of the Crown's breaches of the Treaty of Waitangi and provide redress for historical injustice.<sup>133</sup> The Tribunal's investigation of Claim 167 I affirmed the Iwi's deep connection to the river, leading to the 2014 settlement.<sup>134</sup> This led to the enactment of Te Awa Tupua Act, which formally gives effect to the provisions of the deed of settlement.<sup>135</sup>

Given this historical background, the Te Awa Tupua Act is more than a legal framework granting personhood and establishing governance for the river; it is also a means for addressing historical injustice between the Iwi and the Crown. The recognition of Te Awa Tupua as a legal person is a legal form used to personify the river, thereby protecting and promoting its rights and intrinsic values. This recognition explicitly incorporates the Iwi understanding of the river as an indivisible and living whole, encompassing both physical and metaphysical elements. The Iwi's successful negotiations led to the integration of their values and language into the legal framework, shaping river

<sup>127</sup>Eva Corlett, 'New Zealand's Treaty of Waitangi Explained in 30 s' (*The Guardian*, 5 February 2024) <<https://www.theguardian.com/world/2024/feb/06/new-zealands-treaty-of-waitangi-explained-in-30-seconds>> accessed 15 August 2024.

<sup>128</sup>Liz Charpleix, 'The Whanganui River as Te Awa Tupua: Place-based Law in a Legally Pluralistic Society' (2018) 184 *The Geographical Journal* 19, 19.

<sup>129</sup>*The Whanganui River Report (Wai 167)* (Waitangi Tribunal 1999).

<sup>130</sup>Karen Fisher and Meg Parsons, 'River Co-Governance and Co-Management in Aotearoa New Zealand: Enabling Indigenous Ways of Knowing and Being' (2020) 9 *Transnational Environmental Law* 455, 463.

<sup>131</sup>*Ibid*; Whanganui District Council, 'Te Awa Tupua – Whanganui River Settlement' (Whanganui District Council 2024) <<https://www.whanganui.govt.nz/About-Whanganui/Our-District/Te-Awa-Tupua-Whanganui-River-Settlement>> accessed 15 August 2024.

<sup>132</sup>New Zealand Parliament, *Finlayson, Christopher* 24 May 2016, 714 NZPD 11220.

<sup>133</sup>Treaty of Waitangi Act 1975 (NZ) s 4.

<sup>134</sup>Te Wairoa Iwi and Hapu Deed of Settlement (signed 4 November 2016) <<https://www.govt.nz/assets/Documents/OTS/Te-Wairoa/Te-Wairoa-Iwi-and-Hapu-Deed-of-Settlement-26-November-2016.pdf>> accessed 12 August 2024; *The Whanganui River Report* (n 129).

<sup>135</sup>Te Awa Tupua Act (n 19) s 3(c).

management.<sup>136</sup> For Indigenous peoples, the legal personification of Te Awa Tupua is one component in their broader strategy to mainstream their values into the Western legal system and decision-making processes.<sup>137</sup>

### *Clear roles of Te Pou Tupua in the Act, but not in reality*

As a result of the Te Awa Tupua Act, all previously Crown-owned land on the Whanganui Riverbed was transferred to and managed by Te Pou Tupua.<sup>138</sup> The complex issue of ownership was therefore settled through setting the legal person and governance model, avoiding full ownership by either party. Considering that Te Pou Tupua is represented by both sides of conflict, this arrangement could be understood as a compromise.

While Te Pou Tupua is widely recognised as the human face of Te Awa Tupua, its oversight of Te Korotete, a NZD 30 million fund for the river's well-being and environmental initiatives, is less well known.<sup>139</sup> This fund is a dedicated governmental funding open to proposals from any individuals or groups.<sup>140</sup> Additionally, the Crown allocated NZD 80 million in financial redress to the Iwi and NZD 1 million for implementing Te Awa Tupua Framework.<sup>141</sup> Early outcomes include the construction of a new cycle bridge and Whanganui port revitalisation.<sup>142</sup>

However, Te Pou Tupua's fund management and impact remain unclear due to lack of public reports or evaluations. Despite its significance, Te Pou Tupua's role and effectiveness have been rarely analysed or evaluated since the Act's enactment. Furthermore, Te Pou Tupua's relationship with Ngā Tāngata Tiaki o Whanganui, the post-settlement governance entity established in 2014, remains ambiguous, with little clarity on how their roles interact or differ. Kahui and others noted both entities serve as Te Awa Tupua's guardians, but there is insufficient information to clearly define their specific roles.<sup>143</sup>

### *Needs of local level research driven by local actors*

While the Te Awa Tupua Framework is widely regarded as a landmark achievement for both the Māori Iwi and the river, limited attention has been given to the implementation of its governance structure and its broader impact. Although it may still be early to assess the outcomes, there is a clear need for further research, particularly led by local stakeholders, to evaluate the progress, challenges, and implications of this innovative

<sup>136</sup>O'Donnell and others (n 88) 415.

<sup>137</sup>Elizabeth Macpherson, 'Can Western Water Law Become More 'Relational'? A Survey of Comparative Laws Affecting Water Across Australasia and the Americas' (2023) 53 *Journal of the Royal Society of New Zealand* 395.

<sup>138</sup>Cabinet, *Whanganui Land Settlement: Crown Offer* (CAB-19-MIN-0212.01 Revised) para 20 <<https://www.govt.nz/assets/Documents/OTS/Whanganui-Land-Settlement-lower-reaches-of-Whanganui/Whanganui-Land-Settlement-Crown-Offer.pdf>> accessed 20 August 2024.

<sup>139</sup>Ruruku Whakatupua Te Mana o te Awa Tupua (5 August 2014) s 7.

<sup>140</sup>*ibid* (n 139) s 7.7.

<sup>141</sup>Linda Te Aho, 'Ruruku Whakatupua Te Mana o te Awa Tupua – Upholding the Mana of the Whanganui River' (Māori Law Review 2014) <https://maorilawreview.co.nz/2014/05/ruruku-whakatupua-te-mana-o-te-awa-tupua-upholding-the-mana-of-the-whanganui-river/> accessed 20 August 2024.

<sup>142</sup>Laurel Stowell, 'Finally! Upokongaro cycle bridge launched across Whanganui River' (*Whanganui Chronicle*, 25 March 2020) <<https://www.nzherald.co.nz/whanganui-chronicle/news/finally-upokongaro-cycle-bridge-launched-across-whanganui-river/JS265O2HQZAKRDAXWYNN2D2NI/>> accessed 20 August 2024; Laurel Stowell, 'Governance Group Established for Whanganui Port Projects' (*Whanganui Chronicle*, 29 June 2020) <<https://www.nzherald.co.nz/whanganui-chronicle/news/governance-group-established-for-whanganui-port-projects/GHW2FKWLGALOF64RM3PKX5NQYA/>> accessed 20 August 2024.

<sup>143</sup>See Kahui, Armstrong and Aanesen (n 125) 14.

governance model. While such studies remain few, some have begun to offer valuable insights. For example, Cribb and others highlight Te Kopuka, a strategy group formed under the Act, as a key institutional innovation driving local governance change.<sup>144</sup> Comprising representatives from the Iwi, river interest groups, local authorities, government agencies, commercial and recreational users, and environmental groups, Te Kopuka develops and approves Te Heke Ngahuru, a strategy addressing issues and recommending actions related to Te Awa Tupua.<sup>145</sup>

Since its inaugural meeting in May 2019, Te Kopuka has prioritised Te Awa Tupua's well-being and developed a common vision based on Tupua te Kawa.<sup>146</sup> Cribb and others highlight the drafting and release of the strategy in September 2023 as a key achievement in fostering inclusive, democratic collaboration among stakeholders, including both Māori and non-Māori.<sup>147</sup> With only four of its 17 members representing government authorities, Te Kopuka exemplifies a community-led model, promoting diverse participation and collective decision-making in shaping the river's future.<sup>148</sup>

### ***Bangladesh: a story of continued suffering***

In Bangladesh, rivers are considered to be like mothers. With around 800 rivers that weave in and out of the country creating a complex river system, waterways have been the primary method of transportation and urban development.<sup>149</sup> Millions of fishers, farmers, and their families form riverine communities and depend on these rivers for survival.<sup>150</sup> Therefore, the Court's decision to grant legal status to 'all' rivers is significant, not only for preserving traditional values but also for protecting the livelihoods of riverine communities, including marginalised populations.

### ***Bottom-up environmental advocacy***

Like many other cases, the Bangladesh case shows a profound power imbalance between the petitioner and the respondents. The petition was filed by the local NGO HRPB against the national government represented by the Secretary of the Ministry of Shipping, the Director General of the Department of Environment, and others.<sup>151</sup> The first petition concerning the Turag River goes back to 2009, filed by the same NGO.<sup>152</sup> This led to the formation of the National River Conservation Commission (NRCC) and the enactment of the National River Conservation Commission Act, 2013 (NRCC Act), although

<sup>144</sup>Cribb, Macpherson and Borchgrevink (n 63) 14.

<sup>145</sup>Te Awa Tupua Act (n 19) s 36.

<sup>146</sup>Cribb, Macpherson and Borchgrevink (n 63) 14–15.

<sup>147</sup>*Ibid.*

<sup>148</sup>*Ibid* 15.

<sup>149</sup>Bangladesh Tourism Board, 'Bangladesh A Land of Rivers' (Bangladesh Tourism Board 2020) <[https://tourismboard.portal.gov.bd/sites/default/files/files/tourismboard.portal.gov.bd/page/a3c70b40\\_263e\\_4d8c\\_9c9a\\_1cc0f551b041/2020-09-30-17-49-581fb3417aa0a4510515e740cabe9f83.pdf](https://tourismboard.portal.gov.bd/sites/default/files/files/tourismboard.portal.gov.bd/page/a3c70b40_263e_4d8c_9c9a_1cc0f551b041/2020-09-30-17-49-581fb3417aa0a4510515e740cabe9f83.pdf)> accessed 1 September 2024; S Nazrul Islam, 'The Sorry State of Rivers in Bangladesh' (*The Daily Star*, 27 September 2022) <<https://www.thedailystar.net/opinion/views/news/the-sorry-state-rivers-bangladesh-3129401>> accessed 1 September 2024.

<sup>150</sup>Efadul Huq and Mohammad Azaz, 'The Destructive Work of Restoration: Fishing Communities facing Territorialization in Turag River' (2024) *Environment and Planning E: Nature and Space* 1, 1, 8, 23.

<sup>151</sup>HRPB (n 31).

<sup>152</sup>*Human Rights and Peace for Bangladesh v Government of Bangladesh and Others* (2009) HCD Writ Petition No 3503 of 2009 (BD).

without enforcement power.<sup>153</sup> Thereafter, between 2013 and 2016, The Daily Star, a local newspaper, extensively reported on compliance with the High Court orders and the river's condition. In 2019, influenced by the global rights of nature movement, ActionAid in Bangladesh held the 4th International Water Conference, titled 'River: A Living Being', which introduced legal precedents from New Zealand and India, fuelling social pressure to protect rivers.<sup>154</sup> The recognition of rivers as legal and living entities was the result of sustained activism by those committed NGOs, journalists, public lawyers, and environmentalists for protecting rivers and surrounding communities.

In the case of Bangladesh, the role of Indigenous peoples in securing legal rights for rivers is unclear.<sup>155</sup> Given the complexities of defining indigeneity in Bangladesh, the case is better understood through local people's interests and responsibilities toward land and water management.<sup>156</sup> The drive behind this was environmental advocacy rather than Indigenous values, which the Court leveraged to strengthen the legal rights and protection of rivers.<sup>157</sup>

### *A half victory to be further achieved by implementation*

Despite a positive court ruling, weak governance has hindered its implementation in Bangladesh. First, the Court's judgment failed to clearly define rights and implementation mechanisms, obstructing the establishment of appropriate water governance.<sup>158</sup> The NRCC, appointed as the guardian of all rivers, is intended to prevent illegal encroachment, ensure multi-dimensional use of rivers, maintain natural flows, and keep rivers navigable.<sup>159</sup> However, it lacks statutory power to enforce its recommendations and functions only as an advisory body.<sup>160</sup> Under Section 12 of the NRCC Act, its role is limited to recommending taking appropriate steps for the government to prevent illegal encroachment, evict illegal structures and ensure ecological balance and sustainable management of rivers, and suggesting amendments to laws and policies where necessary.<sup>161</sup>

To strengthen the NRCC, the Court directed the State to amend the Act and grant the NRCC investigative and enforcement powers as an independent institution.<sup>162</sup> According to the order, all relevant authorities must consult and obtain NRCC approval before initiating initiatives.<sup>163</sup> Despite this order, the NRCC remains underfunded, lacks resources, and has no administrative power to fulfil its mandate.<sup>164</sup> The former NRCC chairman noted that the NRCC is deliberately kept weak in law and executive power.<sup>165</sup> In its

<sup>153</sup>Imtiaz Ahmed Sajal, 'Strengthening the National River Conservation Commission of Bangladesh' (*The Daily Star*, 15 October 2019) <<https://www.thedailystar.net/law-our-rights/law-watch/news/strengthening-the-national-river-conservation-commission-bangladesh-1813927>> accessed 30 August 2024.

<sup>154</sup>ActionAid, *A Summary of International Water Conferences of ActionAid Bangladesh*, (ActionAid 2022) 3.

<sup>155</sup>Islam and O'Donnell (n 82) fn 42; O'Donnell and others (n 88) fn 88.

<sup>156</sup>O'Donnell and others (n 88) 412.

<sup>157</sup>*ibid* 421.

<sup>158</sup>Jolly and Naik (n 87) 266.

<sup>159</sup>National River Conservation Commission Act 2013 (BD) (NRCC Act).

<sup>160</sup>Sajal (n 153).

<sup>161</sup>NRCC Act (n 159) s 12.

<sup>162</sup>*HRPB* (n 31) Dir 4; Islam and O'Donnell (n 82) 163.

<sup>163</sup>*ibid*.

<sup>164</sup>Naimul Alam Alvi, 'NRCC Has Been Kept Weak on Purpose' (*The Daily Star*, 17 December 2023) <<https://www.thedailystar.net/opinion/views/news/nrcc-has-been-kept-weak-purpose-3496281>> accessed 20 August 2024.

<sup>165</sup>*ibid*.

2018 annual report, the NRCC described itself as a recommending body without authority, expressing frustration over being frequently ignored by relevant authorities.<sup>166</sup>

### *Multilayered and structural power imbalance*

Given that the government is one of Bangladesh's largest polluters, the state-appointed guardianship raises concerns about the NRCC's autonomy and effectiveness.<sup>167</sup> The NRCC has faced resistance from high-ranking bureaucrats as well as intimidation when reclaiming encroached river lands.<sup>168</sup>

While rivers have yet to benefit from their legal status, riverine communities continue to face environmental, social, and cultural harm. Their marginalisation stems not only from river degradation, but also from authority-led restoration efforts. Huq and Azaz argue that legislative efforts to restore the Turag River, along with infrastructure development and land use, have actually worsened the river's condition by displacing river-based communities, including fishers and farmers who have a reciprocal relationship with the river.<sup>169</sup> They were excluded from both the planning and implementation of the restoration, erasing them from the Turag riverine area.<sup>170</sup> Their analysis highlights the need to recognise and centre the stewardship and practices of the riverine communities.

Despite the social pressure leading to the court's decision, its impact remains limited. Multiple legal statuses granted to all rivers in Bangladesh have yet to bring real change, leaving both rivers and dependent communities vulnerable to the existing power imbalance.

### *Australia: a story of collaboration*

The Yarra River flows 242 km from the pristine forests of the Yarra Ranges through the rural Yarra Valley, Melbourne's suburbs and city, before reaching Port Phillip Bay.<sup>171</sup> Recognising Birrarung as one living and integrated natural entity extends legal protection to the river's surrounding watershed, wetlands, and waterbeds.<sup>172</sup> This legal status of recognising Te Awa Tupua as a singular entity requires stakeholders to act in integrated and collaborative ways among themselves.<sup>173</sup> It demands that all stakeholders adjust their practices for the river's health and well-being.<sup>174</sup>

### *Collaborative approach to make actions for Birrarung*

The 50 Year Community Vision (Community Vision) was established in 2018 under the Yarra River Act, incorporating diverse community input to guide the Yarra Strategic Plan (Strategic Plan).<sup>175</sup> To achieve this long-term vision, the Strategic Plan, Burndap

<sup>166</sup>Sajal (n 153).

<sup>167</sup>Jolly and Naik (n 87) 265.

<sup>168</sup>Alvi (n 164).

<sup>169</sup>Efadul Huq and Mohammad Azaz, 'The Destructive Work of Restoration: Fishing Communities facing Territorialization in Turag River' (2024) *Environment and Planning E: Nature and Space* 1, 1.

<sup>170</sup>*ibid* 4.

<sup>171</sup>State Government of Victoria (n 101) 16.

<sup>172</sup>Yarra River Act (n 33) s 7.

<sup>173</sup>*ibid* s 13(d).

<sup>174</sup>*ibid*.

<sup>175</sup>Melbourne Water Corporation, *Yarra River 50-year Community Vision: Wilip-gin Birrarung murrin* (Melbourne Water Corporation 2018).

Birrarung burndap umarkoo 2022–2032, was launched in February 2022.<sup>176</sup> Melbourne Water, the lead agency, developed the Strategic Plan and produced three annual reports detailing progress and challenges.<sup>177</sup> While it is too early to see immediate improvements in the river's condition, its most noteworthy achievement is the collaborative governance mechanism, bringing together state, local government, communities and Traditional Owners, local farmers, and fisheries to protect the river and its lands as one living and integrated natural entity.<sup>178</sup>

### ***Two key players for Birrarung: the Yarra Collaboration Committee and the Birrarung Council***

A key governance body for implementing the Strategic Plan is the Yarra Collaboration Committee (YCC). Composed of representatives from 15 state and local government agencies – Responsible Public Entities (RPEs) as listed in the Yarra River Act<sup>179</sup> – and Traditional Owners, the YCC oversees implementation and ensures alignment of any works on Yarra River land area with the Strategic and Implementation Plans.<sup>180</sup> Meeting bi-monthly, members exchange knowledge, progress, and challenges they face in delivering projects. The Implementation Plan focuses on embedding the Strategic Plan into the RPEs' operations and practices by establishing and initiating governance arrangements such as decision-making frameworks; activity schedules; and monitoring, evaluation, reporting and improvement processes.<sup>181</sup>

Whilst the YCC guides RPEs in implementing the plan, the Birrarung Council as the independent 'voice of the river'<sup>182</sup> advocates for Birrarung and advises the Minister for Water. However, as discussed earlier, the Yarra River Act grants it no decision-making power or authority to implement the Strategic Plan. Despite this, the author of this article considers that the Birrarung Council functions as an informal check-and-balance mechanism in two ways.

Firstly, the Birrarung Council reports directly to the Minister for Water and influences Parliamentarians. It provides annual reports to the Minister for Water and the Victorian Parliament, evaluating RPEs' performance from the river's perspective.<sup>183</sup> For instance, it reviews the annual report submitted by the lead agency among the RPEs and its progress.<sup>184</sup> Then, the Birrarung Council's own annual report presents its findings to the Minister for Water, with both reports subsequently submitted to Parliament.<sup>185</sup> Although

<sup>176</sup>Melbourne Water Corporation, *Burndap Birraung burndap umarkoo – Yarra Strategic Plan* (Melbourne Water Corporation 2022).

<sup>177</sup>Melbourne Water Corporation, 'Burndap Birraung burndap umarkoo (Yarra Strategic Plan)' (Melbourne Water Corporation, 29 November 2024) <<https://www.melbournewater.com.au/about/what-we-do/publications/burndap-birraung-burndap-umarkoo-yarra-strategic-plan>> accessed 1 May 2025.

<sup>178</sup>Melbourne Water Corporation, *Burndap Birraung Burndap Umarkoo Yarra Strategic Plan : Third Annual Report 2023–2024* (Melbourne Water Corporation 2024) 27–29.

<sup>179</sup>Yarra River Act (n 33) 3(1).

<sup>180</sup>Melbourne Water Corporation (n 176) 3.

<sup>181</sup>*Ibid.*

<sup>182</sup>State Government of Victoria, 'Landmark Legislation To Protect The Yarra River' (State Government of Victoria, 22 June 2017) <<https://www.premier.vic.gov.au/landmark-legislation-protect-yarra-river>> accessed 30 August 2024.

<sup>183</sup>State Government of Victoria, 'About the Council' (State Government of Victoria, 20 March 2024) <<https://www.water.vic.gov.au/birrarung-council/about-us/about-the-council>> accessed 1 August 2024.

<sup>184</sup>Birrarung Council, *Birrarung Council Annual Report to Parliament on the implementation of Burndap Birrarung Burndap Umarkoo Yarra Strategic Plan 2023* (Birrarung Council 2023) 12.

<sup>185</sup>Melbourne Water Corporation (n 176) 3.



it lacks a formal monitoring mandate, its assessments influence decision-making and accountability.

Secondly, the Birrarung Council's acknowledgement of Traditional Owners, along with strong public trust and support, suggests that it holds significant authority in practice to fulfil its role. While not legally recognised as the river's guardian, the Birrarung Council gains legitimacy of representing the river by acknowledging a plurality perspective of Traditional Owners as the custodians of the river and its land, and by committing to be guided by their voices and knowledge.<sup>186</sup> This authority enables the Council to effectively speak for the river and drive change by allowing others to communicate with the river.<sup>187</sup>

The first annual report tabled in February 2023 highlights the progress in establishing operational processes.<sup>188</sup> Its second report released a year after acknowledged improvement but also identified areas needing attention. These areas include ensuring decision-making is aligned with the river's status as a single living entity and strengthening RPEs' understanding of this status and the relationship with Birrarung.<sup>189</sup> Building on the challenges and opportunities identified in the previous year, the third report outlined five strategic priorities, each accompanied by specific measures to address them.<sup>190</sup>

While RPEs are expected to integrate these principles and values into their daily practices and decision-making in relation to the Yarra River land, the Yarra River Act does not specify how to operationalise them.<sup>191</sup> Early research has noted little evidence of these principles being implemented in RPEs.<sup>192</sup> Furthermore, the Birrarung Council's report flagged delays in implementing the Land Use Framework, which indicates that RPEs' decision-making practices are not yet fully aligned with the principles.<sup>193</sup>

Efforts to address these gaps include Yarning Circles, where senior RPE leadership and Traditional Owner Corporations engage in conversations to internalise principles into their governance structures, daily practices, and decision-making.<sup>194</sup> Moreover, embedding the decision making framework, designed to align activities and decisions with the Act and its delivery plan, could help RPEs fully integrate the principles into planning and implementation.<sup>195</sup> In this sense, the Birrarung Parklands Transformative Project, which positions Traditional Owners as decision-makers and addresses complex multi-agency challenges, is considered to be a pathway for RPEs and the wider community to deepen their understanding of Birrarung and its surrounding lands as one living and integrated entity.<sup>196</sup>

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<sup>186</sup>Birrarung Council, *Birrarung Council Annual Report to Parliament on the implementation of Burndap Birrarung Burndap Umarkoo Yarra Strategic Plan 2024* (Birrarung Council 2024) 7.

<sup>187</sup>Lidia Cano-Pecharroman and Erin O'Donnell 'Relational representation: Speaking with and not about Nature' (2024) *PLOS Water* 3(10) 1, 13.

<sup>188</sup>Birrarung Council, *Birrarung Council Annual Report to Parliament on the implementation of Burndap Birrarung Burndap Umarkoo Yarra Strategic Plan 2022* (Birrarung Council 2022).

<sup>189</sup>Birrarung Council (n 184) 9.

<sup>190</sup>Birrarung Council (n 186) 44–45.

<sup>191</sup>Yarra River Act (n 33) s 19(d).

<sup>192</sup>Clark and others (n 21) 825.

<sup>193</sup>Birrarung Council (n 184) 28.

<sup>194</sup>*ibid* 39.

<sup>195</sup>Melbourne Water Corporation (n 176) 152.

<sup>196</sup>Birrarung Council (n 186) 39.



### **Spreading effect of Birrarung**

Birrarung has clearly served as an influential model in Victoria. A similar legislation was introduced, granting the Great Ocean Road region the status of a 'living and integrated natural entity'.<sup>197</sup> Drawing inspiration from the Birrarung initiatives, the Action Plan for the Waterways of the West was developed.<sup>198</sup> However, unlike the Birrarung case, no separate council was established, but Traditional Owners were instead recognised as the voice of the region's waterways.<sup>199</sup> Future studies could explore the impact of these differing governance models for natural entities recognised as a living entity in Victoria.

Overall, while the Birrarung case lacks legal personhood recognition under the Yarra River Act, it features a well-structured governance mechanism, supported by publicly accessible official resources that track implementation progress. The process embraces the stewardship of Traditional Owners, reflecting Victoria's growing recognition of and sensitivity to Traditional Owners as custodians responsible for keeping the river alive for future generations.

### **Conclusion: reimagining riverine rights**

Although details in the recognition of riverine rights and legal status vary, the legal developments of all three case studies aim to address past injustice, particularly committed by those in power, and to reconcile relationships between wrongdoers and riverine elements, including both humans and nature. Each case reflects struggles between the powerful and the powerless, rooted in historic, social, and cultural factors that have led to the ongoing marginalisation of both rivers and the peoples connected to them. While human rights and riverine rights differ, the structural inequalities and discrimination against humans parallel the treatment of rivers, harming relationships among humans and between humans and rivers.

Critiques of the legal person and guardianship models come from both inside and outside communities, as well as from legal, environmental, and social scholarships, reflecting diverse perspectives. Some argue that the legal approach to protecting rivers remains anthropocentric, while others contend that the term 'legal person' is merely a legal construct, not an attempt to humanise rivers, making the critique of anthropocentrism a misconception.<sup>200</sup> From Indigenous and local perspectives, guardianship models may limit a river's agency, as water interacts with various parts of nature including humans beyond human control.<sup>201</sup> Additionally, critics argue that jurisdiction and scholarship overly focus on the legal person and guardianship models, generalising, simplifying, and universalising legal trends without considering specific contexts.<sup>202</sup> Some view Indigenous peoples' engagement with the rights of nature as strategic rather than

<sup>197</sup>Katie O'Bryan, 'Australia's Rights of Nature Push Flows from the Yarra River' (Monash University, 3 March 2023) <<https://lens.monash.edu/@environment/2023/03/03/1385376/australias-rights-of-nature-push-flows-from-the-yarra-river>> accessed 30 August 2024.

<sup>198</sup>State Government of Victoria, *Waterways of the West Action Plan* (State Government of Victoria 2021) 11.

<sup>199</sup>*ibid* 3.

<sup>200</sup>Anne Salmond, Gary Brierley and Dan Hikuroa, 'Let the Rivers Speak: Thinking about Waterways in Aotearoa New Zealand' (2019) 15 *Policy Quarterly* 45, 49.

<sup>201</sup>*ibid* 49.

<sup>202</sup>Tănăsescu (n 5) 446.

genealogical, suggesting that the legal person model may not fully reflect Indigenous conceptions and could potentially hinder Indigenous emancipatory politics.<sup>203</sup>

Nevertheless, granting legal person status to rivers, influenced largely by local and Indigenous customs and values, has introduced pluralism to Western-oriented political and legal systems. This legal innovation emphasises nature's intrinsic value and advocates for the mutual flourishing of both humans and nature. As seen in the case of Te Awa Tupua and Birrarung, legislative and implementation processes have become more diverse and inclusive by including Indigenous communities previously excluded from Western legal systems.

Notably, while approaches vary, recognising rivers as living entities in law and practice underscores the need for a holistic understanding. This perspective views rivers not as isolated or fixed units, but as dynamic and interconnected ecological systems that interact with and relate to broader riverine life. As demonstrated by the Birrarung case, the law can recognise rivers as living entities without granting them legal personhood. Being recognised as a living entity in law itself does not inherently confer legal rights or duties, as rivers cannot be ontologically identified as humans. However, the absence of legal rights for rivers does not preclude alternative approaches for revitalising rivers. Well-established governance mechanisms within legislation have facilitated collaboration among communities, public and private organisations, leading to foundational initiatives such as the Community Vision, Strategic Plan, and Implementation Plan, which collectively serve as implementation mechanisms and support the river's revitalisation.

On the other hand, as examined with the Turag River and Te Awa Tupua cases, by assigning multiple statuses of legal and living entities to rivers or by incorporating Indigenous values and customs into laws, legal frameworks can grant rivers legal person status and personify them as living entities in law. Shifting the focus from the purely legal aspects of personifying rivers to the more social and cultural contexts of rivers reveals a richer narrative about their existence and relationships with humans and other natural elements. This shift indicates that understanding the real impact of legal outcomes and their implementation process requires more than a narrow legal interpretation. A relational approach – which considers how various community interests intertwine to protect and promote rivers – can provide insights different from traditional legal frameworks based solely on rights, duties, and redress. A multi-layered social and legal understanding, grounded in relational ontology, can drive legal and social change that benefits and revitalises riverine life. Future field visits could be conducted to validate the socio-legal findings of this article more thoroughly, using firsthand data.

As the case studies illustrate, challenges and limitations certainly exist. However, there is no single solution that serves as a saviour. All approaches, including legal mechanisms, have their flaws and constraints. Once a tool is available, the focus should shift to its implementation. The responsibility lies with all participants in this effort – not just governments, lawyers, Indigenous communities, and locals with interests in rivers, but also individuals, academics, and anyone who values nature and cherishes memories of rivers, like the author of this article. The collective willingness to use these tools to protect, empower, and revitalise rivers and riverine life will enable everyone to see and hear what rivers show and say to us.

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<sup>203</sup>Tănăsescu (n 5) 429.

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