

Consultation Submission Draft National Planning Framework



Philip Swan

Photo: Baldoyle Bay SAC by Philip Swan

Submission by:

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Date of submission: 12th September 2024

Submission

1. Introduction

- 1.1 I have an Advanced Diploma in Planning and Environmental Law from the Honorable Society of Kings Inns. I advocate for Rights of Nature and the protection of our species and habitats, through sustainable planning and development, in accordance with National and European planning and environmental laws. I have the following comments to make in relation to the Draft National Planning Framework (NPF).
- 1.2 The National Planning Framework (NPF) is a critical instrument for shaping Ireland's future in terms of sustainable development, infrastructure, and environmental protection. However, based on a review of the documents associated with the NPF and its Strategic Environmental Assessment (SEA), as well as the Natura Impact Statement (NIS), there are areas where the framework could be improved to ensure full compliance with the Habitats Directive (92/43/EEC), Birds Directive (2009/147/EC), and SEA Directive (2001/42/EC). This submission highlights some areas of concern, identifies non-compliance with relevant directives, and offers recommendations for improving the protection of habitats and species.

2. Non-Compliance with the Habitats Directive and Birds Directive

- 2.1 Inadequate Assessment of Impacts on Protected Species. The NPF and accompanying SEA do not fully address potential impacts on species listed under Annex I of the Birds Directive and Annex II and IV of the Habitats Directive. This is particularly evident in the limited treatment of cumulative impacts and the lack of specific assessments for certain sensitive species, such as migratory birds and marine species affected by renewable energy development.

Issue: Limited assessment of in-combination effects on protected species.

Recommendation: The SEA and NIS should include a more detailed cumulative impact analysis, specifically assessing the combined effects of various projects (including wind energy, drainage, wastewater, and urban / port development) on protected species.

Relevant Sections: SEA Environmental Report, Chapter 5, Pages 46 and 94.

3. Incomplete Consideration of Alternatives

- 3.1 The Habitats Directive (Article 6(3)) and Birds Directive require a thorough consideration of alternatives that avoid impacts on protected species and habitats. While alternatives are mentioned, they are not fully explored in a way that would mitigate impacts on sensitive species and habitats such as raised bogs and peatlands.

Issue: Insufficient analysis of alternative locations and solutions that avoid adverse impacts on protected habitats.

Recommendation: Provide a more detailed assessment of alternative approaches, particularly for renewable energy projects, infrastructure development such as LNG and Water/Wastewater, and urban expansion. These alternatives should focus on avoiding impacts on protected areas such as Natura 2000 sites, RAMSAR Site, raised bogs, and peatlands.

Relevant Sections: SEA Environmental Report, Chapter 7 and NIS, Table 9-2

4. Gaps in Mitigation for Birds and Other Protected Species

- 4.1 The Birds Directive emphasizes the need for robust mitigation strategies for bird species, especially those listed under Annex I. However, mitigation measures for collision risks from wind energy infrastructure, disturbance during construction, and habitat loss are not sufficiently detailed. Similarly, for other protected species under the Habitats Directive, mitigation measures are insufficiently defined in the NIS.

Issue: Lack of specific, enforceable mitigation measures for bird species and other protected species.

Recommendation: The NPF should adopt stronger, species-specific mitigation measures, such as restricting development during sensitive breeding or migratory periods, and implementing noise reduction technologies to mitigate disturbances.

Relevant Sections: SEA Environmental Report, Chapter 5

5. Non-Compliance with the SEA Directive

- 5.1 Insufficient Public Consultation and Transparency. The SEA Directive (Article 6) emphasizes early and effective public participation in environmental decision-making. However, the NIS and SEA report do not adequately outline how public feedback has been integrated into the decision-making process, and draft documents nor is there sufficient information about ongoing consultations with relevant stakeholders.

Issue: Limited transparency on how public and stakeholder consultations have informed mitigation strategies.

Recommendation: Enhance public consultation processes by ensuring early and comprehensive stakeholder involvement, including environmental NGOs, and clearly integrate consultation outcomes into the drafts as well as final decisions.

Relevant Sections: NIS, Table 9-2

- 5.2 Failure to Address Transboundary Impacts. Article 7 of the SEA Directive requires transboundary consultations when plans or programmes are likely to have significant effects on other Member States. The SEA documents lack a comprehensive assessment of potential transboundary impacts, especially concerning offshore energy developments that may affect marine species migrating between jurisdictions.

Issue: Absence of transboundary impact assessments, particularly for marine species and habitats.

Recommendation: Ensure that transboundary impacts are assessed, and initiate consultations with neighboring Member States for developments, plans or programmes that may have cross-border environmental consequences, especially in marine environments and boarder habitats.

Relevant Sections: SEA Environmental Report, Chapter 9

- 5.3 Lack of Detailed Monitoring Mechanisms. The SEA Directive (Article 10) mandates that Member States monitor the significant environmental effects of plans. The SEA and NIS documents include general monitoring proposals but lack the specificity required to track impacts on sensitive habitats and species effectively.

Issue: Vague and non-specific monitoring measures.

Recommendation: Develop more concrete and enforceable monitoring plans, with specific indicators and thresholds for habitats and species protected under the Habitats and Birds Directives.

Relevant Sections: SEA Environmental Report, Chapter 9

6. Specific Impacts of Renewable Energy Projects on Protected Habitats and Species

- 6.1 Impacts on Marine Species from Renewable Energy. The NIS and SEA documents mention the development of offshore wind energy but do not provide a full assessment of the impacts on marine species, such as cetaceans and seabirds, protected under the Habitats and Birds Directives. There is also a lack of specific mitigation strategies for underwater noise pollution (see Finneran et al 2023)¹ and habitat disturbance caused by offshore wind farms. There is no cumulative impacts assessment with wastewater impacts in Ireland and UK or climate change impacts in relation to warming oceans etc.

Issue: Incomplete assessment of impacts on marine species.

Recommendation: Include a more comprehensive assessment of the impacts of offshore renewable energy projects on marine species, with concrete mitigation measures such as effective noise pollution control and restricted construction periods.

Relevant Sections: SEA Environmental Report, Page 93

1 Finneran JJ, Schlundt CE, Mulsow J. Temporary threshold shift in bottlenose dolphins exposed to steady state, 1/6-octave noise centered at 0.5 to 80 kHz. J Acoust Soc Am. 2023 Aug 1;154(2):1324-1338. doi: 10.1121/10.0020728. PMID: 37650783. <https://pubmed.ncbi.nlm.nih.gov/37650783/>

- 6.2 Impacts on Raised Bogs and Peatlands from Onshore Wind Energy. Onshore wind energy developments pose significant risks to raised bogs and peatlands, which are habitats protected under the Habitats Directive. Ireland | Hosts a significant percentage of all protected peatland and raised bog in the EU. This means Ireland has an even greater obligation to protect these habitats within our member state in order to ensure a robust NATURA2000 network of these habitat types. The current NIS and SEA reports recognize these risks but fail to provide sufficient mitigation measures to prevent habitat loss, drainage, and fragmentation, particularly in relation to Onshore wind energy and Forestry.

Issue: Risk of habitat destruction in raised bogs and peatlands.

Recommendation: Prohibit wind energy development in Natura 2000 sites and other protected bog habitats, and require comprehensive restoration plans for any affected peatland areas.

Relevant Sections: SEA Environmental Report, Page 179, 191-192

7. Mitigation and Recommendations for Improving the National Planning Framework

- 7.1 Stronger Protections for Annex I and II Species: Include more robust mitigation measures to protect species listed under Annex I of the Birds Directive and Annex II of the Habitats Directive, particularly in areas affected by renewable energy development and urban expansion.
- 7.2 Comprehensive Cumulative Impact Assessments: Enhance the SEA and NIS with detailed cumulative impact assessments, especially for wind energy projects and their combined effects on biodiversity.
- 7.3 Detailed Alternatives and Site Selection: Ensure that all possible alternatives are explored in depth, particularly for energy infrastructure projects, Water infrastructure Projects (ie water supply project alternative to fix the leaking pipes in Dublin, GDD Project alternative to allow INTEL to treat and reuse their own wastewater in house and to fix infiltration of surface water to the Ringsend agglomeration, incineration of Sewage Sludge) to avoid impacts on NATURA2000 sites and other sensitive habitats.
- 7.4 Enhanced Public Participation: Improve transparency and stakeholder engagement by ensuring all public and NGO feedback is integrated into the final planning decisions, particularly for projects affecting protected species and habitats.
- 7.5 Specific and Enforceable Monitoring Plans: Develop detailed monitoring protocols with clear indicators and thresholds for habitats and species, ensuring early detection of unforeseen impacts and the implementation of corrective measures.
- 7.6 Transboundary Impact Consideration: Include assessments of potential transboundary impacts and initiate consultations with neighboring countries, particularly for offshore wind energy developments.
- 7.7 A separate Water Framework Directive Assessment of the Plan in a stand alone document should be carried out and be put out for public consultation as part of the next draft of the NPF.

Conclusion

To ensure compliance with the Habitats Directive, Birds Directive, SEA Directive and Water Framework Directive, the National Planning Framework must address the gaps identified in the protection of habitats and species, and Waterbodies. By strengthening mitigation measures, improving public participation, and ensuring more detailed impact assessments, the NPF can contribute to sustainable development while safeguarding Ireland's rich biodiversity.

Yours Sincerely

Sabrina Joyce-Kemper

Appendix 1- Environmental Justice Network Ireland -Rights of Nature in Ireland:Towards a living island of rightsbearing communities



SEPTEMBER 2022

RIGHTS OF NATURE IN IRELAND

TOWARDS A LIVING ISLAND OF RIGHTS-BEARING COMMUNITIES

**Submission to the
Citizens' Assembly on
Biodiversity Loss**

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Rights of Nature in Ireland

Towards a living island of rights- bearing communities

Submission to the Citizens' Assembly on Biodiversity Loss

September 2022

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Preface

'We abuse land because we see it as a commodity belonging to us. When we see land as a community to which we belong, we may begin to use it with love and respect.'

(Aldo Leopold, 1887-1948, Environmentalist, United States)¹



Sabrina Joyce-Kemper and family Mia Kemper, Lucas Kemper and Ben Kemper

I was asked to write this preface not because I am a person of note, of high profile or fame, but because I am a normal citizen of Ireland. Like each of you, I answered a call to acknowledge the need to protect biodiversity. For the last ten years I have given my time voluntarily to advocate for the natural world and biodiversity and have tried to use my voice to speak for species who cannot speak for themselves.

While you all have your reasons for becoming involved in this Citizens' Assembly my reasons are simple. For my three children. They are my world and their survival is intrinsically linked to that of the natural world in which we are all entangled. And this simple premise is what our submission is all about.

This assembly is being asked to identify all of the drivers of biodiversity loss, but what if I told you there is just one. Humankind. Our human-centric approach to biodiversity protections needs to radically shift if we are to preserve our natural world and ourselves with it.

For hundreds of thousands of years our species believed that the Sun and the planets revolved around the Earth, that we were the centre of the solar system. It was less than 500 years ago that Copernicus published his theory that in fact the Sun was the centre of our solar system. A theory that took another 100 years to be accepted. We do not have 100 years. This is our Copernicus moment. Nature does not need us, we need Nature. We must accept that we are just one of millions of species on this planet and that we need this living web of biodiversity to survive and thrive. For too long we have elevated our species rights above others and in doing so have eroded our own habitat and environment to the point of being non-sustaining.

¹ Leopold, A. (Edition, 2020) *A Sand County Almanac*, Foreword, viii. Oxford: Oxford University Press.

What we are asking you to do is to consider our proposal to enshrine and protect the Rights of Nature, the rights of our island home and her communities of species and ecosystems in the Constitution, Bunreacht na hÉireann.

We can no longer continue with the proposition that Nature revolves around the needs and whims of humankind. Our human-centric approach to Nature conservation – placing economic values and fairy tales of endless economic growth first - can never fully allow for the effective protection of biodiversity unless we also recognise Nature's prior and intrinsic rights consistent with the capacity of ecosystems to regenerate and continue supporting all life forms into the future. Is this not the very least that we can offer future generations?

We are also inviting you to consider extending fundamental protections to Nature, the Rights of Nature, as the basis for a reciprocal human right to a safe, clean, healthy and sustainable environment. We are inviting you to support concurrent calls for such a right in Ireland. On October 8, 2021, the UN Human Rights Council adopted a resolution recognising that the right to a safe, clean, healthy and sustainable environment is a human right. Human rights are a vital source of protection for the dignity and integrity of human beings, however they can only be truly effective in the midst of our multiple social and ecological crises if our dominant, human-centric value systems are transformed, especially our growth-obsessed economic system.

These two sets of rights, Rights of Nature and the Right to a safe, clean, healthy and sustainable environment should be delivered together, in a mutually reinforcing relationship, one to the other. The fate and liberation of the earth and human beings is deeply entangled.

Our children can only run free to meet the future with hope if we are prepared to let our rivers also run free.

Sabrina Joyce-Kemper
Environmental advocate and citizen of Ireland

1. Introduction

There is growing interest in the concept of 'Rights of Nature' and the legal possibilities it offers as a means of protecting the natural world when regulatory efforts fail. David Boyd, the current UN Special Rapporteur on Human Rights and the Environment, has defined Rights of Nature as "the rights of non-human species, elements of the natural environment and inanimate objects to a continued existence unthreatened by human activities".² In a practical and legal sense, the concept is centred on the premise that Nature's integrity and regenerative capacity have the intrinsic right to flourish and the right to defence in a court of law against harms, with the authority of constitutional law where necessary.

Our legal systems, in their current form, designate land, animals, ecosystems, etc, as mere objects which humans are licensed to destroy and plunder. Humans and corporations are free to use Nature for our narrow economic interests, without fundamental ecological responsibilities or rights that can adequately counter the power of the imperatives to trade and stimulate production and consumerism. The protection of biodiversity, including the protection of endangered species and specified habitats, whilst often covered in a piecemeal fashion in legislative and regulatory frameworks, is treated as an afterthought. Instead, the principle of safeguarding biodiversity and ecological integrity should have a place in our legal system equal to that afforded to human activity. At its core, the idea of Rights of Nature therefore encapsulates broader thinking about how we can redefine, or realign, our relationship with the natural world and how Rights of Nature might be recognised and asserted as part of a wider transition for our society.

The idea that Nature and humans are deeply interconnected is far from a new concept. It is something that indigenous peoples have long since understood. For example, the [Māori people](#)³ of New Zealand, who act as guardians of the Whanganui River, consider the river as an ancestor whose health is a direct reflection of the health of their people. As the traditional Māori saying goes, "I am the river, the river is me". In recent years, some countries have started to codify this insight by giving concrete legal effect to this holistic approach. One pioneering example is that in 2017, New Zealand [passed a law](#)⁴ granting the Whanganui River the same rights as a human being. Under the legislation, Māori leaders are appointed to uphold the river's rights by acting and speaking for and on its behalf in court and promoting its health and wellbeing.

Without wishing to romanticize our past, it is worth noting that our ancient Irish ancestors also had an intuitive understanding of the inherent value of Nature and the place of humans within it. Ireland's indigenous [Brehon Law system](#)⁵ that survived until it was replaced by the English common law in the 17th century, showed some [concern for the environment](#).⁶ For example, long before modern laws on Nature conservation, the eighth century *Bretha Comaithchesa* "judgments of neighbourhood" contained a list of twenty-eight trees and shrubs and the various penalties that would be incurred by anyone who damaged them. Furthermore, the seventh-century *Bechbretha* "bee-judgments" demonstrated an awareness that trees are more likely to develop rot or disease if a cut is made during periods of growth by imposing a heavier fine for damage to a tree during its growing season.

We encourage the Citizens' Assembly to derive inspiration from the examples set by New Zealand, many other countries, indigenous communities and Ireland's cultural and legal heritage in determining the ways in which the Rights of Nature can be implemented on the island of Ireland. There are different spheres within which this can happen, from community engagement and declarations at a local level, to changes in laws, policy or even constitutions by local and national governments, but also extending to the development of an international Rights of Nature movement which transcends borders. In this regard, there have been important international developments, with the United Nations General Assembly adopting its first resolution on '[Harmony with Nature](#)' in 2009 and there are also advances in the global call to [make ecocide an international crime](#). At national level, countries such as Ecuador, Bolivia, and Uganda have now written Rights of Nature into their constitutions and over the last 15 years, communities across the world in countries such as the USA, Columbia and Peru have [engaged in legal action](#) designed to recognise Rights of Nature.

These developments have inspired communities and NGOs on the island of Ireland to adopt the Rights of Nature paradigm as an alternative lens through which our relationship with Nature can be viewed, but also as an alternative means of challenging government failure to protect the environment. Grassroots campaigns and communities across the island are coalescing into a Rights of Nature movement and have already persuaded councils in Derry, Donegal, Fermanagh and Omagh, Newry, Mourne and Down and Belfast to adopt motions that [recognise the Rights](#)

² David R. Boyd, *The Rights of Nature: A legal revolution that could save the world* (ECW Press, 2017).

³ New Zealand Department of Conservation Te Papa Atawhai, 'Māori Values', available [here](#).

⁴ Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, available [here](#).

⁵ The Courts Service, 'History of the Law in Ireland', available [here](#).

⁶ Kelly, F. Trees in Early Ireland. Irish Forestry (1999), available [here](#).

[of Nature.](#) Practical recommendations from the Citizens' Assembly can help accelerate this movement.

In this collaborative submission to Ireland's Citizens' Assembly on Biodiversity loss, we have gathered together various strands of the debate around Rights of Nature happening on the island and made recommendations about how the Citizens' Assembly might integrate this important concept into its work. The submission identifies five central issues: potential constitutional change as a vehicle for Rights of Nature and the reciprocal, indivisible Right to a safe, clean, healthy and sustainable environment; the connection between biodiversity loss, culture and language; the intersection between Rights of Nature and property rights; and the potential for criminalising ecocide. On the basis of this discussion, we have also made 15 core recommendations for the consideration of the Citizens' Assembly.



2. Rights of Nature and the Irish Constitution

2.1 Nature in Irish legal history

Inherent regard for what we might today describe as Rights of Nature is found in many pre-modern and indigenous legal regimes around the world. For Aboriginal peoples land is the source of the law, most if not all indigenous and local community legal regimes recognise the fundamental relationship between environmental harmony and human well-being. Increasingly, the Rights of Nature are being enshrined in constitutional and national law of dominant legal traditions. The notion of *buen vivir* 'good living'⁷ has been incorporated into Ecuadorian and Bolivian constitutional law. The wellbeing economy debate in modern Ireland is also driven by core concerns about ecological or planetary boundaries and the ethical limits this places on our behaviour towards the earth. This notion of 'good living' finds resonance in early Irish law reference to the king's *fir flathemon* (justice) upon which rest the possibilities of peaceful and prosperous times.⁸ A king guilty of *gau flathemon* (injustice), the texts warn, will see the 'soil and elements' rebel against him, 'bringing crop failure, dearth of fish, defeat in battle, plagues, lightening, etc.'⁹ The link between a just king and social and agricultural harmony set out in the eighth century text *Audacht Morainn* is mirrored in *De Duodecim Abusivis Saeculi* (*De XII*) - one of the most 'profoundly influential formulations of Christian political obligation in the entire Middle Ages'.¹⁰ The *De XII*, which is accepted as being of Irish provenance, describes the unjust king whose rule 'causes not merely his own damnation but cosmological tragedy'.¹¹

In present times the ideas of kingship and monarchy have given way to politicians, corporate CEO's, oligarchs and billionaires. Their actions or inactions shape the way of the world and the governance of our environmental, social and economic well-being. Their failings to act as 'good kings' are seen in the destruction of the environment, economic collapse and the undermining of spiritual, cultural and physical well-being of humanity and the natural world. This is not a

natural consequence of development; it is the consequence of development that views all of earth's bounty as resources, which must be exploited. Notions of private property expounded by the 17th century English philosopher John Locke helped license or legitimize the right to invade and establish settler colonies, and expropriate, plunder and 'develop' the lands, resources and environment of indigenous peoples and communities for trade in natural resources.¹² The transition to a rapacious, capitalist-driven system of ecological exploitation and extraction is linked to histories of power, colonialism and imperialism.¹³ Locke's ideas provided cover for the imposition of European ideas of improvement and development at the expense of indigenous forms of life and local laws.

Ireland, which served as the training ground for British colonisation of north America, is a text book case of the destruction of the natural environment for commercial, political and colonial ends. The wholesale felling of Irish forests for the building of British ships, casting of cannons and the expropriation of its lands to fund military enterprise is a case in point. The more recent gifting of rights to exploit Ireland's offshore natural gas reserves¹⁴ and the forced installation of infrastructure for its commercialisation has again put trade in natural resources before the rights of communities (of humans and other species). In addition, Ireland (north and south) has been consistently in the top 10 countries in the world in terms of policy attractiveness for the mining industry.¹⁵ It didn't have to be this way. Reification of property rights over communal rights was not preordained.

As Ireland moved towards independence, those responsible for the drafting of the Constitution of 1922 included a number of influential scholars and lawyers who sought to free Irish law of the elements of colonial rule and in the process recover the perceived high qualities of old-Irish law.¹⁶ At the time of the Constitutional drafting a parallel nationalist court system known as the Dail courts, applying elements of

⁷ Salazar, J.F., 'Buen Vivir: South America's rethinking of the future we want,' *The Conversation*, 24 July 2015. Accessed: 24 August 2022: <https://theconversation.com/buen-vivir-south-americas-rethinking-of-the-future-we-want-44507>

⁸ Kelly, F. (1988) *A Guide to Early Irish Law*, Dublin Institute of Advanced Studies, Dublin 18.

⁹ Kelly, 1988, 18.

¹⁰ Celtic and Anglo-Saxon Kingship: Some Further Thoughts, in *Sources of Anglo-Saxon Culture*, eds Paul E. Szarmach and Virginia Darrow Oggins (Kalamazoo: Medieval Institute Publications, 1986), pp. 151–83 (p. 160). cited in Grigg, Julianna, *The Just King and De Duodecim Abusivis Saeculi Parergon* 27.1 (2010).

¹¹ Grigg, J., (2010) *The Just King and De Duodecim Abusivis Saeculi Parergon* 27.1 29.

¹² Locke, J (2016) *Second Treatise of Government and A Letter Concerning Toleration*, first published 1689/1690, Oxford University Press.

¹³ Brand, U. and Wissen, M. (2021) *The Imperial Mode of Living; Everyday Life and the Imperial Mode of Living*, London: Verso.

¹⁴ Slevin, A. (2017) *Gas, Oil and the Irish State: Understanding the dynamics and conflicts of hydrocarbon management*, Manchester University Press.

¹⁵ ROI is currently ranked No.1 on this list, with NI currently No.3, full listing available [here](#).

¹⁶ Mohr, T. (2007) 'Law in a Gaelic Utopia: Perceptions of Brehon Law in Nineteenth and Early Twentieth Century Ireland', in O. Brupbacher et al (eds). *Remembering and Forgetting: Yearbook of Young Legal History*, Martin Meidenbauer, Munich 264. Mohr has highlighted three of the constitutional commission in particular Darrell Figgis the author of the Gaelic State, Hugh Kennedy who went on to become the first Chief Justice of the Supreme Court, and Eoin McNeill a renowned scholar of old Irish law.

Early Irish, Napoleonic and Roman law, had already begun the process of decolonising the Irish legal system. Their cumulative influence was apparent in “the first optimistic drafts of the constitution” which emphasised popular sovereignty, social equality, a desire to put an end to capital punishment and a desire to promote the equality of women.¹⁷ CJ France, a member of the constitution’s drafting committee, argued the virtue of reserving the natural endowments of the state for the benefit of all¹⁸. Not all of these principles were to find their way into the 1922 Constitution.

Today we have an opportunity to revisit the early ambition of the drafters of the constitution and, perhaps, go even further in realising the need to decolonize our inherited mindsets that have largely deprived us of public regard for the aliveness and gifts of Nature, and an appreciation that political liberation must extend to our rivers, fauna, mountains and forests. Our island is constituted by a myriad of living communities, both human and more-than-human. Had it not been for the civil war, the *Dáil* Courts may well have become a central part of a new Irish system of law. It was not to be and, in 1922, the order establishing the *Dáil* Courts was rescinded and a judicial system firmly rooted in the inherited colonial common law regime was validated. In 1937, following a definitive break with Britain, a new Constitution was adopted which is still in force today. The 1937 Constitution retains some of the high aspirations.¹⁹ It lost, however, the emphasis on popular sovereignty over natural resources. Following the economic crash of 2008, lack of accountability of Irish and EU politicians, Irish and EU bankers, Irish developers, and Irish and EU corporate leaders was glaring. Customary legal systems such as old Irish law continue to serve as sources of living law where duties of care, honesty and justice may be deemed as obligations. Looking back to our legal heritage through a ‘rights’ lens may offer us pathways towards a fairer and more sustainable future.

2.2 Connecting Rights of Nature and the Right to a Safe, Clean, Healthy and Sustainable Environment

Human rights are a legal framework to achieve “a common standard of achievement for all peoples and all nations”, as outlined in the [Universal Declaration of Human Rights](#).²⁰ They are both a moral claim of rights that everyone has and a legal framework for securing

these rights. Human rights law has the purpose of respecting, protecting, and securing these rights. The human right to a safe, clean, healthy and sustainable environment must be embedded – and rendered meaningful – through acknowledgement of Nature’s own intrinsic right to health, to thrive, regenerate and flourish independently of human purposes. The obvious vehicle for legal recognition of both human rights to a healthy environment and the Rights of Nature in Ireland is through our Constitution.

Internationally, it is now recognised that having a safe, clean, healthy and sustainable environment is necessary for human wellbeing and human rights. The Aarhus Convention UNECE 1998 explicitly recognises the right to a clean and healthy environment in its Preamble and Art 1. However the right was not phrased in a manner which made it mandatory to give effect to in the legal systems of the State Parties, instead relying on a suite of procedural environmental rights to achieve protection of the right indirectly. Similarly, the Latin American [Escazú Agreement](#) expresses the right to a clean and healthy environment in stronger terms. In October 2021, the United Nations Human Rights Council, which is made up of 47 elected UN Member States, passed the much-awaited [Resolution 48/13](#).²¹ which recognises the human right to a safe, clean, healthy and sustainable environment. Importantly, the landmark resolution acknowledges that the climate crisis and environmental damage are interlinked and have a disproportionate impact on the most vulnerable segments of society. Building on the UN Human Rights Council’s recognition of this right, in July 2022, the UN General Assembly, which is made up of all 193 UN Member States, adopted a historic resolution recognising the right to a safe, clean, healthy and sustainable environment as a universal human right. The [resolution](#)²² also recognises that the impact of climate change, the unsustainable management and use of natural resources, the pollution of air, land and water, the unsound management of chemicals and waste, and the resulting loss in biodiversity interfere with the enjoyment of this right.

The resolutions are an encouraging sign that the international community is beginning to understand that human rights and Nature’s rights are two sides of the same coin. We can see this in all sorts of environmental disasters in recent years: from [wildfires and drought](#)²³ in Europe, California and Australia to recent [mass flooding](#)²⁴ in Germany, Belgium and the UK, and how environmental problems have massive impacts on humans. Climate and biodiversity crises are not

¹⁷ See Mohr 2007 referring to Eoin McNeill’s comments on the draft constitution, National Archives of Ireland, Department of the Taoiseach, § 8953.

¹⁸ Brian Farrell The Drafting of the Irish constitution Irish Jurist, summer 1970, vol.5, No.1 pp 115-140, at 120

¹⁹ Mohr 2007, 273

²⁰ Universal Declaration of Human Rights (1948), General Assembly, resolution 217 A (III), A/RES/3/217 A, 10 December 1948, available [here](#).

²¹ The human right to a safe, clean, healthy and sustainable environment, United Nations Human Rights Council Resolution A/HRC/48/L.23/Rev.1, available [here](#).

²² The human right to a clean, healthy and sustainable environment, United Nations General Assembly Resolution A/RES/76/300, available [here](#).

²³ BBC News, ‘Australia fires: A visual guide to the bushfire crisis’ (2020), available [here](#).

²⁴ The Guardian, ‘Climate crisis made deadly German floods ‘up to nine times more likely’ (2021), available [here](#).

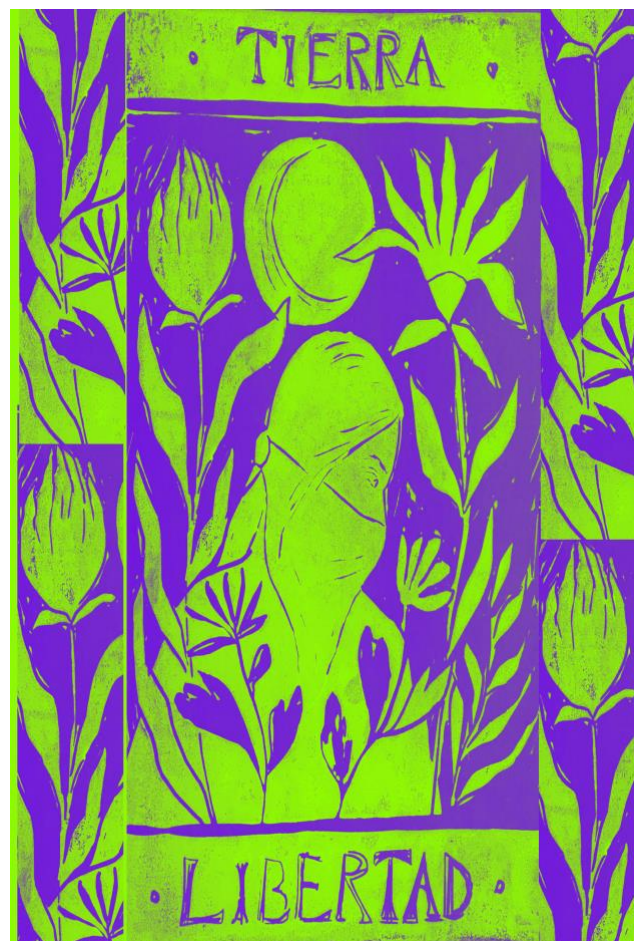
abstract ideas but something which affects everyone all over the world, though of course different people are affected differently. These catastrophic events are a powerful example of the extent to which human life is reliant on an environment which is healthy, relatively stable and safe. Specifically, human rights, such as rights to life, health, housing, food and water, are dependent on the state of our natural environment. These rights of humans have been pursued, for the most part during the modern era, at the expense of regard for and the codification of the rights of nature. This submission asserts that human rights, while important and universal guarantees for human beings, cannot be fully realised while they are incorporated and subject to dominant economic and social systems that continue to regard nature as purely instrumental, valued only insofar as it can be taken up and used for human ends. Human rights and dominant economic logics must be subject to a more profound, much older and demanding ethic that recognises the intrinsic rights of nature to flourish, regenerate and reproduce the conditions for life, including the human. A new spirit of reciprocity must be enshrined if we are to re-establish a profound balance of rights and regard across all the communities of species that constitute our island home. We are asserting that the human right to a safe, clean, healthy and sustainable environment must be embedded – and rendered meaningful – by acknowledging Nature’s own intrinsic right to health, to thrive, regenerate and flourish independently of human purposes.

2.3 The procedural aspects of environmental human rights

Procedural environmental rights are the idea that environmental protection is not just achieved by aspirational statements about sustainability, but required practical measures to ensure, in particular, that citizens can make sure governments and businesses are doing what they ought to protect the environment. This type of environmental accountability is often called environmental democracy. Three rights are seen as integral to environmental accountability – the right to access information about the environment, the right to participate in environmental decision making, and the right to access the courts if those rights are not upheld or the environment is harmed. These are recognised as a sub-set of human rights, called procedural human rights.

These rights are already binding on Ireland under International Law – in particular the Aarhus Convention UNECE 1998. The Aarhus Convention has never been fully implemented in Irish law.²⁵ Ireland’s legal system is constructed so that citizens cannot sue to force the Government to implement international agreements. They only gain rights under such agreements once they

are implemented with domestic measures. However, if these rights were enshrined in the Constitution, citizens, and (if the rights are constructed properly), NGOs could take action to hold their Government to account for failure to fully vindicate those rights. A constitutional amendment around these rights could be phrased in general terms but recognising these rights and requiring the State to vindicate them. This would enable citizens and NGOs to take action to protect the environment/nature.



2.4 The potential for constitutional change in Ireland

If Ireland were to enact constitutional provisions on the Rights of Nature and the right to a safe, clean, healthy and sustainable environment, we would be following in the footsteps of countries such as Ecuador which, in 2008, amended its constitution to recognise the Rights of Nature to exist, persist, evolve, and regenerate. Ecuador’s example demonstrates the powerful impact that such constitutional amendments can have for people and planet. For instance, in December 2021, relying on the Rights of Nature provisions in the Ecuadorian Constitution, the Constitutional Court [ruled that Ecuador’s government will have to revoke mining](https://static1.squarespace.com/static/62821548d89ad1244a3b1509/t/62b217f33b64af02534730e7/1655838713431/Aarhus+ireland+Report+210622.pdf)

²⁵ Hough, A. 2022. Finding Common Ground – Report on Aarhus Implementation – Ireland, see:

<https://static1.squarespace.com/static/62821548d89ad1244a3b1509/t/62b217f33b64af02534730e7/1655838713431/Aarhus+ireland+Report+210622.pdf>

[permits](#)²⁶ within a protected area on the basis that they run the risk of irreversibly damaging ecosystems.

In a striking example of how our legal systems can be transformed to incorporate the principle that the Rights of Nature and the right to a clean, safe, healthy, and sustainable environment are intimately linked, the court also found that the government's lack of environmental studies and consultations with local communities violated those communities' rights to a healthy environment, to water and to prior consultation. According to the court:

'...The very existence of humanity is inevitably tied to that of nature [sic], for he conceives it as part of himself. Therefore, the rights of nature [sic] include necessarily the right of humanity to its existence as a species. It is not a rhetorical lyricism, but a transcendent confirmation and commitment that, according to the preamble to the Constitution, requires 'a new form of citizen coexistence, in diversity and harmony with nature [sic].'²⁷

In the landmark case from 2020, *Friends of the Irish Environment CLG v. the Government of Ireland* (*'Climate Case Ireland'*),²⁸ the Supreme Court decided that the government's National Mitigation Plan on climate policy failed to specify the manner in which it proposed to meet its obligations under the [2015 Climate Act](#)²⁹ to 'transition to a low carbon, climate resilient, and environmentally sustainable economy' by 2050. In response to Friends of the Irish Environment's arguments that allowing emissions to rise violated the rights to life, bodily integrity and an environment consistent with human dignity under the Irish Constitution and the European Convention of Human Rights, the Supreme Court indicated that a right to a healthy environment could not presently be found in the text of the Constitution but could still be enshrined in the Constitution by way of a referendum.

This case also highlighted the difficulties caused for environmental protection by the current procedural rules governing access to the Courts in Ireland. The Court found that even if a human right to a clean and healthy environment did exist, the NGO in this case would have lacked the 'standing' to assert it, because they were an organisation³⁰. 'Standing' is a legal term meaning the capacity to bring a law suit. Irish rules on standing in environmental cases usually require that the person has suffered an injury as a result of matters the

subject of the law suit,³¹ or that in planning judicial reviews they have a strong connection to lands affected by the planning decision ('sufficient interest'), or have participated in the planning process (prior participation). The requirement of injury or particular affectedness is problematic in environmental cases where harms can be generalised and large scale, and happen over long time frames like climate change. The restriction of human rights standing to humans as in the *Climate Case Ireland* is problematic as in many cases environmental organisations are the only ones with the skills and knowledge to identify complex environmental legal issues in the tight timeframes applicable in environmental cases (e.g. 8 weeks for environmental judicial review of a planning decision) and their status as incorporated companies gives them a certain protection from any costs risks which might arise. Denying them the capacity to assert rights on behalf of the environment in public interest scenarios such as climate mitigation is clearly disastrous.

Inspired by and in solidarity with Ecuador's pioneering example, we would therefore encourage the Assembly to take up where the Supreme Court left off by recommending that a referendum be held on whether or not to insert this right into the Constitution. However, a rights-based approach to protecting the environment must not merely focus on what humans can get from Nature but rather, how we can live in partnership with Nature. After all, the right to a safe, clean healthy and sustainable environment is necessarily premised on the environment's right to be healthy in and of itself. Indeed, as Frank Armstrong has argued, the Rights of Nature can emerge incrementally in Ireland through our existing constitutional framework.³² Finally, a rights-based framework needs to be accompanied by the necessary procedural rights like the right to go to court to protect the environment, if they are not to be rendered meaningless.

²⁶ Inside Climate News, 'Ecuador's High Court Affirms Constitutional Protections for the Rights of Nature in a Landmark Decision' (2021), available [here](#).

²⁷ Ibid.

²⁸ *Friends of the Irish Environment v The Government of Ireland & Ors* [2020] IESC 49, available [here](#).

²⁹ Climate Action and Low Carbon Development Act 2015, available [here](#).

³⁰ For more see Kelleher, O. 2021 "Systemic climate change litigation, standing rules and the Aarhus Convention: a purposive approach" *Journal of Environmental Law*, Volume 34, Issue 1,

March 2022, Pages 107–134,
<https://doi.org/10.1093/jel/eqab037>

³¹ *Cahill v Sutton* [1980] IR 269

³² Armstrong, F. 2019 "'Wild Law' is the Path of Natural Justice" in *Cassandra Voices*, 1st March. See:
<https://cassandravoices.com/law/wild-law-is-the-path-of-natural-justice/>



Ireland's Constitution could operate as a direct vehicle for Rights of Nature. Our overarching recommendation would be that the Citizens' Assembly supports:

1. **A constitutional amendment giving explicit recognition to the Rights of Nature to exist, thrive, evolve, and regenerate in Ireland alongside the reciprocal and indivisible human right to a safe, clean, healthy and sustainable environment, as recognised by the UN. Additionally, the amendment should require that the State guarantee the rights of individuals and organisations to hold the State to account for protection of the environment, by guaranteeing the State will by its legislation vindicate the environmental procedural rights of access to information, public participation in environmental decision making and access to justice. This could take the form of an amendment asserting that 'The State guarantees through its laws it will vindicate the rights of individuals and organisations to access to information on the environment, to participate in environmental decision making and be heard, and to go to court to defend the environment and these rights'.**

- **This call for an amendment to the Constitution would entail a call on the Government to organise a Constitutional Referendum under the provisions of**

Article 46 of Bunreacht na hÉireann. The Assembly may wish to consider proposing draft language to the Government for such a referendum. This could be in the form of a new stand-alone additional article, possibly titled "Environment". Alternatively, the right to a clean and healthy environment and associated procedural rights could be inserted into Art 40.6 of the Constitution (the enumerated Personal Rights).

- **In addition to updating environmental legislation in recognition of these new constitutional rights, established rules of procedure such as the rules around judicial review in Order 84 of the Rules of the Superior Courts, and in the Planning Act 2000 as amended, would need to be altered to reflect a commitment to broader access to justice. Environmental laws and procedures for participating in environmental fora will need to be simplified and streamlined in order to fully vindicate the rights of participation and access of any person or organisation to defend, protect, and enforce those rights on behalf of Nature [rights of standing].³³**
2. **In recommending that the Citizens' Assembly support a constitutional amendment in line with the UN General Assembly's recognition (July 29th 2022) of the human right to a safe, clean, healthy and sustainable environment (brought about by referendum) we further invite the Citizens' Assembly to support the unification, simplification and updating of environmental legislation to reflect the human right to a safe, clean, healthy and sustainable environment underpinned by the Rights of Nature. In this regard, the government should carefully consider the work already undertaken by the Climate Bar Association in drafting a model environmental code and in recommending the creation of a specialist environmental court.**
 3. **We recommend that the Citizens' Assembly encourage the Government to support the [proposal of the Parliamentary Assembly of the Council of Europe \(PACE\)](#)³⁴ for a new**

³³ "Standing" is defined as the legal permission to appear as an applicant in court. Trees, rivers, mountains, and other elements of the environment are not able to appear in court and they would not be granted standing themselves because they are not able to speak to their own case. However, this fact should not stand in the way of granting them standing because children and others in the

judicial system are allowed to have a guardian/advocate appointed to speak on their behalf. New modalities can be designed to ensure that citizens can represent local rivers and other ecological features assigned rights of standing before the courts.

³⁴ The Parliamentary Assembly of the Council of Europe, 'The right to a healthy environment: PACE proposes draft of a new protocol

Protocol to the European Convention on Human Rights (ECHR) recognising the right to a safe, clean, healthy and sustainable environment. Strengthening the ECHR's environmental human rights protections would bolster an all-island approach to the climate and biodiversity crises by ensuring that Northern Irish citizens are also afforded the same international legal right to a healthy environment.³⁵

In addition, we recommend that the Citizens' Assembly explores developments regarding Rights of Nature across the whole of the island thus far and how these connect to global Rights of Nature movements:

4. We recommend that the Citizens' Assembly note and commend the pioneering work of Donegal County Council and commission research on the progress of the Rights of Nature campaign in the County and the local authority's response with a view to publicising the outcome to raise public awareness of the concept and its implications for, inter alia, local government bodies. The Assembly may also consider a call for witnesses from the Rights of Nature campaign on the island to appear before the Assembly. This information could inform and support the public information campaign ahead of any referendum on a constitutional amendment on Rights of Nature and the reciprocal human right to a healthy environment.
5. We recommend that the Citizens' Assembly commend and endorse the Motion introduced and supported by Donegal County Council on the Rights of Nature, with a recommendation that other Councils across the island consider similar initiatives, including well-resourced and fully participatory public consultation exercises

as well as local direct democracy mechanisms.

6. In order to ensure that the recommendations of the Citizens' Assembly are taken forward throughout the island of Ireland, the Citizens' Assembly is invited to copy all outcomes to the Northern Ireland Executive and the North-South Ministerial Council, and to transmit these recommendations to any future Citizens' Assembly on future constitutional arrangements for the island.
7. The Citizens' Assembly is invited to transmit the recommendations and report of the Citizens' Assembly to the UN [Harmony with Nature](#) programme.

Customary legal systems such as old Irish law can continue to serve as sources of living law where duties of care, honesty and justice may be deemed as obligations. With that in mind, we also advocate exploration of old Irish law and its potential relevance to a new conversation about our relationship with nature:

8. The Citizens' Assembly is invited to recommend that Government invite the Law Reform Commission to draw up terms of reference for a review of customary law in Ireland, also making reference to the early drafters of the 1922 Constitution, with a view to making recommendations on the further decolonisation of Irish laws. This with a view to making recommendations on bringing Irish laws and the Constitution into line with international trends³⁶ consistent with a decolonisation of domestic laws, realigning Irish laws with the Rights of Nature and placing ecology at the heart of a wellbeing economy.³⁷

to the European Convention on Human Rights' (2021), available [here](#).

³⁵ This proposed reflects some new research conducted by King's College London on the right to a healthy environment. They published two separate reports on the UK and Ireland and the wording used here largely reflects their recommendations. See here for further information. <https://www.kcl.ac.uk/news/kings-legal-clinic-student-research-makes-the-case-for-environmental-rights-to-be-recognised-as-human-rights>

³⁶ See for example Lee Godden (2021) 'A duty of care and decolonising environmental law: Re-imagining sustainability practices in Australia', Pandora's Box, 15 May, 17-37. Available [here](#). Similarly, the work of Amitav Ghosh (2021) op.cit.

³⁷ See The Wellbeing Economy Alliance, including details of WEALL in Ireland (www.weall.org)

3. Biodiversity, culture and language

An teanga Gaeilge is our birthright – something we should be immensely proud of, not only for its cultural wealth and its social and psychological subtlety, but also for the insights it offers into the flora and fauna, the climate patterns, the moon cycles, the ocean currents and the otherworldly dimensions of this, our island home. Whether we pass it on as a precious heirloom or let it dissipate and die is up to us. Is í ár dteanga í, agus beatha teanga í a labhairt. (Manchán Magan, The Journal, 20 November, 2021)

Increasing attention is being paid to the role that our Gaelic language and culture can play in developing a greater awareness of the biodiversity of our Irish landscape and Nature, and of the extent of biodiversity loss.³⁸ Irish is also being recognised for its rich literature which displays what one scholar has called an ‘almost mystical feeling for nature [sic]’.³⁹ Michael Cronin has argued strongly in his bilingual book *An Ghaeilge agus an Éiceolaíocht/Irish and Ecology*⁴⁰ that a return to speaking Irish offers an essential resource to develop a deep awareness of place and the many layers of history and environmental awareness that is embodied in the rich traditions of place names and *dinnseanchas* (stories about place) that can never be fully accessed through translation. As he asks: ‘How are citizens to be engaged, motivated and empowered if one of the most precious resources they have for understanding the place of their island in the world of earth, sky and sea is routinely and systematically ignored?’⁴¹ He goes on:

*Irish forces us to look at our surroundings anew and it is precisely the need to be jolted out of our complacency which becomes a pressing necessity in the midst of a climate crisis.*⁴²

A renewed understanding of the importance of indigenous cultures and especially their understanding of the environment and community is emphasised again and again in reports both of the Intergovernmental Panel on Climate Change (IPCC) and the Intergovernmental Science-Policy Platform on

Biodiversity and Ecosystem Services (IPBES). As the IPCC put it in its 2014 report:

*Indigenous, local and traditional knowledge systems and practices, including indigenous people’s holistic view of community and environment, are a major resource for adapting to climate change, but these have not been used consistently in existing adaptation efforts. Integrating such forms of knowledge with existing practices increases the effectiveness of adaptation (IPCC, 2014: 19).*⁴³

And the IPBES had this to say in its 2019 report:

*Recognizing the knowledge, innovations, practices, institutions and values of indigenous peoples and local communities, and ensuring their inclusion and participation in environmental governance, often enhances their quality of life and the conservation, restoration and sustainable use of nature [sic], which is relevant to broader society.*⁴⁴

Among the contributions our native language has to offer is its distinctive sense of the individual embodied in community and in Nature which in the opinion of some makes it a far more ecological language.⁴⁵ And the remarkable success of Manchán Magan’s books on Irish and environmental issues testifies to the wider appeal of the language in this regard.⁴⁶ Yet, to date, the Irish language and its rich and deep culture deeply rooted in our landscape and environment has been completely ignored in policy on climate change and on biodiversity loss. The time has come to recognise that linguistic diversity is an essential component of biodiversity and a popular recovery of our appreciation of the island’s linguistic heritage can embed a new appreciation of and relationship to our landscapes, bioregions, and environmental practices.

To paraphrase Michael Cronin, the Irish language forces us to look at our surroundings anew and it is precisely the need to be jolted out of our complacency which becomes a pressing necessity in the midst of a climate crisis.⁴⁷ It is no accident that local languages and knowledge systems have disappeared at the same

³⁸See Peadar Kirby (2022) ‘Athru Treo: An Ghaeilge sa Trasnú go Sochaí Iar-Charbóin agus Bithéagsúil’, MA thesis, MIC.

³⁹ Richard J. Kelly (1995): ‘An Introduction to the Context of Early and Medieval Irish Poetry’, in *The Harp*, Vol. 10: 14-23.

⁴⁰ Michael Cronin (2019): *An Ghaeilge agus an Éiceolaíocht/Irish and Ecology*, Dublin: FÁS, 2019.

⁴¹ Cronin (2019) 7.

⁴² Cronin (2019) 57.

⁴³ IPCC (2014) AR5 Synthesis Report: Climate Change, Intergovernmental Panel on Climate Change, 19.

⁴⁴ IPBES (2019): Global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy

Platform on Biodiversity and Ecosystem Services. E. S. Brondizio, J. Settele, S. Díaz, and H. T. Ngo (editors). IPBES secretariat, Bonn, Germany, 18. Available here: <https://ipbes.net/global-assessment>

⁴⁵See, for example, Liam Mac Cóil, Liam (2016): ‘Ar scáth a chéile a mhaireann na focail’, i Breandán Mac Cormaic eagr.: ‘Is ar scáth a chéile a mhaireann na daoine’: Éire sa 21ú Aois idir Indibhidiúlacht agus Phobal, Baile Átha Cliath: Coiscéim: 90-103.

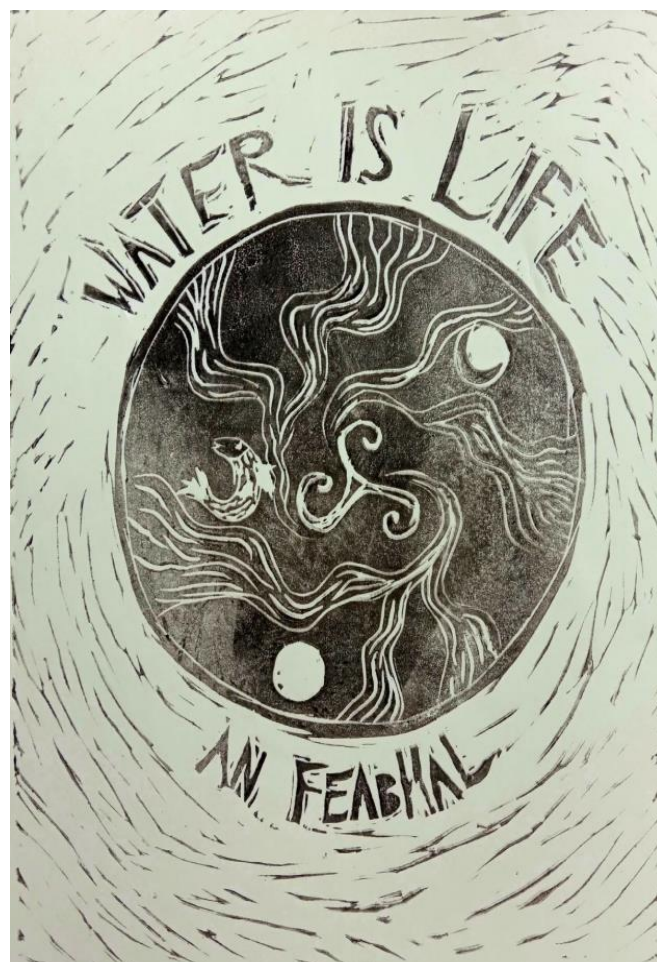
⁴⁶Magan’s book *Thirty-Two Words for Field: Lost Words of the Irish Landscape* (Gill Books, 2020) has sold more than 55,000 copies.

⁴⁷ Cronin (2019) 57.

rate and as part of the same process of species extinction. Our colonial experience has taught us that language (allied to economic power) can be used to impose and bestow destinies on both societies and landscapes. Our linguistic heritage can also be a powerful source of resistance to a legacy of dominant narratives associated with ecologically damaging patterns of behaviour. Our *solidarity* with indigenous peoples around the world who have begun to succeed in empowering alternative ecological narratives and knowledge systems – indeed alternative ways of being in the world - must extend to a recovery of our own indigenous knowledge and linguistic heritage across the island.⁴⁸

In terms of the role that the Gaelic language and culture can play in developing a greater understanding of the origins and drivers of biodiversity (the reshaping of our Irish landscape and Nature) and of the extent of biodiversity loss, we recommend that the Citizens' Assembly:

9. Invite the Government to create a fund for the island's leading language organisations (including, Gael Linn, Gaeloideachas, Cumann na bhFiann, Conradh na Gaeilge, Oireachtas na Gaeilge and Glór na nGael) and language scholars working at the intersection of socio-ecological transitions, language and power, to explore and deepen their contribution to our understanding of the climate and ecological crises. This contribution should focus on the important linkages between our relationships to Nature, language policy and the island's colonial experience.⁴⁹



⁴⁸ NatureScot, (2021) Scotland's environmental agency, has commissioned work on the links between Gaelic and biodiversity conservation. See NatureScot Biodiversity Report 1230: Ecosystem Services and Gaelic – A Scoping Exercise. Available here: <https://www.nature.scot/doc/naturescot-research-report-1230-ecosystem-services-and-gaelic-scoping-exercise>

⁴⁹ For an outstanding treatment of the links between the climate and biodiversity crises, colonialism and the promise of restoring Nature as a subject of history, see the best-selling work of Amitav Ghosh, (2021), *The Nutmeg's Curse: Parables for a Planet in Crisis*, Chicago, University of Chicago Press.

4. Rights of Nature and Property Rights

4.1 The intersection of Rights of Nature and property rights

Property mediates our relationship with the land and landscapes that surround and support us. It is a touchstone of contemporary society and, in many ways, helps us to order and make sense of the world. Property also drives biodiversity loss. More specifically, our beliefs about property and our understanding of what 'ownership' means (in terms of what owners are entitled to do and when property rights can be constrained) fundamentally shape land use and, as such, impact environmental outcomes. In understanding and addressing biodiversity loss on the island, it is vital to appreciate how property has contributed to the problem. This then allows a discussion about how property might interact with Rights of Nature as a potential solution.

4.2 Property as a driver of biodiversity loss

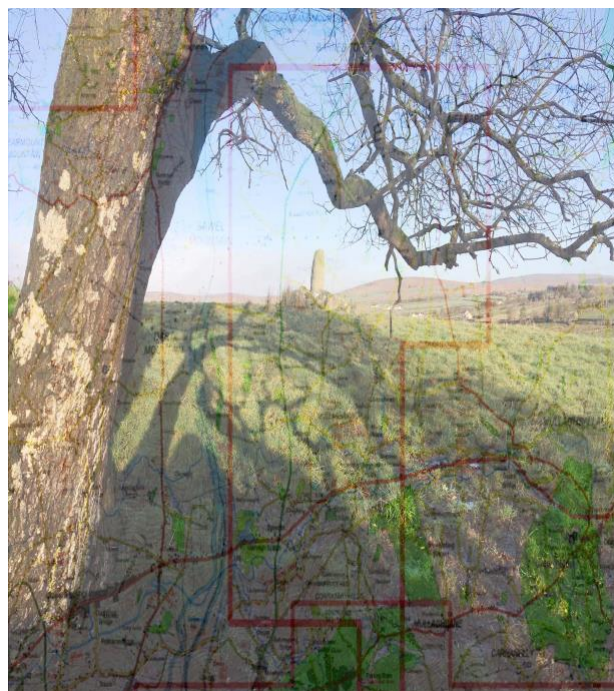
Property, conventionally understood, does not recognize Nature as a living organism. Although most textbooks on the subject will declare in their opening pages that there is no definition of 'property', it is commonly understood that property amounts to decisive 'agenda setting' power over a resource. In general terms, this manifests as a collection of rights or entitlements. In *Landscape*, Nicole Graham describes the problem of 'dephysicalised property' – or the tendency of contemporary property law to separate these legal frameworks from the places in which they operate. For Graham, 'property is not about real things but abstract rights,'⁵⁰ and this creates and perpetuates a distant relationship between us and our surroundings: when we look around, we see a 'lawscape', rather than a landscape. In this conception, property rights serve to legitimize exclusion and exploitation of the natural world, driving biodiversity loss.

For this reason, mainstream property rights do not easily interact with the Rights of Nature – either in philosophical terms, or as part of a legal system. Such an approach calls for a fundamentally changed perception of the natural world and our place in it. Indeed, in Ireland, land ownership has long been a controversial and contested subject, including in the drive for independence, especially regarding the Land

Wars. Therefore, there may be particular devotion amongst Irish people to the idea of property as exclusion, and a reluctance to cede control of land, or entertain the possibility that property rights might be constrained.⁵¹ This debate also, of course, intersects with constitutional property rights, as well as the Article 1 Protocol 1 right to property enshrined in the European Convention on Human Rights.

4.3 Balancing Rights of Nature and property rights on the Island of Ireland

Granting legal personhood and fundamental rights to Nature to exist and flourish may help to justify constraints on property rights, where existing environmental law and governance has failed.⁵² It may be that this kind of approach will inevitably lead to a political and public debate about how these rights should be balanced, but such a debate is preferable to no debate at all. In such a political process, the interests of Nature would be represented by guardians or custodians who could be any citizen and who could give a legal voice to wildlife and ecosystems, where previously these entities were silent (in a similar way to how Guardians *Ad Litem* act on behalf of children without legal capacity to act for themselves).



⁵⁰ Nicole Graham, *Landscape: Property, Environment, Law* (Routledge, 2011).

⁵¹ Bróna McNeill, *Agricultural Land Ownership and Nature Conservation: Reconceptualising Property to Further Environmental Protection in Northern Ireland* (Un-published PhD thesis, Forthcoming).

⁵² For example, there has been ongoing difficulty in implementing EU environmental legislation due to resistance from landowners over restrictions on land use. See Brendan Flynn, 'Environmental Lessons for Rural Ireland from the European Union: How Great Expectations in Brussels get dashed in Bangor and Belmullet', in John McDonagh and others (eds), *A Living Countryside: The Politics of Sustainable Development in Rural Ireland* (Routledge, 2009)

Another possible approach to operationalizing Rights of Nature has been to use property law itself as a framework. For example, in July 2014, legislation was passed in New Zealand vesting fee simple ownership of Te Urewera National Park in the park itself.⁵³ The park is recognized as a legal actor, capable of holding property rights and, as such, the State has a legal duty to protect and enforce these. A variation of this is found in the innovative work of Karen Bradshaw, who advocates the use of the trust mechanism to afford property rights to wild animals.⁵⁴ Again, as legal actors, animals (as property owners) would be entitled to certain rights – including the right to exclude. This would, through the action of designated guardians, potentially deliver a degree of protection to ecosystems or wildlife in some clearly defined circumstances. However, such an approach is not without controversy. Granting property rights to ecosystems or wildlife – potentially through property redistribution – again raises questions about constitutional rights and the fundamental right to property in Article 1 Protocol 1 of the European Convention on Human Rights and will not be workable in all circumstances. The most successful areas for this kind of approach would therefore largely be publicly or community owned spaces.

This challenge begins to raise a deeper question though, about what property means to us and how we perceive the places we inhabit. It is interesting to note that, globally, the Rights of Nature movement has often developed alongside increased rights and recognition for indigenous communities, such as in Ecuador.⁵⁵ As noted above, these communities often maintain a deeply spiritual relationship with the natural world, and an appreciation of their place within it. This provides a framework within which the beyond-human world holds as much importance as the human. Despite the sense that our current property system has alienated us from Nature, the deep connection between people and places in Ireland – reflected in our language and culture – perhaps conveys a different narrative. Even in contemporary agriculture and our long farming traditions, we see evidence of communities rooted in their places, who shape and are shaped by the land and who often view themselves as custodians of the land, rather than property owners. Reimagining property and what it means to ‘own’

something may have the potential to improve environmental outcomes by recognizing the rights of non-owners (including non-humans) relative to owners. In this sense, embracing a Rights of Nature approach becomes an empowering device – a vital part of the emerging recognition that we need to counter (urgently) the idea of human entitlement. In practical terms, this could be reflected in changes to land governance regimes and may include, for instance, updating agricultural policy to reflect changed ideas about the rights and obligations of landowners. Such a change may also be reflected in planning decisions. Ireland may also take inspiration from Scotland’s radical project of land reform⁵⁶ and legislate for improved access to land – a critical component of the changed relationship between humans and the landscapes and life forms that surround us. The idea of private property has always had a difficult relationship with environmental protection, but it is worth remembering that property is what it is because we have created it that way, and it is within our power to re-make it.

10. It is recommended that the Law Reform Commission engage in research that seeks to interrogate prevailing beliefs about property rights and the meaning of ‘ownership’, with a view to reconceptualising property as a dynamic institution, capable of recognizing the rights of non-owners (including non-humans) relative to owners, particularly in agricultural and commercial contexts.

11. In July 2014, legislation was passed in New Zealand vesting fee simple ownership of Te Urewera National Park in the park itself, securing a range of protections and rights for the landscape and biodiversity contained within it. It is recommended that the Law Reform Commission engage in research to establish whether this type of approach might be replicated in Ireland, and to identify locations across the island where it might be implemented.

12. Legislation should be introduced that establishes a statutory ‘right to roam’ across uncultivated land, as well as a statutory scheme to improve the provision of public rights of way in the countryside. Opening up access to Nature will foster a stronger connection to, and a deeper respect for, biodiversity in all its forms and empower people to seek its protection.

⁵³ Te Urewera Act 2014, available here < <https://www.legislation.govt.nz/act/public/2014/0051/latest/DLM6183601.html> > Last accessed 8th August 2022.

⁵⁴ Karen Bradshaw, *Wildlife as Property Owners: A New Conception of Animal Rights* (The University of Chicago Press, 2020).

⁵⁵ Kimberley Brown, ‘Ecuador’s top court rules for stronger land rights for indigenous communities’ (Mongabay 9th February 2022)

< https://news.mongabay.com/2022/02/ecuadors-top-court-rules-for-stronger-land-rights-for-indigenous-communities/?mc_cid=447b634dff&mc_eid=c2ff371fa1 > last accessed 8th August 2022.

⁵⁶ For an overview see Malcolm Combe, Jayne Glass, Annie Tindley (eds), *Land Reform in Scotland* (Edinburgh University Press, 2020)

5. Rights of Nature and Ecocide Law

5.1 Criminalising the destruction of Nature

While the Rights of Nature movement has typically not extended to criminal law, [campaigns](#) to criminalise the destruction of the environment have run alongside and intersected with Rights of Nature campaigns.⁵⁷ The term 'ecocide' originally emerged in response to the environmentally destructive impacts of the United States' use of the lethal chemical agent, Agent Orange, in the Vietnam War. It has since been used to describe oil extraction in the Canadian [Alberta Tar Sands](#),⁵⁸ environmental degradation in the Niger Delta region of Nigeria, illegal mining in Venezuela, and most recently attacks on nuclear facilities in Ukraine. Others have also used the term to describe the range of [ordinary acts](#)⁵⁹ that contribute to environmental degradation, such as releasing micro plastics into the oceans, emitting greenhouse gases and disproportionately using pesticides.

While early debates around ecocide's criminalisation failed to result in any concrete action, support for such a move has significantly grown in recent years. Building on the longstanding work of the late Scottish barrister and environmental campaigner, [Polly Higgins](#),⁶⁰ a key recent development in this long-standing campaign has been the [production](#)⁶¹ of a new proposed definition of 'ecocide', drafted by a panel of environmental and international criminal law experts in June 2021. The expert panel have expressed the hope that the definition might form the basis of a new international crime, capable of being prosecuted at the International Criminal Court (ICC) and adopted into the domestic laws of the Assembly of State Parties' (which includes Ireland).



The proposed crime, which prohibits 'the extensive destruction, damage to or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the inhabitants of that territory has been severely diminished' is particularly relevant to this Assembly's focus on biodiversity loss. The crime is ecocentric in focus, meaning that damage or harm suffered by the natural environment itself is sufficient as the basis for the crime, without requiring additional harms to human beings. Commenting on the new definition, the Panel's Co-Chair Philippe Sands QC has [highlighted](#) the importance of protecting the environment as 'an end in itself,' linking the crime to Rights of Nature ways of thinking.⁶²

While the International Criminal Court (ICC) currently defines victims as including only natural persons and certain organisations and institutions, the criminalisation

⁵⁷ For background on the international ecocide campaign see: <https://www.stopecocide.earth/>

⁵⁸ Martin Crook & Damien Short (2014) 'Marx, Lemkin and the genocide–ecocide nexus', *The International Journal of Human Rights*, 18:3, 298-319.

⁵⁹ For a discussion on the ordinary acts that can contribute to ecocide, see Robert A. (2020), *The ordinary acts that contribute to ecocide*, New York: Routledge.

⁶⁰ Stop Ecocide International. Polly Higgins (1968-2019). Available [here](#).

⁶¹ In November 2020 the Independent Panel for the Legal Definition of Ecocide convened under the auspices of the Stop Ecocide Foundation at the request of the governing parties in Sweden. For the results of their work go to: <https://www.stopecocide.earth/expert-drafting-panel>.

⁶² Aljazeera Centre for Public Liberties and Human Rights (2021), 'The Revolution does not happen overnight': Philippe Sands on ecocide and its links to Nuremberg, 29 June. Available [here](#).

of ecocide offers [possibilities](#) for extending understandings of victimhood to include more-than-human beings and environments. In the context of the ICC, such recognition could open doors to the rights of participation, reparation, and assistance for the natural world. Indeed, the criminalisation of ecocide has been [described](#) as ‘the logical extension of establishing Rights of Nature.’⁶³

5.2 Legal developments in the EU and beyond

In the European context, the [European Parliament](#)⁶⁴ has voiced support for a new crime, and the European Law Institute has been working on drafting a model law for the European Union, drawing from the Expert Panel’s new definition. Examples already exist in domestic legal jurisdictions: France has introduced a domestic law on ecocide, following the Citizens’ Assembly for Climate [recommendation](#) in June 2020.⁶⁵ France’s Climate and Resilience Act criminalises ecocide under national law, providing for up to 10 years in jail for those committing offences which ‘cause serious and lasting damage to health, flora, fauna or the quality of the air, soil or water.’ It also obliges the government to report back to the French parliament on ‘its action in favour of the recognition of ecocide as a crime which can be tried by international criminal courts.’ The French law is a relevant example for this Assembly’s consideration, as it is explicitly linked to the planetary boundaries, including biodiversity loss and extinction. Nor is France the first country to criminalise ecocide in its domestic laws, other examples can be found in several former Soviet states (including for example Armenia, Georgia, Ukraine, and Russia), as well as Vietnam and Ecuador (where Rights of Nature are also a constitutional principle).

5.3 Development of ecocide law in Ireland

In Ireland, the concept of ecocide has already gained traction. In 2013, the Green Party voted unanimously to pass a motion condemning ecocide, and in 2020 the party supported a [motion](#) ‘that the Greens recommend that the Oireachtas in organising the next Irish Citizens’ Assembly on biodiversity, explore ecocide (manmade destruction of ecosystems) as an urgent priority.’⁶⁶

2019, the [Youth Assembly on Climate](#)⁶⁷ formally presented a declaration to the Government and the members of the Oireachtas, in which they called on their elected representatives to ‘outlaw acts of ecocide – being the widespread and systematic loss of ecosystems, including climate and cultural damage.’

The time is right for Ireland to take a leading role in criminalising ecocide as a means of prohibiting and punishing crimes against biodiversity. It can do this in several ways. First, it can introduce a new crime into its own domestic law, as France has done. Second, as a State Party to the International Criminal Court, Ireland can show its support for the crime’s introduction, and indeed even propose such an addition itself. Third, Ireland can use its voice in other regional and international fora. Ireland has a strong voice within the European Union and has over half a year left of its seat on the United Nations Security Council. The Security Council holds the strongest enforcement powers within the UN, and has in recent years put more focus on the relationship between the environment through meetings such as the February 2021 [High-level Open Debate on Climate and Security](#).⁶⁸ There, it was recognised that the atrocities and security issues inflicted through environmental harm and global warming fall within the purview of the Security Council. Ireland can choose to push forward this agenda and bring ecocide and the protection of Nature onto the international security agenda.

- 13. It is recommended that Ireland introduce a new crime of ecocide into its own domestic law**
- 14. As a State Party to the International Criminal Court, the Citizens’ Assembly should recommend that Ireland show its support for the crime of ecocide’s introduction, and indeed even propose such an addition itself.**
- 15. The Citizens’ Assembly should recommend that Ireland can use its voice in other regional and international fora to support the criminalisation of ecocide e.g. within the EU.**

⁶³ Conflict and Environment Observatory (2021), ‘Could criminalising ecocide increase accountability for environmental harm in conflicts?’, Online Blog, April 22. Available [here](#).

⁶⁴ European Parliament (2021), European Parliament resolution of 20 January 2021 on human rights and democracy in the world and the European Union’s policy on the matter – annual report 2019. Available [here](#).

⁶⁵ Stop Ecocide International (2020), ‘President Macon “Shares ambition” to establish international crime of ecocide,’ 29 June. Available [here](#).

⁶⁶ Cathy Fitzgerald (2020), ‘Further steps in Ireland to help end ecocide’, in Hollywoodforest Blog, October 9. Available [here](#).

⁶⁷ To view a full version of the Youth Assembly Climate Dáil declaration see The Irish Times online, Friday, 15 November. Available [here](#).

⁶⁸ United Nations Security Council press release (2021), ‘Climate Change “Biggest Threat Modern Humans Have Ever Faced”, World-renowned naturalist tells Security Council,’ 23 February. Available [here](#).

6. Conclusions

The Rights of Nature do not pose as an overnight solution or magic bullet but can form a vital element in an emerging narrative that once again places *connection* and *relationship* at the heart of a regenerative vision dedicated to the flourishing of all living beings. The Rights of Nature, for example, extends our policy vision or framework for national wellbeing to Nature or the 'more-than-human', extending regard and rights to our island ecosystems to flourish, to the rights of our rivers to run free, liberated to a significant degree from the burden of their enclosure in systems of economic calculation and subjection to exclusively human claims of valuation. The Rights of Nature also form part of a radical new way of thinking about addressing the urgency of our climate and ecological emergencies. Dáil Éireann, the Northern Ireland Assembly and the UK Parliament have declared climate emergencies but none have followed through on the full implications of these declarations and their status is ambiguous.⁶⁹

One of the key arguments of Earth Jurisprudence is that Nature's inherent rights should be recognised in our legal system to rebalance the current dynamic. The 2010 [Universal Declaration of the Rights of Mother Earth](#) sets out a framework for this, with Nature having rights including life, respect, continuity, freedom from contamination and restoration after damage caused by humans. Our recommendations address this at different levels: a constitutional amendment explicitly recognising the Rights of Nature and the right to a healthy environment that makes the link between human needs and ecological integrity; resulting obligations on the state to respect the Rights of Nature and safeguard biodiversity and ecological integrity; and the enactment of a legislative and/or regulatory framework which provides for the Rights of Nature to be protected and exercised, with obligations on public bodies, individuals and corporations, and other steps which Ireland can take to realign our relationship with Nature and halt the devastating impact of biodiversity loss across the island.

In this submission, we hope that we have demonstrated to the Assembly that such either/or approaches to Nature rights and human rights wrongly assume that affording greater rights to Nature means fewer human rights and monumental sacrifices by people who are already stretched too thin. There is a need for recognition of the integral and reciprocal relationship between the intrinsic or biocentric Rights of Nature to exist and flourish and the anthropocentric Human Right to a safe, clean, healthy and sustainable environment.



⁶⁹ <https://www.ftbchambers.co.uk/blogs/potential-legal-effect-declarations-climate-emergency>

7. Key Recommendations to the Citizens Assembly on Biodiversity Loss

1. A constitutional amendment giving explicit recognition to the Rights of Nature to exist, persist, evolve, and regenerate in Ireland alongside the reciprocal and indivisible human right to a safe, clean, healthy and sustainable environment, as recognised by the UN. Additionally, the amendment should require that the State guarantee the rights of individuals and organisations to hold the State to account for protection of the environment, by guaranteeing the State will by its legislation vindicate the environmental procedural rights of access to information, public participation in environmental decision making and access to justice. This could take the form of an amendment asserting that 'The State guarantees through its laws it will vindicate the rights of individuals and organisations to access to information on the environment, to participate in environmental decision making and be heard, and to go to court to defend the environment and these rights'.
 - a. This call for an amendment to the Constitution would entail a call on the Government to organise a Constitutional Referendum under the provisions of Article 46 of Bunreacht na hÉireann. The Assembly may wish to consider proposing draft language to the Government for such a referendum. This could be in the form of a new stand-alone additional article, possibly titled "Environment". Alternatively, the right to a clean and healthy environment and associated procedural rights could be inserted into Art 40.6 of the Constitution (the enumerated Personal Rights).
 - b. In addition to updating environmental legislation in recognition of these new constitutional rights, established rules of procedure such as the rules around judicial review in Order 84 of the Rules of the Superior Courts, and in the Planning Act 2000 as amended, would need to be altered to reflect a commitment to broader access to justice. Environmental laws and procedures for participating in environmental fora will need to be simplified and streamlined in order to fully vindicate the rights of participation and access of any person or organisation to defend, protect, and enforce those rights on behalf of Nature (rights of standing).
2. In recommending that the Citizens' Assembly support a constitutional amendment in line with the UN General Assembly's recognition (July 29th 2022) of the human right to a safe, clean, healthy and sustainable environment (brought about by referendum) we further invite the Citizens' Assembly to support the unification, simplification and updating of environmental legislation to reflect the human right to a safe, clean, healthy and sustainable environment underpinned by the Rights of Nature. In this regard, the government should carefully consider the work already undertaken by the Climate Bar Association in drafting a model environmental code and in recommending the creation of a specialist environmental court.
3. We recommend that the Citizens' Assembly encourage the Government to support the proposal of the Parliamentary Assembly of the Council of Europe (PACE) for a new Protocol to the European Convention on Human Rights (ECHR) recognising the right to a safe, clean, healthy and sustainable environment. Strengthening the ECHR's environmental human rights protections would bolster an all-island approach to the climate and biodiversity crises by ensuring that Northern Irish citizens are also afforded the same international legal right to a healthy environment.
4. We recommend that the Citizens' Assembly note and commend the pioneering work of Donegal County Council and commission research on the progress of the Rights of Nature campaign in the County and the local authority's response with a view to publicising the outcome to raise public awareness of the concept and its implications for, inter alia, local government bodies. The Assembly may also consider a call for witnesses from the Rights of Nature campaign on the island to appear before the Assembly. This information could inform and support the public information campaign ahead of any referendum on a constitutional amendment on Rights of Nature and the reciprocal human right to a healthy environment.
5. We recommend that the Citizens' Assembly commend and endorse the Motion introduced and supported by Donegal County Council on the Rights of Nature, with a recommendation that other Councils across the island consider similar initiatives, including well-resourced and fully participatory public consultation exercises as well as local direct democracy mechanisms.
6. In order to ensure that the recommendations of the Citizens' Assembly are taken forward throughout the island of Ireland, the Citizens' Assembly is invited to copy all outcomes to the Northern Ireland Executive and

the North-South Ministerial Council, and to transmit these recommendations to any future Citizens' Assembly on future constitutional arrangements for the island.

7. The Citizens' Assembly is invited to transmit the recommendations and report of the Citizens' Assembly to the UN Harmony with Nature programme at the United Nations Headquarters in New York.
8. The Citizens' Assembly is invited to recommend that Government invite the Law Reform Commission to draw up terms of reference for a review of customary law in Ireland, also making reference to the early drafters of the 1922 Constitution, with a view to making recommendations on the further decolonisation of Irish laws. This with a view to making recommendations on bringing Irish laws and the Constitution into line with international trends consistent with a decolonisation of domestic laws and realigning Irish laws with the Rights of Nature and placing ecology at the heart of a wellbeing economy.
9. Invite the Government to create a fund for the island's leading language organisations (including, Gael Linn, Gaeloideachas, Cumann na bhFiann, Conradh na Gaeilge, Oireachtas na Gaeilge and Glór na nGael) and language scholars working at the intersection of socio-ecological transitions, language and power, to explore and deepen their contribution to our understanding of the climate and ecological crises. This contribution should focus on the important linkages between our relationships to Nature, language policy and the island's colonial experience.
10. It is recommended that the Law Reform Commission engage in research that seeks to interrogate prevailing beliefs about property rights and the meaning of 'ownership', with a view to reconceptualising property as a dynamic institution, capable of recognising the rights of non-owners (including non-humans) relative to owners, particularly in agricultural and commercial contexts.
11. In July 2014, legislation was passed in New Zealand vesting fee simple ownership of Te Urewera National Park in the park itself, securing a range of protections and rights for the landscape and biodiversity contained within it. It is recommended that the Law Reform Commission engage in research to establish whether this type of approach might be replicated in Ireland, and to identify locations across the island where it might be implemented.
12. Legislation should be introduced that establishes a statutory 'right to roam' across uncultivated land, as well as a statutory scheme to improve the provision of public rights of way in the countryside. Opening up access to Nature will foster a stronger connection to, and a deeper respect for, biodiversity in all its forms and empower people to seek its protection.
13. It is recommended that Ireland introduce a new crime of ecocide into its own domestic law.
14. As a State Party to the International Criminal Court, the Citizens' Assembly should recommend that Ireland show its support for the crime of ecocide's introduction, and indeed even propose such an addition itself.
15. The Citizens' Assembly should recommend that Ireland can use its voice in other regional and international fora to support the criminalisation of ecocide (e.g. within the EU).

Annex 1: Rights of Nature Timeline

2006

Tamaqua Borough, Pennsylvania, in the U.S., bans the dumping of toxic sewage sludge as a violation of the Rights of Nature.

Since 2006, dozens of communities in the U.S. enact Rights of Nature laws after Tamaqua became the first place in the world to recognize these rights.

2008

Ecuador becomes the first country in the world to recognize the Rights of Nature in its national Constitution.

2010

Bolivia holds the *World People's Conference on Climate Change and the Rights of Mother Earth*, where the *Universal Declaration on the Rights of Mother Earth* is issued. It has been submitted to the U.N. for consideration.

The *Global Alliance for the Rights of Nature* is formed.

Bolivia's Legislative Assembly passes the *Law of the Rights of Mother Earth*.

2011

In Ecuador, the first Rights of Nature court decision is issued, regarding the Vilcabamba River, upholding the Rights of Nature constitutional provisions.

2012

A campaign is launched in India to recognize rights of the Ganga River through national legislation.

The International Union for the Conservation of Nature (IUCN) adopts a policy to incorporate the Rights of Nature in its decision-making processes.

2013

The campaign for the *European Citizen's Initiative for the Rights of Nature* is launched.

The first state constitutional amendment to include Rights of Nature is proposed in Colorado, in the U.S.

2018

The Ponca Nation of Oklahoma, in the U.S., adopts a customary law on the Rights of Nature.

In Colombia, the Supreme Court recognizes the Amazon as a 'subject of rights.' The Administrative Court of Boyacá recognizes the Páramo in Pisba, a high Andean ecosystem facing significant mining, as a 'subject of rights.'

Uganda enacts the *National Environmental Act of 2019* in which Nature is recognized as having ‘the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution.’

The *Lake Erie Bill of Rights* is approved by the residents of Toledo, Ohio, after they were prevented from voting on the measure in 2018 by the Ohio Supreme Court. It was the *first law* in the U.S. to secure legal rights of an ecosystem.

2019

In 2019, in Colombia, the Third Court of Penalties and Security Measures in Cali recognizes the [Pance River](#), including the river basin and tributaries, as a ‘subject of rights.’

In Colima, Mexico, the Rights of Nature are recognized in the state constitution.

In Sweden, a proposed Rights of Nature constitutional amendment is introduced in Sweden’s parliament, the Riksdag.

The Catholic Bishops’ Conference of the Philippines issues a Pastoral Letter calling for the recognition of the Rights of Nature, writing ‘recognition of the Rights of Nature is at the core of the call for ecological conversion.’

2020

The Menominee Tribe of Wisconsin adopts its [Recognition of the Rights of the Menominee River](#) resolution.

The [Nez Perce Tribe](#) recognizes the Snake River as a living entity with legal rights.

The T̓silhqot’in Nation enacts its Sturgeon River law which recognizes that ‘animals, fish, plants...have rights in the decisions about their care and use that must be considered and respected.’

The [Blue Mountain Council](#) in New South Wales, Australia, adopts a measure to integrate the Rights of Nature in its municipal planning and operations.

2021

In Northern Ireland, the local district councils of [Derry City and Strabane](#), Fermanagh and Omagh, Newry, Mourne and Down and Belfast approve Rights of Nature motions.

In the Republic of Ireland, Donegal County Council also approved a Rights of Nature motion.

Annex 2: Further Reading

David Boyd, 2017, *The Rights of Nature: A legal revolution that could save the world*, ECW Press.

The Rights of Nature, Alberta Civil Liberties Research Centre: This is an interesting and up-to-date review of the Rights of Nature, including recent legal and constitutional developments. Available [here](#).

Towards an EU Charter on the Fundamental Rights of Nature, European Economic and Social Committee, 2019. Available [here](#).

EJNl Rights of Nature Documentary with John Spillane, Available to watch [here](#).

Mohr, Thomas, *Salmon of Knowledge*, *Peritia* 16 (2002) 360-95.

O'Reilly Edward *An Essay on the Nature and Influence of the Ancient Irish Institutes, Commonly Called Brehon Laws* *The Transactions of the Royal Irish Academy*. Vol 14 (1825) pp. 141-226, at 154

Tobin, Brendan *Ireland: Individual and Group Rights in Ancient Irish Law*, with M. O'Flaherty, in Suksi, M. et. al. (eds.) *First Fundamental Rights Documents in Europe*: Intersentia, Cambridge, 2015

Tobin, Brendan *Indigenous Peoples, Customary Law and Human Rights – Why Living Law Matters* Routledge, London 2014.

Annex 3: Case Studies

1. Ireland's Peatlands

In Ireland, we are the custodians of [8% of the world's blanket bogs](#).⁷⁰ Furthermore, our raised bogs are amongst the finest examples of their type in the world and account for [60% of Europe's remaining active raised bog network](#).⁷¹ Our bogs are a national treasure whose rich landscapes are a haven of biodiversity by providing refuge for a wide range of species, including several rare plants, birds and insects.

Furthermore, as well as their importance for biodiversity, they are also of vital importance for humans. Namely, by accumulating and storing millions of tonnes of carbon, our bogs are the very lungs of our country, our Amazon Rainforest. It is estimated that a 15cm thick layer of peat [contains more carbon](#)⁷² per hectare than a tropical forest but when we destroy our bogs, we allow this carbon to be released into the atmosphere, thereby disturbing the balance of carbon in the atmosphere and accelerating the climate crisis. Similarly, burning peat and other solid fuels significantly contributes to air pollution, with the European Environment Agency estimating that [1,300 people in Ireland die prematurely each year](#)⁷³ from inhaling fumes from solid fuel.

In addition to playing a vital role in keeping our air and therefore, our lungs, clean, blanket bogs have a water content in excess of 90% and act as vast water reservoirs that are crucial to the management of water within river catchment areas. Therefore, along with being a refuge of rare biodiversity, by cleaning our air and securing our water supplies, this unique ecosystem provides for some of our most basic rights. However, peatlands can only continue to look after us if we return the favour by protecting and conserving them. In our view, there is no clearer example of the extent to which Nature rights are human rights.

Sadly, the current status of bog conservation is poor. Despite the uniqueness of these habitats and the designation of some of our bogs as [Special Areas of Conservation](#)⁷⁴ under the EU Habitats Directive, [only 8% of raised bogs across the Irish Midlands are deemed suitable for restoration and conservation and a mere 1% is said to be active](#).⁷⁵ living bog (still capable of growing). [Centuries of turf cutting](#),⁷⁶ first using a tool called a *sleán* and from the 1980s onwards, with invasive machinery, has left our bogs in this sorry state. The machinery's large blades cut multiple drains into the bog, ruining its ability to hold water, which is the defining feature of this ecosystem. We now find ourselves at a crossroads. Either we continue to exploit our bogs down to the very last sod of turf and irretrievably destroy this unique biodiverse landscape, or we decide to conserve and restore it before it's too late. The path we choose will define our bogs' futures as either water reservoir or wasteland.

Faced with the potential destruction of our bogs, things have started to change in recent years. For example, in 2019, a landmark [High Court ruling](#)⁷⁷ struck down regulations allowing for the unregulated industrial extraction of peat from Irish bogs. This ruling prompted Bord na Móna's historic decision to cease commercial peat extraction and rebrand as a "climate solutions company" in 2020. However, according to a recent [investigation](#),⁷⁸ illegal extraction still occurs and in 2021 alone, peat was cut at 280 plots in protected bogs without state consent.

As recently as March 2022, the High Court granted an [injunction](#)⁷⁹ to halt a company from engaging in unregulated large-scale peat extraction in the Midlands. Worryingly, the lands in County Westmeath where illegal extraction has been taking place drain into the River Inny which flows into the nearby Lough Derravaragh, which is protected under EU law. In her judgment, Ms Justice Phelan unequivocally stated that any benefit to the mushroom industry, which uses the extracted peat for horticultural purposes, "cannot outweigh the very serious environmental consequences of allowing Harte Peat to continue to carry on an unauthorised and wholly unregulated activity".

Related to this, legal challenges, known as [judicial reviews](#),⁸⁰ initiated by peat extraction companies seeking to circumvent the requirement to obtain planning permission for horticultural peat extraction are ongoing. These efforts

⁷⁰ The Irish Peatland Conservation Council, 'Blanket Bogs', available [here](#).

⁷¹ The Journal, 'Peat was cut at 280 plots in protected bogs last year without State consent' (2022), available [here](#).

⁷² The European Commission, 'Restoring Ireland's raised bogs to capture carbon', available [here](#).

⁷³ The Environmental Protection Agency, Monitoring & Assessment, available [here](#).

⁷⁴ The National Parks and Wildlife Service, 'Special Areas of Conservation (SAC)', available [here](#).

⁷⁵ The European Commission, 'Restoring Ireland's raised bogs to capture carbon', available [here](#).

⁷⁶ RTE, 'All you need to know about turf cutting' (2022), available [here](#).

⁷⁷ The Journal, 'Environmental group wins landmark case over large-scale peat extraction' (2019), available [here](#).

⁷⁸ Noteworthy, 'Peat was cut at 280 plots in protected bogs last year without State consent' (2022), available [here](#).

⁷⁹ Noteworthy, 'High Court orders peat company to halt unauthorised extraction in Midlands' (2022), available [here](#).

⁸⁰ Noteworthy, 'EPA 'kicked the stool' from under peat company seeking extraction licence, High Court hears' (2022), available [here](#).

to weaken the protections afforded to Irish peatlands also benefit from significant [political support](#)⁸¹ for continuing commercial extraction. Notably, in November 2021, a number of Fine Gael and Fianna Fail senators initiated a bill entitled the [Horticultural Peat \(Temporary Measures\) Bill 2021](#).⁸² The Bill, which is opposed by the government, proposed to put a stay until 2030 on the decision to end the extraction of peat for the horticultural industry. This would put Ireland at odds with EU law, notably the Environmental Impact Assessments and Habitats Directives. In response to this backlash from industry and some politicians, it is suggested that inserting the Rights of Nature and the reciprocal right to a safe, clean, healthy and sustainable environment in the Irish Constitution would help shield our fragile bogs and other valuable ecosystems from political expediency and short-sighted measures.

Most recently, a [proposal to ban the commercial sale of turf](#)⁸³ in order to tackle air pollution, has been met with opposition in some rural communities who fear that it will penalise those who depend on the sale of turf for their livelihoods and to heat their homes. The ban was due to enter into force in September 2022 but has now been postponed for at least the rest of the year.

Urgent measures to prevent biodiversity loss must of course secure a just transition for the most affected communities. The opposition to the proposal to ban the sale of turf is a clear example of how much-needed environmental measures run the risk of falling at the first hurdle if not accompanied by adequate socio-economic supports. In this regard, the [home retrofitting grants](#)⁸⁴ administered by the Sustainable Energy Authority of Ireland should be expanded to include specific supports for communities reliant on turf.

Furthermore, as local communities, turf cutters and ex-extraction workers are intimately familiar with the landscape and biodiversity of our bogs, they are arguably best placed to take on new roles as custodians of this fragile ecosystem. The most recent round of government funding awarded to grassroots community organisations under the [Peatlands Community Engagement Scheme](#)⁸⁵ is a hopeful indication that this idea is starting to catch on.

Similarly, in the interest of securing a just transition and creating new employment opportunities for communities traditionally reliant on peat extraction, conservation and rewetting projects should ideally hire people with local knowledge of the bogs. In our opinion, encouraging and implementing such a sense of guardianship and custodianship of place is the most just and effective way to transition towards a more sustainable and reciprocal relationship with Nature. To this end, environmental conservation covenants (an agreement between a landowner and a body like a charity or public body to do or not do something on their land for a Nature conservation purpose) could be introduced, modelled on payment schemes used by the Department of Agriculture, Food and the Marine, such as the [Basic Payment Scheme](#)⁸⁶ or the [Organic Farming Scheme](#).⁸⁷ Such a scheme would offer regular payments to turf cutters and other rural communities in exchange for managing land in a way that protects and promotes biodiversity. In the United Kingdom, similar schemes such as [Countryside Stewardship](#)⁸⁸ and the [Sustainable Farming Incentive](#)⁸⁹ have proved extremely popular, with tens of thousands of agreements being set up to provide additional revenue streams to farmers and rural communities.

Protecting and rehabilitating Ireland's peatlands must take centre stage in legislative and policy decisions aimed at tackling the climate and biodiversity crises. This can be meaningfully achieved by abandoning a longstanding extractivist approach that, in recent years, was only somewhat curtailed by the planning system, in favour of the Rights of Nature and the human right to a safe, clean, healthy and sustainable environment.

A recent legal challenge⁹⁰ in the United States grounded in a Rights of Nature law demonstrates the potential of the Rights of Nature in protecting our peatlands. In November 2020, an Orange County charter amendment aimed at protecting wetlands and waterways was overwhelmingly passed by voters. The amendment formed the basis for the first US legal challenge relying on Rights of Nature arguments which sought to block a housing development in fragile wetlands, arguing that the development would violate the wetlands' right to flow freely. In July 2022, the case was dismissed on the basis that the charter amendment was superseded by state law. However, this first of a kind legal

⁸¹ The Irish Times, 'Peat Bill proposes to put a stay until 2030 on decision to end extraction' (2021), available [here](#).

⁸² The Horticultural Peat (Temporary Measures) Bill 2021, available [here](#).

⁸³ The Irish Times, 'Sinn Féin motion targeting turf sale ban defeated by Government' (2022), available [here](#).

⁸⁴ The Sustainable Energy Authority of Ireland, 'Home Energy Grants', available [here](#).

⁸⁵ The Department of Housing, Local Government and Heritage, 'Minister of State Malcolm Noonan announces €160,000 grant funding for peatland conservation initiatives across the country' (2022), available [here](#).

⁸⁶ Lynch, E. Basics of the Basic Payment Scheme, Today's Farm March/April 2016, available [here](#).

⁸⁷ The Irish Farmers Association, 'Organic Farming Scheme', available [here](#).

⁸⁸ The UK Rural Payments Agency, 'Countryside Stewardship', available [here](#).

⁸⁹ The Department for Environment, Food and Rural Affairs and Rural Payments Agency, 'Sustainable Farming Incentive Guidance', available [here](#).

⁹⁰ The Guardian, 'Streams and lakes have rights, a US county decided. Now they're suing Florida'(2021), available [here](#).

challenge is an encouraging example of how Rights of Nature arguments can be developed and deployed for the protection of wetlands.

In Ireland, a number of grassroots organisations and community groups have formed to speak on behalf of our bogs and conserve and protect these vital but vulnerable sites. For example, the [Friends of Ardee Bog](#)⁹¹ in County Louth work tirelessly to protect, preserve and promote Ardee Bog, offer protection to Curlews breeding in the bog and campaign for the Rights of Nature. [Clara Bog Nature Reserve](#)⁹² in County Offaly is another fine example of what can be achieved when protecting and promoting biodiversity is placed at the heart of how our peatlands are managed.

As a [signatory](#)⁹³ to the Ramsar Convention on Wetlands of International Importance, Ireland adheres to the Convention's goals on "the conservation and wise use of all wetlands through local and national actions and international cooperation ...". Furthermore, 45 sites in Ireland have been designated as Wetlands of International Importance under the Convention. In light of Ireland's international commitments on the protection of wetlands and the unique importance of our peatlands at European and international level, Ireland should strive to be a world leader in this area by granting legal rights to our bogs to exist, persist and regenerate free from harm.

2. The River Shannon

Rivers provide another compelling example of the extent to which Nature rights are human rights. In particular, as our drinking water is sourced from rivers, lakes, springs and groundwater, our health is intricately linked with the health of our rivers. However, according to a [2020 report](#)⁹⁴ from the Environmental Protection Agency ("the EPA"), our drinking water supplies are still not as robust as they need to be to ensure that supply is resilient and safe into the future.

The main threats facing the biodiversity and water quality of Irish rivers come from human activities, in particular, nitrogen and phosphorus from agriculture and urban waste water discharges. High nutrients are both catastrophic to the rivers' natural ecosystems by causing nuisance plant and algal growth and pose a substantial risk to human health. Worryingly, the EPA has [classified](#)⁹⁵ 43% of our rivers and 44% of our lakes as being of unsatisfactory quality.

The extent to which we rely on clean, ecologically flourishing rivers is evidenced by the fact that a [pipeline](#)⁹⁶ to extract 300 million litres of water from the River Shannon on a daily basis to supply Ireland's expanding population with drinking water is making its way through the planning process. The project proposes to take water from the lower River Shannon at Parteen Basin in Co. Tipperary, with a new water treatment plant nearby at Birdhill. Treated water will then be piped 170km to a termination point reservoir at Peamount in County Dublin, connecting into the Greater Dublin Area.

Whilst forward planning is important for maintaining reliable supplies of clean drinking water well into the future, this cannot be done at the expense of the ecological integrity and biodiversity of the River Shannon. Notably, a [Water Environment \(Abstractions\) Bill](#)⁹⁷ is currently being prepared in response to a [European Commission infringement action](#)⁹⁸ against Ireland for its failure to comply with the Water Framework Directive's requirement to put in place a system for prior authorisation for water abstraction (i.e., the removal of ground or surface water for domestic, agricultural or industrial use). Incredibly, water abstraction is not effectively regulated in Ireland and we therefore have no idea of the extent to which our natural water resources are being used, where water is being taken from and for what purpose. This creates all sorts of risks for the local environment, including potential depletion of wetlands and damage to biodiversity. However, the Bill that will supposedly tackle these threats to the biodiversity of our rivers proposes to allow 100 times more water to be abstracted without a licence in the Republic compared to Northern Ireland. Organisations such as the Sustainable Water Network (SWAN) [oppose](#)⁹⁹ the Bill in its current form on the basis that licensing and registration exemption limits are far too high and therefore pose a threat to the ecological integrity of our rivers. In addition, in January 2021, the Joint Committee on Housing, Local Government and Heritage published its [Report](#)¹⁰⁰ on Pre-Legislative Scrutiny of the Bill. It recommended, amongst other measures, that the

⁹¹ Friends of Ardee Bog, available [here](#).

⁹² Clara Bog Nature Reserve, available [here](#).

⁹³ The Ramsar Convention Ireland Country Profile, available [here](#).

⁹⁴ The Environmental Protection Agency, 'Drinking Water Quality in Public Supplies 2020', available [here](#).

⁹⁵ The Environmental Protection Agency, 'Water Quality in 2020: An Indicators Report', available [here](#).

⁹⁶ Irish Water, 'Water Supply Project – Eastern and Midlands Region', available [here](#).

⁹⁷ An Taisce, 'Joint Oireachtas Committee report on problematic Abstraction Bill' (2021), available [here](#).

⁹⁸ The European Commission, 'October infringements package: key decisions' (2020), available [here](#).

⁹⁹ Sustainable Water Network, 'Water Environment (Abstractions) Bill', available [here](#).

¹⁰⁰ Joint Committee on Housing, Local Government and Heritage, 'Joint Committee on Housing, Local Government and Heritage launches Report on Pre-Legislative Scrutiny of the General Scheme of the Water Environment (Abstractions) Bill' (2021), available [here](#).

threshold for the registration of water abstraction in the Bill be lowered to 10 cubic metres, as in Northern Ireland, Scotland, and Wales and that the licensing thresholds be lowered from 2,000 cubic metres per day to 20 cubic metres per days, as is the case in Northern Ireland, England and Wales.

In a separate project that threatens the ecological integrity of the River Shannon, as well as human health, in April 2021, An Bord Pleanála (“the Board”) [confirmed](#)¹⁰¹ that a proposed extension to an extraction facility at Europe’s largest alumina plant in County Limerick would meet the definition of a strategic infrastructure development. The implication of this is that the proposed development now benefits from a fast-tracked planning process that bypasses the local authority and limits the possibility for public participation. The Board was expected to deliver its decision on the proposed expansion in June 2022. However, in June, the Board informed the applicant company and those objecting to the site’s expansion that the application is still pending before the planning inspector and will not be dealt with until at least September 2022.

The expansion of the Aughinish Alumina bauxite refinery is [widely opposed](#)¹⁰² by local environmental groups who maintain that this would pose unacceptable environmental risks to the Shannon estuary by causing a further build-up of toxic material at the site in Askeaton. The proposal to expand the bauxite residue disposal area by on-site rock blasting is also a cause of concern. As the explosions would take place close to the banks of a red-mud pond, there is a real risk of contamination of the River Shannon.

The above legislative and project proposals demonstrate that we are at a critical juncture for the ecological integrity and cleanliness of our rivers, particularly the River Shannon. The extent of the changes and risks that the River Shannon will undergo over the coming years necessitates a strong Rights of Nature approach for the sake of both the river and the people of Ireland. Inspired by pioneering examples of the Rights of Nature being given legal effect by granting legal personhood to the Whanganui River in New Zealand and to Canada’s [Magpie River](#)¹⁰³ in 2021, we encourage the Citizens’ Assembly to recommend that Ireland set an historical precedent by being the first European country to grant a river legal personhood.

The [River Shannon Management Agency Bill 2020](#)¹⁰⁴, which is currently making its way through the Houses of the Oireachtas, presents an ideal opportunity to grant legal personhood to the River Shannon. If passed, it will create a single competent authority to coordinate flood risk and management along the river. We recommend that the Bill be amended to grant legal personhood to the River Shannon. A further amendment should expand the competent authority’s mandate so that, similarly to the Māori guardians who can speak on behalf of the Whanganui River in court, the authority will act as an independent custodian of the River Shannon’s rights and have the ability to bring legal challenges on its behalf.

¹⁰¹ An Bord Pleanála, Case Reference: PC91.308903 Aughinish Island, Askeaton, Co. Limerick, available [here](#).

¹⁰² AL Circle, ‘Rusal’s Aughinish alumina refinery expansion opposed by local groups’ (2022), available [here](#).

¹⁰³ International Rivers, ‘Why Recognize a River’s Rights? Behind the scenes of the Magpie River case in Canada.’ (2021), available [here](#).

¹⁰⁴ River Shannon Management Agency Bill 2020, available [here](#).

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