ecotrust canada

Rights of Nature

HOME-LANDS TOOLKIT

2022

Rights of Nature Module

Purpose and Outcomes

- Provide foundational information on the Rights of Nature movement.
- Explain how legal recognition for the rights of nature can help Indigenous communities protect their homelands.
- Give applied examples of how communities, nations, and states around the world have legislated and implemented their own approaches to the rights of nature.

Overview

This is one module within a broader toolkit intended to facilitate the goals and projects of First Nations communities related to housing and homelands governance. Each module can be used individually in connection with other supporting modules, or in conjunction with the toolkit as a whole-system approach.

The term “rights of nature” has come to refer to a growing movement to legally recognize natural bodies such as mountains, rivers, or whole territories as legal persons, which provides legal standing for their custodians and stewards who may seek legal remedies to natural harms.

The value of these rights is that harm to nature recognized in this way can enable direct legal action. Whereas without being recognized as a “legal person” taking legal action for harm to the natural environment usually needs to be framed through harm to a human being. Where the damage to nature is significant but the impact to humans is not, the current norm limits the ability of the law to protect the natural environment. Simply put, until very recently, the law sees humans as having rights while nature does not.

If someone injures your body then you can sue for damages. Similarly, the rights of nature framework provides the possibility to seek a direct remedy for environmental harm. While nature cannot stand in court and defend itself, much like how children are not expected to represent themselves, this framework provides an avenue for custodians and guardians to stand in court for nature and advocate for its rights. Where Indigenous communities and their traditional territories are concerned this framework would provide a clear, legally empowered stewardship role in relation to their lands.


Nuxalk Territory

Relevance to Housing and Homelands Governance

In the case of Indigenous traditional territories, this understanding of property relations has the potential to give better expression to more culturally legitimate relationships to land that differ from European models that centre exploitation and exclusion. This can be the case both in the broader Nation context regarding territorial homelands governance as well as in an individual or family context in relation to housing.

If an individual or group wants to invest time and energy into building a home in their territories, they often face obstacles due to the collective nature of Aboriginal Title. Due to the imposed limits on Aboriginal lands under Crown law, there can be an inherent disincentive to invest in building a home if the restrictions on title require that privately held land return to community hands at the end of a certain term, as with a 99-year lease.

Understanding a territory to have inherent rights to its integrity and a certain kind of ownership of itself opens the path to different forms of property relations. One example would be the possibility of gaining a community recognized entitlement to land by demonstrating beneficial and sustainable use of the land, both to the benefit of human members of the community as well as non-human members. Rather than the rights to occupy and use land coming from an external organization based on paying for an entitlement to do whatever you want with it, an entitlement to land of this kind would derive directly from committing to and fulfilling the inherent stewardship relation to the land itself. In this way, continued use and benefit is guaranteed through the individual or group's good stewardship of their charge. For a look at how this would fit into a compatible community housing framework, see our module on Community Land Trusts. This 'stewardship title' approach would allow members of the community to invest time and energy

into their homes and territories without having to worry about losing the benefit of that work in the future, provided they did not abuse or abandon the land. Given that many communities face difficulties in getting members to care for and maintain their homes due to the traumas of the housing policies under the Indian Act, this relationship to land and property may renew the individual stewardship relation to land and make the responsibility to care for it explicit.

Another benefit of this approach is that the nature of entitlement to the land can remain collective, and therefore be more compatible with a Crown law understanding of Aboriginal Title, and yet still be used, improved, and enjoyed by individual members.

Example Implementations

The first rights of nature law was implemented in Tamaqua Borough, Pennsylvania in 2006. Since then, implementations of the rights of nature have spread across North America, introduced as national policy by countries like Ecuador, Bolivia, Panama, and Uganda, and recognized by courts in Colombia, India, and Bangladesh.

In Indigenous contexts, rights of nature laws and policies have been implemented by the Menominee Tribe of Wisconsin, the Ponca Tribe of Oklahoma, the Nex Perce Tribe, the White Earth Band of Ojibwe, the Oneida Nation, and the Yurok Tribe in California.

More locally, in 2020 the Tŝilhqot'in enacted the Sturgeon River Law, which states that natural entities such as animals, fish, and plants have rights that need to be considered and respected regarding their care and use. In 2021, the Innu Council of Ekuanitshit in conjunction with the local municipality recognized the rights of the Mutehekau-shipu River.

While each of these examples differ in varying degrees due to local contexts and traditions, each approach to implementation of a rights of nature framework usually includes a few common elements:

1. The framework incorporates a recognition of specific legal rights. This can include statements that recognize the right of a natural entity to exist, to function well, to remain unpolluted, to the integrity of its ecosystem, etc.

2. There is a provision to protect and defend the proposed rights. This outlines how guardians and stewards – be they people, communities, or governments – are invested with the authority (or 'standing') to legally advocate for and defend rights on behalf of the natural entity.

3. There is an outline for a strategy as to how these rights are going to be respected. This can include steps which different levels of government or institutions may need to take to ensure they work in harmony with the rights of nature as they are recognized. This may include a review of institutional practices, environmental impact research, collaboration with other stakeholders, etc.

Next Steps

- Review the information provided in the Title and Tenure module to better understand the relationship between title and the rights of nature.
- Engage in the Values and Principles module if further articulation of these might be needed for the purposes of envisioning a tailored-to-community approach to the rights of nature. [Link to module]
- Reach out to the Indigenous Home-Lands initiative at Ecotrust Canada. We're ready to offer support to First Nations partners interested in delving further into any of the concepts presented here. To learn more, contact us via https://ecotrust.ca/priorities/home-lands/