A Comparative Constitutional Analysis of Natural Resources Protection

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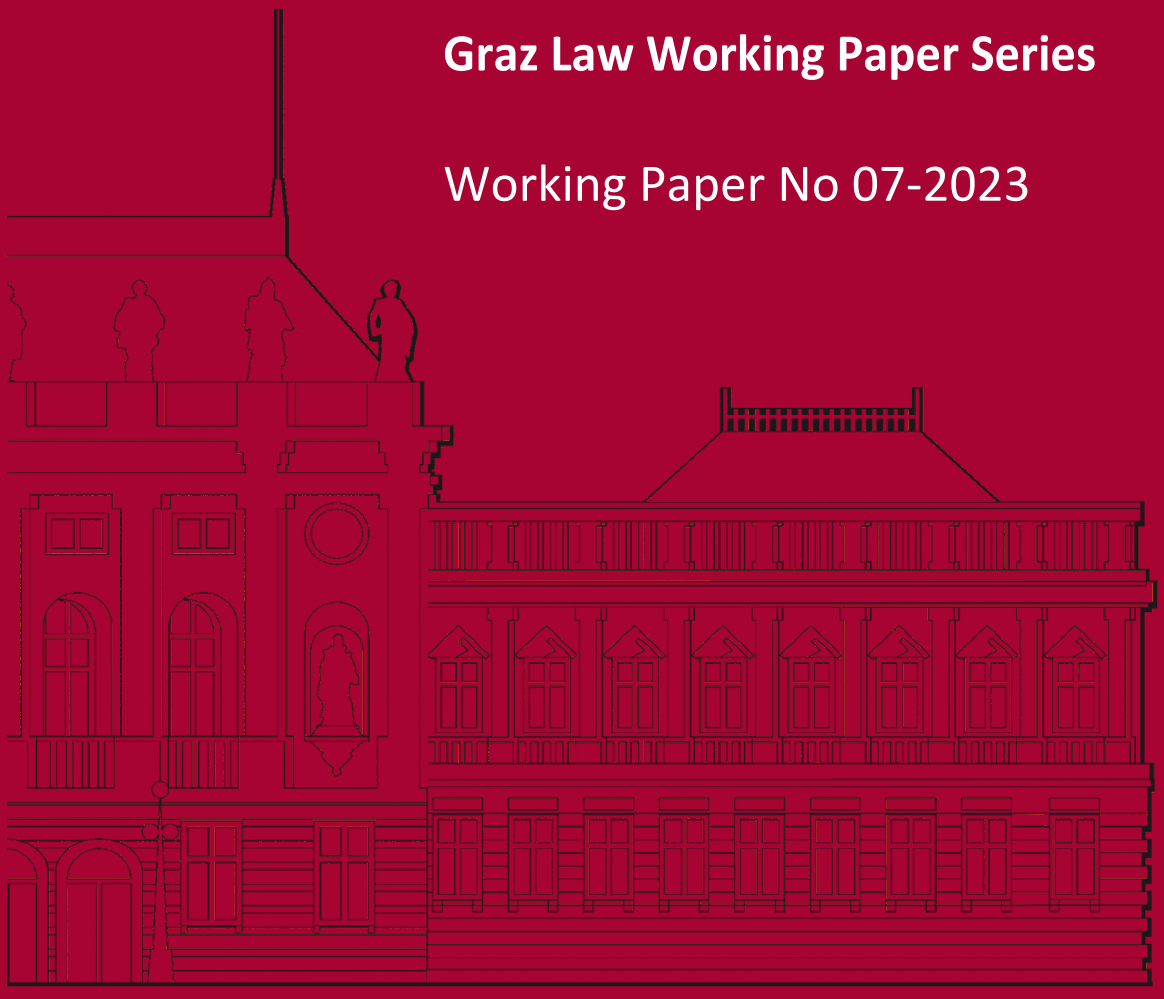
Graz Law Working Paper Series

Working Paper No 07-2023



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To cite this paper:
Ruppel/Murray, 'A Comparative Constitutional Analysis of Natural Resources Protection', Graz Law Working Paper No 07-2023.

Abstract

Globally, constitutions follow different approaches to dealing with their respective country's natural resources, which are rooted in the diverging cultures, political and legal systems, as well as in the distinct historical developments of the diverse constitutional orders. Accordingly, the present contribution discusses how the analysed countries' constitutions have played different roles in the field of the protection of natural resources, be they renewable or non-renewable. This contribution observes the notable similarities between the inclusion of provisions relating to ownership, exploitation and exploration, and the use of, natural resources. Moreover, while constitutional protection is generally afforded to natural resources through the human right to a healthy environment, this contribution reflects upon how the developing trend of adopting constitutional rights for nature both affects and ostensibly guarantees the protection and management of natural resources.

This paper is based on Oliver C. Ruppel and Ruda Murray, 'Natural Resources' in Max Planck Encyclopedia of Comparative Constitutional Law (OUP 2023).

Keywords: Comparative Constitutional Law, Constitutional Design, Constitutions and International Law, Legal System, Natural Resources, Natural Rights, Principles and Objectives of Constitutions, Rule of Law

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1. Introduction: Defining Natural Resources

Natural resources are the foundation for all life on earth. All living creatures are dependent thereon to exist (natural resources guarantee a continued supply of food, water, and energy) and, thus, it is subject to many sorts of laws and policies. While the term 'natural resources' is often used in conservation laws and regulations, no clear and generally acknowledged definition exists. The most common approach is to describe the term widely, while others are more specific. The Oxford Dictionary defines natural resources as '[m]aterials or substances occurring in nature which can be exploited for economic gain'. In the context of international environmental law, the Declaration of the UN Conference on the Human Environment, which was discussed and adopted in Stockholm (1972) and is considered to be one of the legal foundations of international environmental protection in modern times, proclaims that natural resources include 'the air, water, land, flora and fauna', which 'must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate' (Principle 2).

In general, natural resources include renewable resources stemming 'from renewable natural stocks that, after exploitation, can return to their previous stock levels by natural processes', provided they 'have not passed a critical threshold' from which 'regeneration is very slow (e.g. soil degradation), or impossible (e.g. species extinction)', and non-renewable resources', whose natural stocks cannot be regenerated' or that can only be regenerated over a considerable period (Westhoek et al). Fossil fuels, metals and minerals are examples of non-renewable resources, while land, air and biodiversity can be classified as renewable resources.

While many constitutions do not make specific reference to natural resources or lack a clear definition thereof, one exception is the Constitution of Kenya: 27 August 2010 (as Amended to 2021), which defines it in Article 260 as:

> the physical non-human factors and components, whether renewable or non-renewable, including (a) sunlight; (b) surface and groundwater; (c) forests, biodiversity and genetic resources; and (d) rocks, minerals, fossil fuels and other sources of energy.

Kenya is also one of the few countries in the world to have a provision in its Constitution on environmental courts (Article 162(2)(b)). The Environment and Land Court Act (Act No. 19/2011), which plays a role in governing the country's natural resources, was promulgated to establish a superior court with original and appellate jurisdiction to hear and decide on all matters concerning the environment and the use and occupation of, and title to, land (Preamble and Article 13).

1.1 Core Meaning in Constitutions Which Refer to the Term

The core meaning of 'natural resources' in constitutions which refer to it regularly includes the aspect that it denotes raw materials provided by nature (see Article 302 of the Constitution of the Bolivarian Republic of Venezuela: 15 December 1999 (as Amended to 2009) and Article 408 of the Constitution of the Republic of Ecuador: 28 September 2008 (as Amended to 2021)). Others merely inexplicitly list examples of natural resources — e.g., Articles 19–20 of the Constitution of Algeria: 28 November 1996 (as Amended to 2020) and Article 9 of the Constitution Law of the People's Republic of China: 4 December 1982 (as Amended to 11 March 2018). Thereby, the term is used rather broadly with few express distinctions between renewable and non-renewable resources — one exception being the Constitution of the Plurinational State of Bolivia: 7 February 2009, which distinguishes between its renewable (forestry, water, animals, biodiversity, and, specifically, coca) and non-renewable resources (e.g., minerals 'in all of their states' and hydrocarbons) in Part IV Title II.

1.2 Delineation of Overlapping Concepts

Since the environment is a concept closely related to natural resources, it is often found in constitutions that the conservation of natural resources and environmental protection are mentioned concurrently. Overlaps exist between the two concepts and the borders are fluent. The environment has a broader meaning and not only encompasses physical and biological factors, but also social factors, including aesthetic and cultural components. Thus, the term environment denotes the entire range of living and non-living factors that influence life on earth, and their interactions, while the term natural resources refers to products of the environment exploited by humans and considered economically useful. The term 'natural resources' is narrower than nature, but broader than biological diversity since it also encompasses non-living organisms including water, soil, and land (Beyerlin and Holzer 2013). Therefore, because of this overlap, constitutional provisions designed for the protection of

the environment could apply to the conservation of natural resources (e.g., Article 73 in the Constitution of Zimbabwe: 22 May 2013 (as Amended to 2021); Article 39(3) of the Constitution of the Republic of Azerbaijan: 12 November 1995 (as Amended to 2016); Article 5 of the Constitution of the Kingdom of Bhutan: 18 July 2008). Conversely, not all elements of the environment will be protected by provisions that apply to the protection of natural resources (see Article 270(1)(c) in Zimbabwe's Constitution; Article 7 of the Constitution of the Czech Republic: 16 December 1992 (as Amended to 2021); Article 120(2) of the Constitution of South Korea: 17 July 1948 (as Amended to 1987)).

Additional overlap can be observed between natural resources, the environment, and Mother Nature in constitutions, which have adopted rights for nature (see Stone 1972). The Universal Declaration of Rights of Mother Earth, adopted by the World People's Conference on Climate Change and the Rights of Mother Earth in Cochabamba, Bolivia, on 22 April 2010, regards Mother Earth as a 'living being' comprising 'a unique, indivisible, self-regulating community of interrelated beings that sustains, contains and reproduces all beings' (Article 1). Thereby, nature receives rights, which include the right to exist, thrive, regenerate, and seek judicial redress, via its guardians, for violations of its rights (Articles 2–3). Thus, these constitutions contain provisions which simultaneously concern the protection of the environment, sustainable use of natural resources, and rights for nature — as contained in the Declaration of Rights of Mother Earth (e.g., Article 2(IX) of the Political Constitution of the Free and Sovereign State of Colima: 19 September 1917 (as Amended to 2022)).

2. Analyzed Constitutions

To provide a regionally balanced insight, one constitution of each of the following geographic regions has been analyzed: for Africa, South Africa; for the Americas, Brazil; for Asia, India; for Europe, Germany; and for Oceania, Australia. With this selection, major legal systems in the world are represented. Furthermore, the constitutions discussed provide a differentiated view of how natural resources are dealt with. The constitutions of the countries, which have, to date, incorporated rights for nature will also be examined to determine how such rights affect the regulation of natural resources, particularly on state ownership and exploitation. These countries are Ecuador and Bolivia.

3. Evolution

Natural resources, as important foundations of economic development in many countries, have been subject to national interests and, thus, constitutional regulation throughout history. Yet, the protection and conservation of natural resources only became relevant in terms of constitutional regulation in the past decades, particularly, following the Stockholm Conference. Since the mid-1970s, the right to a healthy environment, which may serve as a legal foundation to claim that the conservation of natural resources has been introduced into many constitutions, with Portugal and Spain breaking the first ground in 1976 and 1978, respectively, and it has been observed that the recognition of environmental rights has grown more rapidly over the past decades than any other human right (Law and Versteeg 775).

Subsequent to the Earth Summit held in Rio de Janeiro, Brazil, in 1992, the notion of sustainable use of natural resources has become an increasingly common feature in many constitutions (e.g., Article 59(1)(dh) of the Constitution of the Republic of Albania: 21 October 1998 (as Amended to 2016); Article 39(2) of the Constitution of the Republic of Angola: 21 January 2010 (as Amended to 2021); Article 12 of the Constitution of the Republic of Armenia: 5 July 5 1995 (as Amended to 2020)).

While the ideology that rights ought to be granted to nature has been held for centuries by many indigenous and select religious groups (see Radziunas), its 'Western Awakening' was observed in 1972 with Stone's article 'Should Trees Have Standing?' (Macpherson 332), but only gained traction following the incorporation of rights for nature in Ecuador's Constitution and increased awareness and global interest created by the 2010 World People's Conference (Acosta (2010); Acosta (2013)).

4. Comparative Description of the Role and Meaning of 'Natural Resources' in the Context of Individual Constitutions

In constitutional contexts, a distinction is made between the economic and environmental aspects of natural resources, given that they are used economically and, thus, require special regulation regarding the question of who is entitled to make use thereof; what happens with revenues resulting from their use; and how they are to be protected in terms of sustainable use for the benefit of present and future generations. The economic aspects are illustrated through specific provisions concerning the ownership (property rights), exploitation, exploration, mining, utilization, etc. rights of the government or individuals to (mostly) economically viable (i.e., non-renewable) natural resources (see Botchway and Rukuba-

Ngaiza; Article 102 of the Political Constitution of the Republic of Nicaragua: 19 November 1986 (as Amended to 2021)). Environmental aspects are conversely concerned with the conservation, protection, and sustainable use of natural resources and the ecosystems they form part of (e.g., Article 60 of the Constitution of Nicaragua; Article 54 of the Constitution of the Republic of Lithuania: 25 October 1992 (as Amended to 2022)). Note that most constitutional provisions combine the economic and environmental aspects of natural resources (see Section 2 of Title VII in the Constitution of Niger (Seventh Republic): 31 October 2010 (as Amended to 2017) and Chapter 2 of Title III in the Political Constitution of Peru: 31 December 1993 (as Amended to 2021)).

Ownership of natural resources is a regulatory instrument often found in national constitutions in complementation to the international law principle of permanent state sovereignty (UNGA Resolution 1803 of 1962). Mostly, the sovereign state (e.g., Article 11 of the Constitution of the Kingdom of Bahrain: 14 February 2002 (as Amended to 2017)) or the people (e.g., Article 13 of the Constitution of Ukraine: 28 June 1996 (as Amended to 2019)) are defined as the owners of natural resources. Usually, it is stated that ownership contains a socioeconomic element establishing it as being owned for the benefit of the people and present and future generations. Both the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social, and Cultural Rights (1966) in their respective Articles 1(2) provide individuals with fundamental rights to the natural resources in their countries. See also Article 21(1) of the African Charter on Human and Peoples' Rights (1981), which stipulates that no member state may deprive its people of their nation's natural resources and that all such peoples have the right to 'freely dispose of their wealth and natural resources'.

Provisions regarding the ownership of natural resources are regarded as essential and are usually elaborate in those countries that have substantial mineral or forest resources, and where the expansion of agriculture plays a key economic role. This gives rise to a prevalent issue in many countries, namely the recognition (or absence) of indigenous people's rights to exercise their traditional ownership and usage of certain natural resources in constitutions (see Section C(7)(a) of COP 15 Kunming-Montreal Global Biodiversity Framework).

In the same context, it is necessary to provide protection mechanisms to conserve natural resources and regulate their sustainable use, which is often prescribed by national constitutions either directly in the form of state obligations or as directives to the legislature

to enact related statutory law. Many constitutions recognize the right to a healthy environment, which can also serve as the legal foundation to enforce the conservation of natural resources before competent courts, as the conservation of natural resources is intricately linked to the fulfilment of human rights (Rio+20 Joint Report). Legislative and executive powers in matters related to the protection of natural resources are further examples of domestic constitutional provisions that refer to natural resources.

4.1 South Africa

Regarding natural resource governance and the challenges of the 21st century, South Africa is an important political actor on the African continent. As the only African nation with a G20 seat, South Africa is not only a leading economy on the continent, but has, compared to other African countries, a well-developed infrastructure, which, together with its unique location on three essential shipping routes from West to East, makes it an ideal 'pathway to Africa', also for natural resources exploitation (see Ruppel and Borgmeyer).

The Constitution of the Republic of South Africa: 18 December 1996 (as Amended to 2012) — the supreme law of the land — was approved by the Constitutional Court after two years of negotiations and drafting by the elected Constitutional Assembly, which was instituted following the end of Apartheid. This Constitution has been lauded globally for its Bill of Rights, which is often considered as a model owing to its visionary formulation of civil and political rights, as well as its wide range of enforceable social and economic rights. Section 24 is the central clause relevant to natural resources and the environment and states that:

> Everyone has the right to (a) an environment that is not harmful to their health or well-being; and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that – (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

However, unlike many constitutions, which provide that natural resources are owned by the State (e.g., Article 100 of the Constitution of Namibia: 21 March 1990 (as Amended to 2014)) (Ruppel and Ruppel-Schlichting), the South African Constitution contains no explicit provision assigning ownership of, nor the sharing of revenues from, natural resources. Section 24 merely recognizes everyone's entitlement to the beneficial use thereof. In the same spirit, the property clause in Section 25 provides that public interest incorporates 'reforms to bring

about equitable access to all South Africa's natural resources'. In line therewith, the concept of public trusteeship emerged — the idea that the country's natural resources belong to all its people (Viljoen). This is reflected in Section 3(1) of the National Water Act (Act No. 36/1998) — declaring the National Government as the 'public trustee' of the country's water resources. Followed by the National Environmental Management Act (Act No. 107/1998), in Section 2(4)(o) — the 'environment is held in public trust for the people'; then the Mineral and Petroleum Resources Development Act (Act No. 28/2002) in Section 2, which confirms the National Governments 'custodianship' over the nation's mineral and petroleum resources to 'promote equitable access' to all citizens; and, lastly, the National Environmental Management: Biodiversity Act (Act No. 10/2004) in Section 3 — affirming the State's 'trusteeship of biological diversity'.

Within the Constitution, natural resources are subject to environmental conservation in terms of Section 24, which is anthropocentric and can be asserted vertically against the State. Whether the environmental right also applies horizontally, i.e., whether it can be invoked in private disputes, is subject to debate (Glazewski 5-12). Section 24 can be invoked by all people in South Africa, but it excludes animals and plants. The substantive environmental right entrenches, on the one hand, an enforceable defensive right and, on the other, a positive obligation directed at all branches of government. Section 38(d) of the Constitution also introduces the public-interest action, whereby anyone can approach a court in the sole interest of the public when a right (e.g., Section 24) has been infringed upon. Thereby, one need not have a direct interest in the matter to take legal action (Swanepoel 29). This is further iterated in Section 32(1) of the National Environmental Management Act and the Promotion of Administrative Justice Act (Act No. 3/2000), which was promulgated to give effect to the right of 'just administrative action' in Section 33 of the Constitution.

The scope of application of Section 24 is overly broad, because the term 'environment', as used but not defined by the drafters, is itself broad. Thereby, it can be implied that this provision not only contains a fundamental right but also enshrines cultural and socioeconomic aspects in Section 24(b). Section 1 of the National Environmental Management Act defines the environment as:

> the surroundings within which humans exist and that are made up of: (i) the land, water and atmosphere of the earth; (ii) micro-organisms, plant and animal life; (iii) any part or combination of (i) and (ii) and the interrelationships among and between them; and (iv) the

physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and wellbeing.

Of particular importance regarding natural resources is Section 24(b)(iii) of the Constitution, according to which measures need to be taken to prevent pollution and ecological degradation, promote conservation, and secure ecologically sustainable development and use of natural resources, while promoting justifiable economic and social development. As explicitly mentioned in Section 24, such measures include legislative actions in the form of statutory environmental law, but also other measures implemented by the executive branch, such as policies and programs. To that end, the judiciary plays a significant role in the realization of this right, e.g., by imposing sentences on people who commit environmental crimes and ensuring that the government upholds its obligations created by Sections 24 and 27 (see Krüger).

The Constitution sets out in Section 40(1) that the South African government is comprised of three distinct, interdependent, and interrelated spheres, namely national, provincial, and local (municipal). As to their respective competencies, Schedule Four provides a list of functional areas over which the national and provincial spheres have concurrent legislative competence (Part A), such as matters concerning the environment and nature conservation, excluding national parks, national botanical gardens, and marine resources, with the local sphere possessing competence to regulate and manage matters affecting their respective municipal areas (Part B), such as air pollution, land-use planning, and the supply of water and sanitation services. Similarly, Schedule Five (Part A) lists the functional areas over which the provincial sphere has exclusive legislative competence, and the corresponding (Part B) regulation and managerial competence of the municipal sphere over matters such as waste removal and disposal. Crucially, Section 41(1) requires that these spheres cooperate, preserve peace, and secure the well-being of the nation's people. Respectively, Sections 83-102, 103-150, and 151-164 describe the capacities and powers of the national, provincial, and local spheres. Given that the 'environment' is a matter of concurrent national, provincial, and local concern, naturally, there is overlap in the exercise of their duties in relation thereto (see Thornhill).

Revenues out of natural resources from mining are governed by the Public Finance Management Act (Act No. 1/1999), which provides that the Minister of Minerals and Energy can determine that any community or local government receives a payment from royalties resulting from mining activities. Such payments go to the Local Economic Development Fund,

which is managed by the national Department of Provincial and Local Government and which finances projects to the benefit of local governments or implemented by them (Brosio and Singh 14).

According to reports by the IPBES (2019), the ICCA Consortium (2021), the FAO on Forest Governance (2021), and the IPCC (2022), environmental degradation trends are 'less severe or avoided' in areas owned or managed by indigenous peoples. This can be attributed to most indigenous peoples' cultural and spiritual connection with nature, and with the steady decline of the world's natural resources, traditional knowledge of conservation and sustainability is gaining recognition (Magni 438). No mention is made in the South African Constitution regarding indigenous peoples' usage and ownership of natural resources located in their traditional territories. However, as South Africa's legal system consists of a hybrid of Roman-Dutch Civil Law, English Common Law, and Customary Law, the Constitution does acknowledge the validity of customary laws applied by indigenous peoples in South Africa, which concern natural resources (Sections 39(3) and 211–212). Also, through the cases of *Alexkor Ltd et al v the Richtersveld Community et al* (2003) and *Gongqose et al v Minister of Agriculture, Forestry et al* (2018), clarity was given as follows: provisions in environmental legislation as regards natural resources do not extinguish the rights and traditions of indigenous peoples regarding said resources and the use and exploitation thereof. These rights continue to exist subject to the limitations and requirements laid out in the relevant legislation, particularly regarding conservation and sustainable development (see Humby et al; Rautenbach; Maimela). At present, South Africa does not integrate indigenous conservation into national environmental protection laws. However, this might change in the future, since the High-Level Panel Report for Submission to the Minister of Environment, Forestry, and Fisheries of 15 December 2020 revealed that South Africa ought to be turning toward its indigenous peoples for guidance.

Resembling Germany's, South Africa's Constitution is regarded as one of the most 'international law-friendly' constitutions in the world (Tladi 311; see Sections 39(1)(b) and 233). Consequently, international environmental law instruments do influence policymaking on matters concerning natural resources. For example, South Africa has ratified the Revised African Convention on the Conservation of Nature and Natural Resources (2016), which in Articles 2 and 4 requires States to adopt measures to achieve the objective of conserving and

sustainably using natural resources 'in the interest of present and future generations' (see Ruppel (2021)).

4.2 India

The supreme law of India, namely the Constitution of India: 26 January 1950 (as Amended to 2021), which replaced the prior Indian Independence Act (1947), contains an explicit provision regarding the ownership of natural resources in Article 297:

> (1) All lands, minerals and other things of value underlying the ocean within the territorial waters, or the continental shelf, or the exclusive economic zone, of India shall vest in the Union and be held for the purposes of the Union.
>
> (2) All other resources of the exclusive economic zone of India shall also vest in the Union and be held for the purposes of the Union.

However, Article 39(b) of the Constitution provides that state policy should be directed towards securing 'that the ownership and control of the material resources of the community are so distributed as best to subserve the common good'. Whether, and if so, under which conditions the government has the right to alienate, transfer, and distribute natural resources other 'than by following a fair and transparent method consistent with the fundamentals of the equality clause enshrined in the Constitution', has been subject to a judgment — *Centre for Public Interest Litigation et al v Union of India et al* (2010). In para 63, the Supreme Court of India elaborates on the definition of the term natural resources, and states that they are:

> […] generally understood as elements having intrinsic utility to mankind. They may be renewable or non-renewable. They are thought of as the individual elements of the natural environment that provide economic and social services to human society and are considered valuable in their relatively unmodified, natural form. A natural resource's value rests in the amount of the material available and the demand for it. The latter is determined by its usefulness to production.

The Court further noted that no comprehensive legislation has been enacted that governs the use of natural resources. Nevertheless, referring to an earlier judgment (*Reliance Natural Resources Limited v Reliance Industries Limited* (2010)), concludes that the State 'is the legal owner of the natural resources as a trustee of the people' and must distribute them equally

for the 'larger public good' (para 72). The Mines and Minerals Development and Regulation Act (1957), in the Second Schedule, sets out the applicable royalties for different mineral resources.

In terms of environmental conservation, which also protects natural resources, Article 48A of the Constitution stipulates that the State 'shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country'. Additionally, Article 51A(g) imposes a duty on every citizen 'to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures' — this is gradually becoming a commonplace duty in constitutions (e.g., Article 78 of the Constitution of Azerbaijan; Section 50(8) of the Constitution of the Kingdom of Thailand: 6 April 2017; Article 25(3) of the Constitution of Senegal: 22 January 2001 (as Amended to 2018); and Article 38 of the Constitution of Kazakhstan: 5 September 1995 (as Amended to 2022)).

Several other provisions incorporate the conservation and sustainable use of natural resources into planning law. Article 243ZD(3), for example, provides that the District Planning Committee, when preparing draft development plans, must have regard for matters 'including spatial planning, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation'. A similar provision is laid down in Article 243ZE for draft development plans by the Metropolitan Planning Committee. As per Article 243W(a) of the Constitution, municipalities are endowed with certain powers, authorities, and responsibilities by the legislature of a State. This includes, *inter alia*, the performance of functions and the implementation of schemes concerning the matters listed in the Twelfth Schedule to the Constitution, of which a relevant clause for the conservation of natural resources is number eight, listing urban forestry, protection of the environment, and promotion of ecological aspects. An analogous provision endows the committees with the powers and authority necessary to enable them to carry out the responsibilities conferred upon them, including urban forestry, protection of the environment and promotion of ecological aspects (Article 243W(b), read together with the Twelfth Schedule to the Constitution).

The judiciary plays a key role in shaping environmental laws and policies, and, thus, in the management of natural resources (Verma 10). This is particularly true since the instrument of Public Interest Litigation, as provided in Article 32 of the Constitution, has the potential to contribute toward more efficient environmental protection and management of natural

resources. The underlying reason for this is that in many legal systems, environmental litigation faces the challenge that access to the courts may be limited because of conservative standing rules that require the plaintiff to establish that they have a personal interest in the action at hand. Instead, India's judiciary has taken 'a more activist approach towards redressal of issues placed before it' (Chaturvedi 1461). Notably, the Court in *Intellectuals Forum, Tirupathi v State of AP et al* (2006) confirmed that 'all human beings have a…duty of ensuring that resources are conserved and preserved' for present and future generations. Also, in para 23 of *Periyakaruppan v Principal Secretary to Government et al* (2022), Mother Earth is declared a legal person 'with all corresponding rights, duties and liabilities of a living person' to preserve and conserve it and promote its 'health and wellbeing'.

Regarding Article 21 of the Constitution, which provides that everyone has the right to protection of life and personal liberty, the court in *Subhash Kumar v State of Bihar et al* (1991) confirmed that this right also encompasses the right to live in a healthy and pollution-free environment. To give effect thereto, the National Green Tribunal Act (Act No. 19/2010) was promulgated for the 'effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources' (Preamble). Chapter III of the Act sets out the jurisdiction, powers, and proceedings of the Tribunal, which has both original and appellate jurisdiction over all civil cases where the substantial legal question relates to the environment (Shukre 403).

Despite having voted in favour of the United Nations (UN) Declaration on the Rights of Indigenous Peoples (2007) and having signed the ILO Indigenous and Tribal Peoples Convention (1989), until its Constitution provides otherwise, no official recognition is afforded to the countries' indigenous peoples. Instead, listed groups are referred to as 'Scheduled Tribes', who are given certain rights set out in the Constitution. Therefore, despite India maintaining a hybrid legal system, the position as regards indigenous peoples' rights to access and exploitation of natural resources in their territories remains precarious (UNHRC).

4.3 Germany

Historically, the German Basic Law: 23 May 1949 (as Amended to 2022), contained hardly any content related to environmental protection and natural resources. However, with the rapid progress of technical and industrial development after WW2, environmental problems such as pollution of air, soil, and water bodies became increasingly apparent. Parliamentarian debates on the introduction of environmental concerns into the German Basic Law started in

the early 1970s; however, it was only in 1993 that a compromise proposal of a constitutional commission, which proposed the introduction of a state objective of environmental protection, was approved by the Federal Parliament and the Federal Assembly and effected on 15 November 1994.

Provisions relevant to natural resources, in general, relate to concurrent legislation (Articles 72 and 74 Basic Law). Legislative power is assigned to the federal States of Germany (*Länder*), except in cases where it is explicitly assigned to the Federation (*Bund*). The protection of nature and landscape management (excluding general principles of nature conservation, the law on the protection of plant and animal species and the law on the protection of marine life) are subject to concurrent legislation just as in the case of the management of water resources (Article 72 Basic Law). Within the scope of Article 72, the federal States can enact laws in variance to legislation enacted by the Federation.

Further provisions pertinent to natural resources are Article 91a Basic Law on the joint responsibility of the Federation and the federal States, which include the improvement of the agrarian structure and coastal preservation. However, the central provision dealing with the protection of the environment is Article 20a Basic Law, which has given rise to a vast spectrum of statutory law and policy and has been subject to various court decisions (Murswiek). Article 20a Basic Law (as translated by the language service of the German *Bundestag*) reads as follows:

> Mindful also of its responsibility towards future generations, the State shall protect the natural foundations of life and animals by legislation and, in accordance with law and justice, by the executive and judicial action, all within the framework of the constitutional order.

The term 'natural foundations of life' is most relevant in the context of natural resources. The Basic Law itself, however, does not provide a definition thereof, which leaves the term open for interpretation so that it can be applied dynamically, depending on the current needs and developments.

As to the nature of constitutional environmental protection, it should be noted that the provision concerning the protection of the natural foundations of life and animals, as stipulated in Article 20a Basic Law is not allocated in the catalogue of basic rights (Articles 1-19) but has rather been formulated as a *Staatsziel* (BVerfGE 102, 1 (18); 102, 347 (365)), a directive principle of state policy. In contrast to the basic rights, Article 20a Basic Law does not

constitute a subjective enforceable right (Theil 8-9). Rather, it is objective: it binds the legislature, executive, judiciary, and all bodies of government. Article 20a Basic Law, thus, only applies vertically. However, in *Neubauer et al v Germany* (2021), the Federal Constitutional Court of Germany (*Bundesverfassungsgericht*) was tasked with the issue of climate change and inter-generational equity when a group of German youth argued that certain provisions of the Federal Climate Change Act of 12 December 2019 were incompatible with their fundamental rights, as they failed to provide sufficient specifications for emission reductions from 2031 onwards. The Court agreed (para 192), stating that:

> […] the Basic Law imposes an obligation to safeguard fundamental freedom over time and to spread the opportunities associated with freedom proportionately across generations. As intertemporal guarantees of freedom, fundamental rights afford the complainants protection against the greenhouse gas reduction burdens imposed by Article 20a Basic Law being unilaterally offloaded onto the future (para 183).

Furthermore, Article 20a Basic Law 'encompasses the necessity to treat the natural foundations of life with such care and to leave them in such condition that future generations who wish to carry on preserving these foundations are not forced to engage in radical abstinence' (para 193). Although the Court reaffirmed that Article 20a Basic Law does not contain subjective rights but is a 'fundamental national objective' and, thus, 'cannot be directly relied upon to establish standing to lodge a constitutional complaint' (para 112), through its judgment, the Court has confirmed that Article 20a Basic Law encompasses a duty of the State to take climate action and achieve climate neutrality (paras 197–198).

As to the ownership of natural resources, three provisions of the Basic Law can be mentioned. Firstly, Article 15 on socialization provides that land, natural resources, and means of production may 'be transferred to public ownership'. Secondly, Article 74 extends concurrent legislative powers to 'the transfer of land, natural resources, and means of production to public ownership or other forms of public enterprise', as well as to the promotion of agricultural production and forestry (except for the law on land consolidation), ensuring the adequacy of food supply, the importation and exportation of agricultural and forestry products, deep-sea and coastal fishing, and preservation of the coasts.

Thirdly, Article 89 provides that '[t]he Federation shall be the owner of the former *Reich* waterways'. Other than this, no provision is enshrined in the Constitution regulating the

ownership of natural resources. The right to property guaranteed by Article 14 Basic Law is relevant as natural resources *de facto* follow the rules of property rights. The right to property can be subject to certain limitations for the benefit of public goods and owning property is linked to certain obligations. A multitude of laws govern the use of natural resources and limit the rights linked to private property. The German Civil Code of 1 January 1900 (as Amended to 2022) (*Bürgerliches Gesetzbuch*, BGB) provides that:

> […] the right of the owner of a plot of land extends to the space above the surface and to the subsoil under the surface. However, the owner may not prohibit influences that are exercised at such a height or depth that he has no interest in excluding them (§ 905 BGB).

Furthermore, a multitude of provisions in German Public Law governs the use of natural resources. The right to make use of mineral resources, for example, as well as the associated rights and obligations, are governed by the Federal Mining Act of 13 August 1980 (*Bundesberggesetz*), which distinguishes between mountain-free mineral deposits on one hand, and mineral deposits belonging to the owner of the property on which they are located, on the other. The latter are conclusively listed in the Federal Mining Act and include, *inter alia*, clay, quartz, and quartzite. Mountain-free mineral deposits such as ores, solid metals, and fossil fuels, as well as geothermal energy, are resources which are not covered by property ownership. Whoever wants to make use of these resources needs the appropriate permit from the State. Similarly, many provisions exist regarding inland waters and the use of water as a natural resource. Article 89 Basic Law provides that '[t]he Federation shall be the owner of the former Reich waterways'. The administration of waterways of the Federation (governed by the Federal Waterway Law of 2 April 1968 (*Bundeswasserstrassengesetz*), is performed through its authorities. The ownership of inland waters is regulated by the Federal Water Act of 27 July 1957 (*Wasserhaushaltsgesetz*). Federal waterways are in general owned by the Federation. It is, furthermore, provided that flowing surface waters and groundwater cannot be subject to property rights. Subject to the principle of proportionality, various conditions of toleration or allowance to conduct measures designed to protect the waters may be imposed on owners and beneficiaries of land on which flowing surface waters occur. In the case of unreasonable impairments of the property, the persons concerned are entitled to compensation.

4.4 Australia

The Commonwealth of Australia Constitution Act: 9 July 1900 (consolidated as of 4 September 2013) is to some extent uncommon, as, although it contains certain fundamental rights, there is no catalogue of fundamental rights comparable to a bill of rights as known in most Western democracies and other Anglo-Saxon countries (Saunders and Stone 906). The country lacks a legal act in which the most important fundamental rights are laid down, which makes these rights enforceable. The rights derived from the wording of the Constitution include only a few, such as the right to vote, freedom of conscience and religion or belief, and the right to trial by a jury. Other than this, the Constitution is silent, which, however, does not mean that no protection of fundamental rights and freedoms in Australia exists. The ratification of international treaties (often lacking effective enforcement mechanisms), court decisions, and national and federal legislation specify several fundamental rights and freedoms. Environmental protection and the conservation of natural resources are primarily governed by court decisions and statutory law and policy. A landmark decision relevant to the conservation of natural resources, namely the *Commonwealth v Tasmania* (1983), has, for instance, influenced much of Australia's national environmental legislation (Holley; Genovese). This decision confirmed that the Commonwealth had power under Section 51(xxix) to make laws to protect the environment.

Legislation plays a significant role in the context of natural resources. An explicit environmental right or other provisions relevant to ownership or protection of natural resources, does, however, not exist in Australia (Pointon and Bell-James 76 and 83), nor at the Commonwealth level, nor the level of state and territory law; although some state and territory laws provide for the protection of civil and political rights, such as the Human Rights Act (2004) of the Australian Capital Territory or the Charter of Human Rights and Responsibilities Act (2006) of Victoria.

On the level of Commonwealth Law (federal law), various pieces of legislation have been enacted that are pertinent to environmental protection and the conservation of natural resources (see Bates). The central piece of legislation in this regard is the Environment Protection and Biodiversity Conservation Act (1999) on matters of national environmental significance, which provides a legal framework to protect and manage, nationally and internationally, important flora, fauna, ecological communities, and heritage places. Furthermore, a plethora of environmental legislation, aiming to protect the environment and

manage natural resources sustainably, exists in Australia's states and territories, such as the Environmental Protection Acts of the Australian Capital Territory (1997), Queensland (1994), South Australia (1993), and Western Australia (1986), to name but a few. Refer also to the Great Ocean Road and Environs Protection Act 19 of 2020 and the Yarra River Protection Act 49 of 2017 (Victoria). Also, the State of New South Wales is revered for having one of the world's first environmental courts, which is also a superior court — the Land and Environment Court established on 1 September 1980 (Pring and Pring 2016; Sulistiawati et al 2021).

The Constitution is silent regarding the rights of Australia's indigenous peoples (Saunders and Stone 41). However, following the historic case of *Mabo v Queensland (No 2)* (1992), in which the legal doctrine of native title was asserted, the federal Native Title Act (Act No. 110/1993) was enacted (see Saunders and Stone 39; Vickers 107–108). The native title denotes that if indigenous peoples can prove that they have an ongoing connection with certain land areas, according to their traditional laws, and their interest has not been extinguished, such interest can be legally recognized (for a discussion, see O'Bryan 69-70). Persons and companies seeking to undertake mining and exploration projects in claimed native title holders' territories can conclude voluntary indigenous land use agreements with the concerned parties.

Although there are voices that call for better protection and promotion of civil, political, socioeconomic, and cultural rights on the constitutional level, the recommendation by Australia's federal government's Human Rights Consultation Committee in 2009 to adopt a national Human Rights Act was rejected by the government, and considerations for a constitutional change to include an instrument such as a bill of rights into the Australian Constitution are not on the table (for a debate on the topic refer to Gordon; Babie; Ferdous). Thus, issues pertinent to natural resources remain of limited relevance in the field of Constitutional Law in Australia.

4.5 Brazil

The Constitution of the Federative Republic of Brazil: 5 October 1988 (as Amended to 2017), contains various provisions relevant to natural resources. Such provisions have been included not only to foster environmental protection but also for economic reasons (Marcos Ramos 6). Given that Brazil is a country rich in natural resources, especially mineral resources (Raftopoulos and Morley 14), it is not surprising that the Constitution provides detailed provisions on the ownership of natural resources. The central provision is Article 20, which

declares distinct items as property of the Union, including natural resources of the continental shelf and the exclusive economic zone; mineral resources; and certain lands and waters, such as interstate waters and lakes, rivers, and any watercourses on lands that it owns. Article 26 assigns the property on the following to the State:

> I. surface or underground waters, whether flowing, emerging or in reservoirs, with the exception, in the latter case, as provided by law, of those resulting from works carried out by the Union;
>
> II. ocean and coastal island areas that are under their dominion, excluding those under the dominion of the Union, counties or third parties;
>
> III. river and lake islands that do not belong to the Union;
>
> IV. vacant government lands not included among those belonging to the Union.

Mineral deposits and other mineral resources and hydraulic energy sites belong to the Union and constitute property distinct from the soil for the effects of exploitation or use (Article 176). Prospecting and mining of mineral resources and use of hydraulic sites may only be performed subject to authorization or concession by the Union, which must be temporary and may not be transferred without the prior consent of the granting authority. Prospecting and mining activities subject to authorization must be in the national interest, and only Brazilians and companies organized under Brazilian law that have their headquarters and management in the country are eligible to perform these mining activities. The Union has a monopoly on various prospecting and exploitation activities, according to Article 177 of the Constitution, which is the case for deposits of petroleum, natural gas and other fluid hydrocarbons, ores, and nuclear minerals. The Union may, however, contract with private firms to perform the activities, which fall under the monopoly of the Union. Concerning legislative powers, Article 49 XVI provides that National Congress shall have the exclusive power to authorize the exploitation and use of water resources, prospecting, and mining of mineral wealth on indigenous lands. To institute civil investigations and public civil actions to protect the environment lies within the institutional function of the Public Ministry (Article 129 III), which consists of the Public Ministry of the Union and the Public Ministries of the States.

Article 23 stipulates that the Union, states, federal districts, and counties have joint powers regarding certain activities, including in the fields of environmental protection and liability for damages to the environment; combating pollution; and the preservation of forests, flora, and fauna (Article 23 VI and VII). The concurrent legislative power of the Union, states and federal districts apply to the fields of 'forests, hunting, fishing, fauna, preservation of nature, defense of the soil and natural resources, protection of the environment and pollution control' and to liabilities for damages to the environment (Article 24 VI, VII and VIII). Another important provision relevant to natural resources is contained in the Constitution's Chapter on public administration, which provides in Article 43 that the Union may coordinate its actions in the same social and geo-economic complex, to foster development and reduce regional inequalities. To this end, regional incentives include, among others, 'priority in the economic and social use of rivers, reservoirs, or waters that can be dammed in low-income regions subject to periodic droughts'.

Natural resources also play a vital role in the field of national security. The National Defence Council has the authority to:

> […] propose the criteria and conditions for utilization of areas indispensable to the security of national territory and to opine on their effective use, especially for the frontier strip and those related to preservation and exploitation of natural resources of any kind.

Title VII of the Constitution recognizes the principle of environmental protection as one of the principles, which must be observed within the economic order (see Articles 170 and 174).

For agrarian reform, rural property that is not fulfilling its social function may be subject to expropriation, provided that prior and just compensation is paid. The social function is met, if several requirements are fulfilled simultaneously, one of them being the adequate use of available natural resources and the preservation of the environment (Article 186).

The Constitution has put great emphasis on environmental protection in various contexts, particularly within Chapter VI. Per Article 225 both the government and the 'community' are charged with the 'duty to defend and preserve' the environment 'for present and future generations'. Article 225(4) also provides that the natural resources located in the Brazilian Amazon may be utilized by the State, bearing in mind the need to preserve its precious environment.

On fundamental rights and guarantees, Article 5 provides that any citizen has the standing to bring a popular action to annul an act injurious to the environment and historic and cultural patrimony (see Drummond and Barros-Platiau 94–95). However, the rights of indigenous peoples to natural resources and territories in Brazil is an ongoing contentious issue (refer to the Extraordinary Appeal (RE) No 1.017.365 (2021); Ávila 2021).

Based on the relevant provisions, a myriad of environmental laws and policies have been enacted and natural resources do play a significant role in Brazilian Constitutional Law. However, where the country once showed commitment to achieving sustainable use of natural resources (e.g., the 2017 National Review on the SDGs), it has since reversed its progress (see the Amicus Brief filed by the UN Special Rapporteur on Human Rights and the Environment; Raftopoulos and Morley 16–18). One notable example is the country's aggressive development projects in the Brazilian Amazon (a matter currently before the International Rights of Nature Tribunal; also refer to the Complaint Delivered to UN Special Rapporteurs against Bolsonaro's Government (2022) (UN)). Nevertheless, the judiciary has proven instrumental in ensuring that the government gives effect to their international obligations — in the *Partido Socialista Brasileiro et al v Federal Union of Brazil* (on Climate Fund) (2022) case, the court ruled that the Paris Agreement (2015) is a 'supranational' human rights treaty, which takes precedence over national laws (para 17; Tigre; Kaminski). Also, four municipalities in Brazil have adopted the rights of nature into their laws (Article 236 of the Municipality of Bonito Organic Law (No 01/2017), State of Pernambuco; Article 181 of the Municipality of Paudalho Organic Law (No 03/2018), State of Pernambuco; Article 133 of the Municipality of Florianopolis Organic Law (2019), State of Santa Catarina; Section IX Article 157 of the Municipality of Serro Organic Law (2022), State of Minas Gerais).

5. The Impact of the Rights of Nature on the Regulation of Natural Resources

Located on the Pacific coast of South America, Ecuador is one of the richest countries in the world (environmentally speaking), not only due to its aesthetic — as the home of the Galápagos Islands and parts of the Amazon Rainforest — but in terms of its wealth in natural resources. Consequently, the Ecuadorian Constitution contains extensive provisions concerning the environment and natural resources. The current Constitution was a result of the advocation by former President Rafael Correa (2007-2017) to reform the country's political and economic system built on neoliberal economic policies, particularly concerning development — emphasizing the need to rethink society's relationship with the environment

through the indigenous ideology of 'living well in harmony with nature' (see Kauffman and Martin 130; Tanasescu 846-847). Drafting began in 2007 by the Constituent Assembly, consisting of 130 delegates, with the public required to vote on the final provisions — a contrast to the previous Constitution, written at a military site 'behind closed doors' (Akchurin 942-943). The Constitution was immediately hailed as the 'most progressive in the world,' given that for the first time a constitution contained rights for nature itself (Whittenmore 659-660).

The road to the current Bolivian Constitution was not an easy one, wrought with political and social tensions, which caused unrest in the country (note the Cochabamba Water War of 2000 and the Gas War of 2003), with demands for the reconstruction of the state and the reformation of the country's laws and politics (Tomaselli and Hofmann 3). Remarkably, amid all the tumultuous upheaval, on 25 January 2009, after being drafted by a Constitutional Assembly, the new Constitution was approved by the National Congress, and, following a free and fair public voting process, subsequently entered into force. Akin to Ecuador's, the Bolivian Constitution has received much praise for its provisions relating to the environment and recognition of indigenous rights, which were advocated for by the country's first elected indigenous president, Evo Morales (2006-2019).

Accordingly, bearing in mind the importance of recognizing indigenous peoples' beliefs and cultures, the Preamble of Ecuador's Constitution acknowledges humanity's interconnectedness with nature and envisions the 'good way of living' for all Ecuadorians (also iterated in Article 74). This *Sumak Kawsay* indigenous philosophy (see Berros; Barié) is a recurring theme, which requires that sustainable development and socio-economic policies be in harmony with nature (Preamble, Articles 275 and 387(2)). Similarly, the Preamble of Bolivia's Constitution contains the indigenous philosophy and belief of *Buen Vivir* or *Vivir Bien* — the 'good life', stating that the search therefore 'predominates' the essence of living in Bolivia (Barié).

Chapter Seven of Ecuador's Constitution sets out Pachamama's specific rights, which include the right to 'integral respect for its existence and for the maintenance and regeneration of its life cycles' (Article 71). Given that the Constitution holds supremacy 'over any other legal regulatory framework', these rights and duties take precedence above all other laws and regulations (Articles 424–425). Although nature's rights are listed in a separate

chapter, the rights of, and respect for, the Pachamama (Mother Earth) is not confined thereto but feature throughout the Constitution.

Dissimilar to Ecuador, Bolivia's Constitution is not credited for expressly containing rights for nature — the so-called Madre Tierra or 'sacred Mother Earth' (Preamble); instead, indirect recognition is provided. Article 13(2) iterates that the Constitution does not 'deny' or take precedence over other rights, which are not expressly 'enumerated', but recognized elsewhere in legislation. Article 13(3) stresses further that there is no 'hierarchy or superiority of some rights over others'. Article 13(1) also asserts that the rights 'recognized' in the Constitution (including those not expressly included) are 'inviolable, universal, interdependent, indivisible and progressive', which the State must 'promote, protect and respect'. Bolivia does have two statutes, which extensively sets out nature's rights and sustainable development framework — the Law of the Rights of Mother Earth (Act No. 71/2010) and the Framework Law of Mother Earth and Integral Development for Living Well (Act No. 300/2012). However, for the present discussion, the focus will only be on Bolivia's constitutional text, which is detailed regarding the environmental policies and economic approaches taken to the exploitation of natural resources.

Per Articles 3(5) and (7) of Ecuador's Constitution, it is part of the State's 'prime duties' to protect the country's natural 'assets', and to promote sustainable development. Article 10 expressly provides that nature is recognized as a 'subject' of rights, with Article 11(9) stressing that it is the State's 'supreme duty' to respect and enforce the rights contained therein (including the Pachamama's). To that end, the State is charged with nature's restoration and the adoption and implementation of 'effective mechanisms' to achieve the same (Article 72) and to 'apply preventive and restrictive measures on activities that might lead to the extinction of species, the destruction of ecosystems and the permanent alteration of natural cycles' (Article 73). The Constitution further provides that Ecuador's Amazon region is a 'special territorial district' that forms 'part of an ecosystem that is necessary for the planet's environmental balance' (Article 250). Accordingly, the State must 'adopt sustainable development policies' to safeguard its biodiversity in line with the principle of Sumak Kawsay (Articles 250 and 259). Per Articles 317, 395, and 408, the State must restore the natural environments, which natural resources are extracted from, minimize any negative impacts affecting the environment, and balance the interests of humanity, nature, and the economy.

On a similar note, Article 8(1) of Bolivia's Constitution provides that the State must promote the principles of living harmoniously (with nature), living well, and living the good life. Articles 346 and 354 (read together), accordingly, compel the State to conserve the country's 'natural assets', ensure their sustainable use, and 'develop and promote research related to the management, conservation, and use of natural resources'.

Article 71 of Ecuador's Constitution not only encourages the State to fulfil nature's rights but also empowers all persons to 'call upon public authorities to enforce the rights of nature'. Ecuadorians are also obliged to respect nature's rights, defend their country's natural resources, and use said resources 'rationally, sustainably and durably' (Articles 83(3) and (6)). Similarly, all Bolivians have a duty to protect and defend the nation's natural resources to 'contribute to their sustainable use in order to preserve the rights of future generations', 'protect and defend an environment suitable for the development of living beings', and to participate in environmental management and decision-making (Articles 108(15)-(16) and 342–343).

Ecuador's Constitution stipulates that non-renewable natural resources are the 'inalienable property' of the State and 'immune from seizure and not subject to a statute of limitations' (Articles 1, 317 and 408). Articles 261(7), (11) and 313 further specify that the State has 'exclusive jurisdiction' over Ecuador's protected areas and natural resources, including energy resources, minerals, oil, gas, water resources, forest, and other biodiversity resources. Thereby, given the country's economic circumstances, the Constitution follows a resource nationalism approach, as the emphasis is placed on the State's ownership or sovereignty over natural resources, particularly non-renewable resources (van Teijlingen 904; Kauffman and Martin 130). Although persons may freely use the renewable resources found on their private property, for non-renewable resources, 'prior informed consultation' with the 'competent authorities' is required (Articles 57(6)-(7)).

Bolivia's Constitution, on the other hand, underscores in several provisions that ownership and sovereignty of the country's natural resources lie with the people 'without limitation' (Articles 7, 309(1), 311(II)(2) and 349(1)). To that end, the State 'shall recognize, respect and grant individual and collective ownership rights' for the 'use and enjoyment of natural resources' (Article 349(2)). Yet, the State does have 'exclusive authority' over strategic natural resources, which include 'minerals, the electromagnetic spectrum, genetic and biogenetic resources, and water sources' (Article 298(II)(4)). The Constitution also authorizes the State to

manage, control, and take responsibility for the country's mining industry (Article 369) and the exploration and exploitation of the country's natural resources (Article 351). Per Articles 311–313, 316(6), 319, 348(II), 369, and 370(II) of Bolivia's Constitution, the country's mining industry must contribute to socio-economic development. Thus, Articles 355(I) and 356 provide, respectively, that the 'industrialization and sale of natural resources shall be a priority of' the State, and that any activities concerning the 'exploration, exploitation refining, industrialization, transport, and sale of non-renewable natural resources' shall be regarded as being 'of state necessity and public utility'. Thereby, Bolivia follows a neo-socialist approach to the ownership and exploitation of national resources, tempered by a dose of pragmatism stemming from their economic standing (Lalander 150).

Referring to non-renewable natural resources located in protected areas and 'in areas declared intangible assets', Article 407 of Ecuador's Constitution sets out that the President can request that extractive activities be undertaken in such areas, which are otherwise 'forbidden'. An example hereof is the Yasuní (Ishpingo-Tambococha-Tiputini) National Park initiative: this area is a natural sanctuary (having been declared a World Biosphere Reserve by UNESCO in 1989), but also contains a large oil deposit (Clément de Colombières 34). The government agreed in 2007 to forego half of these oil revenues if it received the other half through international donations (Berros). As the target was not achieved, the National Park was declared open for exploitation in 2013 (Clément de Colombières 34; Berros).

Similarly, Article 385 of Bolivia's Constitution stipulates that protected areas 'constitute a common good' and perform vital environmental functions but does not ban extractive and exploration activities in these sensitive areas (Articles 9(6), 306(V), 316, and 355). For example, the State passed Supreme Decree 2366 of 2015, which permits hydrocarbon exploration activities in protected areas and national parks (Article 2; Tomaselli and Hofmann 14), with Supreme Decree 2549 of 2015, extending such activities to certain parts of the Brazilian Amazonia (Calzadilla and Kotzé 420). The Constitution classifies Bolivia's Amazonia as a highly environmentally sensitive biodiversity eco-region, which is a 'strategic area of special protection for the comprehensive development of the country' (Article 390(I)) but requires the State to 'prioritize' its 'sustainable, integral development' and encourage financial endeavours in this strategic area (Article 391). Furthermore, Articles 386–389 permit the exploitation of natural forests and woodlands in Bolivia by the State if such activities contribute to the strategic 'development of the Bolivian people'.

Despite a few difficulties with enforcement, Ecuador's judiciary has given effect to nature's rights (see Caso No 1149–19-JP/20 (2021) regarding the Los Cedros nature reserve; Sentencia No 22–18-IN/21 (2021) where the court ruled in favour of nature's rights to protect mangroves from extractive activities).

For Bolivia, on the other hand, apart from the legislation mentioned, no significant judgments or developments in support of nature's rights can further be noted (Clément de Colombières 37–38). There has also been no legal mechanism initiated to ensure that nature's rights are being given effect. This is evidenced by the promulgation of Law 969 of 2017, on Protection, Integral and Sustainable Development of the Isiboro Secure National Park and Indigenous Territory, which allows for construction projects in this protected area. The International Rights of Nature Tribunal found this law to be invalid in 2019 and subsequent government actions unlawful. Unfortunately, due to the non-binding nature of their decisions, the Bolivian government has paid no heed to its orders. Nevertheless, on International Mother Earth Day (22 April 2021) the government reconfirmed the country's commitment to promoting nature's rights (Wadhwa) and in 2022, launched the Geopolitics of Living Well, which calls for a new relationship of respect for Mother Earth by focusing on ancestral knowledge.

6. Conclusion and Comparative Assessment

It is evident that without some kind of constitutional foundation, the intention to protect natural resources can easily ring hollow. Although a few of the analyzed systems share certain overarching elements, such as state ownership of natural resources or the recognition of the principle of sustainable use, the constitutional regulatory approach of each country affects the implementation and details of these shared elements differently. This is rooted in the diverging cultures, political and legal systems, as well as in the distinct historical developments of the diverse constitutional orders.

While the Australian Constitution does not contain provisions on natural resources, the Indian, Brazilian, Ecuadorian, and Bolivian Constitutions contain elaborate provisions relating to the conservation and sustainable use of natural resources. Brazil's and Bolivia's Constitutions contain extensive provisions relating to mining activities and both Ecuador's and Bolivia's Constitutions contain provisions regulating exploration and exploitation activities in their protected areas and respective Amazonian regions.

Definite provisions on the ownership of natural resources are contained in the Constitutions of India, Brazil, Ecuador, and Bolivia, whereas the South African Constitution rather implicitly recognizes everyone's entitlement to good use of natural resources and incorporates the notion of public trusteeship in its environmental legislation, with the German legal system containing some relevant provisions in the Basic Law, which are complemented by statutory provisions. Undoubtedly, statutory law and, thus, legislative powers assigned by the different constitutions, but also the implementation, enforcement, and compliance mechanisms of the executive, play a leading role in the context of conservation and sustainable use of natural resources. This is also notable in the regions with dedicated environmental courts or tribunals (Brazil, India, Australia, and Bolivia).

On that note, stark contrasts between the various constitutions relate to the notion of standing (*locus standi*). In Australia, no enforceable substantive right to the environment exists on the constitutional level, and, thus, no provision extends to the protection of natural resources. This the Australian Constitution has in common with the German Constitution, with Article 20a Basic Law anchoring environmental protection as a directive principle of state policy, which recent judgments confirmed also includes climate change action. In contrast, the South African, Indian, Brazilian, Ecuadorian, and Bolivian Constitutions all contain enforceable rights concerning the environment. Thus, the protection of natural resources has been subject to judicial proceedings in most of these legal systems, be it in the form of individual claims or the claims of environmental organizations, or the review of state action.

Dissimilar to the broad environmental provision found in the Constitution of Germany, the Constitutions of India, Brazil, South Africa, Ecuador, and Bolivia contain more precise provisions on how natural resources are to be protected. Thereby, positive obligations to protect natural resources are imposed on the State, with an increasing trend to impose such an obligation on citizens — also found in the nature's rights Constitutions of Ecuador and Bolivia. A common formula in this regard asserts that the State is not only obliged to prevent the emergence of environmental harm and foster intergenerational and intragenerational equity, but also ensure the protection and enforcement of nature's rights.

The internal conflict present in Ecuador's and Bolivia's Constitutions demonstrates that failing to expressly clarify the extent to which nature's rights and economic development (i.e., the use and exploitation of non-renewable natural resources) are to interact and impact one

another on a constitutional level, could lead to these rights merely being symbolic instead of pragmatic (see Schoukens).

Considering new scientific understanding of the impact of humanity's activities on nature (UN GEO: 6 Report (2019)), there is a notable shift being undertaken in countries (be it due to judicial orders or citizen advocation), orchestrated by international environmental laws, toward more eco-centric environmental policies and development modes focusing on the protection of natural resources for the common good (refer to the ILA Guidelines for Sustainable Natural Resources Management for Development; Directive 2009/147/EC on Wild Bird Conservation; Directive 1992/43/EEC on the Conservation of Natural Habitats and Wild Fauna and Flora; Global Oceans Treaty (Greenpeace International)). Also, several of the ILC's Principles (2022) are dedicated to the protection of the occupied country's natural resources. Against the backdrop of the devastating effect Russia's military activities have on Ukraine's natural environment (Harari and Annesi-Maesano 2022), these principles are crucial to the advancement of the legal protection of the environment (and natural resources) during both international armed conflicts, as well as civil wars. Furthermore, the European Commission has proposed the Nature Restoration Law as part of the Biodiversity Strategy for 2030, which 'is a comprehensive, ambitious and long-term plan to protect nature and reverse the degradation of ecosystems'. The proposed Nature Restoration Law further aims to repair and protect natural areas in Europe by specified 'binding restoration targets' set for 2030 and 2050, respectively.

Therefore, the importance of natural resources, both economically and within the ecological sphere they form part of, cannot be overstated. While the first has been a core component in most constitutions for decades or even centuries, the latter is in recent years also becoming commonplace as the mantra of only one planet is starting to seep in, and nations are taking heed of the warnings spelt out by increasing environmental disasters. Whether the solution to ensure natural resource protection and conservation lies with the use and national law implementation of indigenous knowledge, less aggressive exploration and exploitation activities, more proactive targets in international environmental law agreements, the ever-growing trend of granting national rights for nature, or a combination thereof, only time will tell.

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