



## *Extending Court-Protected Legal Person Status to Non-Human Entities*

By Markus Zimmer, IJCA Executive Editor

On 3 November 2016, in response to a writ of habeas court case filed by the Argentina Functionaries and Lawyers Association for the Rights of Animals (AFADA), Judge María Alejandra Mauricio of the Third Court of Guarantees in Mendoza, Argentina ruled that a captive chimpanzee named Cecilia at the Mendoza Zoo is a “non-human legal person” with “inherent rights.” In her judgment, Judge Mauricio granted the writ and ordered the transfer of Cecilia to Brazil’s Sorocaba Sanctuary for primates. Her order also requested the *Legislatura de la Provincia de Mendoza* to allocate to the competent local authorities the resources necessary to terminate the captivity in inhumane conditions of zoo animals such as elephants, lions, tigers, bears, among others, and of all exotic species for whom the geography and climate of the Province of Mendoza are alien.

Judge Mauricio based her decision on an earlier precedent established in a unanimous decision in Argentina’s Second Court of Cassation in a similar case involving Sandra, an orangutan. In their decision, the cassation judges noted “We acknowledge that an animal is an individual with rights, and therefore non-human individuals (animals) are possessors of rights, such that they are protected according to the appropriate measures.”

Similar habeas corpus litigation involving primates is pending in the trial and appellate divisions of the New York Supreme Court in the U.S. by the plaintiff Non-human Rights Project (NhRP). Three pending cases involve (i) Tommy, a male chimpanzee confined prior to his death to a cage in a shed on a used trailer lot; earlier, he had been coerced to appear as Goliath in the 1987 film, *Project X*; (ii) Kiko, also a former chimpanzee actor whose handlers allegedly abused him, now presumed to be confined to a storefront cage; and (iii) chimpanzees Hercules and Leo, confined for six years to a university-affiliated basement laboratory where they were successively anesthetized with electrodes inserted into their muscles for research into how early human species evolved to walk upright. NhRP’s primary objective is to secure legally recognized and justiciable fundamental rights for non-human animals.

In recent years, formal advocacy to establish legal rights justiciable in courts of law for non-human entities has breached the confines of the animal world. In 2014, passage of the Te Urewera Act by the parliament of New Zealand, following negotiations with indigenous Maori groups, ceded the government’s formal ownership of an 821-square-mile national park and granted via statute the corresponding land the status of a legal entity with “all the rights, powers, duties and liabilities of a legal person.” The outcome deferred to the Maori worldview in which human beings identify themselves as coextensive with nature, in this instance the land comprising the park. At the time, the minister of Maori affairs described the settlement as “a profound alternative to the human presumption of sovereignty over the natural world.”

On 30 August 2012, the government of New Zealand and a representative of the Whanganui River iwi, an indigenous Maori group, signed a preliminary agreement, the final version of which was passed into law on 15 March 2017. Under the terms of the treaty settlement, the Whanganui River, New Zealand’s third longest, is granted under its Maori name, *Te Awa Tutua*, the legal status of a person with all the rights, duties and liabilities that attach to that status, including the right to have a court of law review claims brought on its behalf by two legal guardians tasked in the new law with representing the river. Final passage into law of the agreement concluded the lengthiest litigation in New Zealand’s history; the Whanganui iwi first initiated action seeking legal status for its relationship with the river in the 1870s. The final settlement included NZ\$80m for financial redress, \$30m for a contestable fund to restore the river to its pristine state, and \$1m to anchor its legal framework.

Within a few days on a separate continent, a decision issued by the High Court of Uttarakhand at Nainital and signed by Indian judges Rajiv Sharma and Alok Singh ordered as follows in paragraph 19 of Writ Petition (PIL) No. 126 of 204:

Accordingly, while exercising the *parens patrie* jurisdiction, the Rivers Ganga and Yamuna, all their tributaries, streams, every natural water flowing with flow continuously or intermittently of these rivers, are declared as juristic/legal persons/living entities having the status of a legal person with all corresponding rights, duties and liabilities of a living person in order to preserve and conserve river Ganga and Yamuna. The Director NAMAMI

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Gange, the Chief Secretary of the State of Uttarakhand and the Advocate General of the State of Uttarakhand are hereby declared *persons in loco parentis* as the human face to protect, conserve and preserve Rivers Ganga and Yamuna and their tributaries. These Officers are bound to uphold the status of Rivers Ganges and Yamuna and also to promote the health and well being of these rivers.

Several weeks after issuing this decision, the two judges extended equivalent status to the Gangotri and Yamunotri glaciers that source the two rivers.

These several designations by judicial and legislative powers on separate continents may be the genesis of a fledgling movement; court systems on all continents may be well advised to remain alert as to the prospective impact on their workloads where such status is declared and the commensurate rights adjudged to be actionable. The reactive momentum spawning such campaigns is building. Evidence of the progressively corrosive impact on the non-human world by the burgeoning propagation of *Homo sapiens* continues to intensify and mushroom concern with the environment generally and with at-risk animal and marine populations in particular. Where reliance for protective relief on behalf of the non-human world has traditionally generated demand for politicians and law enforcement to intercede, the feeble success record of their intercession efforts continues to reflect halting progress. Indeed, research into the level of successful intercession in illegal cross-border wildlife and marine life trafficking yields statistical results that are equivalent to cosmetic window dressing – roughly estimated at ten percent. Groundbreakers in the global animal and marine life rights and protection sectors are weary of legislative inaction, marginally competent enforcement, slap-on-the-wrist fines and punishments, and widespread tolerance of corruption. Particularly egregious are the legal and regulatory frameworks drafted with international assistance and passed by local law-making bodies but whose execution is grimly underfunded and violations of whose provisions are routinely ignored.

Some now view the extension and recognition in law of legal-person status with the attendant justiciable rights, duties and liabilities to non-human species of animal and marine life as a more powerful tool for coercing meaningful protection and sanctuary for them.

The need for a more powerful arsenal of criminal deterrence and punishment tools has reached significant levels in recent decades as the scope, geography and business of illegal wildlife trafficking has evolved. Long before the passage of laws restricting or prohibiting trade in protected and endangered species and their body parts, rulers of ancient kingdoms and dynasties routinely honored their counterparts with exotic fauna and marine life. In 179 BCE, King Zhao Tuó in today's northern Vietnam dispatched to the Han court a tribute that included ten rhinoceros horns, 500 purple-striped cowries, 40 pairs of live kingfishers and two pairs of peacocks. Such official gifts over succeeding centuries frequently included, in addition to rhino horns, elephant tusks, tortoise shells, reptile skins and tiger parts, to name a few.

Traditional day-to-day trafficking then occurred primarily locally in developing Southeast Asian and sub-Saharan African countries among indigenous populations as a means of earning subsistence income. Those traditions now are in decline. They have been succeeded in recent decades by the business interests of regional and transnational crime consortia already traditionally engaged in illegal trafficking of human beings, organs, drugs, cultural artifacts, diamonds and precious gemstones, oil and gold. Their newly found illicit wildlife and marine trafficking interests were sparked by two incentives.

First is yield; the increasingly disproportionate distribution of personal wealth among populations and the exorbitant growth in discretionary income among the affluent have stimulated enhanced competition in restricted markets for exotic goods, possession and display of which are publicly arrayed to flaunt social status and exclusivity. The resulting competition for acquisition has spawned over time significant inflation in the cost of such goods, creating the potential for enormous profits. This inflation is exacerbated by the decline in species populations, some of which are approaching extinction. In 2014, the price per pound of rhino horn approached US\$16,000. The profits such pricing represents attracts criminal enterprises.

Second is risk; passengers arriving at international airports in Singapore, Indonesia, Saudi Arabia, the Republic of China, and other venues are warned that transporting illicit drugs into the country carries the death penalty. By comparison, transporting wildlife parts may or may not trigger arrest and criminal charges, depending on whether laws prohibiting them exist and the extent to which they are enforced. Where they do exist and criminal charges are triggered, couriers may forfeit their goods and pay token fines; rarely does prosecution of such illicit trafficking result in incarceration. The comparative punishments grid for the content of what is trafficked varies considerably. The criminal justice severity index of trafficking in illicit drugs, production and distribution of which may, in extreme cases, result in overdoses that prove fatal, far surpasses that of trafficking in rhino horns or elephant ivory or tiger bones, genitals or organs which allegedly can be freely purchased, for example, at Noi Bai International Airport in Hanoi among other venues. This lopsided severity index persists even though harvesting such wildlife parts almost always entails slaying the subject animals as if they were

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simple commodities intended for indiscriminate use by human beings – commodities to which the concept of inherent rights to life and limb does not apply and cannot legally be established.

Even where elements of wildlife and marine trafficking have meaningful criminal sanctions attached to them, effective enforcement, particularly in developing countries, is compromised by, among other factors, inadequate resources and corruption. Although UNODC, USAID, INL, DFID and other organizations and NGOs work cooperatively with local enforcement and wildlife protection agencies in developing countries, the proportion of those arrested and charged with wildlife and marine trafficking crimes is much higher than the relatively few successfully tried and convicted in courts of law. A primary cause is want of effective investigations and credible forensic evidence. Moreover, transnational criminal enterprises invest heavily in creating sophisticated networks organized to thwart and elude anti-trafficking initiatives. These enterprises also exploit front-line enforcement agents, supervisors and managing officials at key illicit trade source, transit and destination points by offering to supplement modest government salaries with covert payments for engaging in a variety of activities and oversight that evade established controls and safeguards.

There is broad general agreement that demand for illegal wildlife rests largely with wealthy consumers in China, the United States and the European Union. Effectively responding to their appetites for a constellation of trafficked goods and services anticipates global transportation, economic and distribution networks that extend from the least- to the most-developed countries. The success of these illicit trade networks depends on the ability of their facilitators to engage and reward dishonest and unethical government officials who accept bribes or other favors to lubricate the production, transit and delivery of these controlled products and services. Their corruption progressively infests agency administration and operations at multiple levels, anchoring itself in a variety of basic functions and services that prey on and undermine government integrity and functionality.

Left unattended, the corrosive effects of trafficking-related corruption have the potential to incrementally erode and eventually destroy the very foundations of legitimate and effective government and the rule of law. We see its fruits manifest worldwide to varying degrees in numerous governments. If this fledgling movement to extend to non-Homo sapiens the status of legal persons with all corresponding rights, duties and liabilities of a living person catches on and that status is institutionalized as justiciable in national and international court systems, it may transform how modern societies value and protect their non-human wildlife and marine resources. The time for such transformation is long overdue.

