Local, National, and International Rights of Nature

We have seen so far the alleged intellectual origins of the idea of rights for nature, as well as its paradigmatic case to date. In terms of practical implementation however, Ecuador was not the first case of rights for nature in the world. That distinction goes to Tamaqua Borough, Schuylkill County, Pennsylvania, USA which, in 2006, passed a municipal ordinance recognizing nature’s rights. Two years later, Ecuador became the first constitutional implementation in the world, and that further emboldened others to appropriate the rights mechanism for the representation of nature. Many more municipalities across the US have since passed ordinances that include rights for nature, Bolivia has approved a law package dealing specifically with what they call the rights of mother earth, New Zealand has granted rights of personhood to a river, and advocates have taken the right of nature to the United Nations. This chapter will look at all of these developments in turn, starting from the municipal level up. In the process, I will analyze the basic structure of representing through rights in all of these cases and show it to be fundamentally similar to the Ecuadorian one.

5.1 Grass roots

The first appearance of the rights of nature anywhere was in 2006, at the municipal level, in Tamaqua Borough, Schuylkill County, Pennsylvania, USA. CELDF, the same organization that consulted the Ecuadorian advocates during the Constitutional Assembly, was behind this first practical implementation of the concept, as well as most of the other municipal ordinances across the US. Since then, they have secured rights for nature, defined as the area of the municipality, in ‘two dozen communities,’ including in the city of Pittsburgh, in 2010. The Tamaqua Borough
ordinance starts with the finding that the borough had ‘been rendered powerless by the state and federal government to prohibit the land application of sewage sludge by persons that comply with all applicable laws and regulations.’ This, in other words, is the background against which the borough finds it necessary to adopt ordinance No.612 of 2006. The background then is one where the community feels powerless to stop certain practices (in this case the application of sewage sludge) that it would rather avoid. Corporations and the state, both federal and local, are seen as the enemies that are to be opposed with this ordinance. This is exactly the same set-up that we encountered in the previous chapter, where the opposition was also to the state and to industrial interests.

Though the ordinance prohibits the application of sewage sludge without a stringent array of testing, it gives itself another line of defense by making the nature of the borough a legal person. Here again, the rights of nature appear as a strategic tool against a state perceived as hostile and/or in thrall to private interests. As in the case of Ecuador before, granting rights to the natural environment incorporates two different kinds of claims: the largely moral claims of nature’s worth, as well as the legal/strategic ones that see the rights of nature as part of a wider effort of rights consolidation, tied to the idea of local self-determination. The sections in question are 7.6 and 7.7, strengthened by 12.2. It is worth quoting all of them in full.

‘Section 7.6: It shall be unlawful for any corporation or its directors, officers, owners, or managers to interfere with the existence and flourishing of natural communities or ecosystems, or to cause damage to those natural communities and ecosystems. The Borough of Tamaqua, along with any resident of the Borough, shall have standing to seek declaratory, injunctive, and compensatory relief for damages caused to natural communities and ecosystems within the Borough, regardless of the relation of those natural communities and ecosystems to Borough residents or the Borough itself. Borough residents, natural communities, and ecosystems shall be considered to be ‘persons’ for purposes of the enforcement of the civil rights of those residents, natural communities, and ecosystems.

Section 7.7: All residents of Tamaqua Borough possess a fundamental and inalienable right to a healthy environment, which includes the right to unpolluted air, water, soils, flora, and fauna.

Section 12.2: Any Borough resident shall have standing and authority to bring an action under this Ordinance’s civil rights provisions, or under state and federal civil rights laws, for violations of the