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Can Rights of Nature Make Development More Sustainable? Why Some Ecuadorian lawsuits Succeed and Others Fail

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Summary. — In 2008, Ecuador became the world's first country to include rights of Nature (RoN) in its constitution. The constitution presents RoN as a tool for building a new form of sustainable development based on the Andean Indigenous concept *sumak kawsay* (*buen vivir* in Spanish), which is rooted in the idea of living in harmony with Nature. While much is written on the ethical arguments regarding RoN (and buen vivir), few studies analyze how RoN might be implemented. We fill this gap by explaining why some efforts to apply Ecuador's RoN laws succeeded while others failed. We compare 13 RoN lawsuits using an original framework for analyzing the pathways and strategies RoN advocates (and their opponents) use to build (and counter) momentum behind judicial processes meant to buttress the enforcement of contested RoN norms. The case descriptions and analysis draw on primary documents and in-depth interviews conducted during 2014–15. Through process tracing, we identified key structural conditions and strategic decisions shaping the outcomes in each case. Our findings as of 2016 reveal unexpected pathways of influence involving a symbiotic process among civil society, state agencies, and the courts. Surprisingly, civil society pressure was the least successful pathway, as activists lost high-profile lawsuits. Nevertheless, they facilitated judicial momentum by working on less-politicized local cases and training lower-level judges. Instrumental use of RoN laws by the state produced unintended consequences, including establishing precedent and educating judges. Knowledgable judges are unilaterally applying RoN in their sentencing, even when neither claimants nor defendants allege RoN violations. Ecuador's cases demonstrate how "weak" RoN laws can strengthen, providing important insight into the global contestation over sustainable development and the strategies and legal tools being used to advance a post-neoliberal development agenda rooted in harmony with nature.

Key words — sustainable development, rights of nature, Latin America, Ecuador, buen vivir, sumak kawsay

1. INTRODUCTION

For nine years, environmental activists have celebrated Ecuador's audacious move to include rights of Nature (RoN) in its 2008 Constitution. Ecuador's constitution pledges to build a new form of sustainable development based on the Andean Indigenous concept of *sumak kawsay* (translated into Spanish as *buen vivir*), which is rooted in the idea of living in harmony with Nature (Chuji, 2014; Oviedo, 2014). The Preamble "celebrates" Nature (which it identifies as Pachamama) and presents a guiding principle for the new development approach: that humans are part of Nature, and thus Nature is a vital part of human existence. [1] Ecuador's constitution presents buen vivir as a set of rights for humans, communities, and Nature, and portrays RoN as a tool for achieving an alternative model of sustainable development that challenges dominant neoliberal approaches. While much is written on the ethical arguments regarding RoN (and buen vivir), few studies analyze how RoN might be implemented. We begin to fill this gap by analyzing the application of RoN in Ecuador, the world's first country to grant Nature constitutional rights. As the United Nations moves toward implementing a Post 2015 Sustainable Development Agenda, Ecuador's experience provides important insight into the global contestation over how sustainable development should be conceptualized and practiced, as well as the strategies and legal tools being used to advance a post-neoliberal development agenda. [2]

Ecuador's RoN provisions resulted from the activism of a diverse array of indigenous, environmental, and leftist organizations that ascribe different meanings to these concepts (Aidoo, Martin, & Ye, in press; Gudynas, 2015; Radcliffe, 2012). [3] Buen vivir therefore represents a variety of discursive and practice-related "platforms" (Gudynas, 2011) for considering and practicing alternative visions of development. Consequently, its implementation has varied widely, from natural resource extraction in biologically sensitive protected areas in order to finance poverty reduction policies (e.g., Yasuní National Park), to supporting communities' and Nature's rights against agro-industry. By analyzing the dynamics of contestation surrounding the application of RoN in Ecuador, this article provides new insight into the struggles to construct post-neoliberal development within the global market system.

Contestation over RoN quickly escalated after the constitution's signing in 2008. These rights immediately conflicted with the Ecuadorian government's plans to expand large-scale mining and oil extraction to finance development projects. Numerous lawsuits were filed to protect Nature's rights, including from economic development projects. Given the State's plan to fuel economic growth through increased extractivism, including in fragile and protected ecological areas, Ecuador constitutes a "hard case" for implementing RoN. This article presents a conceptual framework for understanding the tools and pathways through which Ecuador's RoN are applied in

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practice and the reasons why these rights are upheld in some cases and not others.

Ecuador's experience is important because of its interaction with a global movement promoting RoN internationally as a means of changing the way sustainable development is conceptualized and practiced. No longer a fringe idea advocated only by a handful of radical activists and leftist governments, RoN has become more mainstream. This counter norm is expressed in venues as diverse as U.S. municipal ordinances, for example in Santa Monica and Pittsburgh (Sheehan, 2014), New Zealand's treaties with its Māori population (Iorns Magallanes, 2014; Ruru, 2014), Supreme Court decisions in India (Radhakrishnan, 2012), Pope Francis' 2015 encyclical *Laudato Si*; UN General Assembly resolutions (including the 2015 resolution A/RES/70/208 to develop RoN jurisprudence), and the 2015 Paris Climate Talks, where RoN was advocated as a tool for curtailing fossil fuel emissions. In 2012, the International Union for Conservation of Nature (IUCN) made RoN "the fundamental and absolute key element for planning, action and assessment. . .in all decisions taken with regard to IUCN's plans, programmes and projects" (IUCN, 2012, pp. 147–148). It and other organizations are part of a new global governance network dedicated to implementing RoN as a means for living in harmony with Nature. [4]

To facilitate their efforts, RoN advocates created a new international governing institution: the International Tribunal for the Rights of Nature. This "people's tribunal" investigates, tries, and decides cases involving alleged violations of the Universal Declaration of the Rights of Mother Earth, adopted at the 2010 World People's Conference on Climate Change and the Rights of Mother Earth in Bolivia. [5] Proposed by Alberto Acosta, former President of Ecuador's Constituent Assembly, the idea was inspired by the International War Crimes Tribunal and the Permanent Peoples' Tribunal, established by citizens to investigate and publicize human rights violations. [6] Just as these tribunals provided social pressure to create and strengthen international human rights law, the International Tribunal for the RoN is meant to foster international RoN law.

The above anecdotes show how RoN jurisprudence is simultaneously developing in Ecuador and internationally. We use the Ecuadorian case as a lens for analyzing the interaction between global and local governance. We document below the formation of a global RoN network, the ability of Ecuadorian and foreign members of this network to institutionalize RoN norms in the Ecuadorian constitution, and the international reverberations of Ecuador's pioneering RoN laws. In addition to its impact on strengthening RoN in international discourse and organizations, Ecuador's experience also has broader relevance because emerging norms are imbued with meaning through their application in specific cases. As the first country to apply RoN laws, Ecuador's experience is influencing global notions of what RoN norms look like in practice. Given Ecuador's influence on international RoN mobilization, we argue that explaining variation in the application of Ecuador's RoN laws has value for understanding the strategies, pathways, and processes through which emerging global counter-norms strengthen.

The literature on norm emergence and development emphasizes institutionalization as an important mechanism (Finnemore & Sikkink, 1998, p. 900), and many studies examine how new norms get institutionalized in domestic and international laws (Carpenter, 2007; Risse, Ropp, & Sikkink, 1999; Sikkink, 2011). However, in the early stages of a norm's life cycle, when the norm is highly contested, laws often are not applied in ways that support the norm. For example, the adoption of human rights laws cannot fully explain the pattern of human rights prosecutions. The effects of human rights laws are conditional on bottom-up legal mobilization over time (Dancy & Michel, 2015, p. 1). Yet, few studies examine the pathways and strategies norm entrepreneurs/advocates (and their opponents) use to build (and counter) momentum behind judicial processes meant to buttress the enforcement of emerging counter-norms. [7] To fill this gap, we analyze the tools and pathways through which Ecuador's RoN are applied in practice and the reasons why these rights are upheld in some cases and not others.

We describe below four legal tools used to implement RoN and then compare 13 attempts to apply these tools through one of four pathways: (1) norm-driven civil society pressure, (2) instrumental government action, (3) bureaucratic institutionalization, and (4) professional interpretation by judges. We use this framework to explore several questions with global ramifications. Given that Ecuador's constitutional RoN have not eliminated new large-scale extractive projects, do they still matter, and if so, how? And what lessons does Ecuador's experience have for those working to implement RoN legislation in other countries and in international fora?

Our findings, based on case analysis from 2008 to 2016, reveal some unexpected pathways of influence and suggest that the pathways channeling efforts to apply RoN influence the prospects for success. Contrary to our expectations (based on the norms literature), civil society pressure was the least successful pathway. RoN activists faced two main obstacles: (1) the politicization that inevitably occurs around norm contests, and (2) judges' lack of knowledge about how to interpret RoN. Activists lost high-profile lawsuits. They succeeded only by working "below the radar" (Gash, 2015) on un-politicized local cases and training lower-level judges.

We argue, however, that highly politicized civil society pressure outside the courts contributed indirectly to judicial momentum. Anti-mining activists used Ecuador's RoN laws as a tool for mobilizing society and shaming the government. As a result, the government invoked RoN to justify and legitimize its development agenda. While the state often invoked RoN instrumentally (producing hypocritical positions), the result was to build precedent and raise awareness of RoN among judges. Judges knowledgable about RoN are unilaterally applying RoN in their sentencing, even in cases where neither claimants nor defendants invoke RoN. One of our most interesting findings, which we explore below, is that RoN jurisprudence is being developed in Ecuador by judges, not because they are RoN advocates, but because they feel a professional responsibility to interpret and apply the law in its entirety. We argue that the Ecuadorian cases demonstrate the power of "weak laws"—legal provisions adopted by governments as "cheap talk" because they see little cost and have no intention of enforcing them (Snyder & Vinjamuri, 2004). Ecuador's constitutional RoN articles do matter in the sense that RoN activists are using them as tools to strengthen RoN jurisprudence and norms in a way that are having real impacts.

2. GLOBAL FOUNDATIONS OF THE RIGHTS OF NATURE MOVEMENT

The idea of RoN has roots in both Western and non-Western thinking, and has been expressed by writers from every continent. A common thread uniting these various traditions is the need to see humans as part of Nature, rather than separate and apart. As U.S. RoN scholar Thomas Berry argued, "the

planet Earth is a single community bound together with interdependent relationships" (Berry, 2006, pp. 149–150).

For millennia, Indigenous communities worldwide have similarly viewed the human experience as part of the planetary experience. According to Ecuadorian Indigenous leader and former Minister of Foreign Affairs, Nina Pacari (2009, p. 35), the Indigenous *cosmovisión* that surrounds the concept of buen vivir and RoN in the Ecuadorian and Bolivian constitutions is a natural outgrowth of the relationship of humans to Mother Earth. Viewing human welfare as intertwined with the welfare of all Earth ecosystems means that development must be based on ecological foundations that recognize the integral processes of the biosphere and the need for harmony and balance among all elements of the system. This principle, which is supported by a multiplicity of indigenous and non-indigenous thinkers, informs not only the concept of buen vivir in Ecuador, but also the global RoN movement, now organized through the Global Alliance for the Rights of Nature.[8]

For RoN advocates, market structures treating natural resources as objects for human exploitation are a root problem. To rectify this, they are calling for a new body of law, based on a philosophy of law called Earth Jurisprudence, which privileges maintaining the integrity and functioning of the whole Earth community in the long term over the profit-driven structure of existing legal and economic systems. Such a philosophical perspective prioritizes the fundamental rights of all living things to exist and live in a healthy and sustainable environment (Cullinan, 2011).

While scholars had written about RoN for decades,[9] global networks to develop and promote Earth Jurisprudence began forming in the 1980s, initially in the Global South through Indigenous movements mobilizing to protect Mother Earth. Inspired by Berry's writings, the London-based Gaia Foundation collaborated with Berry to hold the first international conference on Earth Jurisprudence in 2001. This conference convened lawyers, environmental leaders, educators from South Africa and the United States, and Indigenous peoples in the Canadian Arctic and the Colombian Amazon (Bell, 2001). Throughout the early 2000s, institutions and centers for Earth Jurisprudence formed in the UK, South Africa, Australia, New Zealand, the US, and elsewhere. In 2006, the Community Environmental Legal Defense Fund (CELDF) helped citizens of Tamaqua, Pennsylvania write the world's first local RoN ordinance.[10]

In 2007, global efforts to promote Earth Jurisprudence fed into Ecuadorian efforts to strengthen environmental protection, including through RoN, in the new constitution. The Pachamama Alliance, a U.S. environmental NGO with strong ties to Ecuadorian Indigenous organizations, was a key node in the global RoN governance network. After learning of Tamaqua's RoN ordinance, Pachamama Alliance founder Bill Twist connected CELDF lawyers with Ecuadorian environmental activists, as well as Alberto Acosta, then-president of Ecuador's Constituent Assembly. Ecuadorian RoN advocates collaborated with CELDF lawyers to draft proposed RoN articles for Ecuador's constitution. These articles adapted and strengthened Tamaqua's municipal RoN ordinance.[11] Ecuador's constitutional RoN provisions diffused through the global RoN network and became a model for RoN laws subsequently adopted in Bolivia and the U.S. (Milam, 2013). Given the multi-directional, global–local connections through which Earth Jurisprudence is developing, explaining Ecuador's successes and failures is crucial to understanding the future of RoN at both local and global levels.[12] The next section sets the stage for this analysis by describing the political context in which Ecuador's RoN legislation was crafted.

3. POLITICS OF ECUADOR'S RIGHTS OF NATURE

In 2006, Rafael Correa was elected president after a decade of extreme political and economic instability. Correa rose to power on the promise to fundamentally remake Ecuador's political and economic system, supported by a new political movement and political party called Alianza PAIS. A loose collection of leftist academics, Indigenous, and other social movement activists, the movement was held together largely by a desire to replace neoliberal economic policies with an alternative development approach (Becker, 2013; Grugel & Riggirozzi, 2012; Radcliffe, 2012; Sader, 2009). A key step was rewriting the country's constitution in 2007.

The process of writing Ecuador's new constitution was remarkably participatory, meant to be a reflection of true development from multiple collectivities (Radcliffe, 2012). Civil society submitted over 3,000 proposals, which were considered by the Constituent Assembly (Greene, 2015). This process provided a window of opportunity for RoN activists to influence national legislation. Ecuadorian RoN advocates (primarily Indigenous and environmental activists and lawyers) collaborated with US environmental lawyers from CELDF to draft proposed RoN articles. They found a powerful ally in the constituent assembly's president, Alberto Acosta, a well-known economist and former Energy Minister who was sympathetic to the idea. While RoN was not universally supported in the assembly, Acosta ensured that it was included in the final draft, which Ecuadorian voters approved in 2008.

Ecuador's 2008 constitution is the world's first to treat Nature as a subject with rights. Chapter 7 grants Nature the rights to exist, to maintain its integrity as an ecosystem, and to regenerate "its life cycles, structure, functions and evolutionary processes." Nature also has the right to be restored if injured, independent of human claims for compensation. Moreover, the constitution empowers any person to enforce these rights in court on behalf of Nature (Article 71). Finally, Articles 71–73 require the State to enforce and protect RoN, particularly from damage caused by extractive industries, including through preventive action. RoN was one of several constitutional elements designed to move the country away from a neoliberal development approach toward an alternative approach rooted in the Indigenous concept sumak kawsay (buen vivir).

Once the constitution passed, attention turned to creating the secondary laws and institutions needed to give form to constitutional principles. President Correa immediately launched a public campaign to pass a mining law that greatly expanded existing mining operations and initiated new sites. Correa argued the State could ensure socially and environmentally responsible mining practices. Moreover, profits from mining and oil extraction were necessary to develop a post-fossil fuel energy sector, reduce poverty, and expand access to education, healthcare, and other public goods. For Ecuador's government, these goals constituted buen vivir.

Indigenous and environmental activists fiercely criticized the law, saying it violated both RoN and the constitutional rights of Indigenous communities to prior consultation. They accused the government of coopting and twisting the meaning of buen vivir. Correa responded by calling them "childish environmentalists" (cited in Dosh, 2009). Passage of the Mining Law in January 2009 prompted tens of thousands of Indigenous, community-rights, and environmental activists to protest nationwide. Tensions reached a boiling point in September 2009 after the government proposed a Water Law that opponents argued similarly violated the constitutional rights of Nature and Indigenous communities. Ecua-

dor's government cracked down, and by 2011 had arrested nearly 200 Indigenous leaders, charged with terrorism for protesting mining activities. [13] The government also closed several organizations leading the protests, including the Development Council of Indigenous Nationalities and Peoples of Ecuador and the environmental NGOs Acción Ecológica and Fundación Pachamama. [14]

Given the State's priority on exploiting natural resources to fuel social development, the government postponed creating the secondary laws and institutions needed to strengthen and give form to constitutional RoN principles. [15] Environmental lawyers and activists drafted a secondary RoN law, but decided not to submit it to the National Assembly given the hostile political context and their fear that this would provide an opportunity for legislators to restrict the constitution's RoN provisions. [16] Consequently, efforts to apply RoN in Ecuador occurred in a highly politicized context, with relatively little institutional structure beyond general constitutional principles. Yet, while some efforts failed, others succeeded in developing RoN jurisprudence. The following sections catalog these efforts and present a framework for analyzing this variation in success and failure.

4. TOOLS AND PATHWAYS FOR APPLYING RIGHTS OF NATURE

The case descriptions and analysis provided below are the product of several years of in-country fieldwork (and years of literature review) during which we collected primary documents, media reports, as well as interviews with participants in the lawsuits (plaintiffs, defendants, lawyers, judges), government representatives (national and subnational), corporations, Indigenous and environmental organizations advocating RoN, among other actors. We also attended international RoN Tribunals and observed various meetings of the Global Alliance for the Rights of Nature over the past several years. While most fieldwork was conducted in Ecuador, we also carried out research in the US with digital or telephone interviews to include case studies in other countries and in international fora. Information collected was validated through triangulation, comparing primary court documents, interviews, news reports, and observation when applicable.

(a) *A note on Ecuador's Court and legal systems*

Ecuador's court system is organized according to its political and administrative structure. Most proceedings begin in municipal-level courts (called "First Instance Courts"). Provincial Courts are "Second Instance Courts" that serve as appellate courts for first instance matters. Each Provincial Court is internally divided into specialized courts for different branches of law (e.g., civil, criminal, and constitutional). The National Court of Justice is the highest body of the judiciary and serves as the main judicial institution that hears cases of cassation and revision of appeals. The Defensoría del Pueblo is a government ombudsman's office designed to protect human rights to which communities and individuals can report RoN violations. In 2015, the government ordered all allegations of RoN violations to be channeled through the Defensoría del Pueblo. This decision is controversial since the Defensoría has no legal authority and the Constitution states that any citizen can represent Nature in court.

Some cases in this study are from the Galapagos Islands, an Ecuadorian province with special legal status. Ecuador's Constitution (Article 258) specifies the province's function of protecting the principles of patrimonial conservation through the concept of buen vivir/sumak kawsay. Article Three of the Special Law of the Galapagos outlines principles for governing the islands. These include: "An equilibrium among the society, the economy, and nature; cautionary measures to limit risks; respect for the rights of nature; restoration in cases of damage; and citizen participation." Article 20 of the Special Law also defines the unique role of the Galapagos National Park (GNP), which represents the state and nature in all lawsuits dealing with RoN in criminal and civil matters. Within this park system is a Marine Protected Area (MPA), extending 40 miles outside the islands. This MPA has another set of special laws that surround it, including those prohibiting long line and commercial fishing. Finally, the Galapagos Islands have a new governing structure created in 2014 that includes a Government Council composed of Ecuador's President, a Technical Secretary, the Minister of Environment, Minister of Tourism, Minister of Agriculture and Fishing, Director of National Planning, the mayors of each Galapagos canton, and a permanent representative of the President from the rural Galapagos cantons. Prior to 2014, the Conservation Sector (comprised of various environmental NGOs and scientific teams) had one vote on policymaking in the MPA. While this is no longer the case, this group still meets and played a key role in some cases described below.

(b) *Legal tools*

We identified four legal tools through which RoN is applied in Ecuador. Given the lack of institutionalization through secondary laws, RoN in Ecuador is mostly applied through three types of lawsuits (constituting three of the four "tools"). [17] The first two involve lawsuits seeking protection of RoN guaranteed in the Constitution and the Organic Law of Constitutional Guarantees. These constitutional lawsuits (processed through civil and constitutional courts) ask that damaged ecosystems be restored (a form of restitution for Nature) and/or that preventive action be taken to avert expected future violations. The most common constitutional lawsuits are those requesting "protective action" to uphold RoN. Other constitutional lawsuits seek to overturn laws and executive orders that violate the constitution's RoN clauses.

Criminal lawsuits provide a third legal tool, which became possible in 2014 with the passage of Ecuador's new Penal Code. Chapter 4 of the Penal Code specifies various "crimes against the environment, Nature or Pachamama," including crimes against biodiversity and against natural resources, including water, soil, and air. Criminal lawsuits seek punishment for such crimes and are processed through criminal courts. Unlike constitutional lawsuits, which seek restorative justice by restoring ecosystems, criminal lawsuits seek punishment of guilty parties. The fourth tool is not a lawsuit, but rather administrative action by a government agency to uphold RoN. For example, the Ministry of Environment has invoked RoN to justify punitive action (e.g., fines, removal of licenses, and eviction of companies from ecological reserves) and restoration of damaged ecosystems.

(c) *Cases and pathways*

We identified 13 cases where the above legal tools were used to try to protect RoN during 2008–16. In several cases, lawsuits were combined with administrative action. Table 1 summarizes these cases and identifies whether or not RoN were successfully applied (i.e., a judge upheld RoN or the government implemented an administrative action to protect RoN).

Table 1. *Ecuador's rights of nature cases 2008–16*

Pathway	# of Cases	Legal Tool	% Successful
Civil Society (Norm driven)	5	3 protective actions; 1 challenge to law's constitutionality; 1 criminal lawsuit	40% (2/5 cases)
Instrumental Government Action (Interest driven)	2	1 protective action; 1 criminal lawsuit	100% (2/2 cases)
Bureaucratic Routine (Rule driven)	4	1 protective action; 2 criminal lawsuits; 4 administrative actions (3 combined with lawsuits)	100% (4/4 cases)
Juridical Epistemic Community (Professional standards driven)	2	2 protective actions	100% (2/2 cases)
Total	13	5 protective actions; 2 admin actions + protective actions; 1 admin action + criminal lawsuit; 1 admin action only; 2 criminal lawsuits only; 1 challenge to constitutionality of a law	Protective actions—60%; Challenge constitutionality of a law—0%; Administrative actions—100%; Criminal lawsuits—100%

Of the 13 cases, 10 efforts to apply RoN succeeded while three efforts failed. The cases not only show that the pathway through which efforts to apply RoN are channeled influences the prospects for success, but also that interactions among the pathways create new opportunities for applying and strengthening RoN over time.

We identified four pathways for implementing RoN in Ecuador: (1) civil society pressure, (2) instrumental government action, (3) bureaucratic institutionalization, and (4) application by the juridical epistemic community (i.e., judges). These pathways differ not only by the type of actor, but also their motivation. Civil society actors were motivated by normative principles and invoked these in their struggle to protect Nature. As one might expect, the president's office acted instrumentally, invoking RoN when it served its purpose and ignoring RoN when it challenged government policies. Consequently, government positions look quite hypocritical, particularly on mining (described below).

At other times, however, government agencies like the Environment Ministry invoked RoN to justify routine bureaucratic actions that pre-dated RoN laws and which could have been justified through other regulations. This pathway is important because the incorporation of norms into routine bureaucratic policies and practices is thought to be crucial for norm adoption since it leads to the internalization of norms through habituation. The incorporation of new norms like RoN into routine bureaucratic procedures can signal the beginning of a transition from the first stage of a norm's life cycle (emergence) to the internalization phase (Finnemore & Sikkink, 1998).

Judges' actions were often neither normative nor instrumental, but rather rooted in the routine application of law. One of our most interesting findings, which we explore below, is that RoN jurisprudence is being developed in Ecuador by judges who did not identify as environmentalists in interviews (indeed, most expressed a lack of knowledge regarding RoN) and who did not invoke normative arguments regarding Nature in their rulings, but who expressed a professional responsibility to interpret and apply the law in its entirety. The following four sections analyze these pathways and the interactions among them.

5. PATHWAY 1: NORM-DRIVEN CIVIL SOCIETY PRESSURE

Given the passage of constitutional RoN provisions in 2008, Indigenous movements and environmental NGOs were initially optimistic that Ecuador was turning away from extractivist-based development.[18] These hopes were dashed when the government passed the 2009 Mining Law and moved quickly to expand industrial mining. Eager to protect the gains they had made, civil society activists invoked the constitution's RoN provisions to challenge the government's extractivist development agenda through lawsuits for protective action.

The success of civil society pressure is mixed. Three of their five lawsuits have failed. Two factors likely explain these failures and constitute the principle obstacles to implementing RoN. First, the contentious relationship between RoN activists and the government meant some lawsuits were highly politicized. Judicial sentences consequently focused on navigating the politicized environment rather than on implementing the specifics of the law.[19] Second, most lawyers and judges simply lacked knowledge of RoN and how to interpret it. The idea that individual and corporate property rights must be curtailed in some cases to uphold Nature's rights was not only foreign to most judges, but ran counter to their legal training. As a result, judges in civil society lawsuits have generally ruled that economic development activities are protected by individual rights (e.g., property rights, right to work) that supersede Nature's rights.

The Condor-Mirador lawsuit illustrates the problems of politicization and lack of knowledge. In 2010, Indigenous and environmental activists realized the political situation would not allow them to strengthen RoN through secondary laws. They therefore tried to strengthen RoN by establishing case precedent. After spending two years searching for the perfect case—a high-profile case involving a clear, unambiguous, large-scale violation—RoN activists decided on an open-pit mining project known as Condor-Mirador.

In March 2012, the Ecuadorian government signed a contract with the Chinese-owned mining company Ecuacorriente to establish the country's first, large-scale, open-pit mining project in a sector of the Amazonian province Zamora-Chinchipe known as "Condor-Mirador." The mining concessions cover 38 square miles and will include an open-pit mine expected to measure 2.5 miles in diameter and 0.7 miles deep (Sacher, 2011, p. 6). The project's environmental impacts are particularly problematic because it exists in one of the most biodiversity-rich areas of the planet home to several endangered endemic species, particularly some amphibians close to extinction. Also, the project is located in the watersheds for two rivers used for irrigation and consumption, and which constitute habitat for various animal and plant species.

The mining company's own environmental impact study acknowledged that the open-pit mine would cause impacts listed as RoN violations in the constitution. These include the total removal of ecosystems, including the habitats on

which endangered endemic species rely, likely causing the extinction of one or more species (Thurber & Noboa, 2010, PDF 374). Also, contaminating surface and groundwater with heavy metals and toxic products would be catastrophic for surrounding watershed ecosystems (Sacher, 2011, p. 16–17). Article 73 of Ecuador's constitution explicitly requires the State to "apply preventive and restrictive measures on activities that might lead to the extinction of species, the destruction of ecosystems and permanent alteration of natural cycles." Moreover, the constitution clearly establishes the precautionary principle; activities likely to produce these outcomes must be stopped and re-designed. RoN activists therefore saw Condor-Mirador as a promising case for creating RoN jurisprudence.

In January 2013, a collection of Indigenous movements, environmental and human rights NGOs, and communities near the mine jointly filed a constitutional lawsuit for protective action to the 25th Civil Court in Pichincha province.[20] The defendants included Ecuacorriente, the Ministry of Non-Renewable Natural Resources for signing the mining contract, and the Ministry of Environment for granting an environmental license. The lawsuit alleged that these actions constituted RoN violations since scientific studies showed the mining project would likely produce environmental impacts explicitly prohibited in the constitution (e.g., destruction of whole ecosystems, extinction of species, and degradation of water ecosystems, which enjoy special protection due to water being a precondition for life).[21] The suit also noted articles in the constitution and the Law of Jurisdictional Guarantees and Constitutional Control that require the State to take preventive action against potential RoN violations, even amid uncertainty. The suit asked the Court to suspend the Condor-Mirador project and order a new environmental impact study that would address impacts on the project's drainage into watersheds.

The judge ruled that the Condor-Mirador project did not violate RoN for two principle reasons, both of which reflect questionable and controversial interpretations of the constitution's RoN clauses. First, the judge ruled that since the mining project would not affect a protected area, the environmental damage would not violate the RoN. This decision was problematic for two reasons. First, an audit by the Ministry of Environment's Comptroller showed the project did intervene in the Protected Forest of the Cordillera del Cóndor (Controlaría General del Estado, 2012). More important, the constitution clearly states that all Nature has rights, not just Nature found in protected areas. The judge also argued that civil society's efforts to protect Nature constituted a private goal, while Ecuacorriente (a private company) was acting in favor of a public interest, namely development. Ruling that the public interest takes precedent over a private interest, the judge ruled against the claimants. Putting aside the perverse logic of this argument, it contradicts the constitutional principle that Nature's rights are both independent of societal interests and of equal value.

Civil society appealed the decision in the Provincial Court of Pichincha but lost. They blamed their loss on a lack of judicial independence. Their allegation is supported by a 2010 memo circulated among judges by Alex Mera, National Judicial Secretary, on behalf of President Correa (obtained by the authors). The memo decries the "illegitimate abuse of protective action provided for in the Constitution" to challenge public works projects, which "has meant a grave setback against placing the general interest over particular interests" (Mera Giler, 2010). Arguing that "this situation has meant an enormous opportunity cost for the country," the memo presents instructions from President Correa that any judge approving a preventive action against a State project must personally reimburse the State for "damages and harm" incurred as a result of suspending the project. Government bureaucrats will determine the amount of damages owed.

Concluding they would never get a fair ruling under the current government, RoN activists chose not to appeal the Condor-Mirador case to the Constitutional Court. Rather, they appealed the case to the Inter-American Court of Human Rights, where it is under review. Many RoN activists decided not to bring more lawsuits in Ecuador for fear of establishing negative jurisprudence that could weaken the gains made in the Constitution. They focused instead on mobilizing support for RoN within Ecuadorian society.

Some Ecuadorian environmental lawyers disagree that the main problem is a lack of judicial independence.[22] Rather, they say most judges do not understand RoN and do not know how to interpret them or balance them against other constitutional rights. The lawsuit for protective action against a pine tree plantation in the páramos of Tangabana illustrates this problem.[23]

The Tangabana case relates to a 200-hectare monoculture plantation established by the private company ERVIC with funding from Ecuador's Ministry of Agriculture (through a reforestation program meant to increase carbon sequestration). ERVIC's owner, retired military captain Carlos Rhor, extended the plantation beyond his property into páramos collectively owned by a local Indigenous community. Community members were concerned because the páramos serve as the catchment area for their watershed. Pine trees are notoriously water intensive and known to seriously degrade the hydrological flow in páramo ecosystems. For this reason, Ecuador's Ministry of Environment prohibits reforestation projects in native páramo.[24] Community members turned to the environmental NGO Acción Ecológica for help. While Acción Ecológica feared bringing another suit after Condor-Mirador, they took a risk. Since government policy prioritized protecting páramo ecosystems, they saw this as a chance to create positive RoN jurisprudence through a case that did not directly challenge the government's extractivist agenda, and thus would sidestep the political conflicts associated with this agenda.[25]

In November 2014, a collection of RoN activists (represented by Yasunidos Chimborazo and Acción Ecológica) and the community's pastorate filed a lawsuit for protective action in the Judicial Court of Colta (a canton in Chimborazo province). The judge ruled against the claimants on procedural grounds. The ruling demonstrates the judge's lack of understanding of RoN. First, he noted that the claimants did not own the affected land (community members were not signatories to the suit due to fear from intimidation by ERVIC). The judge ruled that since the claimants could not prove they themselves were harmed, they could not bring suit. He failed to understand that, since RoN exist independently of human interest, Article 71 of the constitution allows any person to bring a suit on behalf of Nature, including those not personally affected by RoN violations. The judge also ruled that the claimants had not demonstrated an existing damage that needed to be repaired. However, this is not necessary under the Law of Constitutional Guarantees, which authorizes preventive action to protect RoN before harm is committed.

Finally, the judge ruled that evidence submitted by the claimants (e.g., affidavits and scientific studies showing the damage pine trees cause to páramo ecosystems) was invalid because it was not presented with the respective witness testimony, a process required in criminal lawsuits. Rather, the clai-

mants' lawyers submitted the evidence with sworn affidavits, as permitted in constitutional lawsuits by the Law of Constitutional Guarantees. According to the claimants' lawyer, ignorance of the different procedural requirements for different kinds of lawsuits is a common problem in small municipalities like Colta.[26] Such places often have a single, "multicompetent judge" with general training to receive any kind of lawsuit. For practical reasons, such judges are often specialists in criminal suits and lack expertise in constitutional lawsuits. This provides a significant obstacle in highly complex cases like constitutional RoN cases.

Acción Ecológica appealed the decision to the Provincial Court of Chimborazo. However, the judge refused to consider new evidence, meaning Acción Ecológica could not submit the evidence of RoN violations that the first-instance judge had ruled inadmissible. Lacking the necessary evidence, the provincial judge ruled the claim inadmissible and denied the appeal. The claimants' lawyer, Pablo Piedra, lamented "our constitutional rights were once again violated because of a procedural issue."[27] In September 2015, Piedra filed an appeal before the Constitutional Court, alleging a violation of due process. The case awaits consideration.

Despite these failures, there are successful cases of civil society lawsuits that similarly illustrate the importance of judicial knowledge and politicization of cases. The first successful civil society RoN lawsuit was filed by two Americans, Nori Huddle and Richard Fredrick Wheeler, who own land along the Vilcabamba River in Loja province. While widening a nearby road, Loja's Provincial Government discarded excavated material and construction debris into the river. Blockages altered the river's path and increased its flow, causing large floods that increased the risk of landslides, damaged local ecosystems, and reduced local landowners' access to land and water. Desperate to save their land, Huddle and Wheeler sued the provincial government on behalf of the Vilcabamba River. As a constitutional lawsuit on behalf of Nature, the suit did not seek restitution to Huddle and Wheeler, but only the restoration of the river's natural ecosystem.

After losing in municipal court, Huddle and Wheeler appealed to the Provincial Court of Loja. In March 2011, the provincial court ruled in favor of the Vilcabamba River, making it the world's first successful RoN lawsuit. According to RoN activists, the favorable sentence was influenced by the fact that the judge was a friend of the claimants' lawyer, who educated the judge about the constitution's RoN provisions and provided guidance on how to interpret them.[28] The judge's education on RoN may partially explain why this case succeeded. The judge's ability to focus on interpreting the law correctly was no doubt helped by the fact that the case involved a relatively mundane issue like provincial road construction, and not a more nationally politicized and controversial issue like mining.

Similar cases exist in the Galapagos Islands, where a Special Law and Marine Protected Area create unique criminal and civil codes for protecting this World Heritage Site. In July 2011, the Ecuadorian Coast Guard boarded the fishing vessel Fer Mary and her six smaller crafts within the Galapagos Marine Reserve. They found 357 sharks without fins, representing 94% of the total catch in the storage area, and 1,335 shark hooks strung in a 30-mile line with specific characteristics used for capturing sharks. Sharks are a protected species and fishing them inside the Galapagos Marine Reserve is an environmental crime under the Galapagos Law and Penal Code of Ecuador.[29] In September 2011, pressured by members of the Conservation Sector, the Galapagos district attorney's office and Galapagos National Park filed a criminal lawsuit against the Fer Mary captain and crew for crimes against Nature. The Conservation Sector, led by attorney Hugo Echeverria, tried to represent the sharks in court, but the judge denied the action saying, "If you are not the shark, which clearly you are not; if you are not a lawyer of the park or if you are not the district attorney, then you have no business here in my courtroom."[30] Therefore, while civil society instigated the lawsuit and advocated for the sharks, it was not permitted to formally be part of the trial.

The Galapagos judge later claimed he was not competent to hear the case and moved it to Guayaquil, on Ecuador's mainland. In interviews, members of the park and government community commented that the judge felt threatened and that it was difficult for him to choose a "fish over a human's ability to feed his family and continue a career he has been doing over a lifetime."[31] Aside from delaying the case, the decision meant that the suspects were released from detention and the next hearing took place 982 km away from the crime scene. The Fer Mary, however, remained impounded in the Galapagos.

From June 2012 through August 2014, the case was transferred to Guayaquil and awaited trial. Proceedings began in May 2015 and in July 2015 the court ruled in favor of the sharks. The judge sentenced the captain of the Fer Mary to two years in prison, and crewmembers to one year each. The verdict also ordered confiscation of the six accompanying motor launches, as well as the destruction of the Fer Mary. In his verdict, Judge Franco Fernando cited Constitution Chapter 7, Articles 71–73 related to RoN. This marked the first conviction of an environmental crime in 14 years of Galapagos law and set a precedent for sanctioning shark finning and other crimes against Nature in the Galapagos (Franco Fernando, 2015). Despite the successful ruling, the judge did not permit the Conservation Sector to legally represent the sharks in court (the District Attorney and Galapagos Park did this), but it did speak for Nature through an amicus brief.[32] As attorney Hugo Echeverria explains, a remaining hurdle in strengthening RoN jurisprudence, particularly in criminal cases such as this one, is enforcing Article 71 of the constitution, which grants anyone the right to legally represent Nature.

Together, the civil society cases suggest that activists' efforts to advance RoN norms are most successful when the cases are not nationally politicized, for example by challenging the state's extractivist agenda. This supports an emerging body of literature showing that such high-profile cases can undermine judicial momentum behind the protection of new, controversial rights. Judicial momentum is instead built by acting "below the radar," or working quietly to accumulate legal precedent through lower-level courts on low-profile cases (Gash, 2015). As a counter-norm, RoN is not currently strong enough to undermine the State's extractivist development agenda. While a lack of judicial knowledge also remains a problem, efforts by civil society to educate and train judges on RoN law may be producing incremental normative development, as we discuss below. Interestingly, this normative change is also occurring through instrumental action by the State.

6. PATHWAY 2: INSTRUMENTAL GOVERNMENT ACTION

RoN jurisprudence in Ecuador is being developed in large part through government action. Six of the 13 RoN applications were initiated by the State, all successfully. Moreover, the State employed the full array of legal tools: constitutional

lawsuits for protective action, criminal lawsuits, and administrative action. Sometimes, these are motivated by instrumental policy considerations directed by President Correa, while other times the Ministry of Environment simply invokes RoN to justify routine administrative actions. Regardless, we argue these actions are strengthening RoN in Ecuador, perhaps unintentionally, by establishing precedent and raising the profile and awareness of RoN among judges.

The government's use of RoN to combat unauthorized mining illustrates instrumental state action. There has long been unauthorized, "artisanal" mining in provinces like Esmeraldas and Zamora-Chinchipe. When Ecuador's government decided to expand industrial mining (what Eduardo Gudynas, 2015 refers to as "neo-extractavism"), it initiated efforts to eliminate unauthorized mining. The desire to regulate all mining was undoubtedly one motivation. But the crackdown also responded to community appeals for state action to address the environmental damage caused by illegal mining. By 2010, various governmental and university reports showed that unauthorized mining had seriously degraded 140,000 hectares of land and released high levels of toxins into water sources in the cantons Eloy Alfaro and San Lorenzo (Esmeraldas province). Citing these reports, in May 2011 the Ministry of Interior requested that the 22nd Criminal Court of Pichincha approve preventive action. Citing Articles 71–73 of the constitution, the request argued that the State's duty to protect RoN, in this case the rights of water, justified extraordinary measures, including "the destruction of all items, devices, tools, and other utensils that constitute a serious danger to Nature." [33]

On May 20, 2011, the court approved the request and ordered the Armed Forces, National Police, and other government agencies to collaborate in operations to control illegal mining to uphold RoN. That same day, President Correa issued Executive Decree 783, declaring a state of exception in San Lorenzo and Eloy Alfaro and ordering a military operation to combat mining in the cantons. The next day, nearly 600 soldiers seized and destroyed more than 200 pieces of heavy mining equipment, including those that local miners had rented from third parties. [34] Over the next several years, similar operations were repeated in Esmeraldas and replicated in other provinces, including Zamora-Chinchipe, Morona Santiago, and Napo.

While the government's use of RoN to combat unauthorized mining seems hypocritical given its refusal to acknowledge RoN in the Condor-Mirador case, instrumental State use of RoN may have longer-term consequences that may strengthen RoN jurisprudence. For example, the precedent set by the State's action in Esmeraldas is now institutionalized in the country's 2014 Penal Code. Title IV, Chapter 4 identifies a series of crimes against Nature, and Article 551 legalizes the destruction of private property to protect the RoN against such crimes. While the original intention was to consolidate State control over mining, the law theoretically can now be used in other circumstances.

7. PATHWAY 3: BUREAUCRATIC INSTITUTIONALIZATION

In contrast to President Correa's instrumental use of RoN, the Ministry of Environment invokes RoN to justify routine administrative actions that are part of its institutional mission of environmental protection. In some cases, the ministry unilaterally applies sanctions, like fines or the removal of environmental licenses for economic development projects determined to violate the RoN (e.g., the Secoya palm plantation and Macas road cases are summarized in our online Appendix). [35] Other times, the Ministry files criminal lawsuits against individual perpetrators. In 2014, the ministry won two lawsuits against individuals who killed a condor and a jaguar, both endangered species. In justifying its actions, the ministry cited Article 73 of the constitution, which requires the State "to apply preventive and restrictive measures on activities that might lead to the extinction of species..." In both criminal cases, the hunters were sentenced to prison.

The Cayapas shrimper case shows how the Ministry of Environment's incorporation of RoN into its bureaucratic routine is slowly strengthening RoN jurisprudence such that it challenges vested economic interests. Ecuador is Latin America's largest shrimp producer, and shrimpers are a powerful interest group. The expansion of shrimp farms in Esmeraldas province has destroyed much of the province's traditional mangrove forests. In 1995, the government established the Cayapas Ecological Reserve to protect some remaining mangroves. However, forty-two shrimp companies already operating in the area were allowed to stay within the reserve. This exacerbated conflict between the shrimp companies and local communities who relied on the mangrove forests for their sustenance. The government did little until 2008.

In 2008, President Correa issued Executive Decree 1391, which regulated shrimp farmers and made possible their removal from protected areas. Charged with enforcing protected areas, the Ministry of Environment removed dozens of shrimp companies from three ecological reserves, including Cayapas, during 2010–12. In 2011, one shrimp farmer, Manuel de los Santos Meza Macías, sued for a protective action to stop the Ministry's administrative action to remove him. At the hearing, Meza argued that "the economic interest of an individual takes precedence over Nature," and the judge agreed (Corte Constitucional del Ecuador., 2015, p. 2). Citing constitutional protections of private property (Art. 66, No. 26 and Art. 32), the judge ruled that the Ministry of Environment's effort to remove Mr. Meza Macías' shrimp company constituted an infringement on constitutional rights to property and to work.

After losing its appeal in Provincial Court, the Ministry of Environment appealed to the Constitutional Court, arguing that the lower courts' rulings were unconstitutional since they violated the constitution's RoN clauses. In its appeal, the Ministry argued that it "violated the constitution" for "the judge to place the economic interest of an individual above that of Nature...since the environmental legislation that governs us is oriented around preventing violations of the rights of Nature." The Ministry asked the Constitutional Court to rule on this "to establish a precedent that permits us to exercise fully the respect for Nature and for buen vivir, as issues like these concern the whole community and are...nationally relevant" (Corte Constitucional del Ecuador, 2015, p. 4).

On May 20, 2015, the Constitutional Court ruled that RoN and buen vivir are central to the constitution and, therefore, RoN are transversal (e.g., Art. 83 no6 and Art 395 No. 2). This means RoN affect all other rights, including property rights. The Court acknowledged that this reflects "a biocentric vision that prioritizes Nature in contrast to the classic anthropocentric conception in which the human being is the center and measure of all things, and where Nature was considered a mere provider of resources" (Corte Constitucional del Ecuador, 2015, p. 10). The Court ruled that by not guaranteeing the RoN, the lower court rulings violated the constitutional right of due process. The Court overturned the lower

court sentences and ordered the case to be retried in the Provincial Court, but this time considering RoN.

Given the government's frustration with RoN being used to challenge its extractivist agenda, it is ironic that the State has been an influential force for strengthening RoN in Ecuador, succeeding in each of its efforts to apply RoN. While the government often invokes RoN for instrumental purposes, the result has been to build precedent and raise the profile and awareness of RoN among judges. As the next section shows, this has important effects of its own.

8. PATHWAY 4: PROFESSIONAL INTERPRETATION BY JUDGES

Unlike civil society pressure through the court system, which utilizes RoN as a tool for legal precedent and RoN norm development, or the government's use of RoN to justify and enforce its policies, this fourth pathway reflects judges' professional desire to correctly interpret constitutional law. This pathway involves lawsuits that were not originally about RoN (i.e., neither claimants nor defendants invoked RoN), yet judges unilaterally applied RoN in their sentencing. These judges simply recognize that RoN is part of Ecuadorian law and their professional standards require them to apply and interpret the law in its entirety.

The first case illustrating pathway 4 began before the 2008 Constitution codified RoN. In 1993, the agro-industrial company PRONACA installed a large-scale pork processing plant in the canton Santo Domingo de los Colorados. Over 15 years, PRONACA built 40 factories in the canton that processed millions of pigs and chickens annually. For years, community members denounced the negative effects on the environment, human health, and the local economy. They accused PRONACA of human rights violations and appealed to the Ministries of Agriculture and Environment for help. [36] After a decade of study, the Ministry of Environment determined PRONACA was operating without proper legal permission. A 2003 Inter-institutional Technical Commission report confirmed reduced quality of life for populations near the plant, including contaminated local rivers, severe odors, and decreased tourism. The National Council for Water Resources also found that PRONACA did not have legal permission to use subterranean water sources and ordered fines and proper permitting. [37]

In 2009, community members filed a lawsuit with the 19th Civil Court in Pichincha province. Community members did not invoke RoN, but argued that PRONACA's actions violated their constitutional rights to Health and a Safe and Clean Environment. They asked for a stoppage of 6 new biodigestor machines that PRONACA was installing to process the release of methane gas caused by intensive pig farming. While the judge allowed the biodigestors, she created a commission to audit and monitor the biodigestors to ensure adequate water usage, waste management, and the protection of citizen and community rights. Importantly, the judge based this latter decision on the court's role not only in protecting peoples' and communities' right to live in a clean environment, but also in protecting RoN, including Nature's right to be restored to its ecological state before PRONACA entered the province. This ruling is significant not only for establishing RoN precedent, but also because the court acknowledged its right to invoke constitutional RoN (e.g., Articles 71–72) even when claimants did not invoke these rights.

Another case where judges applied RoN in their sentences occurred in Santa Cruz, Galapagos. In 2012, 18 citizens, primarily business owners, sued the municipal government to stop construction on Charles Darwin Avenue (a main boulevard) during high tourist season (fearing it would hurt business). Their argument rested on the fact that the municipality lacked an environmental license for the project. The mayor argued the municipality had the right to build the road quickly before the tourist high season, regardless of licensing procedure. While the claimants invoked procedural measures, the judge applied RoN in his decision. The judge noted the construction area constituted a species habitat, and the road crossed a migratory path for marine iguanas and other species. Invoking RoN (Articles 71–73), Judge Pineda Cordero ordered that construction be suspended until the municipality obtained an environmental license based on an environmental impact assessment that would guarantee the protection of species habitat, particularly during migratory season.

This case is significant not only for the judge's unilateral application of RoN, but also for placing Nature's constitutional rights over the rights of autonomous, decentralized municipalities. Citing the constitution's precautionary protection measures and the hierarchy of rights, the judge claimed the court's duty to protect Nature took precedence over its duty to protect governments' ability to carry out public works. Equally significant, the judge cited the Vilcabamba case as precedent, suggesting that earlier cases brought by civil society contributed to the judge's knowledge of RoN. This and other successful cases suggest RoN is slowly developing as a norm within Ecuador's legal epistemic community, empowering judges to apply RoN even when claimants do not originally ask for it.

9. CONCLUSION

Ecuador's experience with RoN shows how RoN norms are developing through a different trajectory than other norms, such as human rights. Ecuador's RoN laws were informed by global thinking, but advanced more rapidly than in other countries or in international fora. Unlike human rights, where international laws and norms diffused down to local levels, strong international RoN laws and norms are not available to domestic activists seeking to pressure the State to abandon its extractivist development agenda (Risse *et al.*, 1999). The classic "boomerang" approach is not available. This is why Ecuadorian RoN activists are at the forefront of global efforts to establish RoN in international law, described in the introduction. Ecuadorian activists are in the unique situation of using RoN as a tool domestically and advancing it as an emerging norm globally. Their experience therefore has lessons for understanding how new norms develop that are relevant to RoN activists working in other countries and internationally.

When considering Ecuador's high-profile lawsuits that challenged the Mining Law and Condor-Mirador project, it is tempting to conclude that Ecuador's RoN laws merely reflect "cheap talk" on the part of the government because it saw little cost and had no intention of enforcing them (Snyder & Vinjamuri, 2004). The question then becomes, do such "weak laws" matter and, if so, how? Comparing the full range of RoN cases suggests that Ecuador's constitutional RoN articles do matter in the sense that RoN activists are using them as tools to strengthen RoN jurisprudence and norms in a way that are having real impacts. However, to do so, they have to overcome two main obstacles: (1) the politicization that inevitably occurs around norm contests, and (2) judges' lack of knowledge.

RoN was politicized from the outset because Indigenous and environmental activists used it to challenge the govern-

ment's economic development strategy. One important consequence was that the secondary laws and institutions that were to strengthen and give form to the constitution's RoN principles were never created. The government ignored this process as it focused on expanding mining. After their legal challenges to mining failed, RoN activists decided not to pursue secondary laws out of fear of weakening the constitutional provisions. This meant that judges had a great deal of power to interpret and apply the constitution's RoN principles. This is why judges' knowledge became so important. The politicization of RoN set the conditions for RoN norm development through the courts.

Since weak international RoN norms meant civil society could not activate the boomerang model to pressure the Ecuadorian state, it is not surprising that civil society lost lawsuits challenging the state's vital interest in economic development through extractivism. Yet, the case comparisons show that norm entrepreneurs within civil society could still develop RoN norms to the extent (1) they could identify local cases less likely to be politicized, and (2) they could identify and/or train judges with the knowledge to accurately interpret RoN laws.

Ironically, the politicization of RoN arguably contributed to RoN jurisprudence by raising the profile of RoN. While civil society did not win highly politicized, high-profile lawsuits, anti-mining activists used Ecuador's constitutional RoN articles as a tool for mobilizing society and placing RoN on the national agenda, making it a salient issue. The mobilization in response to oil drilling in Yasuní national park is illustrative.

In 2013, Ecuador's government abandoned its proposal to forgo oil extraction in Yasuní in exchange for international donations to finance alternative development. It then announced plans to initiate new oil drilling in the reserve.[38] In response, RoN activists launched a national social movement called "Yasunidos." Their media campaign highlighted that drilling in Yasuní would violate the constitutional rights of Nature and of Indigenous communities. Yasunidos organized a campaign to collect signatures to hold a referendum on whether to block drilling in Yasuní. When the National Electoral Council rejected the signatures, activists sued before the Constitutional Court. The Court did not deny electoral fraud, but also did not mandate a referendum. This outcome increased popular perception that the government's actions were unconstitutional and increased Yasunidos' ability to mobilize society against the government.

The result is that RoN is now a regular part of national discourse. When politicians and bureaucrats discuss development, particularly mining and oil, they also often discuss RoN. While the government still pursues development through extractivism, it must justify such activities as consistent with the concept of buen vivir and the constitutional rights of Nature. Ecuador's government has repeatedly invoked RoN to justify and legitimize its policy agenda, including actions that are controversial for countering powerful economic actors (e.g., unauthorized miners and shrimp farmers). Importantly, the state wins when cases are politicized and thus become high profile. Somewhat ironically, this has strengthened RoN norms by accumulating precedent and increasing the knowledge of judges.

The increasing number of successful RoN sentences suggests that judges' knowledge of RoN is expanding, a point confirmed in interviews with lawyers and judges. Interview data and the legal reasoning presented in judicial sentences show that this is largely due to the combination of the issue's politicization and civil society's efforts to accumulate precedent through less-politicized cases. To our surprise, the increase in knowledge among judges opened a pathway for applying RoN that we did not initially consider. As judges become aware of RoN laws, they become agents in the development of RoN norms and jurisprudence, not because they are norm entrepreneurs, but because of their professional requirements to interpret and apply RoN according to the law. The fact that Ecuadorian judges are beginning to apply RoN to cases that were not initially about RoN is evidence that RoN norms are strengthening in the judicial system. This is another way that Ecuador's allegedly "weak" (i.e., not fully implemented) RoN laws matter.

This norm emergence and growing caseload suggest pathways toward successful implementation in other states seeking to codify RoN. Even in states with extractivist policies and economies, such as Bolivia, RoN has the potential to (a) emerge as a right equal to human rights and (b) change the development dynamic to include a more biocentric approach. In Ecuador, despite its extractivist development agenda, placing RoN as a constitutional right has also heightened its importance and called the legal community, judges, and civil society to re-frame decisions in terms of living harmony with nature, rather than strictly in anthropocentric terms.

Ecuador's experience is informing international efforts to advance RoN. International Tribunals for Rights of Nature that have taken place in Quito and Lima in 2014 and in Paris during the 2015 UNFCCC Climate Talks provide platforms for sharing knowledge and invoking RoN in international and domestic institutions around the world. RoN laws either exist or are being crafted at various levels of government in a diverse array of countries, from the U.S. and Brazil, to Romania, New Zealand and India. Inspired by Ecuador's experience, these efforts are combining into an emerging movement for a Universal Declaration of Nature's Rights. If such a declaration were to occur, it would create a new level of application for RoN beyond the state and thus, open avenues for pressure on states that do not apply RoN. Our preliminary findings from the world's first RoN lawsuits lay the groundwork for future comparative research on the pathways of implementation of RoN in other states and their implications for broader norm development.

NOTES

1. Pachamama is a sacred deity revered by Indigenous people in the Andes. Pachamama is often translated as Mother Earth in English. While Ecuador's constitution equates Pachamama with Nature, we note that non-indigenous Ecuadorians do not always interpret Pachamama in the same way, as will be evidenced by the article's case studies.

2. On post-neoliberalism, see Sader (2009), Grugel and Riggirozzi (2012). See Lele (2013) for a summary of the debates and competing arguments regarding sustainable development.

3. A large literature problematizes different interpretations of buen vivir and sumak kawsay, including the view that these are distinct concepts (e.g., Acosta and Martínez, 2009; Hidalgo-Capitán, Guillén García, & Deleg Guazha, 2014; Lalander, 2014). Describing these different interpretations is beyond the scope of this article. While acknowledging the differences, we use the terms as they are typically used in relation to Ecuador's political project of putting buen vivir and rights of nature into practice. We note that some indigenous activists argue that the Ecuadorian government's treatment of buen vivir is inconsistent with

the Indigenous concept sumak kawsay. They accuse government leaders of coopting and twisting the concept's meaning to justify a traditional Western development model rooted in resource extraction and increased consumption (e.g., Cholango, 2010; Oviedo, 2014; Simbaña, 2011).

4. The Gaia Foundation, Global Alliance for the Rights of Nature, Pachamama Alliance, Wild Law UK, Navdanya Foundation in India, and the Indigenous Environmental Network are but a few examples of organizations working to promote a global dialog on the subject. Regarding IUCN, see http://www.iucn.org/news_homepage/news_by_date/?11070/Its-not-just-people-Nature-has-rights-too (accessed November 9, 2016).

5. http://therightsofNature.org/wp-content/uploads/FINAL-UNIVERSAL-DECLARATION-OF-THE-RIGHTS-OF-MOTHER-EARTH-APRIL-22–2010.pdf (accessed November 9, 2016).

6. Nobel Prize winner Bertrand Russel created the International War Crimes Tribunal in 1966 to investigate human rights abuses committed against Vietnamese peoples resulting from U.S. military intervention in Vietnam (Republic of Ecuador., 2008, p. 3). Inspired by the Russell Tribunal, law experts and rights activists established The Permanent Peoples' Tribunal to investigate and provide judgments on violations of human rights around the world (Duffett, 1968).

7. The literature on norms commonly refers to people engaged in constructing and promoting new norms as "norm entrepreneurs" (e.g., Finnemore & Sikkink, 1998; Keck & Sikkink, 1998).

8. See http://therightsofnature.org (accessed November 9, 2016).

9. For example, see Christopher Stone's 1972 seminal work *Should Trees Have Standing?* (New York: Oxford University Press).

10. See Community Environmental Legal Defense Fund (CELDF), http://celdf.org/2015/08/tamaqua-borough/ (accessed November 9, 2016).

11. Ben Price, interview by author via telephone, October 8, 2014.

12. On the multidirectional flow of influence across transnational networks, see, for example, Kauffman, 2017; Kauffman and Martin, 2014; Brysk, 2000; Keck and Sikkink, 1998.

13. "ONG: 189 indígenas están acusados de terrorismo y sabotaje," *El Tiempo*, July 19, 2011, available at http://www.eltiempo.com.ec/noticias-cuenca/73360-ong-189-inda-genas-esta-n-acusados-de-terrorismo-y-sabotaje/ (accessed November 9, 2016).

14. Acción Ecológica's legal status was subsequently reinstated amid international pressure.

15. In addition to not considering a secondary RoN law in the National Assembly, the government failed to create the "superintendencia" (autonomous, independent administrative unit) for the environment, as mentioned in the constitution (Patricio Hernandez, interview by author, Quito, Ecuador, August 3, 2015). However, RoN were subsequently supported by the 2014 Penal Code, which specifies "crimes against Nature or Pachamama" (Chapter 4).

16. Natalia Green, interview by author, Quito, Ecuador, July 30, 2015; Esperanza Martínez, interview by author, Quito, Ecuador, August 7, 2015; Alberto Acosta, interview by author, Quito, Ecuador, July 31, 2015; Patricio Hernandez, interview by author, Quito, Ecuador, August 3, 2015.

17. Ecuador has a civil law system. However, the lack of secondary RoN laws greatly empowered judges and prompted them to consider judicial precedent.

18. This was confirmed through separate interviews with members of multiple organizations who participated in the drafting of Ecuador's constitutional RoN provisions and who spearheaded efforts to strengthen these provisions after the constitution's signing. Examples include Natalia Green, interview by author, Quito, Ecuador, July 30, 2015; Esperanza Martínez, interview by author, Quito, Ecuador, August 7, 2015; Alberto Acosta, interview by author, Quito, Ecuador, July 31, 2015; Patricio Hernandez, interview by author, Quito, Ecuador, August 3, 2015.

19. We are indebted to Hugo Echeverría for this insight.

20. Organizations filing the lawsuit included three indigenous movements (CONAIE, ECUARUNARI, CONFENIAE), two human rights NGOs La Comisión Ecuménica de Derechos Humanos and Fundación Regional de Asesoria en Derechos Humanos (INREDH), the environmental NGOs Acción Ecológica, Fundación Pachamama, and CEDENMA; and five individuals representing local communities.

21. The lawsuit cited Articles 71–74, 396, 406, 12, 15, 66.2, 276, 282, and 413 of the Constitution and Articles 10 and 32 of the Law of Jurisdictional Guarantees.

22. Hugo Echeverria, interview by author, Quito, September 17, 2015.

23. Páramos are high Andean grasslands that capture and store moisture from the air and regulate the flow of water to lower areas.

24. This prohibition exists in numerous Ministry of Environment regulations. For example, Interministerial Accord No. 002 between the Ministry of Environment and Ministry of Agriculture, published October 8, 2012, states that "in sites where the conditions described as páramos exist, even when they are in altitudes below 3,500 meters above sea level. . ., forest plantations will not be established" (Art. 8). Article 4 of the same accord says that forest plantations for commercial purposes must be established outside of protected areas covered with native páramo vegetation.

25. On the political conflicts surrounding the Ecuadorian government's extractivist development agenda, see Aidoo *et al.* (in press), Gudynas, 2015; Hogenboom, 2012; Svampa, 2015; Peralta, Bebbington, Hollenstein, Nussbaum, & Ramirez, 2015.

26. Pablo Piedra, interview by author, Quito, September 18, 2015.

27. Ibid.

28. Natalia Greene, interview by author, Quito, September 30, 2015.

29. Sea Shepherd, January 19, 2012, "Galapagos Judge Suspended Over Fer Mary Case," available at http://www.seashepherd.org/news-and-media/2012/01/19/galapagos-judge-suspended-over-fer-mary-case-1321 (accessed November 9, 2016).

30. Hugo Echeverría, interview by author, Santa Cruz, Galapagos, April 11, 2014.

31. Interviews by author with Galapagos National Park officials, San Cristobal, Galapagos, April 2014.

32. An amicus brief, meaning friend of the court, is submitted by someone who is not a party to a case and is not solicited by a party, but who assists a court by offering information that bears on the case.

33. Letter sent by Minister of Interior José Serrano to Judge Juan Pablo Hernández Cárdenas of the 22nd Criminal Court of Pichincha, May 20, 2011.

34. "Fuego a maquinaria de mineras en Esmeraldas," *El Universo*, May 24, 2011, http://www.eluniverso.com/2011/05/24/1/1447/fuego-maquinaria-mineras-esmeraldas.html (accessed November 9, 2016).

35. A matrix summarizing all 13 Ecuadorian rights of nature cases is available at https://blogs.uoregon.edu/craigkauffman/rights-of-nature-lawsuits-in-ecuador/ (accessed November 9, 2016.

36. Ninth Criminal Tribunal, Processing number 09171-2015-0004, Guayaquil, Ecuador, p. 1.

37. Ninth Criminal Tribunal, Processing number 09171-2015-0004, Guayaquil, Ecuador p. 2.

38. For descriptions of the Yasuní-ITT initiative, see Martin (2011, 2015).

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