Why Rights of Nature Laws are Implemented in Some Cases and Not Others: The Controlled Comparison of Bolivia and Ecuador

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Introduction

During the last decade, legal provisions recognizing Nature as a subject with rights have proliferated around the world as a tool for enforcing more ecologically sustainable development practices (Kauffman and Martin 2018). Ecuador and Bolivia were the first two countries in the world to adopt national laws recognizing Rights of Nature (RoN), in 2008 and 2010, respectively. On paper, these are among the strongest RoN laws in the world. Ecuador recognizes RoN in its 2008 Constitution. Bolivia's 2010 Law of Mother Earth (*Ley de Madre Tierra*), which recognizes specific RoN, was upgraded in 2012 by the Framework Law of Mother Earth and Integral Development to Live Well (*Ley Marco de la Madre Tierra y Desarrollo Integral para Vivir Bien*). This law's "framework" status makes it superior to other laws.

In addition to their elevated legal status, both laws define rights-bearing Nature similarly and recognize virtually identical rights. Ecuador's constitution recognizes rights for all of Nature, which it defines as Pachamama, a sacred deity revered by Indigenous people in the Andes, often translated in English as Mother Earth (Republic of Ecuador 2008, Preamble). Bolivia's Law of Mother Earth similarly recognizes "the rights of Mother Earth," defined as "a dynamic living system comprising an indivisible community of all living systems and living organisms, interrelated, interdependent and complementary, which share a common destiny" (Plurinational State of Bolivia 2010, Art. 1, 3).

Chapter 7 of Ecuador's constitution recognizes Nature's right 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 (Art. 71). Finally, Articles 71-73 require the State to enforce and protect RoN, particularly from damage caused by extractive industries, including through preventive action. Article 7 of Bolivia's Law of Mother Earth similarly recognizes Nature's right "to maintain the integrity of living systems and natural processes that sustain them, and capacities and conditions for regeneration." In addition, Article 7 recognizes Mother Earth's right to "the diversity of life," to water and clean air, to restoration when affected by human activities, and to maintain "the functionality of the components of Mother Earth in a balanced way for the continuation of [ecosystems'] cycles and reproduction of their vital processes." Like Ecuador's constitution, Bolivia's law obliges citizens and the state to report and address violations (Art. 8-9).

These similarities are not coincidental. Both countries' laws resulted from pressure exerted by Indigenous movements, who allied with newly installed socialist governments to enact a post-neoliberal development model based on indigenous understandings of humans' relationship to Nature (Radcliffe 2012, Postero 2017, Lalander 2014, Kauffman and Martin 2018). This political

alliance granted indigenous movements influence in the writing of each country's new constitution (and in the case of Bolivia, subsequent RoN laws). Indigenous movements in both countries advocated RoN as a tool for implementing a new, post-neoliberal approach to development rooted in Indigenous values and concepts, particularly *sumak kawsay* in Kichwa and *suma qamaña* in Aymara. Typically translated as "buen vivir" in Spanish ("living well" in English), these concepts critique models of development based on exponential growth in consumption and instead emphasize the importance of maintaining balance by living in harmony with other members of your community and with nature.[1]

Despite sharing strong legal status and similar contents, and emerging through similar socio-political processes pushed by the same types of actors sharing the same agenda, implementation has been dramatically different in the two countries. RoN jurisprudence has gradually but steadily developed and strengthened in Ecuador. Guidelines for implementing RoN constitutional principles are fleshed out through secondary laws like the Penal Code (Republic of Ecuador 2014) and the General Organic Code of Processes (Republic of Ecuador 2015). The Ministry of Environment has invoked RoN to justify regulatory actions protecting endangered species and forest ecosystems (Kauffman and Martin 2017). Lawsuits seeking remedy for RoN violations have been filed by individual lawyers and citizens, community groups, social movements, and government agencies like the Ministry of Environment. Courts at all levels, including the Constitutional Court, have upheld the RoN. Indeed, judges have unilaterally recognized RoN in their rulings even when RoN was not invoked either by claimants or defendants, suggesting RoN is embedded in professional legal standards (Kauffman and Martin 2017). The National Ombudsman (*Defensoría del Pueblo*) regularly investigates and documents RoN violations and issues reports recommending restorative measures. In sum, while RoN is still enforced inconsistently and imperfectly, RoN jurisprudence is clearly developing through the implementation of RoN constitutional provisions.

By contrast, there is no evidence that Bolivia's RoN laws are being implemented. To date, RoN has not been invoked in a single lawsuit in Bolivia, much less upheld by a court at any level. Nor has RoN been inserted into administrative policy. Despite its name, Bolivia's Plurinational Authority for Mother Earth (*Autoridad Plurinacional de la Madre Tierra*) does not promote RoN domestically. Rather, it oversees the government's policy for addressing climate change, particularly regarding international negotiations. Indeed, RoN does not exist in the national dialogue in Bolivia the way it does in Ecuador, which is curious given the Bolivian government's defense of RoN in international policy arenas.

Why did strong national RoN laws get implemented in Ecuador but not Bolivia? By answering this question, this paper contributes to the norms literature, particularly regarding the processes through which new norms become institutionalized and put into practice. The literature on norm emergence and development emphasizes institutionalization as an important mechanism (Finnemore and Sikkink 1998, 900), and many studies examine how new norms get institutionalized in domestic and international laws (Risse, Ropp, and Sikkink 1999, Carpenter 2007, 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

[1] Hidalgo-Capitán, Guillén García, and Deleg Guazha (2014) provide an anthology of indigenous writings explaining these concepts.

adoption of human rights laws cannot fully explain the pattern of human rights prosecutions. Dancy and Michel (2015) show how the effects of human rights laws are conditional on bottom-up legal mobilization over time (i.e., the development of jurisprudence). 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 like RoN. This paper begins to fill this gap.

Research Design and Methodology

Ecuador and Bolivia provide a unique opportunity to study norm development processes using a "most-similar-systems" controlled comparison. Ecuador and Bolivia are extremely similar in terms of their political development, demographics, culture, economic development, and socio-political alliance structures. As noted above, very similar domestic political processes produced similar national laws institutionalizing RoN meta-norms circulating internationally.[2]

The Bolivia-Ecuador controlled comparison is valuable because it highlights the limitations of two commonly cited explanations for Bolivia's lack of RoN implementation. First, it is tempting to credit this to the Bolivian government's development strategy, which is based on industrial extraction of natural resources to finance poverty reduction programs. Certainly, Bolivia's government has prioritized economic development through extraction over protecting RoN. However, this same situation exists in Ecuador. Both governments have expanded mining and other development activity into protected areas and indigenous-controlled territory, prompting fierce social backlashes. Leading examples include the national uprising to protect the Isiboro Sécure National Park and Indigenous Territory (known as TIPNIS for the Spanish acronym) in Bolivia and the similar movement to protect Yasuní National Park in Ecuador. Like Bolivian President Evo Morales, Ecuadorian President Rafael Correa saw RoN as a threat to state-led development and took steps to undermine its implementation. Nevertheless, RoN jurisprudence developed in Ecuador. Consequently, the conflict between RoN and state-led development is not a sufficient explanation for the variation in outcomes between Bolivia and Ecuador.

A second common explanation given by Bolivian civil society is that the judicial system is not politically independent, so politically inconvenient laws go unenforced. This may have some truth to it, but, as I show below, the same critiques are made against Ecuador's judicial system. Both countries have a history of adopting strong laws that often remain unenforced in practice. Yet, the question of why RoN jurisprudence developed in Ecuador and not Bolivia remains.

To identify key factors that led RoN jurisprudence to develop in Ecuador and that obstructed this process in Bolivia, I combine controlled comparison with within-case process tracing. My analysis draws on scores of interviews as well as hundreds of primary and secondary documents collected during six months of in-country fieldwork in Ecuador (2015, 2018-2019) and Bolivia (2017). I conducted interviews with members of government, social movements, NGOs, lawyers, and judges who developed the RoN laws in each country, worked in agencies responsible for implementing RoN laws, were involved in high profile conflicts over environmental policy, and/or were involved in RoN lawsuits.

[2] See Kauffman and Martin (2018) for analysis of RoN meta-norm and the mechanisms by which they circulate internationally.

I describe the development of RoN jurisprudence in Ecuador and identify the factors driving this process in an article previously published with Pamela Martin (Kauffman and Martin 2017). Consequently, the remainder of this paper first briefly summarizes the main findings of this analysis. It then examines whether the factors driving the implementation of RoN in Ecuador were absent in Bolivia and whether this can explain the lack of implementation in Bolivia.

Explaining the Development of RoN Jurisprudence in Ecuador

To explain the development of RoN jurisprudence in Ecuador, Kauffman and Martin (2017) compared 13 attempts to apply Ecuador's constitutional RoN provisions through lawsuits and administrative actions. They catalogued these efforts (which constituted the universe of RoN cases in Ecuador as of 2016) and traced the processes involved to explain why RoN was upheld and implemented in some cases and not others. This section summarizes the key findings.

Soon after Ecuador's constitution was adopted in 2008, President Rafael Correa launched a public campaign to pass a mining law that would greatly expand mining operations in order to finance poverty reduction and social welfare programs. Indigenous and environmental activists fiercely criticized the law, saying it violated both RoN and the constitutional rights of indigenous communities to prior consultation. Correa responded by calling them "childish environmentalists" (cited in Dosh 2009).

Passage of the 2009 Mining Law prompted tens of thousands of indigenous, community-rights, and environmental activists to protest nationwide. Ecuador's government cracked down, and by 2011 had arrested nearly 200 Indigenous leaders, charged with terrorism for protesting mining activities.[3] The government also closed several organizations leading the protests, including the Development Council of Indigenous Nationalities and Peoples of Ecuador and two NGOs that were leading RoN advocates: Acción Ecológica and Fundación Pachamama.[4] In short, efforts to apply RoN in Ecuador occurred in a highly-politicized context, with strong government opposition due to the government's plan for extractivist-led development.

Challenging the Government's Mining Agenda

Eager to protect the gains they had made by recognizing RoN in the constitution, civil society activists initially invoked RoN to challenge the government's extractivist development agenda through lawsuits for protective action. Ecuador's first RoN lawsuit, brought in 2009, challenged the constitutionality of the 2009 Mining Law. It argued that the law violated "articles of the Constitution granting rights to nature and explicitly to water," as well as several Indigenous and community rights, including the right to prior consultation.[5]

[3] "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 March 20, 2019).
[4] Acción Ecológica's legal status was subsequently reinstated amid international pressure.
[5] Judgement by the Constitutional Court of the Republic of Ecuador, Sentence No. 001-10-SIN-CC, Case No. 008-09-IN Y 0011-09-IN (March 18, 2010).

After the Constitutional Court upheld the constitutionality of the law, in 2013 RoN activists filed a lawsuit seeking protective action on behalf of Nature against the Condor-Mirador Mining Project, Ecuador's first, large-scale, open-pit mining project, which is located in a biodiversity hotspot. The suit presented scientific studies (including those by the mining company) showing that the open-pit mine would cause the total removal of various ecosystems, including the habitats on which endangered endemic species rely, likely causing the extinction of one or more species, and thus violating RoN (Thurber and Noboa G. 2010, PDF 374). Also, the expected contamination of surface and groundwater with heavy metals and toxic products would be catastrophic for surrounding watershed ecosystems (Sacher 2011, 16-17). Article 73 of Ecuador's constitution 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." Also, the constitution 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. Their suit requested suspension of the project and a more thorough environmental impact assessment. However, RoN activists lost in provincial court and chose not to appeal to the Constitutional Court, fearing that a negative ruling could erode constitutional RoN protections.

Obstacles to Implementing RoN

Two factors likely explain these early failures and constitute major obstacles to implementing RoN. First, the contentious relationship between RoN activists and the government meant some lawsuits became highly politicized and prompted strong government opposition. According to interviews with lawyers and judges involved in RoN lawsuits, judicial sentences consequently focused on navigating the politicized environment rather than on implementing the specifics of the law. 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 early lawsuits ruled that economic development activities are protected by economic 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. 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 (Art. 71-73). 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 (Art. 71).

The judge also argued that civil society's efforts to protect Nature constituted a private goal, while the private mining company Ecuacorriente 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

principle stated in Ecuador's constitution that Nature's rights are both independent of societal interests and of equal value (Art. 72).

RoN activists 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 author). 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. The government would determine the amount of damages owed.

In sum, Ecuadorian RoN activists faced conditions very similar to those in Bolivia: government opposition to RoN as a threat to its development agenda, a judicial system seen to lack political independence, and a lack of knowledge among judges about how to interpret new RoN laws. So, how did Ecuadorians overcome these obstacles? Kauffman and Martin (2017) demonstrate the importance of three strategies: (1) training judges, (2) working "below the radar" to gradually build jurisprudence through local courts using lower-profile lawsuits that do not challenge the national government, and (3) launching public campaigns to raise popular support for RoN, thereby pressuring the government to rhetorically support RoN.

Training Judges & Working "Below the Radar"

Some lawyers concluded that the primary challenge facing RoN was that most judges do not understand the legal doctrine supporting RoN and do not know how to interpret these rights in relation to other constitutional rights. These lawyers sought to overcome this obstacle by creating programs to train judges and by working "below the radar" (Gash 2015) to build case law through less-controversial cases in lower courts that did not challenge the national government's development agenda. These cases were seen as less likely to test the independence of the courts.

This strategy proved successful and produced several victories for RoN that established important precedents (detailed in Kauffman and Martin 2017, Kauffman and Sheehan Forthcoming). A 2011 lawsuit accused a fishing crew of violating the rights of sharks by poaching them. The Ninth Tribunal Criminal Court in Guayaquil found the captain and crew guilty and sentenced the captain to two years in prison, and each crew member to one year.[6] The verdict also ordered the destruction of the ship.[7] This, along with other similar rulings, have established the standard that killing individual members of endangered or protected species constitutes a RoN violation. Court rulings in other lawsuits established that government construction projects cannot impede the ability of ecosystems or species to regenerate.[8] A 2012 judicial ruling in the municipality of Santa Cruz, Galapagos Islands, set the precedent that

[6] Judgment No. 09171-2015-0004, Ninth Court of Criminal Guarantees, Guayas Province, Republic of Ecuador (23 April 2015) 55–59.
[7] ibid 58.
[8] Judgement No. 11121-2011-0010, Provincial Court of Justice, Loja Province, Republic of Ecuador (30 March 2011) 3–4.

obstructing the migration and breeding patterns of species violates the RoN.[9] Step by step, RoN lawyers began to build RoN jurisprudence out of the national spotlight.

Activists Mobilizing Public Pressure

While RoN lawyers were working "below the radar," NGO activists pursued a different strategy. After losing the Condor-Mirador lawsuit, many activists concluded they would never get a fair ruling under the current government. They decided not to bring more lawsuits for fear of establishing negative jurisprudence that could weaken the gains made in the Constitution. Instead, they focused on mobilizing support for RoN within Ecuadorian society.

A leading example of this strategy was the campaign to protect Yasuní National Park from oil extraction, coordinated by the NGO Acción Ecológica.[10] After Ecuador's government announced its intention to initiate new oil drilling in Yasuní in 2013, various 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 the popular perception that the government's actions were unconstitutional and increased Yasunidos's ability to mobilize society against the government.

One result was that RoN became part of national discourse, forcing politicians and bureaucrats to discuss RoN when talking about development, particularly oil and mining projects. While the government still pursued development through extractivism, it was forced to explain how these and other projects were consistent with constitutional RoN and indigenous rights. These exercises in public shaming pressured the government to adopt the rhetoric of RoN to justify and legitimize its policy agenda. This "rhetorical entrapment" (Schimmelfennig 2001) played a key role in developing RoN jurisprudence as the government instrumentally invoked RoN when it served its interests.

Instrumental Government Action

By 2016, Ecuador's government had invoked RoN at least six times to justify actions that it likely would have taken anyway and could have justified using other laws.[11] These cases include four lawsuits brought by Ecuador's government (two for protective action and two criminal lawsuits) as well as regulatory enforcement by the Ministry of Environment. Several of these cases involved controversial and high-profile lawsuits against powerful economic actors. For example, Ecuador's Interior Ministry cited RoN in a lawsuit seeking court authorization to use military force to prevent RoN violations by unregistered mining operators. The court agreed and authorized the military to destroy mining equipment, setting the precedent that the need to prevent RoN violations justifies the destruction of private property—a precedent now enshrined in Chapter 4 of the Penal Code (Republic of Ecuador 2014).

[9] Judgment No. 269 – 2012, Civil and Mercantile Court, Galápagos Province, Republic of Ecuador (28 June 2012).
[10] https://sitio.yasunidos.org/en/ (accessed March 20, 2019).
[11] See Kauffman and Martin (2017) for details of these cases.

In another example, the Ministry of Environment invoked RoN to justify its efforts to remove shrimp farmers from a protected area of endangered mangrove forests (Kauffman and Martin 2017). Because shrimp is a major Ecuadorian export, shrimp farmers constitute a powerful economic interest group. One shrimp farmer sued the government to block their expulsion, arguing that the expulsion would violate the farmers' property rights. The provincial court sided with the farmers. However, the government appealed to the Constitutional Court, which ruled that RoN are transversal in Ecuador's constitution, affecting all other rights (including property rights). The Constitutional Court annulled the Provincial Court ruling and demanded that the provincial court re-try the case and incorporate RoN into its decision.[12]

By making RoN a salient political issue, RoN activists pressured the government to invoke RoN rhetorically, albeit only when it served the government's interests. Nevertheless, the government's application of RoN proved important because when the government invoked RoN in lawsuits, it always won. These were often high-profile cases that attracted national attention and, in some cases, challenged powerful economic interests. Consequently, the government's application of RoN had two important effects: (1) establishing precedent and strengthening RoN jurisprudence, and (2) raising awareness of judges, helping to overcome the lack of knowledge.

Strengthening Jurisprudence

By early 2019, there were at least 24 cases in which legal action was taken to protect RoN. Five of these were launched in late 2018-early 2019 so are still in process. In 13 of the remaining 19 cases, RoN were upheld by the courts. Two of the cases produced mixed results (i.e., RoN was balanced with other rights). Only four of the cases produced negative outcomes for RoN.[13]

The growing 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 at least partly due to the combination of the issue's politicization and civil society's efforts to accumulate precedent through lower profile cases. Training also no doubt played a role. As judges become aware of RoN laws, they become agents in the development of RoN jurisprudence, not because they are norm entrepreneurs, but because of professional standards requiring them to interpret and apply the law in its entirety. This is prompting Ecuadorian judges, including those on the Constitutional Court, to apply RoN in their sentencing even in cases where neither the claimants nor defendants invoked RoN (Kauffman and Martin 2017).

There is also evidence that the strengthening of RoN jurisprudence and increased knowledge of judges may begin to impact the government's development agenda. In November 2018, the Provincial Court of Justice in the Amazonian province of Sucumbíos ruled in favor of an indigenous Cofán community who sued the Ministry of Mining and Ministry of Environment

[12] Judgment No. 166-15-SEP-CC, Case No. 0507-12-EP, Constitutional Court of Ecuador, Republic of Ecuador (20 May 2015).
[13] The list of RoN cases and related court documents were compiled by the author and are available upon request.

(among other agencies) for issuing mining concessions in their territory.[14] The Cofán community argued that the mining activities violated constitutionally protected RoN, the community's right to a healthy environment, as well as indigenous rights to prior consent.

After the Cofán won in the lower courts, the government appealed to the provincial court. The provincial court denied the appeal, saying the mining concessions clearly violated the communities' rights as well as the RoN.[15] The court annulled the mining concessions, ordered the suspension of pending concessions in the territory, ordered the Ministry of Environment to restore the affected ecosystems to their natural state before the mining interventions, and ordered the State Comptroller to audit the process for issuing mining concessions to ensure that they comply with the constitutional rights discussed in the case.[16] This is the first lawsuit in which RoN won out over the national government's extractivist development agenda. While the case will undoubtedly go to the Constitutional Court for final review, it shows the degree to which RoN jurisprudence has strengthened in the decade since Ecuador's constitution was adopted.

Reframing "the Bolivia Puzzle" in Light of Ecuador

Ecuador's experience raises several questions regarding why Bolivia's RoN laws have not been implemented:

1. First, the social movements that drafted Bolivia's Law of Mother Earth (identified below) mobilized national protests beginning in 2011 to block construction of a highway through the TIPNIS national park and indigenous territory, much like their counterparts in Ecuador created the Yasunidos movement (Solon 2017). Yet, they did not frame the struggle around RoN. Why did they not invoke RoN, but instead choose to invoke indigenous rights, like the right to prior consent?

2. Second, Bolivian civil society has not filed any lawsuits at any levels invoking RoN.[17] Nor have they trained lawyers and judges in how to interpret RoN law. Why have Bolivian RoN advocates not sought to build RoN jurisprudence either through high profile lawsuits or by working "below the radar" as Ecuadorians did?

3. Third, why did Bolivia's government not invoke RoN instrumentally in cases where it might have served its interests? As I show below, Bolivian President Evo Morales regularly invokes RoN in international policy arenas. Clearly, President Morales believes there is some advantage to invoking RoN norms in international policy arenas. Why does he apparently not see the same advantage domestically? Why has Morales not been subject to rhetorical entrapment domestically the way Ecuadorian President Correa was?

[14] Judgement No. 21333201800266, Second Instance, Case No. 02221010001, Sucumbios Provincial Court of Justice, Lago Agrio, Ecuador (16 November 2018).
[15] Ibid., 25-29.
[16] Ibid., 29.
[17] This fact was confirmed through numerous interviews with lawyers representing groups advocating RoN, including those representing the organizations that drafted Bolivia's Law of Mother Earth.

The remaining sections answer these questions by tracing the political struggle over RoN in Bolivia. It identifies the conditions and strategies shaping Bolivia's outcome and compares them to Ecuador's experience in order to induce key factors explaining variation in outcomes.

The Political Context of Bolivia's RoN Laws

To understand the factors obstructing implementation of Bolivia's RoN laws, it is useful to first summarize the forces giving rise to these laws and their content. The story begins with the mobilization of indigenous and campesino (small farmer) social movements in the 1990s and early 2000s against the country's neoliberal development agenda. These movements equated neoliberal economics with "colonialism" and sought to restructure Bolivia's state and society in a way that empowered Bolivia's historically marginalized indigenous and campesino communities and reflected indigenous knowledge, values and practices—a process they called "decolonization."[18]

The politics of "decolonization," and consequently RoN, was shaped by historical divisions separating three broad socio-economic and cultural groups. White-mestizos historically controlled the political and economic systems and constituted the country's elites. For reasons relating to patterns of historical development, Aymara and Quechua peoples in the highlands tended to self-identify as *campesinos* (small farmers)—emphasizing class identity rather than ethnicity—and organized in *sindicatos* (union structures). Because of this class-based identity, and negative connotations associated with the word "indigenous," these groups self-identify as *originario* peoples rather than indigenous (Postero 2017). Many of them now live in urban centers and are not closely tied to the land in the same way as most lowland indigenous groups. This third group self-identifies as indigenous and perceives their territory as an important component of their identity. The difference between highland originario and lowland indigenous groups is central to the battle over how to define indigeneity in Bolivia, and thus what it means to "decolonize" Bolivia and create a decolonized indigenous state (Postero 2017). As I show below, these differences are also key to explaining why the rights of Mother Earth are not invoked domestically.

Bolivia's Water War (2000) and Gas War (2003) spurred national mobilization of highland and lowland social movements. In 2004, the country's five main campesino, originario, and indigenous movements formally joined together to create the Unity Pact (Pacto de Unidad) as a space for dialogue (Garcés 2010).[19] The Unity Pact facilitated collaboration among these movements' diverse array of affiliated organizations to demand the convening of a Constituent Assembly to write a new constitution that would restructure relations between state and society. Evo Morales, an Aymara from the highlands and head of the coca growers union, rose to power as a result of this social mobilization. In 2006, Morales was sworn in as the country's first self-identifying indigenous president. His party, Movement towards Socialism (MAS) gained a large

[18] See Postero (2017) for detailed analysis of this process and competing definitions of "decolonization."
[19] The main organizations of the Unity Pact included three highland campesino movements: CSUTCB (la Confederación Sindical Unica de Trabajadores Campesinos de Bolivia), CSCIB (Confederación Sindical de Comunidades Interculturales de Bolivia), CNMCIOB-"BS" (Confederación Nacional de Mujeres Campesina Indígena Originarias de Bolivia "Bartolina Sisa"), as well as one highland indigenous-identifying movement: CONAMAQ (Concejo Nacional de Ayllus y Markas del Qullasuyu) and the national movement of lowland indigenous groups: CIDOB (Confederación de Pueblos Indígenas del Oriente Boliviano).

majority in the legislature. While a Constituent Assembly was not part of MAS's original platform (Tapia 2010, 143), Morales supported the Unity Pact's demand and the assembly was inaugurated in August 2006.

The Unity Pact produced a draft constitution meant to orient the debates in the Constituent Assembly toward the goal of "decolonization" (Garcés 2010). However, this proposal was substantially modified in the political struggles between the Unity Pact, MAS, and opposition parties representing white-mestizo elites. MAS angered many indigenous organizations by restricting their ability to send delegates to the assembly and instead bringing in indigenous representatives as MAS delegates. MAS then changed the rules of debate to allow MAS's simple majority to approve all decisions except the final text (Postero 2017, 49). The constituent assembly process broke down amid ethnic polarization and conflict. In the end, Morales and MAS cut a deal with right-wing parties to approve a constitution, adopted in 2009, which was quite different from the proposals made by the Unity Pact to restructure the state.

Many members of Bolivia's largest social movements were frustrated by what they saw as a lack of progress in their decolonization project and their exclusion from policy-making by the MAS government. Rather than merely expressing their concern, these movements began pro-actively developing proposed laws that would move their decolonization agenda forward. One of the first was the draft Law of Mother Earth released by the Unity Pact in November 2010 (Pacto de Unidad 2010).

Morales' RoN Discourse in International Forums

One of the most puzzling aspects of the Bolivian case is the fact that Evo Morales, and Bolivia's government generally, has become known internationally as a champion of RoN. For Morales, the discourse is tied to global debates over how to address climate change and achieve ecologically sustainable development. Frustrated by the lack of progress and perceived inequities characterizing international climate negotiations, Morales made an impassioned speech to the United Nations General Assembly on September 23, 2009, arguing that the climate crisis stems from "the permanent removal of natural resources and the commercialization of Mother Earth" (Morales 2009, 2). He further argued that for countries to guarantee the well being of their citizens, they must first "guarantee the well being of Mother Earth," because "human life cannot exist without Mother Earth…If we do not defend the rights of Mother Earth, there is no use in defending human rights." He then called on all nations to "declare and expand the rights of Mother Earth's natural regeneration" (Morales 2009, 4).

Frustrated by the lack of progress made at the 2009 UN Climate Change Conference in Copenhagen, in April 2010 Morales convened an international conference called The World People's Summit on Climate Change and Rights of Mother Earth in Cochabamba, Bolivia. Roughly 30,000 people from 140 countries attended to negotiate resolutions intended to address the problems left unaddressed by the UN conference in Copenhagen (Postero 2013, 78). Among other things, attendees of the Cochabamba People's Summit adopted a Universal Declaration of the Rights of Mother Earth, which mirror the RoN granted in Ecuador's constitution and provided a template for the RoN listed in Bolivia's Law of Mother Earth, drafted the following November (UDRME 2010).

Over the last decade, Bolivia's government has continued to advocate for the recognition of RoN within the UN system. Bolivia's government under Morales played a leading role in establishing the United Nations Harmony with Nature Programme, which serves as an organizational platform for promoting RoN in international law and domestically around the world.[20] Each year, this program sponsors annual dialogues within the General Assembly on how to implement RoN as a tool for achieving ecologically sustainable development. Bolivia remains a major political and financial sponsor of these dialogues, which have produced multiple Secretary General reports advocating RoN.[21]

Given the international reputation that Morales has cultivated as a RoN advocate, Morales should be an easy target for rhetorical entrapment by domestic RoN advocates. So why have Bolivian social movements, particularly the members of the Unity Pact who drafted the 2010 Law of Mother Earth, not invoked RoN either in lawsuits or in national protests? And why has the MAS government not invoked RoN domestically, even in the pursuit of its own objectives, as Correa did in Ecuador? The following sections answer these inter-related questions and highlight the importance of three factors that explain the variation in outcomes between Ecuador and Bolivia: (1) Bolivia's weaker RoN laws, compared to Ecuador, (2) Morales' strategic reframing of the government's "decolonization" project, and (3) variation in Bolivia's and Ecuador's civil society structures, particularly regarding the strength of environmental movements and communities of lawyers trained in RoN jurisprudence.

Bolivia's Weaker RoN Laws

To determine why Bolivian civil society groups are not invoking RoN laws, I conducted more than two dozen elite interviews with leaders of various social movements included in the Unity Pact and collected primary documents from social movements and the Bolivian government. Interviewees included individuals who helped draft the 2010 Law of Mother Earth, as well as leaders of social movements mobilizing to protect TIPNIS national park and the NGOs and lawyers supporting these various social movements. Interviewees were remarkably consistent in the answers they gave as to why they do not invoke RoN laws in their struggle. I describe their answers below, presented in the order in which interviewees prioritized them.

Representatives of the groups most interested in defending the rights of Mother Earth (e.g., indigenista intellectuals, lowland indigenous groups, and the lawyers and NGOs supporting them) stressed that they do not see the two rights of Mother Earth laws as viable laws that would provide legal support for their agenda. In other words, they see the legal basis for RoN as too weak. Moreover, representatives of the indigenous groups I interviewed said they do not identify with the laws or see them as representing their agenda. Consequently, there is no sense of ownership of the laws and little belief that these laws could help them. To understand why, it is useful to briefly review the politics behind the passage of the 2010 and 2012 laws.

[20] www.harmonywithnatureun.org (accessed March 20, 2019).
[21] UN General Assembly Resolutions and Secretary General Reports on RoN are available at http://www.harmonywithnatureun.org/unDocs/ (accessed March 20, 2019).

The idea of codifying RoN into law developed from, and was spurred by, lowland indigenous groups.[22] The Unity Pact took up the task of drafting a RoN law following the call to do so in the resolutions adopted at the World People's Conference on Climate Change and Mother Earth, held in Cochabamba in April 2010. The draft law's introduction states:

> The Unity Pact took seriously the resolutions of Tiquipaya [Cochabamba] and gave itself the task of preparing a Draft Law of Mother Earth. This work lasted approximately nine months, through several meetings of social organizations in 18 workshops, most of them regional and by organization, other plurinational and all organizations, with a format for drafting the law and seeking consensus on a single document (Pacto de Unidad 2010, 4).

In late November 2010, the Unity Pact presented their draft law to the legislature's special commission on the environment (Comisión Mixta sobre Medio Ambiente) and began negotiations with the legislature on the final text (Pacto de Unidad 2010, 5). The Law of Mother Earth (Law No. 71) was formally adopted on December 21, 2010. In 2012, the Bolivian legislature made further adjustments to the law by passing the Framework Law of Mother Earth and Integral Development to Live Well (Law No. 300). The differences between the Unity Pact's draft law, the 2010 law, and the 2012 law show how Bolivia's government progressively weakened the legal basis for RoN in Bolivia.

The Unity Pact's Draft Law of Mother Earth is quite extensive and detailed (see Pacto de Unidad 2010). It addresses not only RoN, but many other issues of top concern to indigenous and originary groups that were not incorporated into Bolivia's constitution. Comprised of 12 titles, the draft:

- details the law's scope, concepts, and principles;
- defines Mother Earth's character and rights;
- specifies the duties of the State and society towards Mother Earth;
- develops an ecological-economic model consistent with RoN, which includes a comprehensive and participatory system for planning and accounting; and
- proposes an institutional framework for guaranteeing the rights of Mother Earth, including a Plurinational Council of Mother Earth, a Ministry of Mother Earth, and a Council of Mother Earth to serve as an instrument of co-responsibility in the coordination of public policies and the management of Mother Earth.

The draft law also discusses indigenous rights and their connection to RoN. In this regard, it addresses the concept of Protected Areas and defines the concepts of territory and territoriality, which are important to lowland indigenous identity. Finally, the draft determines the economic regime that would follow recognition of the RoN, defines mechanisms for defending Mother Earth, including incentives and sanctions, and discusses provisions governing the transition to a new RoN regime.

[22] Walter Limache, interview by author, La Paz, Bolivia, November 21, 2017; Raúl Prada, interview by author, La Paz, Bolivia, November 20, 2017; Marilín Karayuri, interview by author, Santa Cruz, Bolivia, November 22, 2017.

The 2010 Law of Mother Earth contains only a small portion of the Unity Pact's draft law. Indeed, it is comprised of just two titles. The first includes general principles. The second defines the legal character of Mother Earth, the rights of Mother Earth, and the obligations of the State and society. It also requires the creation of a national ombudsman's office to protect Mother Earth (Defensoría de la Madre Tierra), "whose mission is to ensure the validity, promotion, distribution and compliance of the rights of Mother Earth established in this Act" (Plurinational State of Bolivia 2010, Art. 10).

In sum, the 2010 Law of Mother Earth includes only general language regarding principles and philosophy and omits the concrete elements that would be required to put the law into practice. This point was made repeatedly by both supporters and opponents of the MAS government to disregard the law as a useful strategy. Numerous interviewees from both government and civil society made almost identical comments about the law being nothing more than "just poetry" and "not a real law."[23]

In 2012, the legislature passed the Framework Law of Mother Earth and Integral Development to Live Well (Law No. 300). As the name implies, the law is focused on laying out the legal framework for Bolivia's development agenda. While it contains some of the flowery language related to Mother Earth from Law No. 71, Law No. 300 clearly weakens the idea of RoN by subsuming it under a broader development agenda that prioritizes natural resource extraction to finance social programs favored by MAS's socialist wing.

Specifically, Law No. 300 weakens the rights of Mother Earth laid out in Law No. 71 by stating that RoN must be considered through the lens of socio-economic rights to economic development. Article 4 states that the rights of Mother Earth are a "subject of collective public interest" and cannot be realized independently. Rather, the rights of Mother Earth must be considered in combination with (and balanced with) three other sets of rights: (1) the collective and individual rights of indigenous, originary and campesino nations and peoples; (2) civic, political, social, economic, and cultural rights of the Bolivian people through holistic development; and (3) the right of urban and rural populations to live in a just and equitable society free from material, social and spiritual poverty (what government officials commonly refer to as "the right to be free of poverty") (Plurinational State of Bolivia 2012).

The primary focus of Law No. 300 (and the resulting institutions and policies) is to promote a form of socio-economic development that advances social justice (defined as the redistribution of wealth and political-cultural influence toward previously marginalized groups). In practice, government officials have invoked these socio-economic rights to justify prioritizing natural resource extraction over environmental protection, saying that RoN will be given greater weight once poverty levels are diminished.[24] The resulting development policies have focused on greatly expanding natural resource extraction, expanding the agricultural frontier, and making agricultural land-use more intensive. Indigenous rights have also been deemphasized in the

[23] Examples include René Orellana, interview by author, La Paz, Bolivia, November 15, 2017; Alcides Vadillo, interview by author, Santa Cruz, Bolivia, November 23, 2017.
[24] René Orellana, interview by author, La Paz, Bolivia, November 15, 2017; Diego Pacheco, interview by author, La Paz, Bolivia, November 16, 2017.

pursuit of this agenda. For example, the government has gutted prior consultation requirements in order to streamline extractivist and agricultural projects (Eichler 2019, Tockman 2018).

To the extent that Bolivia's government invokes rights of Mother Earth language, it does so through its climate change policy and ties this to international climate change negotiations. For example, the government never created the Defensoría de la Madre Tierra as called for in Law No. 71. It did create the Autoridad Plurinacional de Madre Tierra (Plurinational Authority of Mother Earth) in 2013 after the passage of Law No. 300. However, this department does not deal with enforcing the RoN. Rather, it is the department within the Ministry of Environment charged with dealing with climate change. In fact, this is not even a new department. Rather, the government simply renamed the pre-existing department that was dealing with climate change policy, presumably to comply with the law. More importantly, this department's work is geared more towards international audiences than domestic ones. It is the governmental department responsible for international climate change negotiations, where Evo Morales's discourse emphasizes RoN, in contrast to his domestic discourse and policy.

The question of whether RoN exists independent of human rights, particularly economic rights, is an important difference between Ecuador's and Bolivia's laws. By subsuming RoN under a broader set of socio-economic rights, Bolivia's RoN laws are weaker than Ecuador's constitution, which requires that RoN be considered and guaranteed independent of human interest.

For the above reasons, Bolivian civil society groups generally see Law No. 71 as too vague to be useful and see Law No. 300 as departing so significantly from the Unity Pact's draft law that it no longer represented the views of indigenous groups or the NGOs supporting them. Law No. 300 is where the government operationalized the concept of RoN through law, but in doing so it greatly weakened the principles established in Law No. 71. Consequently, social movements and their supporters do not see it as a useful legal tool to invoke in their struggle. Moreover, RoN is not explicitly recognized in the constitution or in international law, while indigenous rights are. For this reason, social movements who support RoN have chosen instead to frame their struggle in terms of indigenous rights and have invoked indigenous rights laws in their legal struggle.

The Bolivia-Ecuador comparison highlights several important ways in which Bolivian RoN laws are weaker than Ecuador's, affecting the strategic logic of RoN advocates in civil society. Ecuador's constitution of course recognizes multiple rights that can be seen as competing with RoN, including socio-economic rights like those mentioned in Bolivia's Law No. 300. However, Ecuador's constitution requires RoN to be considered and guaranteed independent of human interest. Moreover, the constitution portrays RoN as transversal, affecting all other rights. By contrast, Bolivian law requires RoN to be interpreted through the lens of human socio-economic rights. And while the framework status of Bolivia's Law No. 300 gives it superior status, it is not the same as establishing RoN as a constitutionally guaranteed right. Ecuador's constitutional guarantee that RoN must be recognized independent of human interests and rights gave Ecuadorian civil society a stronger legal platform for demanding that courts consider how to balance the competing rights of Nature and humans in any given circumstance.

Changing Political Alliance Structures

Given their extractivist-based development agenda, why did Evo Morales and his supporters in MAS bother passing weak RoN laws rather than rejecting them outright? This question is related to the question of why Morales adopts the language of RoN in international discourse while undermining RoN in domestic policy.

The most persuasive argument comes from anthropologist Nancy Postero (2017). Morales' goal of capturing the state to pursue a redistributive development agenda clearly put him at odds with the Unity Pact's goal of disbanding the liberal state and replacing it with an alternative based on indigenous concepts, values, and customs. Postero argues that Morales adopted the discourse of Mother Earth espoused by indigenista intellectuals as a way to differentiate himself from the colonial past and brand himself as the representative of all indigenous people (highland and lowland alike). This anti-colonial branding gave Morales the broad constituency MAS needed to weaken the power of the pre-existing political class. The strategy succeeded politically. But by the time the 2010 Law of Mother Earth was adopted, the balance of power within MAS's governing coalition was changing, freeing Morales to alter his discourse.

To understand the seemingly hypocritical discourse and weakening of RoN over time, it is important to note that the MAS government during Morales's first term in office (2006-2010) was comprised of "three tendencies with projects that are not necessarily coincidental or harmonious, united by the personal leadership of Evo Morales" (Laserna 2010, 39). David Laserna (2010) categorizes MAS affiliates during this first phase into three groups: the *indigenista* group, the socialist group, and the pragmatist group.

The *indigenista* group, led by then-Foreign Minister David Choquehuanca, "carried the demands and ideas of the Katarista movement of the 1970s, pushing for indigenous rights and recognition… [It] utilized idealized versions of Andean culture to project an indigenous image onto the government's economic projects, arguing that Bolivia's indigenous peoples have solutions to the ills caused by Western capitalism" (Postero 2017, 34). This group had the most influence internationally and was responsible for Morales' international discourse about resolving the climate change crisis by ending capitalism and adopting a more harmonious, indigenous relation to the Earth. The *indigenistas* were the ones most supportive of the rights of Mother Earth language and responsible for the 2010 Law of Mother Earth getting adopted.

Socialists comprise the second group, represented by Vice-President Alvaro Garcia Linera. This group saw the government's role as replacing the country's neoliberal approach to development with one in which the state takes a strong role in the economy, especially "restoring natural resources as a basis of accumulation for national industrialization" (Laserna 2010, 39). This was the group driving the idea of expanding state-led extractivism and using the money to expand industrialization, reduce poverty, and expand economic opportunities for previously marginalized groups.

The third group is the populists, represented and led by Evo Morales. This group sought to mobilize highland social movements, particularly peasant unions and urban neighborhood associations, to undermine the power of the traditional political elite, thereby transforming

Bolivian politics. According to Laserna (2010, 41), this group was not defined by its political orientation or ideology, but rather by its populist method of grassroots politics.

A key factor explaining the weakening of RoN in Bolivia is the changing alliance structures within MAS due to the triumph of the socialist and populist tendencies over the *indigenistas*. Following the adoption of the 2010 Law of Mother Earth, most members of the *indigenista* wing left the government, disillusioned by MAS's betrayal of their vision. These include individuals who were key brokers between the MAS government and Unity Pact.[25] In June 2011, they issued a manifesto that decried MAS policy and practice, accusing MAS of continuing neoliberal economic policies based on transnational extractivism, violating democratic principles, and abandoning the goal of constructing a plurinational state.[26] Once *indigenista* intellectuals and many in the indigenous base (as opposed to campesino and originary movements) left MAS, the constituency for RoN within the government was greatly diminished. This rupture happened in 2011, spurred by the TIPNIS conflict, which explains why the 2012 Framework Law (No. 300) prioritizes extractivist-based development over RoN.

Morales's Strategic Reframing of "Indigeneity" and "Decolonization"

In many ways, the breakdown of the alliance between *indigenistas* and socialists in MAS mirrors the story in Ecuador. Rafael Correa similarly rose to power as the populist leader of a movement (Alianza Pais) that combined indigenous intellectuals and activists with socialists around a common agenda of replacing Ecuador's neoliberal development model with a more socially just alternative. Due to their place in Correa's coalition, Ecuadorian indigenous movements had a substantial role in the constituent assembly, where they helped develop the constitution's RoN principles (Becker 2013). However, the socialist wing of Alianza Pais became the dominant force in the legislature that was formed after the constitution was adopted. As described above, Correa and other socialists advocated expanding mining and oil extraction to finance poverty reduction programs, causing a split with indigenous groups.

Both Correa and Morales strategically adopted Andean indigenous concepts related to "pachamamismo" and "buen vivir" into their rhetoric even as they pursued extractivist development to finance socialist poverty reduction policies (Sánchez Parga 2011). However, they differed in how they responded to the tensions inherent in the alternative approaches to development. Correa responded by invoking RoN strategically and pushing back when RoN challenged his agenda. This gradually led to development of RoN jurisprudence. By contrast, Morales used framing strategies and symbolism to redefine extractivist development as "decolonization" and redefine environmental protection as the perpetuation of "colonialism." This greatly restricted the ability of civil society to mobilize around RoN, and insulated Morales from rhetorical entrapment domestically. Consequently, RoN advocates chose instead to invoke indigenous rights, particularly the right to prior consent, which was still consistent with the "decolonization" project enshrined in the constitution.

[25] Examples include Alejandro Almaraz, Gustavo Guzmán, Raúl Prada, Oscar Vega, Roberto Fernández, Oscar Olivera Foronda, Marcela Olivera Foronda, Leonardo Tamburini, Pablo Regalsky, Pablo Mamani, Jorge Komadina, Gustavo Soto, Aniceto Hinojosa, Víctor Hugo Sainz, Moisés Torres, and Rafael Quispe.
[26] The document *Manifiesto 22 de Junio 2011* is available at https://www.herramienta.com.ar/articulo.php?id=1516 (accessed March 21, 2019).

It is beyond the scope of this paper to detail thoroughly all the ways that Morales redefined the meanings of "indigeneity" and "decolonization" to be consistent with extractivist-led development. Nancy Postero (2017) does this impressively in her book, *The Indigenous State*. She shows how in 2011, following the conflict over TIPNIS national park, Morales shifts away from the prior discourse that focused on the Unity Pact's original vision of decolonization as the restructuring of Bolivia's state, society and economy to be consistent with traditional indigenous values, concepts, and practices. Following 2011, the MAS government reframes decolonization as a process of economic liberation for Bolivia's historically marginalized groups. Key to this economic liberation is national control over natural resources to redirect wealth away from foreign corporations to domestic social groups. In this way, state-controlled extractivist development becomes the means for economic emancipation through decolonization.

No doubt, Morales' ability to engage in this kind of reframing stems in part from his ability to present himself as the first self-identified indigenous president (something Correa could not do), and from the fact that "indigeneity" is a highly malleable concept. As Postero (2017, 4) writes:

> Indigeneity and decolonization were the rallying cries for the Morales revolution… Yet, as the MAS government consolidated its control and defeated its political adversaries on the right, its support for indigenous self-determination waned. Morales continues to invoke indigenous history and culture, but he does so in performance of a state-controlled version of indigeneity that legitimizes state power.

Bolivia's Divided Indigenous Movements

This framing of decolonization as economic liberation is one that resonates strongly with Bolivia's urban population and communities in the highlands, who comprise roughly 70% of the population. As Postero (2017, 111) writes:

> The majority of Bolivians, and that includes many indigenous people, are proud of the nationalization [of gas and other natural resources]… They *want* lithium to be developed, and they want their standards of living to improve. This is part of *pachakuti,* the turning of the timetable, the change of destiny. This is the time for the formerly poor to receive their fair share. A large number of indigenous Bolivians live in cities, surviving in difficult economic situations. For them, the most important goal of the new decolonized state is to pass the benefits of national patrimony to the poor who were traditionally barred from those benefits. They are not as concerned about environmental damage to rural lands as they are about overcoming poverty.

The story is much different for lowland indigenous groups who live in the rural territories targeted by extractive industries. Their territory is an integral component of their identify and culture. Consequently, environmental protection in their territory is intricately tied to the protection of their communities. This is why government plans to construct a highway through TIPNIS national park, seen as the first step toward extractivist intervention, sparked such a large backlash and ultimately led to *indigenistas* leaving MAS and the Unity Pact's dissolution in 2011.

The division between Bolivia's highland and lowland indigenous groups, which goes back many decades and results from distinct trajectories of political development, marks another important difference between Ecuador and Bolivia. Ecuador has one of the most highly organized indigenous movements in Latin America that, despite some internal divisions, unites indigenous movements from both the Andes and Amazonian regions (Becker 2011, Lucero 2008, Yashar 2005). This difference in levels of organization, particularly between highland (Andes) and lowland (Amazonian) movements, likely explains part of the variation in the two countries' civil society-led efforts to promote RoN.

Insulating MAS from "Rhetorical Entrapment"

In addition to exacerbating divides between Bolivia's highland and lowland indigenous groups, undermining their ability to mobilize collectively in support of RoN, MAS's strategic redefinition of decolonization also helps explain why MAS did not invoke RoN instrumentally, as Correa did in Ecuador.

A key aspect of MAS's redefinition of decolonization is the way it devalues any discourse advocating environmental conservation, labeling this as a form of imperialism and colonization. When indigenous intellectuals, lowland indigenous movements, and environmental NGOs criticized the government's extractivist development agenda, the government frames environmental protection, including the concept of national parks like TIPNIS, as an imperialist plot to keep Bolivians poor and underdeveloped. MAS regularly attacks environmental NGOs and lowland indigenous activists as counter-revolutionary agents of foreign capitalist interests (Matejova, Parker, and Dauvergne 2018, Hill 2017). For example, Vice-President García Linera accuses these groups of using foreign funds "to promote a 'transnational imperial policy' of environmental protection, in which countries of the global south forego opportunities for development and become 'park rangers' for the industrialized north" (cited in Achtenberg and Currents 2015, 2). This argument has been used to threaten and harass environmental NGOs. Indigenous groups that protect ecological preserves like TIPNIS have been labeled as terrorists, jailed, and beaten by police.

In interviews, self-described "defenders of Mother Earth" noted that framing their struggle in terms of RoN was strategically problematic for two reasons. First, it greatly increased the danger to protesters, increasing the likelihood of a state backlash. But it also was perceived as less likely to mobilize sympathy and support from other Bolivians, particularly those in urban centers and the highlands, which would be necessary to exert political pressure on the MAS government.

For this reason, social movements seeking to defend TIPNIS and other ecological preserves have chosen instead to frame their struggle as a defense of indigenous rights. By appealing for indigenous autonomy and justice, they are able to more persuasively situate their political demands within the decolonization project described in the 2009 constitution. Bolivia's constitution explicitly recognizes indigenous rights, but not RoN. Similarly, indigenous rights are recognized in international law, unlike RoN. Based on these factors, lowland indigenous movements and their supporters concluded that it would be strategically counter-productive to invoke the country's RoN laws. They were on stronger social, political, and legal footing by

invoking indigenous rights to self-determination and autonomy. As one leading indigenous lawyer noted, "if we have autonomy, the rights of Mother Earth will be protected."[27]

In addition to helping explain why Bolivian social movements have not invoked RoN, MAS's strategy of redefining the country's decolonization project also explains why the government has not invoked RoN instrumentally. To discredit and undermine social movements opposed to the government's extractivist development agenda, the government has framed efforts to protect the country's ecological preserves as a form of colonialism. This has forced the government to avoid invoking the rights of Mother Earth to pursue its own interests domestically, even as it regularly invokes the rights of Mother Earth in international policy arenas.

Different Civil Society Structures

The final question that remains is why we do not see environmental NGOs and lawyers working "below the radar" to gradually build RoN jurisprudence as happened in Ecuador. I argue that this variation can be explained by variation in the countries' civil society structures, specifically variation in the strength of environmental movements and Bolivia's lack of an organized community of lawyers educated in RoN.

In Ecuador, the development of RoN jurisprudence is propelled by an alliance of indigenous movements, environmental NGOs, and environmental lawyers. In Bolivia, it was primarily indigenous groups, specifically lowland organizations and indigenous intellectuals, that advocated for the rights of Mother Earth. Indigenous advocacy for RoN provides a common link between Ecuador and Bolivia, and explains the similarities in how RoN laws emerged and were framed in the two countries. However, the relative scarcity and weakness of environmental NGOs and lawyers in Bolivia helps explain the variation in implementation.

Ecuador has one of the strongest environmental movements in Latin America that dates back to the 1970s (Kauffman 2017, 88-89). During the 1980s and 1990s, the number of Ecuadorian environmental NGOs exploded, fueled by a growing interest among Ecuadorians in conserving their natural patrimony and a stream of money from international NGOs interested in protecting Latin America's tropical forests (Ortiz Crespo 1998). Ecuador's environmental movement includes radical NGOs like Acción Ecológica that oppose a development strategy based on the marketization and exploitation of natural resources. Instead, they advocate a development strategy based on environmental justice, the rights of nature, co-existence with the land, and the Andean indigenous "cosmovision" of the universe. Since its founding in 1986, Acción Ecológica has mobilized popular opposition to industrial mining, logging, and oil exploitation, particularly in the Amazon rainforest. In this, it found common cause with Ecuador's powerful indigenous movement. The alliance between urban environmental groups and indigenous and campesino organizations made Ecuador's environmental movement one of the strongest in Latin America.

In addition, Ecuador has developed a robust "epistemic community" (Haas 1992) of environmental lawyers who have spent decades developing the legal philosophy behind RoN. These efforts date back at least to the early 1990s, when Ecuadorian citizens sued Texaco in US federal court for oil pollution in the Northern Ecuadorian Amazon. Amid the lawsuit, Indigenous

[27] Samuel Flores, interview by author, La Paz, Bolivia, November 15, 2017.

groups, environmental NGOs like Acción Ecológica, and environmental lawyers discussed ways of codifying for Western legal purposes the Indigenous cosmovision that Nature is sacred, possesses its own rights, and is part of a living community in which humans exist (Martin 2011). During the 2000s, these discussions were linked to the global discourse on RoN through transnational networks of anti-extactivist organizations like Oilwatch (Martin 2011). For over a decade these ideas continued to be developed by Ecuadorian legal scholars in universities like Simón Bolívar Andean University and Catholic University. Law programs in these and other universities trained a new generation of lawyers knowledgeable about RoN. Ecuador's RoN legal community has now developed to the point where two of its members—Ramiro Ávila and Augustín Grijalva—now sit on Ecuador's Constitutional Court.

While the concept and original impetus of RoN in Ecuador arguably stems from indigenous movements, civil society's efforts to implement Ecuador's constitutional RoN provisions through lawsuits have largely been driven by Ecuador's environmental NGOs and environmental lawyers. The efforts to strategically identify lawsuits capable of strengthening RoN jurisprudence has been coordinated through CEDENMA (Ecuadorian Coordinator for the Defense of Nature and the Environment), an umbrella organization of Ecuadorian NGOs dedicated to environmental protection. CEDENMA serves as a claimant on many of the civil society lawsuits invoking RoN. Not coincidentally, the woman who coordinates CEDENMA also serves as the coordinator of the Global Alliance for the Rights of Nature, a transnational network of organizations dedicated to promoting RoN globally.

By contrast, Bolivia's environmental movement is relatively weak, marginalized, and disconnected from Bolivia's indigenous movements.[28] While Bolivia's environmental movement has always been weaker than Ecuador's, the Bolivian government's attack on environmental NGOs as agents of foreign colonialism has greatly weakened and divided environmental NGOs (Achtenberg and Currents 2015). One of the few domestic environmental NGOs left in Bolivia is FOBOMADE (The Bolivian Forum for the Environment and Development). Patricia Molina, FOBOMADE's Director General, describes Bolivia's environmental NGO community this way:

> We have never been very strong in financial terms, our strength has always been our coherence and in the actions we have taken. We are weakened and we have gone through many moments, we are beaten because there are currently many problems in the relationship of NGOs.[29]

In addition, Bolivia lacks a robust and highly organized network of environmental lawyers with strong knowledge of RoN jurisprudence that would be necessary to systematically build jurisprudence through strategic lawsuits, particularly working "below the radar."[30] There are, of course, organizations of lawyers working to oppose the government's extractivist agenda. The largest and most established is CEJIS (Center for Legal Studies and Social Research), an NGO of

[28] Patricia Molina, interview by author, La Paz, Bolivia, November 15, 2017; Rubén Pinto, interview by author, La Paz, Bolivia, November 15, 2017.
[29] Patricia Molina, interview by author, La Paz, Bolivia, November 15, 2017.
[30] I am indebted to noted Bolivian scholars Nancy Postero and Derrick Hindery for this insight; Nancy Postero, phone interview by author, November 3, 2011; This point was confirmed by Rubén Pinto, a lawyer for FOBOMADE, who claimed to be the only lawyer in Bolivia considering a RoN lawsuit, interview by author, La Paz, Bolivia, November 15, 2017.

lawyers who advance human rights and work closely with indigenous movements. When asked why they do not invoke the Law of Mother Earth, they laughed and repeated the oft-heard phrase that the law is not really a law, but "just poetry." When pressed, one CEJIS lawyer expressed his preference for indigenous rights by arguing that "RoN is too vague and expansive. With indigenous rights you have a concrete group demanding a concrete right."[31] Ecuador's experience shows that RoN can be applied in concrete ways when lawyers understand the jurisprudence behind the law. Rather, the perception by this and other lawyers in Bolivia arguably reflects their training in human and indigenous rights rather than RoN.

Conclusion

By comparing the politics surrounding implementation of similar RoN laws in Bolivia and Ecuador, this paper highlights several important structural factors and strategies that shape the processes through which new norms like RoN become institutionalized and put into practice. It shows the inadequacy of crediting Bolivia's lack of implementation to the government's development agenda or a perceived lack of judicial independence. Despite facing similar obstacles, RoN jurisprudence gradually strengthened and was enforced in Ecuador, while it was ignored within Bolivia. To explain this variation, the paper examines the structures and strategies shaping the political struggles in each country between socio-political forces backing extractivist development and those supporting RoN.

In Ecuador, RoN supporters overcame political opposition by the government and a lack of knowledge among judges using a three-part strategy: (1) training lawyers and judges, (2) working "below the radar" to develop jurisprudence through low-profile local cases, and (3) mobilizing social pressure on the government to adopt the rhetoric of RoN. This latter strategy made the government vulnerable to rhetorical entrapment (Schimmelfennig 2001), prompting the government to invoke RoN instrumentally. This had the unintended consequence of raising awareness of RoN among judges and strengthening RoN jurisprudence.

By contrast, Bolivian civil society did not engage in these three strategies. Instead it framed its struggle against extractivist development in terms of indigenous rights. Nor did Bolivia's government invoke RoN in its domestic discourse, despite doing so in international discourse. Based on the comparative case studies, this paper concludes that this variation can largely be explained by: (1) differences in how the two countries' RoN laws situate RoN in relation to competing economic rights; (2) variation in Bolivia's and Ecuador's civil society structures, particularly regarding the cohesiveness of highland and lowland indigenous groups, the strength of environmental movements, and the presence of legal communities trained in RoN jurisprudence; and (3) each government's strategy for responding to the tension between RoN and the government's development agenda. Ecuadorian President Rafael Correa responded by invoking RoN instrumentally. By contrast, Evo Morales redefined the concepts of "indigeneity" and "decolonization" to justify state-led extractivist development. In doing so, he redefined environmental protection as a form of "colonization," forcing him to avoid RoN rhetoric in domestic discourse. This insulated Morales from rhetorical entrapment and made it difficult for indigenous groups to invoke RoN, leading them instead to invoke indigenous rights.

[31] Alcides Vadilla, interview by author, Santa Cruz, Bolivia, November 23, 2017.

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