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## WHAT HAPPENED TO BOLIVIA?

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Bolivia was the second country in the world, after Ecuador, to adopt a national law recognizing rights of Nature (RoN). On paper, both countries' RoN laws are among the strongest in the world. Recognition of RoN came first in the 2008 Constitution of the Republic of Ecuador. In Bolivia it came in 2010, with the Law of the Rights of Mother Earth, which was upgraded in 2012 to the Framework Law of Mother Earth and Integral Development for Living Well. The 2012 law's framework status makes it superior to other laws.

In addition to their elevated legal status, Ecuador's and Bolivia's RoN laws are structured very similarly, following the Nature's rights model described in chapter 1. Both recognize rights for all of Nature, defined as Pachamama, or Mother Earth. Bolivia's Law of the Rights of Mother Earth defines Mother Earth 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" (Estado Plurinacional de Bolivia 2010, art. 3).

Bolivia's law also recognizes rights that are virtually identical to those in Ecuador's constitution. Article 7 of the law recognizes Nature's right "to maintain the integrity of living systems and natural processes that sustain them, and capacities and conditions for regeneration" and 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” (Estado Plurinacional de Bolivia 2010).

The guardianship arrangements in both countries are also identical. Like Ecuador’s constitution, Bolivia’s law does not appoint specific guardians, but empowers any citizen or the state to report and address violations (Estado Plurinacional de Bolivia 2010, arts. 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 (Kauffman and Martin 2018; Lalander 2014; Postero 2017; Radcliffe 2012); this political alliance gave Indigenous movements influence in the writing of each country’s new constitution (and Bolivia’s subsequent RoN laws). Indigenous movements in both countries advocated RoN as a tool for implementing an approach to development rooted in Indigenous values and concepts—particularly *suma qamaña* in Aymara and *sumak kawsay* in Kichwa. Typically translated into Spanish as *buen vivir* (“living well”), 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 one’s community and with Nature (Hidalgo-Capitán et al. 2014).

Despite RoN sharing strong legal status, similar structuring, and emerging through similar sociopolitical processes pushed by the same types of actors sharing the same agenda, implementation has been dramatically different in the two countries. Chapter 4 showed how RoN jurisprudence has gradually but steadily developed and strengthened in Ecuador. 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 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 not get implemented in Bolivia as they did in Ecuador? By answering this question, this chapter sheds light on the political processes shaping whether and how new norms become institutionalized and put into practice. We argue that this variation can 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.

## THE BOLIVIA-ECUADOR COMPARISON

Bolivia and Ecuador provide a unique opportunity to study norm development processes using a "most similar systems" comparison. The two nations are extremely similar in terms of their political development, demographics, culture, economic development, and sociopolitical alliance structures. Very similar domestic political processes produced similar national laws institutionalizing RoN.

The Bolivia-Ecuador comparison is valuable because it highlights the limitations of a commonly cited explanation for Bolivia's lack of RoN implementation. 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. As chapter 4 showed, however, the same situation exists in Ecuador, but RoN jurisprudence strengthened there nonetheless.

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 (Territorio Indígena y Parque Nacional Isiboro Sécure, or TIPNIS) 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 the two countries.

### REFRAMING “THE BOLIVIA PUZZLE” IN LIGHT OF ECUADOR

Chapter 4 showed that 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 Ecuadorian RoN activists overcome these obstacles? Chapter 4 demonstrated the importance of three strategies: (1) working “below the radar” to gradually build jurisprudence through local courts using lower-profile lawsuits that do not challenge the national government, (2) training lawyers and judges; and (3) launching public campaigns to raise popular support for RoN, thereby pressuring the government to rhetorically support RoN, albeit instrumentally. These strategies forced judges to consider the relationship between RoN and other rights, and over time their thinking naturally evolved and strengthened RoN jurisprudence.

Ecuador’s experience raises several questions regarding why Bolivia’s RoN laws have not been implemented. First, the social movements that drafted Bolivia’s Law of the Rights of Mother Earth mobilized national protests beginning in 2011 to block construction of a highway through TIPNIS, much like their counterparts in Ecuador created the YASunidos movement (Solon 2017). Yet they did not frame the struggle around RoN. Why did they—the creators of Bolivia’s RoN laws—not invoke it, instead choosing to invoke Indigenous rights like the right to prior consent? Moreover, why have they not linked RoN and Indigenous rights the way Indigenous groups in Ecuador have done?

Second, Bolivian civil society has not filed any lawsuits at any levels invoking RoN,<sup>1</sup> nor have they trained lawyers and judges in how to interpret RoN law, as Ecuadorian activists have done. 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?

Third, why did Bolivia's government not invoke RoN instrumentally in cases where it might have served its interests? As we will show, Bolivian president Evo Morales regularly invokes RoN in international policy arenas, and clearly believes there is some advantage in doing so. 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?

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

## THE POLITICAL CONTEXT OF BOLIVIA'S RIGHTS OF NATURE 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 the Indigenous and campesino 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.<sup>2</sup>

The politics of decolonization, and consequently RoN, was shaped by historical divisions separating three broad socioeconomic and cultural groups. Whites and 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—emphasizing class rather than ethnicity—and organized in *sindicatos* (unions). Because of this class-based identity, and negative connotations associated with the word *indígena* (Indigenous), these groups chose to identify themselves instead as *originario* peoples (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 groups, who self-identify as Indigenous and perceive their territory as an important component of their identity. The difference between highland *originarios* and lowland Indigenous groups is central to the battle over how to define indigeneity in Bolivia, and thus what it means to create a “decolonized” Indigenous state (Postero 2017). These differences are also key to explaining why the rights of Mother Earth are not invoked domestically.

The Cochabamba Water War (1999–2000) and the 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 as a space for dialogue (Garcés 2010).<sup>3</sup> The Unity Pact facilitated collaboration among the movements’ diverse organizations to demand the convening of a Constituent Assembly to write a new constitution that would restructure relations between the 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 for Socialism (Movimiento al Socialismo, or MAS) gained a large majority in the legislature. While a Constituent Assembly was not part of MAS’s original platform, Morales supported the Unity Pact’s demand, and the assembly was inaugurated in August 2006 (Tapia 2010, 143).

The Unity Pact produced a draft constitution meant to orient the debates in the Constituent Assembly toward the goal of decolonization (Garcés 2010). But this proposal was substantially modified in the political struggles between MAS, the Unity Pact, and opposition parties representing white and mestizo elites. MAS angered many Indigenous organizations by restricting their ability to send delegates to the assembly and instead brought in Indigenous representatives as MAS delegates. The party then changed the rules of debate to allow a simple MAS 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, that 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 the MAS government's excluding them from policy making. Rather than merely expressing their concern, these movements began proactively developing proposed laws that would move their decolonization agenda forward. One of the first was the draft Law of the Rights of Mother Earth released by the Unity Pact in November 2010 (Pacto de Unidad 2010).

### MORALES'S INTERNATIONAL RIGHTS OF NATURE DISCOURSE

One of the most puzzling aspects of the Bolivian case is the fact that Evo Morales, and Bolivia's government generally, have become known internationally as champions 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 (UN) 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." 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).

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 Conference on Climate Change and the Rights of Mother Earth in Cochabamba (see chapter 2). Among other things, attendees of the conference adopted a Universal Declaration of the Rights of Mother Earth, which mirrored RoN recognized in Ecuador's constitution and provided a template for RoN listed in Bolivia's Law of the Rights of Mother Earth, drafted the following November.

Over the last decade, Bolivia's government has continued to advocate for the recognition of RoN within the UN system. Under Morales,

the government played a leading role in establishing the UN Harmony with Nature Programme, which serves as an organizational platform for promoting RoN in international law and domestically around the world. As chapter 2 noted, this program sponsors annual dialogues within the UN 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 reports from UN secretaries-general advocating RoN.<sup>4</sup>

Given the international reputation that Morales has cultivated as a RoN advocate, he 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 the Rights 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 President Rafael Correa did in Ecuador? The following sections answer these interrelated questions and highlight the importance of three factors that explain the variation in outcomes between Bolivia and Ecuador: (1) differences in how the two countries' RoN laws situate RoN in relation to competing economic rights; (2) variation in 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) Morales's strategic reframing of the government's decolonization project.

## **BOLIVIA'S WEAKER RIGHTS OF NATURE LAWS**

To determine why Bolivian civil society groups are not invoking RoN laws, we conducted more than two dozen interviews with leaders of various social movements included in the Unity Pact and collected primary documents from the movements and the Bolivian government. Interviewees included individuals who helped draft the 2010 Law of the Rights of Mother Earth and 2012 Framework Law of Mother Earth and Integral Development for Living Well, as well as leaders of movements mobilizing to protect TIPNIS and the nongovernmental organizations (NGOs) and lawyers who have supported 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. In this section we discuss their answers, presented in the order in which interviewees prioritized them.

Representatives of the groups most interested in defending the rights of Mother Earth (e.g., Indigenous 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 legislation that will provide legal support for their agenda; they see the legal basis for RoN as too weak. Moreover, representatives of the Indigenous groups we 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 can help them. To understand why, it is useful to briefly review the politics behind the passage of the 2010 and 2012 laws.

The idea of codifying RoN into law developed from, and was spurred by, lowland Indigenous groups.<sup>5</sup> 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. The Unity Pact's introduction to their draft law 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).

In late November 2010, the Unity Pact presented its draft law to the Plurinational Legislative Assembly's special commission on the environment and began negotiations with the assembly on the final text (Pacto de Unidad 2010). The Law of the Rights of Mother Earth was formally adopted on December 21, 2010. In 2012 the Plurinational Legislative Assembly made further adjustments and passed the Framework Law of Mother Earth and Integral Development for Living Well. The differences between the Unity Pact's draft law, the 2010 law, and the 2012 law show how the Bolivian government progressively weakened the legal basis for RoN in Bolivia.

The Unity Pact's draft law is quite extensive and detailed. It addresses not only RoN but many other issues of top concern to Indigenous and *originario* groups that were not incorporated into Bolivia's constitution. Comprising twelve 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 toward Mother Earth
- develops an ecological and economic model consistent with RoN, which includes a comprehensive and participatory system for planning and accounting
- 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 coresponsibility in the coordination of public policies and the management of the Earth (Pacto de Unidad 2010)

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 RoN, defines mechanisms for defending Mother Earth (including incentives and sanctions), and discusses provisions governing the transition to a new RoN regime.

The 2010 Law of Mother Earth contains only a small portion of the Unity Pact's draft law. Indeed, it comprises just two titles. The first lists general principles, and the second lays out the legal character and 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, the 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" (Estado Plurinacional de Bolivia 2010, art. 10).

In sum, the 2010 Law of the Rights of Mother Earth includes only general language regarding principles and philosophy and omits the concrete elements proposed by the Unity Pact for applying this philosophy in practice. This point was made repeatedly by both supporters and opponents of the MAS government, who disregarded 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."<sup>6</sup>

In 2012 the legislature passed the Framework Law of Mother Earth and Integral Development for Living Well. As its 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 the 2010 Law of the Rights of Mother Earth, the Framework Law 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, the Framework Law weakens the rights of Mother Earth laid out in the 2010 law by stating that RoN must be considered through the lens of socioeconomic 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, *originario*, 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 (Estado Plurinacional de Bolivia 2012).

The primary focus of the Framework Law (and the resulting institutions and policies) is to promote a form of socioeconomic development that advances social justice (defined as the redistribution of wealth and political and cultural influence toward previously marginalized groups). In practice, government officials have invoked these socioeconomic rights to justify prioritizing natural resource extraction over environmental protection, saying that RoN will be given greater weight once poverty levels are diminished.<sup>7</sup> 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 de-emphasized in the 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 the language of the rights of Mother Earth, it does so through its climate change policy and ties this to international climate change negotiations. The government never created the Defensoría de la Madre Tierra as was called for in the 2010 law. It did create the Plurinational Authority of Mother Earth in 2013

after the passage of the Framework Law, but this department does not deal with enforcing RoN; rather, it is the department within the Ministry of Environment charged with addressing climate change. In fact, this is not even a new department. Rather, the government simply renamed a preexisting department that was dealing with climate change policy, presumably to comply with the new law. More important, this department's work is geared more toward international audiences than domestic ones; it is responsible for international climate change negotiations, where Morales's discourse emphasizes RoN, in contrast to his domestic discourse and policy.

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

For these reasons, Bolivian civil society groups generally see the 2010 Law of the Rights of Mother Earth as too vague to be useful, and they see the 2012 Framework Law as departing so significantly from the Unity Pact's draft law that it no longer represents the views of Indigenous groups or the NGOs supporting them. The Framework Law is where the government operationalized the concept of RoN through law, but in doing so it greatly weakened the principles established in the 2010 law. 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, invoking those 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 socioeconomic rights like those mentioned in Bolivia's Framework Law. But 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 socioeconomic rights. And while the framework status of Bolivia's Framework Law 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 gives Ecuadorian civil society a stronger legal platform for demanding that courts consider how to balance the competing RoN and the rights of 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's 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 Indigenous 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 anticolonial branding gave Morales the broad constituency MAS needed to weaken the power of the preexisting political class. The strategy succeeded politically, but by the time the 2010 Law of the Rights 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) comprised “three tendencies with projects that are not necessarily coincidental or harmonious, united by the personal leadership of Evo Morales” (Laserna 2010, 39). Roberto Laserna (2010) categorizes MAS affiliates during this first phase into three groups: the *indigenista* group, the socialist group, and the populist 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’s 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 were responsible for the 2010 law getting adopted.

Socialists comprise the second group, represented by Vice President Álvaro García 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 the Rights 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 the Unity Pact.<sup>8</sup> On June 22, 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 (Regalsky 2011). Once *indigenista* intellectuals and many in the Indigenous base (as opposed to campesino and *originario* 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 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 Alianza Pais, a movement 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). But the socialist wing of Alianza Pais became the dominant force in the legislature that was formed after the constitution was adopted. As chapter 4 noted, Correa and other socialists advocated expanding mining and oil extraction to finance poverty reduction programs, and this caused a split with Indigenous groups.

Both Correa and Morales strategically adopted Andean Indigenous concepts related to *pachamamismo* (the culture of Pachamama, or Mother Earth) and *buen vivir* into their rhetoric even as they pursued extractivist development to finance socialist poverty reduction policies (Sánchez Parga 2011). But 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 the development of RoN jurisprudence (see chapter 4). 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, and particularly the right to prior consent, which was still consistent with the decolonization project enshrined in Bolivia's constitution.

It is beyond the scope of this chapter to detail thoroughly all the ways that Morales redefined indigeneity and decolonization to be consistent with extractivist-led development. Postero (2017) does this impressively, showing how in 2011, following the conflict over TIPNIS, Morales shifted 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, and the exodus of *indigenista* intellectuals, the MAS government reframed 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.

There is no doubt that Morales's 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 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" (2017, 4).

## 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 percent of the population. As Postero 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. (Postero 2017, 111, emphasis in the original)

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 identity 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, seen as the first step toward extractivist intervention, sparked such a large backlash and ultimately led to *indigenistas* leaving MAS and thus the dissolution of the Unity Pact in 2011.

In sum, 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 Bolivia and Ecuador. Ecuador has one of the most highly organized Indigenous movements in Latin America and, despite some internal divisions, it unites Indigenous movements from both the highland (Andes) and lowland (Amazonian) regions (Becker 2011, Lucero 2008, Yashar 2005). This difference in levels of organization and collaboration between highland and lowland movements (which affects the ability to mobilize collective action nationally) likely explains part of the variation in the two countries' civil-society-led efforts to promote RoN.

#### INSULATING MORALES 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 Morales's party 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 criticize 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 counterrevolutionary agents of foreign capitalist interests (Hill 2017; Matejova, Parker, and Dauvergne 2018). 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" (quoted in Achtenberg 2015). Bolivia's government has used this argument 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. Second, it was perceived as less likely to mobilize sympathy and support from other Bolivians, and 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 Bolivia's 2009 constitution, which 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 counterproductive 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 a tool for protecting RoN. As one leading Indigenous lawyer noted, "if we have autonomy, the rights of Mother Earth will be protected."<sup>9</sup>

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 those rights in international policy arenas.

### DIFFERING 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. We argue that this variation can be explained by variations in the countries' civil society structures—specifically, variations 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 Bolivia and Ecuador and explains the similarities in how RoN laws emerged and were originally framed in the two countries. But 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, dating 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, RoN, coexistence 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 rain forest. 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" of environmental lawyers who have spent decades developing the legal philosophy behind RoN (Haas 1992). These efforts date back at least to the early 1990s, when Ecuadorian citizens sued Texaco in a US federal court for oil pollution in the northern Ecuadorian Amazon. During the lawsuit, Indigenous 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). In the early 2000s, these discussions were linked to the global discourse on RoN through transnational networks of antiextractivist organizations like Oilwatch (Martin 2011). For over a decade these ideas continued to be developed by Ecuadorian legal scholars at such institutions as Simón Bolívar Andean University and the Pontifical 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 the Constitutional Court of Ecuador.

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 were, until recently, largely driven by Ecuador's environmental NGOs and environmental lawyers. The efforts to strategically identify lawsuits capable of strengthening RoN jurisprudence has been coordinated through the Ecuadorian Coordinator of Organizations for the Defense of Nature and the Environment

(Coordinadora Ecuatoriana de Organizaciones para la Defensa de la Naturaleza y el Medio Ambiente, or CEDENMA), 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, Natalia Greene, 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 the country's Indigenous movements.<sup>10</sup> 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 these NGOs (Achtenberg 2015). One of the few domestic environmental NGOs left in Bolivia is the Bolivian Forum for the Environment and Development (Foro Boliviano Sobre Medio Ambiente y Desarrollo, or FOBOMADE). As Patricia Molina, FOBOMADE's director general, explains about Bolivia's environmental NGO community, "We have never been very strong in financial terms, our strength has always been our coherence and in the actions we have taken. But we are weakened and have gone through many difficult moments. We are beaten because there are currently many problems in the relationship of NGOs."<sup>11</sup>

In addition, Bolivia lacks a robust and highly organized network of environmental lawyers with the strong knowledge of RoN jurisprudence that would be necessary to systematically build jurisprudence through strategic lawsuits, particularly working below the radar.<sup>12</sup> There are, of course, organizations of lawyers working to oppose the government's extractivist agenda; the largest and most established is the Center for Legal Studies and Social Research, an NGO of lawyers who advance human rights and work closely with lowland Indigenous movements. When asked why they do not invoke the Law of the Rights 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 lawyer for the center 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."<sup>13</sup> Ecuador's experience shows that RoN can be applied in concrete

ways when lawyers understand the jurisprudence behind the law. Conversely, the perception by this and other lawyers in Bolivia arguably reflects their training in human and Indigenous rights rather than in RoN.

## CHAPTER SUMMARY

Together, this chapter and chapter 4 compare the implementation of RoN laws in two countries that structured their laws according to the Nature's rights model. While RoN jurisprudence gradually developed in Ecuador, RoN exists only on paper in Bolivia. By comparing the politics surrounding implementation in Bolivia and Ecuador, these chapters highlight 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 alone. Despite facing similar obstacles, RoN jurisprudence gradually strengthened and was enforced in Ecuador, while it was ignored in Bolivia. To explain this variation, we have examined the structures and strategies shaping the political struggles in each country between sociopolitical 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) working below the radar to develop jurisprudence through low-profile local cases, (2) training lawyers and judges, and (3) mobilizing social pressure on the government to adopt the rhetoric of RoN. This latter strategy made the government vulnerable to rhetorical entrapment, prompting it to invoke RoN instrumentally (Schimmelfennig 2001). 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; it instead 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 case comparisons, we conclude 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) variations 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, Bolivian president 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.

The Bolivian case also highlights a weakness of the guardianship arrangement in the Nature's rights model. While anyone can represent Nature to protect its rights, no one is obligated to do so. If there is no institutional framework created to enforce RoN through regulatory policy, such enforcement requires someone to voluntarily undertake a lawsuit to protect RoN. Under the best of circumstances, this can prove difficult due to problems with collective action: the costs are concentrated (lawsuits are expensive) and the benefits are diffuse. In places like Bolivia there can be additional costs to personal security. Bolivia shows that RoN jurisprudence will likely not develop in this model unless people take action to force it, and the obstacles to doing so can be great.

Chapter 6 will examine how a different guardianship arrangement can fundamentally change the dynamics of implementing RoN, and Earth jurisprudence more broadly. It shows one example of how Earth jurisprudence can be implemented when the legal personhood model is used to create space for an Indigenous group (in this case, the Tūhoe iwi in New Zealand) to recover ancestral knowledge and customs consistent with Earth jurisprudence.





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# **The Politics of Rights of Nature**

## **Strategies for Building a More Sustainable Future**

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