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# **The Politics of Rights of Nature Strategies for Building a More Sustainable Future**

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# NOTES

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## CHAPTER 1

1. For UN reports and regulations regarding RoN, see United Nations Harmony with Nature Programme, n.d.-a.
2. Writings on RoN by norm entrepreneurs from around the world can be found in the anthology *The Rights of Nature* (Council of Canadians 2011).
3. Casey Camp-Horinek, email correspondence with the authors, July 10, 2020.
4. Rooted in Indigenous worldviews, *buen vivir* rejects conventional notions of development based on Western ideals of individualism, a dualism between human-kind and Nature, and a linear notion of progress rooted in material growth.
5. New Zealand's 2012 Deed of Settlement with the Tūhoe iwi recognizes the Te Urewera forest as a legal person with rights. This settlement was incorporated into national law through the 2014 Te Urewera Act (New Zealand Parliamentary Counsel Office 2014a).
6. Both authors are members of the UN Harmony with Nature Knowledge Network. For more information, see United Nations Harmony with Nature Programme, n.d.-b.
7. Portions of this and other sections in this chapter are excerpted from Craig M. Kauffman and Pamela L. Martin, "Constructing Rights of Nature Norms in the U.S., Ecuador, and New Zealand," *Global Environmental Politics* 18 (4), 2018, 43–62. Reprinted here with permission.
8. One exception is the Constitutional Court of Colombia's ruling recognizing the Atrato River as a legal person, as detailed in chapter 8.
9. At the time of this writing in early 2020, Uganda was the only other country to recognize RoN in a national law, its National Environment Act 2019 (Republic of Uganda 2019).

## CHAPTER 2

1. All translations throughout the book are by the authors unless otherwise noted.
2. Nobel Prize winner Bertrand Russell created the International War Crimes Tribunal in 1966 to investigate human rights abuses committed against Vietnamese peoples resulting from US military intervention in Vietnam (Duffett 1968). Inspired by the Russell tribunal, law experts and rights activists established the Permanent Peoples' Tribunal to investigate and provide judgments on violations of human rights around the world (Blaser 1992).
3. Breadth is an inverse measure of cohesion. The closer to a score of 0, the more cohesive the network. The closer to a score of 1, the more fragmented the network.
4. State level community rights / RoN organizations exist in Colorado, New Hampshire, New Mexico, Ohio, Oregon, Pennsylvania, and Washington.
5. Regional clustering for all regions was determined by calculating David Krackhardt and Robert Stern's E-I (External-Internal) Index using UCInet software (Krackhardt and Stern 1988).

## CHAPTER 3

1. This chapter contains excerpts from Craig M. Kauffman and Pamela L. Martin, "Constructing Rights of Nature Norms in the U.S., Ecuador, and New Zealand," *Global Environmental Politics* 18 (4), 2018, 43–62. Reprinted here with permission.
2. Hydraulic fracturing, or fracking, is a process of injecting water, sand, and chemicals at high pressure into bedrock to extract oil and natural gas (US Geological Society).
3. Ambassador John Wood, interview with Craig Kauffman, Wellington, New Zealand, August 10, 2016; Paul Beverley, Crown lawyer for the Te Awa Tupua and Te Urewera settlements, interview with Craig Kauffman, Wellington, New Zealand, August 19, 2016.
4. Wood interview; Beverley interview.
5. Wood interview.
6. Wood interview.
7. Christopher Finlayson, interview with Craig Kauffman, Wellington, New Zealand, August 11, 2016; Beverley interview; Rachel Houlbrook, member of Crown negotiating team for the Te Awa Tupua and Te Urewera settlements, interview with Craig Kauffman, Wellington, New Zealand, August 10, 2016.
8. Tamati Kruger, lead Tūhoe negotiator for the Te Urewera settlement, interview with Craig Kauffman, Wellington, New Zealand, August 17, 2016.
9. Wood interview.
10. Tamati Kruger and Kirsti Luke, lead Tūhoe negotiators for the Te Urewera settlement, interview with Craig Kauffman, Wellington, New Zealand, August 17, 2016.

## CHAPTER 4

1. This chapter contains excerpts from Craig M. Kauffman and Pamela L. Martin, “Can Rights of Nature Make Development More Sustainable? Why Some Ecuadorian Lawsuits Succeed and Others Fail,” *World Development* 92, 2017, 130–142. Reprinted here with permission.
2. A large literature problematizes different interpretations of *buen vivir* and *sumak kawsay*, including the view that these are distinct concepts (see, e.g., Acosta and Martínez 2009; Hidalgo-Capitán, Guillén García, and Déleg Guazha 2014; and Lalander 2014). Describing these different interpretations is beyond the scope of this chapter. While acknowledging the differences, we use the terms as they are typically used in relation to Ecuador’s political project of putting *buen vivir* and RoN into practice. We note that some Indigenous activists argue that the Ecuadorian government’s treatment of *buen vivir* is inconsistent with the Indigenous concept *sumak kawsay*. They accuse government leaders of co-opting and twisting the concept’s meaning to justify a traditional Western development model rooted in resource extraction and increased consumption (see, e.g., Cholango 2010; Oviedo 2014; and Simbaña 2011).
3. Acción Ecológica’s legal status was subsequently reinstated amid international pressure.
4. In addition to not considering a secondary RoN law in the National Assembly, the government failed to create the *superintendencia* (autonomous, independent administrative unit) for the environment that was mentioned in the constitution (Patricio Hernandez, Ecuadorian lawyer specializing in RoN, interview with Craig Kauffman, Quito, Ecuador, August 3, 2015). RoN was, however, subsequently supported by the 2014 Penal Code, whose chapter 4 specifies “crimes against nature or Pachamama” (Republic of Ecuador 2014).
5. Natalia Greene, President of CEDENMA, the National Coordinating Entity for Environmental NGO’s in Ecuador, interview with Craig Kauffman, Quito, Ecuador, July 30, 2015; Esperanza Martínez, founder of the association Acción Ecológica in Ecuador, interview with Craig Kauffman, Quito, Ecuador, August 7, 2015; Alberto Acosta, Ecuadorian economist and president of Ecuador’s Constituent Assembly, interview with Craig Kauffman, Quito, Ecuador, July 31, 2015; Hernandez interview.
6. Hugo Echeverría, Ecuadorian lawyer specializing in RoN, interview with Craig Kauffman, Eugene, Oregon, October 10, 2019.
7. This was confirmed through separate interviews with members of multiple organizations who participated in the drafting of Ecuador’s constitutional RoN provisions and who spearheaded efforts to strengthen these provisions after the constitution’s signing. Examples include the Greene, Martínez, Acosta, and Hernandez interviews.
8. We are indebted to Hugo Echeverría for this insight.
9. Organizations filing the lawsuit included two Indigenous movements (CONAIE; the Confederación de Nacionalidades Indígenas del Ecuador; and Ecuador Runakunapak

Rikcharimuy, or ECUARUNARI); two nongovernmental human rights organizations (the Comisión Ecuémica de Derechos Humanos and the Fundación Regional de Asesoría en Derechos Humanos), the nongovernmental environmental organizations Acción Ecológica, Coordinadora Ecuatoriana de Organizaciones para la Defensa de la Naturaleza y el Medio Ambiente (CEDENMA), and Fundación Pachamama; and five individuals representing local communities.

10. The lawsuit cited articles 12, 15, 66.2, 71–74, 276, 282, 396, 406, and 413 of the constitution and articles 10 and 32 of the Organic Law of Jurisdictional Guarantees and Constitutional Control.

11. The Condor-Mirador project covers territory that is in a protected forest but not a protected area. This distinction is important because mining is not legally allowed in protected areas, but it is allowed in protected forests.

12. Hugo Echeverría, interview with Craig Kauffman, Quito, Ecuador, September 17, 2015.

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

14. This prohibition exists in numerous Ministry of Environment regulations. For example, article 8 of the Interministerial Accord No. 002 between the Ministry of Environment and Ministry of Agriculture states that “in sites where the conditions described as *páramos* exist, even when they are in altitudes below 3,500 meters above sea level . . . , forest plantations will not be established.” Article 4 of the same accord says that forest plantations for commercial purposes must be established outside of protected areas covered with native *páramo* vegetation (Republic of Ecuador 2013).

15. Pablo Piedra, Ecuadorian lawyer representing Nature in the Tangabana case, interview with Craig Kauffman, Quito, Ecuador, September 18, 2015.

16. Piedra interview.

17. Galapagos National Park officials, interviews with Pamela Martin, San Cristobal, Galapagos, April 2014.

18. This point was repeatedly emphasized in author interviews with leaders of social movements opposing mining and oil development.

19. Yaku Pérez Guartambel (the name Yaku means “water”) is a Kichwa-Kañari lawyer who represented the Indigenous communities in the trial. He was also president of ECUARUNARI from 2013 to 2019, and in 2019 was elected the prefect of Azuay Province.

20. Manuela Picq, Professor of International Relations at Universidad San Francisco de Quito, email communication with Pamela Martin, May 2018.

21. Echeverría interview, October 10, 2019.

22. For discussions of the Yasuní-ITT Initiative (which offered a perpetual suspension of oil extraction in the part of Yasuní National Park known as Ishpingo-Tambococha-Tiputini, or ITT), see Martin (2011, 2015).

## CHAPTER 5

1. This fact was confirmed through numerous interviews with lawyers representing groups advocating RoN, including those representing the organizations that drafted Bolivia's Law of the Rights of Mother Earth in 2010.
2. For detailed analysis of this process and competing definitions of decolonization, see Postero 2017.
3. The main organizations of the Unity Pact included three highland campesino movements—the National Confederation of Campesino, Indigenous, and Native Women of Bolivia “Bartolina Sisa” (CSUTCB-BS); the Trade Union Confederation of Intercultural Communities of Bolivia (CSCIB); and the Single Trade Union Confederation of Campesino Workers of Bolivia (CSUTCB)—as well as one highland Indigenous-identified movement, the National Council of Markas and Ayllus of Qullasuyu (CONAMAQ), and one national movement of lowland Indigenous groups, the Confederation of Indigenous Peoples of Bolivia (CIDOB).
4. For UN General Assembly resolutions and reports of the secretaries-general on RoN, see United Nations Harmony with Nature Programme, n.d.-a.
5. Marilín Karayuri, Guaraní journalist who worked on the communications committee of Indigenous marches to protect TIPNIS, interview with Craig Kauffman, Santa Cruz, Bolivia, November 22, 2017; Walter Limache, member of the Unity Pact, interview with Craig Kauffman, La Paz, Bolivia, November 21, 2017; Raúl Prada, advisor to the Unity Pact, interview with Craig Kauffman, La Paz, Bolivia, November 20, 2017.
6. Examples include René Orellana, Minister of Development Planning of Bolivia, interview with Craig Kauffman, La Paz, Bolivia, November 15, 2017; and Alcides Vadillo, Regional Director for Fundación Tierra, interview with Craig Kauffman, Santa Cruz, Bolivia, November 23, 2017.
7. Orellana interview; Diego Pacheco, Deputy Minister of Development Planning, interview with Craig Kauffman, La Paz, Bolivia, November 16, 2017.
8. Among the key brokers were Alejandro Almaraz, Roberto Fernández, Gustavo Guzmán, Aniceto Hinojosa, Jorge Komadina, Pablo Mamani, Marcela Olivera Foronda, Oscar Olivera Foronda, Raúl Prada, Rafael Quispe, Pablo Regalsky, Víctor Hugo Sainz, Gustavo Soto, Leonardo Tamburini, Moisés Torres, and Oscar Vega.
9. Samuel Flores, Permanent Secretary of the Indigenous Court of Justice of the Qhara Qhara Nation, interview with Craig Kauffman, La Paz, Bolivia, November 15, 2017.
10. Patricia Molina, Director General of FOBOMADE, interview with Craig Kauffman, La Paz, Bolivia, November 15, 2017; Rubén Pinto, legal advisor for FOBOMADE, interview with Craig Kauffman, La Paz, Bolivia, November 15, 2017.
11. Molina interview.
12. We are indebted to Nancy Postero and Derrick Hindery for this insight. Nancy Postero, telephone interview with Craig Kauffman, 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; Pinto interview.
13. Vadillo interview.

## CHAPTER 6

1. Portions of this chapter are excerpted from Craig M. Kauffman, "Managing People for the Benefit of the Land: Practicing Earth Jurisprudence in Te Urewera, New Zealand," *ISLE: Interdisciplinary Studies in Literature and Environment* 27 (3), 2020, 578–595, <https://doi.org/10.1093/isle/isaa060>. Reproduced by permission of Oxford University Press.
2. Tamati Kruger, interview with Craig Kauffman, Wellington, New Zealand, August 17, 2016.
3. Kruger interview, August 17, 2016.
4. For example, the Ngai Tahu gave Aoraki / Mt. Cook back to the country after its settlement.
5. Kruger interview, August 17, 2016; Kirsti Luke, interview with the author, Wellington, New Zealand, August 17, 2016.
6. According to Te Ahukaramū Charles Royal (2007), "mana refers to an extraordinary power, essence or presence. This applies to the energies and presences of the natural world. . . . Mauri is an energy which binds and animates all things in the physical world. Without mauri, mana cannot flow into a person or object."
7. While they are extremely important for the Tūhoe iwi, details of the Tūhoe Claims Settlement Act are beyond the scope of this chapter.
8. Kruger interview, August 17, 2016.
9. As part of the reorganization that occurred around the treaty settlement process, the Tūhoe consolidated various Tūhoe *hapū* land trusts and other resources into one account to be able to make investments that benefited the Tūhoe iwi as a whole.
10. Kirsti Luke, interview with Craig Kauffman, Whakatane, New Zealand, June 1, 2019.
11. Multiple members of the bush crew referred to listening to "the voice of Te Urewera" in a joint interview with Craig Kauffman, Te Urewera, New Zealand, May 26, 2019.
12. Tamati Kruger, interview with Craig Kauffman, Taneatua, New Zealand, May 27, 2019.
13. Leader of Te Uru Taumatua operations team in Waikaremoana, interview with Craig Kauffman, Waikaremoana, New Zealand, May 30, 2019.
14. Kirsti Luke, interview with Craig Kauffman, Whakatane, New Zealand, May 26, 2019.
15. Luke interview, August 17, 2016.
16. The building's story is featured in the award-winning documentary *Ever the Land* (Grohnert 2015).
17. For living building standards, see International Living Future Institute, n.d.

## CHAPTER 7

1. Regarding tribal nations, we note that Earth jurisprudence has been a norm in many of their cultures for millennia and that RoN is a Western legal application of their long-held beliefs and practices.
2. PGE cited the US Constitution's Contracts Clause, Due Process Clause, Equal Protection Clause, Petition Clause, and Supremacy Clause.
3. Reply to Plaintiffs Opposition to Motion to Intervene by Little Mahoning Watershed and East Run Hellbenders Society, Inc., CIV. NO.: 1:14-cv-209, December 18, 2014, p. 3. In section 2 of the ordinance, subsections d and e outline Nature's rights. Subsection 2f specifies the right of residents to enforce these rights and intervene.
4. Stacey Long, Grant Township Supervisor Vice-Chair, email correspondence with Pamela Martin, September 27, 2019.
5. Marsha Moutrie, telephone interview with Pamela Martin, October 29, 2019.
6. Linda Sheehan, telephone interview with Pamela Martin, September 22, 2016.
7. These and other data regarding sustainability in Santa Monica are available at the website (City of Santa Monica, n.d.).
8. At the time of this writing, eight tribes in North America—the ʔEsdilagh First Nation of Canada, the Ho-Chunk Nation, the Menominee Tribe, the Navajo Nation, the Nez Perce Tribe, the Ponca Nation, the White Earth Band of Ojibwe, and the Yurok Tribe—recognized RoN in their constitutions or tribal laws.
9. The Chippewa and Ojibwe refer to themselves in their original language as the Anishinaabe.

## CHAPTER 8

1. We note that in 2017 the Madhya Pradesh state legislature in India passed legislation recognizing the Narmada River as a living entity with legal rights. However, no laws recognize RoN for the rivers addressed by the court rulings mentioned.
2. Portions of this chapter are excerpted from Craig M. Kauffman and Pamela L. Martin, "How Courts Are Developing River Rights Jurisprudence: Comparing Guardianship in New Zealand, Colombia, and India," *Vermont Journal of Environmental Law* 20 (3), 2019, 260–289. Reprinted with permission.
3. For example, the Te Awa Tupua treaty settlement and subsequent act were widely publicized by the Earth Law Center, the Global Alliance for the Rights of Nature, and the UN Harmony with Nature Programme.
4. The constitutional articles referred to are 1, 2, 5, 8, 11, 12, 13, 16, 22, 44, 48, 49, 63, 65, 67, 70, 72, 79, 80, 188, 189, 288, 298, 311, 339, 356, 357, 365, and 366.
5. A notable exception is Kothari and Bajpai 2017.

## CONCLUSION

1. In contemporary usage, a tutela is “a constitutional injunction that aims to protect fundamental constitutional rights when they are violated or threatened by the action or omission of any public authority” (Zuleta and Rincón 2019).
2. We are indebted to Kirsti Luke and Tamati Kruger of the Tūhoe iwi in Te Urewera, New Zealand, for this insight.
3. We address examples from Latin America, North America, and New Zealand in chapters 4–8. One example from Europe is the Sami Nation in Sweden, whose parliament endorsed the Universal Declaration of the Rights of Mother Earth in 2018 (Rights of Nature Sweden 2018).