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Rights of Pachamama: More Like Poetry Than Law?

Assessing the Strength and Impact of Nature's Constitutional Rights in Ecuador

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1 Introduction

In 2019, the United Nations Secretary-General warned that we had only eleven years left to limit carbon emissions or unleash suffering unparalleled in human history.¹ That year saw worldwide protest and anger at political failure to stem the rising tides of the climate crisis, including Extinction Rebellion protests which ground London to a halt and School Strikes by young people in 125 countries.² A global poll conducted during the Covid-19 pandemic found an increased appetite for a green economic recovery.³ These developments may show a growing public awareness of the interdependence between humans and nature; there has always been a link between morality and law, and society's sense of morality is shifting. However, our legal systems treat nature as existing for human use by establishing rules which authorise how it is used.⁴ These systems, based upon an anthropocentric philosophical tradition which places humans at the apex of moral and legal consideration, are failing. Despite ample recognition of our impact on Earth, States have consistently failed to achieve targets set by environmental agreements.⁵ In the wake of the destruction of the Holocaust and two World Wars in as many decades, the international community adopted the Universal Declaration of Human Rights (UDHR) in an effort to prevent such horrors from happening again.⁶ Human rights emerged out of a recognition that the system had failed and of a necessity to hold States to a set of minimum standards of behaviour through an enlightened international morality. Through the UDHR, countries formally recognised that all human beings possess rights based not on citizenship but on their inherent humanity.⁷ At the time, this represented a paradigm shift in law, politics and culture.⁸ It is argued that necessity now calls for a similar shift to mitigate further degradation of the environment, species extinction and climate change.

A codified international Rights of Nature (RoN), based on the UDHR, would recognise the same intrinsic right of nature to exist and thrive as that which is bestowed upon humans.⁹ A legal system where Nature's rights are enshrined alongside human rights would require balance between subjects of the law, rather than placing human interests above that of Nature. This

¹ United Nations, 'Only 11 Years Left to Prevent Irreversible Damage from Climate Change', Meetings Coverage and Press Releases, 2019 at <https://www.un.org/press/en/2019/ga12131.doc.htm>.

² Suyin. H. 'Students From 1,600 Cities Just Walked Out of School to Protest Climate Change. It Could Be Greta Thunberg's Biggest Strike Yet', *Time Magazine*, 24 May 2019 at <https://time.com/5595365/global-climate-strikes-greta-thunberg/>; 'Extinction Rebellion Protests: What Happened?' *BBC News*, 25 April 2019 at <https://www.bbc.co.uk/news/uk-england-48051776>.

³ Long, J. et al. 'Now What? Climate Change and Coronavirus', 2020, https://www.ipsos.com/sites/default/files/ct/publication/documents/2020-06/now_what_-_climate_change_and_coronavirus.pdf at 9.

⁴ 'New OxHRH Podcast - When Human Rights Are Not Enough: Defending the Rights of Nature.' Oxford Law Faculty at <https://www.law.ox.ac.uk/news/2018-04-12-new-oxhrh-podcast-when-human-rights-are-not-enough-defending-rights-nature>.

⁵ Rosen, A. 'The Wrong Solution at the Right Time: The Failure of the Kyoto Protocol on Climate Change', *Politics and Policy*, Vol. 43 (1), 2015, 30–58.; Climate Analytics and New Climate Institute. 'Climate Action Tracker' <https://climateactiontracker.org/countries/>; United Nations, 'UN Report: Nature's Dangerous Decline 'Unprecedented'; Species Extinction Rates 'Accelerating.' 2019 at <https://www.un.org/sustainabledevelopment/blog/2019/05/nature-decline-unprecedented-report/>.

⁶ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III). St <https://www.refworld.org/docid/3ae6b3712c.html>. [UDHR].

⁷ *Ibid*, Preamble.

⁸ Nickel, J. *Making Sense of Human Rights*, Second Edition, Blackwell Publishing, 2007. at 8; Cmiel, K. 'The Recent History of Human Rights.' *The American Historical Review*, Vol. 109 (1), 2004, 117-135. at 117.

⁹ World People's Conference on Climate Change and the Rights of Mother Earth, Universal Declaration of Rights of Mother Earth, 2010.

approach requires longer-term, whole system thinking which recognises planetary limits. Recognition of RoN could thus be a powerful tool to protect the environment in ways existing environmental law has failed.

In 2008, Ecuador became the first country in the world to constitutionally adopt Nature's rights.¹⁰ The concept of RoN has since seized the world's imagination, with Ecuador's early and bold adoption exalted by environmental groups.¹¹ Nature's rights are now recognised in various forms in thirty-nine countries.¹² However, RoN is still an emerging field of research.¹³ Studies largely focus on analysis of the Nature's substantive provisions without examination of their application through procedural rights, institutional development and policy.¹⁴ Although research often discusses the legal outcomes of individual cases, environmental outcomes are left mostly unaddressed.¹⁵ Where analysis exists, it often does not situate outcomes within their larger political and economic context, focusing only on questions of law.¹⁶

The paper aims to ameliorate these gaps by linking theory with practice through empirical comparative analysis of the impact Nature's rights in Ecuador. The research will examine the question: what is the strength of Nature's rights implementation in Ecuador and what has been the impact of their legal adoption? The paper will assess the strength of RoN fulfillment in Ecuador and attempt to quantify the impact of implementation on normative and environmental outcomes. Barriers identified will then be explored and contextualised and some solutions offered. It is hoped the paper will enable future research to establish conditions required for successful RoN implementation in order to aid international replication.

1.1 Methodology

Before proceeding, it is necessary to define the terms of the inquiry. 'Nature' is a term which takes several forms within environmental ethics.¹⁷ Here it will be defined as all living and nonliving components of the environment, to reflect current scientific knowledge which conceives of the planet as a whole ecosystem with interdependent components.¹⁸ 'Nature' will be capitalised throughout to recognise the conception of Nature as a subject, as adopted by the UN General Assembly.¹⁹ 'Rights' will be defined using Nickel's definition which includes

¹⁰ Constitución de la Republica del Ecuador, 2008. [Constitution].

¹¹ Earth Law Center, 'Rights of Nature: Time to Shift the Paradigm in the EU?' at <https://www.earthlaw-center.org/nikolettas-ron-article>.

¹² United Nations Harmony with Nature, 'Rights of Nature Law and Policy' at <http://www.harmonywithnatureun.org/rightsOfNature/>.

¹³ Putzer et al. 'Putting the Rights of Nature on the Map. A Quantitative Analysis of Rights of Nature Initiatives Across the World', *Journal of Maps*, 2022, <https://doi.org/10.1080/17445647.2022.2079432>.

¹⁴ Gilbert, J. et al. 'The Future of the Rights of Nature: An Interdisciplinary Scoping Analysis', University of Roehampton, <https://pure.roehampton.ac.uk/portal/en/publications/the-future-of-the-rights-of-nature-an-interdisciplinary-scoping-a>. at 13-21.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ Some extend moral consideration to individuals, others take a biocentric approach. See: Singer, Peter, 'All Animals Are Equal', *Philosophical Exchange*, Vol. 1 (5), 1974. [Singer]; Naess, A. 'The Shallow and the Deep, Long-Range Ecology Movement. A Summary', *Inquiry*, Vol. 16, 1973, 95-100. [Naess].

¹⁸ IPCC, 'Climate Change 2022: Impacts, Adaption and Vulnerability.' Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Cambridge University Press, 3-33, 2022, [doi:10.1017/9781009325844.001](https://doi.org/10.1017/9781009325844.001); Vignieri, S. Fahrenkamp-Uppenbrink, J. 'Ecosystem Earth', *Science*, Vol. 356 (6335), 2017, DOI: [10.1126/science.356.6335.258](https://doi.org/10.1126/science.356.6335.258).

¹⁹ United Nations General Assembly, Resolution 73/235: Harmony with Nature (20 December 2018) A/RES/73/235.

several characteristics. First, rights must have *rightholders, addressees and scope* which *impose a set of standards on governments*. Second, rights are *universal regardless of characteristic*. They must be *high priority norms with strong justifications* and exist due to these justifications *regardless of State recognition*. They are therefore *not subject to political boundaries*. In this context, the rightholder is Nature, the addressees are governments and society and the scope is defined by legal provisions. Nature's rights apply everywhere regardless of jurisdiction, as Nature is a planetary ecosystem. Human rights are justified through the dignity and intrinsic worth of human beings and the conditions required for peace.²⁰ RoN can thus be justified through its intrinsic value, in addition to the necessity of protection of its component parts to enable the wellbeing of the whole planet. It can also be justified anthropocentrically through its requirement for the realisation of fundamental human rights.²¹ Finally, RoN impose restrictions on government and private behaviour through duties such as prohibition of environmentally damaging activities. Human rights indicators are thus meaningful in the context of RoN because in its pragmatic and positivist form, RoN represent the next step in the evolution of rights. The history of rights is one of successive extension of moral consideration and legal personhood which has transmuted 'things' to 'rights holders'.²² RoN is also underpinned by the more idealistic 'Earth Jurisprudence', which focuses on the intrinsic value of Nature in which the principles of Natural Law are ecocentric rather than anthropocentric.²³ While human rights are necessarily anthropocentric, Nature's rights must be inherently Nature-centric. Nature's rights are thus not conceived of as a direct extension of human rights per se, but rather a system to complement human rights.

The study initially set out to analyse the global impact of Nature's rights adoption and a mapping exercise was undertaken to determine global RoN formulations and spatial distribution. The exercise revealed that Nature's rights have been adopted in such large numbers that a larger study would be required to examine their impact. The scope of analysis was therefore narrowed to one country to apply comparative analysis to the formal rights of Nature and implementation on the ground. Such comparison is used by human rights organisations to identify patterns in compliance to improve rights realisation.²⁴ Limiting the study to one country enables a more comprehensive assessment and better identification of barriers to Nature's rights in practice than could be achieved in a global study. Ecuador was chosen as a case study for several reasons. First, it is the only country where Nature's rights have been constitutionally enshrined.²⁵ A constitution sets out a nation's aspirational identity and a constitutional provision represents the highest national legal protection available. As an early adopter of RoN, the country has also had many years to develop institutions and norms around an ecocentric model.

The study was conducted using sequential mixed methods. First, indicators were designed, drawing upon those used to monitor human rights implementation. Assessment of rights compliance requires a comparative approach which takes into account resources and economic,

²⁰ UDHR, *supra* note 6, Preamble.

²¹ UNEP, 'Climate Change and Human Rights', 2015 at <https://www.unenvironment.org/resources/report/climate-change-and-human-rights>.

²² Stone, C. 'Should Trees Have Standing? - Toward Legal Rights for Natural Objects', *Southern California Law Review*, Vol. 45 (2), 450-501, 1972. at 450-457; Nash, R. *The Rights of Nature: A History of Environmental Ethics*, University of Wisconsin Press, Third Edition, 1990.

²³ Berry, T. *The Great Work: Our Way into the Future*, Crown Publications, 2000.

²⁴ Andreassen, B. 'Comparative Analyses of Human Rights Performance', in *Research Methods in Human Rights* at 222-223.

²⁵ Constitution, *supra* note 10.

political and cultural conditions at country level.²⁶ Indicators were thus used to ensure a systematic review of RoN implementation and outcomes which can be replicated for use in other countries. The assessment required a combination of quantitative data collection, doctrinal analysis and qualitative case analysis. Human rights indicators are structured as a tripartite configuration: structural, process and outcome-based.²⁷ Many of the indicators focus on Nature's procedural rights. This is because, while substantive rights are important as a standards defining mechanism, procedural rights comprise the methods through which they are secured.²⁸ Analysis of procedural provisions is thus important in order to assess the efficacy of a right.

Following the tripartite configuration, the first set of indicators are structural and are comprised of *Nature's constitutional rights*, and *institutional, policy and legislative framework*. These elements establish the scope of Nature's constitutional rights and assess the Government's commitment to undertake measures to respect its legislative duties through establishment of the structural elements that support their implementation.²⁹ The second set of indicators measure processes, which are the practical steps the State takes to reach its rights commitments, linking policy with fulfilment on the ground.³⁰ The Structural indicators assessed are: *participation, access to justice and education*. Outcome indicators measure whether the structural and process indicators are having the desired effect over time.³¹ While process indicators are designed to show the effort of the State to uphold its obligation, outcome indicators are related to the enjoyment of the right.³² The outcome indicators were developed to reflect what Nature requires to realise its substantive rights outlined in the Constitution.³³ The research scope does not allow for a thorough review of all Ecuador's environmental outcomes, so the indicators focus on the most important components of Ecuador's ecosystem in addition to its greatest threats. They encompass: *deforestation, extractive industries, biodiversity loss and marine ecosystems*.

The paper will begin with a cursory overview of the ethical basis on which Nature's rights are built. The political context of Ecuador's RoN adoption will be briefly appraised, before assessment of Ecuador's RoN implementation through examination of structural, process and outcome indicators as outlined above. Finally, there will be an in-depth qualitative appraisal to explain and contextualise barriers, and provide some suggestions for solutions.

2 Background and Context

2.1 The Ethical Foundation of Nature's Rights

²⁶ Bantekas, I. and Oette, L. *International Human Rights Law and Practice*, Third Edition, Cambridge University Press, 2020 at 226 and 437-442. [Bantekas and Oette]; United Nations Human Rights Office of the High Commissioner, 'Human Rights Indicators: A Guide to Measurement and Implementation.' 2012, HR/PUB/12/5. [UN Indicators]; De Schutter, O. *International Human Rights Law*, Second Edition, Cambridge University Press, 2014 at 544-569. [De Schutter].

²⁷ *Ibid.*

²⁸ Nickel, J. *Making Sense of Human Rights*, Second Edition, Blackwell Publishing, 2007 at 3-8.

²⁹ UN Indicators *supra* note 26 at 34-35; Bantekas and Oette *supra* note 26 at 439.

³⁰ *Ibid.*

³¹ *Ibid* at 37.

³² *Ibid* at 37-38.

³³ Constitution, *supra* note 10.

The philosophy of Earth jurisprudence underpins the legal notion of nature's rights.³⁴ Earth jurisprudence constitutes a paradigm transformation of traditional theories of law from anthropocentrism to ecocentrism. The paper begins with a brief appraisal of the environmental ethics which formulate our moral obligations towards Nature in this new paradigm. Discussion regarding moral consideration of Nature broadly falls into two categories: individualism (expanding moral standing and therefore rights to be inclusive of individual natural beings) and biocentrism (recognising the rights of nature as a whole).

2.1.1 Individual Rights

Regan and Singer are the most notable proponents of extension of moral standing to other species. For Singer, a utilitarian, an animal is entitled to moral consideration if they possess sentience, which he believes to specifically constitute the capacity to feel pleasure and pain.³⁵ According to Regan's deontological approach, moral standing should be extended to all 'subjects of a life'. Regan defines 'subjects of a life' as beings with beliefs, desires, memories, and a sense of future. Such beings have a good of their own and therefore possess intrinsic value. Beings that possess intrinsic value should not be treated merely as means; they have rights.³⁶

Whilst also concerned with individuals, Taylor advocates a biocentric approach. Building on Schweitzer's 'will to live', he argues that living beings are 'teleological centres of life' with a biological interest of which they strive towards.³⁷ Biocentric egalitarianism thus denotes that *all* living beings have intrinsic and equal value irrespective of sentience.³⁸ This value morally obligates humans to ensure that all other living organisms can flourish. Taylor explicitly states that he makes no moral rights claims for nature, believing his ethics of respect for nature to be adequate.³⁹ However, he does suggest legal protection as 'a means by which a society that subscribed to the ethics of respect for nature could give public recognition to their inherent worth,' presciently outlining a legal RoN.⁴⁰

Notwithstanding collective rights, international human rights law is based upon the intrinsic value of individuals. However, sentience is central to an individual theory of nonhuman rights, which claims that nonhuman animal rights are the logical conclusion to an individual rights approach. This ontology is concerned with species and omits nonliving elements of Nature and relies upon human conceptions of 'sentience' to determine which species are deserving of consideration. Further, individualism is the realm of humanity, but ecosystems operate on larger scales, both spatially and temporally. Since RoN seeks to affirm nature's intrinsic value *as a whole*, clearly an individualist approach would be insufficient. A theory to support RoN would thus need to be holistic.

2.1.2 Biocentrism

Leopold's land ethic calls for a reimagining of human relations with nature via development of an 'ecological conscience' to extension of the community to include land, with man as 'plain

³⁴ Franks, S. The Trees Speak for Themselves: Nature's Rights Under International Law', *Michigan Journal of International Law*, Vol 42 (3), 2021, DOI: <https://doi.org/10.36642/mjil.42.3.trees> at 633.

³⁵ Singer, *supra* note 17.

³⁶ Schweitzer, A. *The Philosophy of Civilisation*, A & C Black Limited, 1923; Regan, T. *The Case for Animal Rights*. University of California Press, 1983 at 243.

³⁷ Taylor, Paul. 'The Ethics of Respect for Nature', *Environmental Ethics*, Vol. 3, 1981, 197–218 at 199. [Taylor].

³⁸ *Ibid* at 200.

³⁹ *Ibid* at 218.

⁴⁰ *Ibid* at 199.

citizen’.⁴¹ He draws parallels between Darwinian evolution and human development of ethics as a means of social organisation. Ethics first dealt with individuals, before extending to communities. To Leopold, the next logical (and necessary) step is to extend it to the land.⁴² Leopold construes land as an interdependent web of life, with energy flowing between soil, plants and animals.⁴³ This provides the foundation of his argument that economics should cease to guide our use of land and we should instead use his famous maxim, ‘A thing is right when it tends to preserve the integrity, stability and beauty of the biotic community. It is wrong when it tends otherwise.’⁴⁴ Thus, Leopold’s prescription to humans is to extend our moral sentiments beyond human interests to the biotic community as a whole. Deep Ecology builds on this sentiment. Developed in contrast to mainstream environmentalism, or what Naess terms ‘shallow ecology’, Naess argues that reforming the current system does not go far enough; an overhaul of society and development of a new eco-philosophy are required.⁴⁵ Naess also argues that humans have lost our sense of place and require a spiritual and physical reconnection to Nature. This is developed via inclusion of a broader ‘ecological self’ through recognition of Nature as a part of our being, drawing on Kant’s ‘*beautiful act*’. By denying other species’ intrinsic value and defining them only in terms of what value they bring for fulfilling human needs, we leave only two possibilities for our relationships with them: exploit or push them to extinction. Naess argues that this harms us too; pandemics and climate change are a consequence of treating life as if it has no intrinsic worth.⁴⁶

2.1.3 Indigenous Cosmovisions

UN estimates that Indigenous groups occupy twenty percent of Earth’s land, with many located in places of rich biodiversity.⁴⁷ They are seen as key to ensuring environmental protection in many places; research has shown that Nature degrades less quickly in areas occupied by Indigenous Peoples.⁴⁸ Many consider Nature as part of their community as opposed to a resource.⁴⁹ Tunks writes that ‘the land for them is more than just a habitat or political boundary; it is the basis of their social organisation, economic system and cultural identification.’⁵⁰ Indigenous spiritualities often adopt a systems approach, reflecting the interconnectedness of humans and Nature.⁵¹ The principles of living in harmony with Nature are often recognised by

⁴¹ Leopold, A. *A Sand County Almanac*. Oxford University Press, 1949. at 221 and 204. [Leopold]

⁴² *Ibid* at 203.

⁴³ *Ibid* at 214-220.

⁴⁴ *Ibid* at 224-225.

⁴⁵ Naess, *Supra* note 17 at 95.

⁴⁶ Naess, A. ‘The Basics of Deep Ecology’, *The Trumpet*, Vol. 21 (1), 1986.

⁴⁷ United Nations, Department of Economic and Social Affairs: Indigenous Peoples at <https://www.un.org/development/desa/indigenouspeoples/mandated-areas1/environment.html>.

⁴⁸ Media Release, ‘Global Assessment: Nature’s Dangerous Decline ‘Unprecedented’; Species Extinction Rates ‘Accelerating’’, Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), 6 May 2019 at <https://ipbes.net/news/Media-Release-Global-Assessment#2-Indigenous>.

⁴⁹ It is important to recognise that Indigenous Peoples are not a homogenous group and some believe the connection to RoN to be overstated: see Tănăsescu, M. ‘Rights of Nature, Legal Personality, and Indigenous Philosophies’, *Transnational Environmental Law*, Vol. 9 (3), 2020, 429-453, [doi:10.1017/S2047102520000217](https://doi.org/10.1017/S2047102520000217).

⁵⁰ Tunks, A. ‘One Indigenous vision for sustainable development law? Tensions and prospects’, *Environmental Law for a sustainable society: New Zealand Centre for Environmental Law Monograph Series*, Vol. 1, 2002 at 114-115.

⁵¹ Knauß, Stefan. ‘Conceptualizing Human Stewardship in the Anthropocene: The Rights of Nature in Ecuador, New Zealand and India’, *Journal of Agricultural and Environmental Ethics*, Vol. 31, 2018, 703–722, <https://doi.org/10.1007/s10806-018-9731-x> at 704.

Indigenous cultures around the world, and many of the most significant RoN developments have been driven by Indigenous activism.⁵²

For the Andean Quechua, the Earth is revered as the goddess *Pachamama*, or ‘Earth Mother’, who oversees agriculture and embodies Earth’s regenerative power.⁵³ Earth is therefore considered a benevolent mother; a living and conscious being with whom humanity must foster a reciprocal relationship in order to live well.⁵⁴ From this worldview stems the principle of ‘*sumac kawsay*’, (or ‘*buen vivir*’ in Spanish), meaning ‘plentiful life’ or ‘good living’. This way of life is rooted in communitarianism, with Nature and humans as one community. *Sumak Kawsay* emphasises balance within the human-Nature relationship which requires respect of *Pachamama*’s limits.⁵⁵ In addition to its challenge to established anthropocentric legal norms, recognition of RoN is thus significant because it recognises a movement which has been largely spurred by developing countries and Indigenous actors and amplifies traditionally disempowered voices.

2.1.4 Legal Rights of Nature

Oliver Stone was the first to suggest extending legal standing to Nature when he argued that protection of Nature rests on balancing human and ecosystem interests.⁵⁶ Stone points to nonhuman entities which already possess rights to highlight that nonhuman legal personhood already exists.⁵⁷ His argument highlights the historical evolution of rights as a transformation for various kinds of people – women and people of colour, for instance – from ‘things to be used’ to ‘rights holders’.⁵⁸ To allow Nature to stand in court, Stone proposes a guardianship arrangement such as those that are already in place for bankrupt corporations and incapacitated persons.⁵⁹ Personifying the environment would allow it to have its injuries recognised and remedies issued.⁶⁰ Stone argues that rights, rather than expansion of environmental law, are required because rights change norms; protecting Nature ‘depends in part upon effecting a radical shift in our feelings about our place in the rest of Nature.’⁶¹

Cultural historian and father of ‘Earth Jurisprudence’ Thomas Berry draws from Indigenous worldviews as inspiration for law, arguing that all species are interweaved and interdependent. Every component of the Earth community inherently possesses three rights: the right to be, the right to habitat and the right to fulfil its role in the community.⁶² The Earth is not a collection of objects for human use but a subject.⁶³ Berry argues that law is derived from the laws of Nature. Just as human rights are inherent to each person because they exist as a human being,

⁵² Franks, S. ‘The Trees Speak for Themselves: Nature’s Rights Under International Law’, *Michigan Journal of International Law*, Vol 42 (3), 2021 at 648.

⁵³ Dransart, P. ‘Pachamama: The Inka Earth Mother of the long sweeping garment’, in *Dress and Gender: Making and Meaning*, 1992, at 145–163.; Tola, M. ‘Between Pachamama and Mother Earth: Gender, political ontology and the rights of nature in contemporary Bolivia’, *Feminist Review*, Vol. 118 (1), 2018, at 25-40.

⁵⁴ Callicott, J. And Frodean, R. *Encyclopedia of Environmental Ethics and Philosophy*, Macmillan Reference, 2009, at 265.

⁵⁵ Calzadilla, P. and Kotze, L. ‘Living in Harmony with Nature? A Critical Appraisal of the Rights of Mother Earth in Bolivia’, *Transnational Environmental Law*, Vol. 7 (3), 2018, 397–424 at 403.

⁵⁶ Stone, *supra* note 22 at 450-501.

⁵⁷ *Ibid* at 452.

⁵⁸ *Ibid* at 455.

⁵⁹ *Ibid* at 464-473.

⁶⁰ *Ibid* at 473-481.

⁶¹ *Ibid* at 495.

⁶² Berry, T. *Evening Thoughts: Reflecting on Earth as a Sacred Community*, University of California Press, 2006 at 149. [Berry Evening Thoughts].

⁶³ Burdon, P. ‘A Theory of Earth Jurisprudence’, *Australian Journal of Legal Philosophy*, 2012 at 29.

the rights of the Earth Community ‘originate where existence originates. That which determines existence determines rights.’⁶⁴ Therefore existence and the laws of the universe are the highest laws, and human laws are required to align to them.

The theories which underpin Nature’s rights are thus concerned with restoration of our relationship with Nature and protection of the Earth through legal recognition of Nature as a subject. This approach rejects the claim that humans have greater intrinsic value than all other forms of Nature and seeks to place the Earth community at the centre of decisions and legal systems.⁶⁵

2.1.5 Ecuador’s Adoption of Rights of Nature

In 2008, Ecuador became the first country in the world to recognise RoN at national level following adoption of its new constitution in 2008.⁶⁶ Authorship of a new constitution was driven by a political desire to curb neoliberal policies that had presided over a period of environmental destruction and political and economic volatility.⁶⁷ In 2006, President Rafael Correa was elected on a populist agenda that promised a transformation of Ecuador’s political and economic structures.⁶⁸ Correa’s election was heavily reliant upon the support of Indigenous groups, led by the powerful Confederation of Indigenous Nationalities of Ecuador (CONAIE), whose influence led to the adoption of the principle of *sumak kawsay*, RoN and the declaration of Ecuador as a plurinational State.⁶⁹ Lawyers from the U.S. based Community Environmental Legal Defense Fund (CELDF) were also involved through provision of advice to Indigenous leaders.⁷⁰ Conceptions of RoN in the Constitution are thus pluricentric, while Berry’s articulation of Nature’s right to exist and Stone’s ideas regarding legal standing are also apparent within the text.⁷¹

3 Implementation Assessment

3.1 Structural Indicators

3.1.1 Ecuador’s Adoption of Rights of Nature

⁶⁴ UDHR, *supra* note 6, Preamble.; Swimme, B. And Berry, T. *The Universe Story: From The Primordial Flaring Forth To The Ecozoic Era – A Celebration Of The Unfolding Cosmos*, HarperOne, 1992.

⁶⁵ Cullinan, C. ‘Earth Jurisprudence; in *The Oxford Handbook of International Environmental Law*, Second Edition, 2021 at 233.

⁶⁶ Constitution, *supra* note 10.

⁶⁷ Becker, M. ‘Correa, Indigenous Movements, and the Writing of a New Constitution in Ecuador’, *Latin American Perspectives*, Issue 176, Vol. 38 (1), 2011, DOI:10.1177/0094582X10384209 at 47-49. [Becker].

⁶⁸ *Ibid.*

⁶⁹ Bainbridge, E. ‘Indigenous Mobilization in Ecuador: The Emergence of CONAIE in Modern Latin America’, Eighth Edition Companion Website, Brown University Library at <https://library.brown.edu/create/modernlatinamerica/chapters/chapter-6-the-andes/moments-in-andean-history/indigenous-mobilization-in-ecuador/>. [Bainbridge].

⁷⁰ Constitution, *supra* note 10, Article 71.; CELDF, ‘Rights of Nature: Timeline’ at <https://celdf.org/rights-of-nature/timeline/>.

⁷¹ Whereas conceptions involving legal personality are often ecocentric. See: Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, ‘Summary for Policymakers: Assessment of the Diverse Values and Valuation of Nature. Bonn, Germany (1 August 2022) IPBES/9/14/Add.2 at 9.; Constitution, *supra* note 10, Articles 71-13.

In 2008, Ecuador became the first country in the world to recognise RoN at national level following adoption of its new constitution in 2008.⁷² Authorship of a new constitution was driven by a political desire to curb neoliberal policies that had presided over a period of environmental destruction and political and economic volatility.⁷³ In 2006, President Rafael Correa was elected on a populist agenda that promised a transformation of Ecuador's political and economic structures.⁷⁴ Correa's election was heavily reliant upon the support of Indigenous groups, led by the powerful Confederation of Indigenous Nationalities of Ecuador (CONAIE), whose influence led to the adoption of the principle of *sumak kawsay*, RoN and the declaration of Ecuador as a plurinational State.⁷⁵ Lawyers from the U.S. based Community Environmental Legal Defense Fund (CELDF) were also involved through provision of advice to Indigenous leaders.⁷⁶ Conceptions of RoN in the Constitution are thus pluricentric, while Berry's articulation of Nature's right to exist and Stone's ideas regarding legal standing are also apparent within the text.⁷⁷

3.1.2 Nature's Constitutional Rights

Doctrinal analysis of the relevant provisions will seek to establish how Ecuador's constitution answers normative questions regarding how Nature's rights should be represented and applied. An assessment of Nature's rights realisation in Ecuador must begin by establishing their scope and place within Ecuador's legal system. First, how should the Constitution be interpreted? Article 427 prescribes that interpretation of the text should be done literally and in line with the Constitution as a whole.⁷⁸ The Preamble, which serves as a constitutional interpretive and contextual guide, makes it clear that Ecuador seeks to build a society that lives in harmony with Nature.⁷⁹ Nature's rights are contained in Chapter 7, Articles 71-73 of the Constitution, where Nature is defined as, 'Pachamama, where life is reproduced and occurs'.⁸⁰ The term *Pachamama* denotes respect for Indigenous worldviews and is broad in scope which is consistent with the intention of Nature as an interconnected ecosystem. However, it also raises questions around what 'Nature' means in practice, with implications for human activities. Article 71 specifies that Nature has three substantive rights: the right to integral respect for its existence, to maintain its integrity as an ecosystem, and for 'the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.'⁸¹ 'Integral respect' could mean that humans should treat Nature in a manner that complies with the Indigenous worldview upon which RoN is based, but it is not explicit.

Article 72 concerns Nature's right to restoration, the positive obligation for which lies with the State.⁸² It instructs the Government to provide restoration and adopt measures to mitigate

⁷² *Ibid.*

⁷³ Becker, *supra* note 67.

⁷⁴ *Ibid.*

⁷⁵ Bainbridge, *supra* note 69.

⁷⁶ Constitution, *supra* note 10, Article 71.; CELDF, 'Rights of Nature: Timeline' at <https://celdf.org/rights-of-nature/timeline/>.

⁷⁷ Whereas conceptions involving legal personality are often ecocentric. See: Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, 'Summary for Policymakers: Assessment of the Diverse Values and Valuation of Nature. Bonn, Germany (1 August 2022) IPBES/9/14/Add.2 at 9.; Constitution, *supra* note 10, Articles 71-73.

⁷⁸ Constitution, *supra* note 10, Article 427.

⁷⁹ *Ibid.*, Preamble.

⁸⁰ *Ibid.*, Article. 71.

⁸¹ *Ibid.*

⁸² *Ibid.*, Article 72.

environmental impact in the case of ‘severe or permanent’ harm.⁸³ The threshold for ‘severe’, nor the level of restoration required, is not stipulated. They could be the point at which Nature is unable and able to access its Article 71 rights. The Constitution also contains provisions which require immediate and longer term governmental measures, such as ‘incentives to organisations and communities to protect and promote respect for Nature.’⁸⁴ Article 73 specifies that the State is obliged to apply preventative measures regarding activities that ‘might lead to the extinction of species, the destruction of ecosystems, and the permanent alteration of natural cycles’, inclusive of introduction of invasive species.⁸⁵ The duty requires *ex post facto* evaluation and prevention of environmental harm, although how harms must be evaluated is not specified. Although Chapter Seven contains Nature’s principle rights, they are also woven throughout the Constitution and are mentioned a further twenty one times. For example, Article 83 affirms that it is a responsibility of all Ecuadorians to respect Nature and use resources responsibly.⁸⁶ Article 71 declares that, ‘all persons, communities, peoples and nations can call upon public authorities to enforce the rights of Nature.’⁸⁷ This represents a universal standing doctrine which mirrors the notion that RoN are inherent to all of Nature. Claims for Nature’s rights are therefore not restricted to the jurisdiction of Ecuador.

The Constitution contains provisions which conflict with Nature’s rights, such as the right to private property, without stipulating how such conflicts should be mediated.⁸⁸ A hierarchy of rights is not specified, although this could be an intentional endeavour to establish the notion of *integralidad* within the text. Article 74 establishes a human right to ‘benefit from the environment and the natural wealth enabling them to enjoy the good way of living.’⁸⁹ This provision is anthropocentric because it allows for resource exploitation, justified as necessary for achievement of *sumak kawsay*. Article 407 forbids the extraction of non-renewable resources in protected areas but allows the President to lift the ban with the consent of the National assembly.⁹⁰

Nature’s inclusion within the Constitution as a subject of rights means it receives maximum legal standing. The constitutional provisions form a distinctively holistic approach which emphasises balance. The recognition of rights for all of Nature combined with a universal standing doctrine renders their scope incredibly inclusive. This expansive approach embeds the concept of Nature’s rights as universal and reflects the fact that Nature is a holistic system and environmental harms are not constrained by human jurisdictions. However, the Constitution also contains inconsistencies, such as the inclusion of traditional anthropocentric provisions relating to resource extraction, justified using *sumak kawsay*. The Constitution thus enumerates competing interests without specifying how they should be balanced, leaving arbitration to the State.

3.1.3 Institutional, Policy and Legislative Framework

An institutional and legislative framework to implement Nature’s rights should flow from and support its Constitutional provisions. Secondary legislation is necessary for effective

⁸³ *Ibid.*

⁸⁴ *Ibid.*, Article 71.

⁸⁵ *Ibid.*, Article 73.

⁸⁶ *Ibid.*, Article 83(6).

⁸⁷ *Ibid.*, Article 71.

⁸⁸ *Ibid.*, Article 321.

⁸⁹ *Ibid.*, Article 74.

⁹⁰ *Ibid.*, Article 407.

implementation because it outlines the detail of how substantive provisions should be implemented.⁹¹ The framework should therefore show establishment of legislation which details how Nature's rights should be governed in addition to institutions dedicated to fulfillment.

Nature's legal provisions are complemented within the Constitution by the aforementioned *sumak kawsay* development model, which the Constitution states will be adopted to assure the rights of people, communities and Nature.⁹² The National Plan for Good Living comprises the policy framework with which *sumak kawsay* is implemented, which is updated every five years.⁹³ The first National Plan, adopted in 2009, included provisions to redistribute wealth and shift Ecuador's energy matrix to end fossil fuel dependency.⁹⁴ However, the Plan also included the promotion of mining projects to achieve good living, although mining contradicted *sumak kawsay*'s stated purpose of assuring Nature's rights. The latest plan, written in 2017, dedicates Objective 3 to guaranteeing the rights of Nature 'for the current and future generations'.⁹⁵ The objective reaffirms Nature's constitutional rights and declares that Ecuador must move toward sustainability by shifting the economy away from dependence on fossil fuels.⁹⁶ Policy objectives include promotion of good environmental practices and a circular economy.⁹⁷ Goals include reduction of contaminated water sources, protecting 16% of national territory under conservation management and a very vague, 'control emissions'.⁹⁸ The Plan does not elaborate on how the country plans to reach these goals.

Uptake of legislation and institutions to administer RoN were slow in the years after adoption of the new Constitution. In 2014, the Criminal Code was adopted.⁹⁹ The Code specifies crimes against *Pachamama* in Chapter 4 which include causing forest fires and hunting and collecting wild flora and fauna. These are aggregated if the crime is committed in a protected area.¹⁰⁰ The Code also orders the immediate suspension of any activity that risks harm to people, ecosystems, animals or Nature and allows for the destruction of tools used to commit crimes against Nature.¹⁰¹ Ecuador's Organic Code on the Environment was passed in 2017 to promote 'the rights of people and Nature, in accordance with the Constitution'.¹⁰² It stipulates that public policies must be oriented towards effecting *sumak kawsay* and the RoN.¹⁰³ Article 6 designates design and planning around implementation of Nature's rights to the National Environmental Authority (MAE), establishing the institutional regime.¹⁰⁴ Regulatory agencies such as the MAE require funding in order to be effective. In 2005, the MAE was well financed and received government funding of USD 9.10 million – 0.11% of the total budget.¹⁰⁵ However, in 2019 the budget was cut by around 41% as part of austerity measures and in 2020, 390 employees were

⁹¹ De Schutter, *supra* note 26 at 551.

⁹² Constitution, *supra* note 10, Articles 275, 276 (4) and 277 (1).

⁹³ UNESCO, 'The National Plan of Good Living: Sumak Kawsay and the Plurinational Plan as the Bases for Cultural Policies' at <https://en.unesco.org/creativity/policy-monitoring-platform/national-plan-good-living-sumak>.

⁹⁴ UNEP, 'Development Strategies of Selected Latin American and Caribbean Countries and the Green Economy Approach: A Comparative Analysis', Green Economy Discussion Paper, 2013. at 22.

⁹⁵ Plan Nacional Para El Buen Vivir: 2017-2021, 2017. at 55. [National Plan]

⁹⁶ *Ibid*, Objective 3.

⁹⁷ *Ibid*, Objectives 3.3 and 3.4.

⁹⁸ *Ibid*, at 58.

⁹⁹ Código Orgánico Integral Penal, 2014. [Criminal Code]

¹⁰⁰ *Ibid*, Articles 246 and 247.

¹⁰¹ *Ibid*, Articles 558 (10) and 69 (3).

¹⁰² El Código Orgánico del Ambiente, 2017, Article 4. [Environment Code]

¹⁰³ *Ibid* at 5.

¹⁰⁴ *Ibid*, Article 12.

¹⁰⁵ World Bank, 'Republic of Ecuador Country Environmental Analysis, Report No. 4029-EC, 2007 at 26.

let go, impacting the Ministry's programmes.¹⁰⁶ The Code also establishes the National System of Protected Areas (SNAP), which is a primary conservation mechanism comprising 68 areas which protect around 14% of Ecuador's land.¹⁰⁷ Notably, protected forests are not included in the Code and do not receive the same level of protections from the extractive industry.¹⁰⁸ Much of the Code's text mirrors the Constitution, including the State's duties around prevention of damage to Nature. This means it can also be broad at times; it avoids stating how Nature's rights should be balanced with other rights.

It is clear that there is a scant structural framework with which to apply Nature's rights beyond general constitutional principles. An institutional regime was not established until 2017 and appoints all responsibility for planning and policy development to a government body. In addition to questions this raises around the Ministry's ability to retain independence from government interference, recent cuts to funding may impact its programme implementation. Enactment of secondary legislation has been slow; it took six and nine years for the Criminal and Environmental Codes to be established after the Constitution was adopted. *Sumak kawsay* is undeniably an innovative development model which breaks hegemonic conceptions of successful development. However, the National Plans contain contradictory measures, some of which mirror Constitutional provisions to protect Nature while others speak of Nature as a resource and use *sumak kawsay* to sanction extractivism. These issues highlight a gap between rhetoric and reality and signal a lack of commitment from the Ecuadorian government regarding its obligations to fulfill Nature's rights.

3.2 Process Indicators

3.2.1 Participation

Participation is a human right closely linked to the right to self-determination through public involvement in the decision making process.¹⁰⁹ It is an essential component of democratic governance and crucial to the realisation of rights, as it enables responsive policy-making and ensures concerns are heard.¹¹⁰ Principle 10 of the Rio Declaration enshrines public participation with regard to environmental harms, stating that 'environmental issues are best handled with participation of all concerned citizens, at the relevant level.'¹¹¹ Research has found that civil society action leads to better application of RoN by judges, including a better understanding of the content of rights and how they are balanced with other interests.¹¹² Realisation of Nature's

¹⁰⁶ BTI Transformation Index, 'Ecuador Country Report 2022 at <https://bti-project.org/en/reports/country-report/ECU>; Cardona, A. 'For Ecuador's Eco Agenda, 2019 Was a Year of Setbacks and Pushbacks', Mongabay, 31 January 2020 at <https://news.mongabay.com/2020/01/for-ecuadors-eco-agenda-2019-was-a-year-of-setbacks-and-pushbacks/>.

¹⁰⁷ World Bank, 'Ecuador – National System of Protected Areas Project' at <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/756131468746732000/ecuador-national-system-of-protected-areas-project>.

¹⁰⁸ Environment Code, *supra* note 102.

¹⁰⁹ United Nations Office of the High Commissioner, 'Guidelines for States on the Effective Implementation of the Right to Participate in Public Affairs', 2018.

¹¹⁰ United Nations Office of the High Commissioner, Press Release: 'Right to Participation Matters More Than Ever: UN Secretary-General', 25 September 2020 at <https://www.ohchr.org/en/stories/2020/09/right-participation-matters-more-ever-un-secretary-general>.

¹¹¹ Constitution, *supra* note 10, Article 71.

¹¹² Schimmöller, L. 'Paving the Way for Rights of Nature in Germany: Lessons Learnt from Legal Reform in New Zealand and Ecuador', *Transnational Environmental Law*, Vol. 9 (3), 2020, 569–592, Cambridge University Press, [doi:10.1017/S2047102520000126](https://doi.org/10.1017/S2047102520000126). at 581.

rights realisation is thus strengthened when complemented by community mobilisation. The Constitution's standing doctrine should ensure bringing claims are more straightforward than in traditional legal systems as harm does not have to be proven to the individual that brings the claim.¹¹³ It also endorses broad community efforts to support Nature, stating that, '[t]he State shall give incentives to natural persons and legal entities and to communities to protect nature and to promote respect for all the elements comprising an ecosystem.'¹¹⁴

An analysis of the effectiveness of participatory measures requires examination of how they have played out on the ground; does the Government consult those affected by its policies and how are communities treated when they attempt to exercise their participatory rights?¹¹⁵ Ecuador's population includes a significant minority of Indigenous Peoples, whose territories are often in environmentally vulnerable areas.¹¹⁶ The Government has at times responded to protests against its extractive policies with the arrest of activists, including arresting nearly 200 Indigenous leaders who were charged with terrorism for protesting mining activities.¹¹⁷ The Constitution states that Indigenous Peoples have a right to 'free, prior informed consultation' regarding development of non-renewable resources on their land which could impact upon them culturally or environmentally.¹¹⁸ However, this provision falls short of the international standard, which calls for an additional clause to ensure consent is acquired regarding all activities which affect Indigenous communities.¹¹⁹ Therefore, there is no requirement for the Government nor companies to adhere to consultation findings. This renders Indigenous communities effectively powerless to prevent extractive activities on their land.¹²⁰ Indigenous communities have repeatedly accused the State of selling their land to oil and mining companies, who often fail to comply with the Constitution and commence activities on Indigenous lands without proper consultation of local communities.¹²¹ In 2012 the Inter-American Court of Human Rights (IACHR) ruled that the Government should have consulted with the Sarayaku Indigenous community before beginning oil extraction on their land.¹²² The ruling called on the Government to reform legislation and conduct appropriate consultation with the local community.¹²³ To date, the Government has not complied with the IACHR's findings.¹²⁴ In response, the Sarayaku have launched a new case to compel the State and have

¹¹³ Anima Mundi, 'Rights of Nature in Practice: Lessons from an Emerging Global Movement', Anima Mundi Law Initiative, 2021 at 18.

¹¹⁴ *Ibid* at 24.

¹¹⁵ De Schutter, *supra* note 26 at 858.

¹¹⁶ Parker, B. '5 Ways a Recent Ecuadorian Constitutional Court Victory Boosts Indigenous Peoples' Fight for the Amazon', *Amazon Frontlines*, July 2020.

¹¹⁷ Kauffman, C. and Martin, P. 'Can Rights of Nature Make Development More Sustainable? Why Some Ecuadorian Lawsuits Succeed and Others Fail', *World Development* Vol. 92, 2017, 130–142, at 133. [Kauffman and Martin]; Humphreys, D. 'Rights of Pachamama: The Emergence of an Earth Jurisprudence in the Americas', *Journal of International Relations and Development*, Vol. 20, 2017, 459–484 at 18.

¹¹⁸ Constitution, *supra* note 10, Article 57 (7).

¹¹⁹ International Labour Organisation Convention 169 on Indigenous and Tribal Peoples (1989) at Article 6 [ILO]; United Nations Declaration on the Rights of Indigenous Peoples (2007) at Articles 19 and 32 (2) [UNDIP].

¹²⁰ Godin, M. and Yopez, A. 'The Fight to Save Ecuador's Sacred River', TIME Magazine, 25 October 2022. at <https://time.com/6224546/fight-to-save-ecuador-piatua-river/>.

¹²¹ *Ibid*.

¹²² *Kichwa Indigenous People of Sarayaku v. Ecuador*, Merits, Reparations and Costs, Judgment, Inter-American Court of Human Rights (ser. C) No. 245 (June 27 2012).

¹²³ *Ibid* at 300 and 301.

¹²⁴ Press Release, 'Indigenous Kichwa People of Sarayaku Demand the Removal from Our Land and Recognition of the Living Forest as a Rights-Holder', Centro por la Justicia y el Derecho Internacional, 13 June 2022 at <https://cejil.org/en/press-releases/indigenous-kichwa-people-of-sarayaku-demand-the-removal-of-explosives-from-our-land-and-recognition-of-the-living-forest-as-a-rights-holder/>.

declared their territory as a living being with consciousness; the new case requests that the Constitutional Court affirm the forest's constitutional rights.¹²⁵ In 2020, the Government began drafting a new bill on consultation measures. However, the drafting process has excluded Indigenous communities and still does not include the right to consent.¹²⁶ The bill focuses on the sharing of economic benefits of extraction while ignoring environmental impacts.¹²⁷

Analysis of participatory mechanisms and Governmental response to community attempts to claim participatory rights reveals a wide gap between plurinational rhetoric in the Constitution and practice. Ecuador's consultation provisions are weak primarily because they omit the requirement to gain consent from communities; a loophole exploited by the Government and corporations alike. However, in recent years, Indigenous communities have seen increased success in bringing claims against corporation and State agencies for violation of participation provisions. For example, in 2022, the Constitutional Court ruled that the failure by oil projects to properly consult with local Indigenous communities violated their right to consultation.¹²⁸ The Court highlighted that the State is obligated to consult the community in a 'clear and accessible' way and consultation must be carried out with the purpose of obtaining consent, in line with international standards.¹²⁹ The Government can only undertake projects without consultation in exceptional circumstances, and projects can never 'generate disproportionate sacrifice to the collective rights of communities and Nature'.¹³⁰ The Court annulled 52 mining concessions and the ruling had an immediate impact on all extractive activities in the country.¹³¹ This represents an historic ruling for Indigenous communities and suggests that jurisprudence may lead to strengthening of Indigenous access to participation.

3.2.2 Access to Justice

A key component of rights realisation is whether subjects can access justice. Justice is typically found through litigation, which should ensure private or public actors who violate rights are held accountable.¹³² It does so through regulation of actors' activities and providing remedies with the aim of restoration of claimants' access to rights.¹³³ By setting precedent, litigation can also strengthen the framework around legal provisions.¹³⁴ Analysis of litigation can therefore show whether rights are effectively enforced by establishing whether cases can be brought, are successful and provide effective remedies.

¹²⁵ *Ibid.*

¹²⁶ Amazon Watch, 'Manufacturing Consent: Ecuador to Draft New Bill on the Consultation of Indigenous Peoples, Without Consulting Them', 18 November 2020 at <https://amazonwatch.org/news/2020/11/18-manufacturing-consent-ecuador-to-draft-new-fpic-bill-without-indigenous-consultation>.

¹²⁷ Vela-Almeida, D. and Torres, N. 'Consultation in Ecuador: Institutional Fragility and Participation in National Extractive Policy', *Latin American Perspectives*, Vol. 48 (3), 2021, 172-191 <https://doi.org/10.1177/0094582X21100814> at 176.

¹²⁸ Corte Constitucional Ecuador, Case No. 273-19-JP (2022) [Sinangoe].

¹²⁹ *Ibid.*, Para. 91.

¹³⁰ *Ibid.*, Para. 125.

¹³¹ Brown, K. 'Ecuador's Top Court Rules for Stronger Land Rights for Indigenous Communities', Mongabay, 9 February 2022 at <https://news.mongabay.com/2022/02/ecuadors-top-court-rules-for-stronger-land-rights-for-indigenous-communities/>.

¹³² Bantekas and Oette, *supra* note 26 at 668-717.

¹³³ *Ibid.*

¹³⁴ *Ibid.*

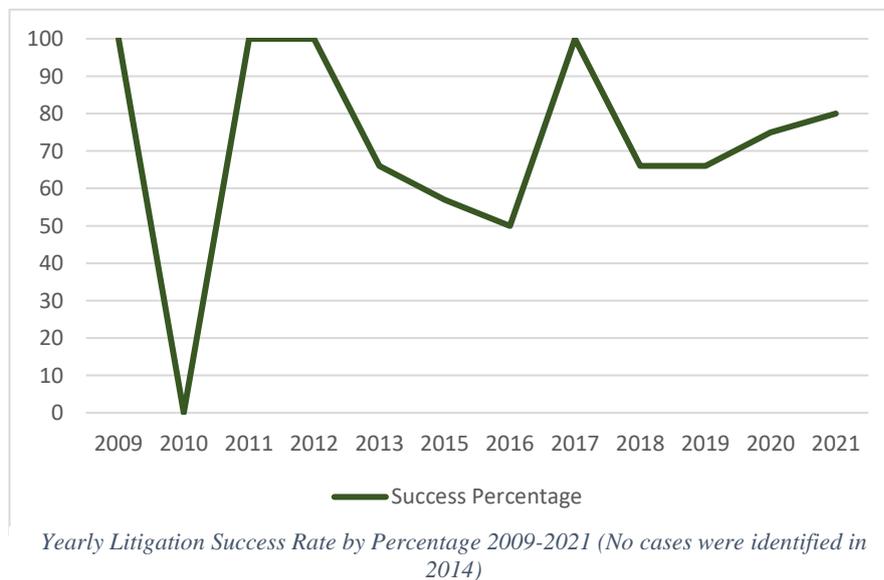
Article 72 of Ecuador’s Constitution provides the remedial provisions of Nature’s restoration in the event of harm, to allow realisation of its substantive rights under article 71.¹³⁵ RoN institutionalisation is weak and application has mostly been developed through litigation; analysis of jurisprudence is particularly relevant in this context.

3.2.2.1 Litigation Scoping Exercise

Number of RoN Cases Identified by Date

Date	Number of Cases
2009	2
2010	1
2011	4
2012	4
2013	3
2015	7
2016	4
2017	2
2018	3
2019	12
2020	4
2021	5
2022	1
Grand Total	52

A scoping exercise of RoN cases was conducted to quantify RoN enforcement through litigation. It found that the annual number of cases brought has remained relatively stable at between one and seven per year since 2008, with the exception of 2019 which saw twelve. This may be explained by President Moreno’s announcement in 2018 of a plan to expand mining exports; half of litigation in 2019 related to mining projects.¹³⁶ The subsequent dip in 2020-2022 may reflect the impacts of the Covid-19 pandemic, which negatively impacted judicial processes globally.¹³⁷ Notwithstanding this reduction, the yearly number of cases has modestly increased over time, which could imply that precedent has made claimants more confident of invoking RoN in court or that awareness is becoming more embedded. The total number of successful RoN cases is currently 37, with four ongoing and eleven unsuccessful. This provides an overall success rate of 71%.



Courts have issued rulings pertaining to a range of environmental concerns, from individual nonhuman animal rights to crimes against wildlife and protection of ecosystems. Most cases relate to mining, oil or infrastructure projects such as road development. Successful litigation has resulted in court orders to protect or restore

¹³⁵ Constitution, *supra* note 10, Articles 71 and 72.

¹³⁶ Dupee, M. ‘Ecuador Has Big Plans for its Mining Industry. But at What Cost?’, *World Politics Review*, 2019 at <https://www.worldpoliticsreview.com/ecuador-has-big-plans-for-its-mining-industry-but-at-what-environmental-cost/?one-time-read-code=50292166912856357342>.

¹³⁷ 51% of countries studied were unable to maintain normal levels of access to justice during the pandemic. See: Global Access to Justice Project, ‘Impacts of Covid-19 on Justice Systems’, 2020 at 31; Buzaşu, C. Cherif, Y. et al. ‘Global Civil Society in the Shadow of Coronavirus’, Carnegie Endowment for International Peace.

seven forests, seven rivers, and six species of wildlife from twelve mining, oil and infrastructure projects.¹³⁸

The review found that cases are most likely to fail when brought by civil society action. Kauffman and Martin suggest that this is due to politicisation of such cases, which typically challenge government projects that are key to its economic agenda.¹³⁹ This theory is supported by the comparatively high success rate of action when instigated by government agencies. However, community and civil society groups have become more successful at litigating over time, with cases relating to consultation of Indigenous communities and recognition of harms caused by mining to Nature achieving particular success.¹⁴⁰ This could reflect better judicial understanding of how to interpret Nature's rights, better awareness or higher confidence from communities and organisations.

3.2.2.2 *Jurisprudential Development*

According to the mapping exercise, most cases are rejected for reasons to do with standing, conflict with other constitutional rights or because courts find projects to be legal under the Constitution's exception clauses.

Article 71 of the Constitution stipulates that anyone can bring a suit on behalf of Nature.¹⁴¹ However, analysis of cases shows that application of this provision by courts has been patchy. For example, in 2015 the Ecuadorian Coast Guard stopped the fishing boat *Fer Mary* inside the Galápagos Marine Reserve and found 357 dead sharks and 1335 hooks which formed a fishing line that extended 50 kilometres.¹⁴² Shark fishing is forbidden within the Reserve and the Galápagos Conservation Sector filed a criminal action to defend Nature's Rights. The action of the Galápagos Conservation Sector to represent the sharks in court was dismissed by the judge because they were not a shark.¹⁴³ The standing issue is further demonstrated by the 2014 Tangabana Páramo ruling, in which a group of activists filed a protective action in the Judicial

¹³⁸ Corte Constitucional Ecuador, Caso No. 1149-19-JP/21 (2021) [Los Cedros Forest]; Ministry of the Environment, 'Secoya Palm Plantation', at <https://www.derechosdelanaturaleza.org.ec/casos/palma-secoyas/>. (2011) [Secoya Plantation]; Azuay Provincial Court, Case No. 01281-2019-00032 (2019) [Collay Forest]; Corte Constitucional Ecuador, Case No. 16171-2019-00001, (2019) [Waorani Block 22]; Corte Constitucional Ecuador, Case No. 22-18-IN/21 (2021) [Mangrove Forests]; Cotachi Court, Case No. 10332-2020-00418, (2021) [Llurimagua Mining Project]; Guabo Court Case No. 07317-2020-00466 (2021) [Guabo Mangroves]; Corte Constitucional Ecuador, Case No. 253-20-JH/22, (2022) [Estrellita]; De Guayas Provincial Court, Case No. 20331-2015-00232(2016) [Sea Cucumbers]; Criminal Guarantees Court, Case No. 09171-2015-0004 (2015) [Shark Fins]; San Cristobal Court, Case No. 20331-2017-00179 (2019) [Illegal Transport of Sharks]; Provincial Court of Los Rios, Case no. 12571-2013-0436 (2013) [Samama Forest]; Loja Court, Case No. 11303-2010-0768, (2011) [Vilcabamba River]; Corte Constitucional Ecuador, Case No. 0047-09-IS (2018) [Mera Canton]; Esmeraldas Second Court of Criminal Guarantees, Case No. 08242-2013-0053 (2013) [Esmeraldas Oil Spill]; Loja Provincial Court, Case No. 11317-2016-00059 (2016) [Alamor.]; Corte Constitucional Ecuador, Case No. 16281201900422 (2019) [Piatua River]; Corte Constitucional Ecuador, Case No. 2167-21-EP/22 (2022) [Monjas River]; Second Civil Court of Galápagos, Case No. 269-2012 (2012) [Iguanas], First Court of Criminal Guarantees, Case No. 01901-2013-0204 (2014) [Condor Hunt]; Ministry of the Interior, Case No. 1967 (2011) [Esmeraldas Illegal Mining]; Provincial Court of Azuay, Case No. 01333201803145 (2018) [Rio Blanco]; Pastaza Provincial Court, Case No.16101-2012-0115 (2012) [La Cero Mining Project]; Sinangoe, *supra* note 128.

¹³⁹ Kauffman and Martin, *supra* note 117 at 134.

¹⁴⁰ For example: Waorani Block 22; Los Cedros; Llurimagua, *supra* note 138; Sinangoe, *supra* note 128.

¹⁴¹ Constitution, *supra* note 10, Article 71.

¹⁴² Illegal Transport of Sharks, *supra* note 138.

¹⁴³ *Ibid.*

Court of Colta to prevent the establishment of a pine tree plantation in the sensitive Tangabana Páramo. The Court ruled that since the plaintiffs were unable to prove they had suffered harm and the harm had not yet occurred, they were unable to bring a claim.¹⁴⁴ Both rulings ignored that a claim can be brought by anyone on behalf of Nature regardless of direct human interest, while the Tangabana Páramo ruling also disregarded that Nature's constitutional provisions allow preventative action.¹⁴⁵

The scoping exercise also found that RoN have at times conflicted with Ecuador's vast panopoly of constitutional human rights.¹⁴⁶ In 2010 the Secoya Indigenous Community agreed with the company Palmeras del Ecuador to create an African palm plantation. The community deforested 180 hectares, unaware they needed permission to do so from the Ministry of Environment. In 2011, the MAE fined the Secoya community 375,000 dollars to reforest the area, citing Nature's rights.¹⁴⁷ The action raises questions around how to achieve balance with the needs of poor, rural communities who may benefit from development that would impact Nature negatively and may be disproportionately affected by instrumental use of RoN by government entities. In 2011, Mr. Meza brought a case against the MAE to prevent his shrimp company from removal from the Capayas Ecological Reserve. The initial judge ruled that MAE's actions had violated Mr. Meza's right to work and property.¹⁴⁸ The judge also recused himself because he found it difficult to choose 'a fish over a human's ability to feed his family and continue a career he has been doing over a lifetime.'¹⁴⁹ While the case was eventually successful, the recusal reveals a problem around deeply rooted cultural norms that conflict with the idea of Nature's rights. When weighing the value of a human's livelihood with the life of 'a fish', the judge's instinct was to value the human more. The case prompted the Constitutional Court to affirm that Nature's rights are transversal and more fundamental than property rights, stating that this reflects, 'a biocentric vision that prioritises Nature in contrast to the classic anthropocentric conception in which the human being is the centre and measure of all things, and where Nature was considered a mere provider of resources.'¹⁵⁰

There are further examples of the ways the ways jurisprudence has developed and RoN norms are becoming embedded within the judiciary. Judges have *sua sponte* identified RoN violations in rulings where claimants have not invoked them. In the case of a road widening project in Santa Cruz, Galápagos, the claimants brought the case to prevent the project from harming their businesses. The municipality had not obtained a license for the works and the claimants cited this as the reason the works should not go ahead. The judge, however, noted that the construction area crossed a migratory path for iguanas and other species and unilaterally applied Nature's rights to suspend the project until the municipality secured an environmental impact assessment that would ensure the protection of the species' habitat.¹⁵¹ There have also been successful prosecutions for crimes against wildlife which established criminal liability for transport of protected fauna.¹⁵² In 2017, the Environmental Code strengthened Nature's constitutional provisions by articulating the *in dubio pro natura* principle. An evolution of the precautionary principle, it stipulates that, 'In contradiction of norms, or if there is doubt on the

¹⁴⁴ Specialised Criminal Chamber, Case No. 06334-2014-1546, 2014. [Tangabana]

¹⁴⁵ Constitution, *supra* note 10, Article 71.

¹⁴⁶ *Ibid.*

¹⁴⁷ Secoya, *supra* note 138.

¹⁴⁸ Capayas, *supra* note 138.

¹⁴⁹ Kauffman and Martin, *supra* note 117 at 136.

¹⁵⁰ Capayas, *supra* note 138 at 10.

¹⁵¹ Iguanas, *supra* note 138.

¹⁵² Sea Cucumbers; Illegal Transport of Sharks; Shark Fins; Condor Hunt, *supra* note 138.

scope of the legal provisions regarding the environment, err on the side of what is most favourable to nature. The same will be done in case of conflict between those provisions'.¹⁵³

The Constitutional Court has also been active when setting precedent and developing clarity through jurisprudence. Several of the Court's rulings have affirmed Indigenous People's constitutional right to consultation before non-renewable projects are carried out on their ancestral territories and in 2019 the Court ordered the National Assembly to issue organic laws to regulate the right to prior consultation under Article 436 of the Constitution.¹⁵⁴ The Court has also set precedent through recognition of the rights of a nonhuman animal as the result of a motion of *habeas corpus*, in addition to outlining the rights that apply to animals.¹⁵⁵ When the Capayas Shrimper case was elevated to the Constitutional Court it found that the lower court 'did not analyze the existence or non-existence of violations of the rights of nature despite their obvious relevance', and ordered the lower court to interpret the case inclusive of Nature's rights.¹⁵⁶

3.2.2.3 Compliance

However, compliance presents a challenge. In several cases, it has been difficult to ascertain whether court-ordered remedies have been implemented and in many others non-compliance has been reported. In its ruling on the Vilcabamba River, the Loja Provincial Court ordered the Provincial Government to comply with its environmental obligations by stopping the project and repairing the ecosystem.¹⁵⁷ However, although the Government halted the project, compliance with other aspects of the order has been difficult to obtain; the river has never been restored and debris from the project has not been cleared, leading the plaintiffs to file an action of non-compliance.¹⁵⁸ The plaintiffs subsequently filed an action of non-compliance because the sentence had not been fully executed. It is unclear what the outcome of the non-compliance action was. In 2017, the Pastaza Provincial Court ruled that development of a hydroelectric dam in the Piatúa River breached Nature's rights under Article 71, in addition to the human rights to a healthy environment, food sovereignty and the collective rights of cultural identity and prior, free and informed consultation of the Kichwa People of Santa Clara.¹⁵⁹ The Court ruled that the corporation GENEFRAN could continue the project only with consent of the local Indigenous community. The community have refused consent, but have experienced intimidation and harassment as a result and the company has not removed its machinery. An Indigenous activist leader told the press that, 'In the courts there is some progress in the recognition of rights, but when it comes to execution... the state continues to align with

¹⁵³ Environment Code, *supra* note 102, Article 9(5).

¹⁵⁴ Rio Blanco; Waorini Block 22; *supra* note 138; Sinangoe, *supra* note 128; Instructions for the Application of the Pre-Legislative Consultation (2019).

¹⁵⁵ Estrellita Monkey, *supra* note 138.

¹⁵⁶ Capayas, *supra* note 138.

¹⁵⁷ Vilcabamba, *supra* note 138.

¹⁵⁸ One of the claimants, Norie Huddle, wrote an article about her frustrations: Huddle, N. 'World's First Successful 'Rights of Nature' Lawsuit', KOSMOS, 2013, at <https://www.kosmosjournal.org/article/worlds-first-successful-rights-of-nature-lawsuit-2/>; Corte Constitucional del Ecuador, Sentencia No. 012-18-SIS-CC, Case No. 0032-12-IS (2018).

¹⁵⁹ Piatua, *supra* note 138.

extractive interests.’¹⁶⁰ The case is currently suspended while the Constitutional Court reviews it.¹⁶¹

Between 2008 and 2022, Nature’s rights have been invoked in 52 cases; 37 successfully. RoN have enjoyed a relatively high success rate and court orders have in theory protected many ecosystems. Instrumental use by government agencies have the benefit of developing jurisprudence and civil society and Indigenous groups seem to be becoming more successful in cases they bring. However, practice around Nature’s provisions regarding preventative action and standing has been patchy, which can be attributed to a lack of understanding by judges. Conflict between traditional and RoN norms have also lead to difficulties around balancing human and Nature’s rights. Uneven application is to be expected when a legal system undergoes such a paradigm shift and are more common in small municipalities where judges are generalists and not well-versed in constitutional law.¹⁶² There also remain challenges around ensuring compliance, as illustrated by the Vilcabamba and Piatua River cases. Consequentially, Nature’s access to justice is incomplete.

3.2.3 Education

A central concern of theories which underpin RoN is that of fostering a relational concept of Nature, but the literature is vague on how to achieve this.¹⁶³ Where it is addressed, it typically centres on discussion of Indigenous customs and what industrialised societies can learn from them.¹⁶⁴ Education is one of the pillars of rights realisation, as well as a factor which shapes cultural values.¹⁶⁵ In *Making Wild Law Work*, Helena R. Howe found that connection to Nature and educational initiatives can shift cultural perceptions of value and support ecocentric legal reform.¹⁶⁶ Studies have shown that the more highly people rate the interconnection of self with Nature, the more likely they are to hold ecocentric values.¹⁶⁷

There are attempts to achieve cultural change for the purpose of rights realisation within the human rights framework. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) includes a groundbreaking provision which imposes State parties to take measures to modify cultural patterns to eliminate prejudices and stereotyped roles, and to ensure education includes the recognition of the common responsibility of both sexes in the raising of children.¹⁶⁸ Environmental education is also viewed as an important tool to promote

¹⁶⁰ Cardona, A. ‘For Ecuador’s Eco Agenda, 2019 was a Year of Setbacks and Pushbacks’, Mongabay, 31 January 2020 at <https://news.mongabay.com/2020/01/for-ecuadors-eco-agenda-2019-was-a-year-of-setbacks-and-pushbacks/>. [Cardona]

¹⁶¹ Godin, M. ‘The Fight to Save Ecuador’s Sacred River’, TIME Magazine, 25 October 2022 at <https://time.com/6224546/fight-to-save-ecuador-piatua-river/>.

¹⁶² Kauffman and Martin, *supra* note 117 at 136.

¹⁶³ Berry Evening Thoughts, *supra* note 62; Stone, *supra* note 22; Cullinan, C. *Wild Law: A Manifesto For Earth Justice*, Chelsea Green, 2011, 44-46.

¹⁶⁴ *Ibid.*

¹⁶⁵ Bantekas and Oette, *supra* note 26 at 33.

¹⁶⁶ Howe, H. ‘Making Wild Law Work – The Role of ‘Connection with Nature’ and Education in Developing an Ecocentric Property Law’, *Journal of Environmental Law*, 2017, 19-45, doi: 10.1093/jel/eqw029.

¹⁶⁷ Bruni, C. et al. ‘Measuring Values-Based Environmental Concerns in Children: An Environmental Motives Scale’, *Journal of Environmental Education*, Vol. 43 (1), 2012.

¹⁶⁸ UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, Vol. 1249, available at: <https://www.refworld.org/docid/3ae6b3970.html> at 13.

sustainable development by the United Nations.¹⁶⁹ Analysis of Ecuador's education system should reveal one which promotes awareness of Nature's rights in addition to a relational conception of Nature in order to embed the normative acceptance of the rights at all levels of society.

The Constitution stipulates that the *sumak kawsay* system is comprised of sectors which include education, and Article 347(4) obligates the State to ensure that all educational facilities provide education around, inter alia, 'the environment, using a rights-based approach'.¹⁷⁰ The 2017 Environmental code also outlines that, 'the National Educational Authority must adjust and update the educational curricula and their contents to strengthen awareness in environmental matters based on the... rights of Nature'.¹⁷¹ In terms of educational policies, the Ministry of the Environment has undertaken a Citizen Environmental Education Project which aims to promote awareness of Nature's rights and foster environmental stewardship through education in rural areas.¹⁷² In 2017, the Ministry of Education developed the Equatorial Garden policy to ensure regular contact with Nature in schools, to foster connection.¹⁷³ Through participation in the programme, more than 10,000 schools have established spaces for Nature in which students are taught regenerative environmental practice.¹⁷⁴ The programme teaches students that they can be agents of change in tackling climate change and has trained more than 2500 teachers in good environmental practice.¹⁷⁵ The programme has reached 2.6 million young people, improved reported self esteem and empathy in students and has been recognised as an example of good practice by UNESCO.¹⁷⁶

Few studies on the impacts of Nature's rights on societal norms or public opinion were found when reviewing the literature for this paper. Eisenstadt and West conducted a nationwide survey in 2017, through which they found that attitudes toward Nature are based on Indigenous worldviews and proximity to environmentally harmful activities such as oil drilling.¹⁷⁷ It can be extrapolated from court cases that awareness of Nature's rights is low in the general public and high in certain groups; most cases have been instigated by governmental agencies, environmental and Indigenous groups. The programmes implemented by Ecuador's education sector represent good practice in the promotion of sustainable development and aim to fulfil the environmental education provisions within the Constitution. It is too soon to tell what impact such policies will have on young people as cultural change requires generations, but as education has a transversal effect on society they may bring Ecuador one step closer to realising its Constitutional vision.¹⁷⁸

¹⁶⁹ UNESCO, 'UN Decade for Sustainable Development 2005-2014', 2005, ED/2005/PEQ/ESD/3.

¹⁷⁰ Constitution, *supra* note 10, Article 340 and Article 347.

¹⁷¹ Environment Code, *supra* note 102 at 62.

¹⁷² Ministry of the Environment, Water and Ecological Transition, 'Citizen Environmental Education Project 'We are Part of the Solution'', at https://www-ambiente-gob-ec.translate.google.com/translate/proyecto-de-educacion-ambiental-ciudadana-somos-parte-de-la-solucion/?x_tr_sl=es&x_tr_tl=en&x_tr hl=en&x_tr_pto=sc.

¹⁷³ Benítez, F. Paredes, M. et al. 'Environmental Educational Programs in Ecuador: Theory, Practice and Public Policies to Face Global Change in the Anthropocene', *Ensaio*, Vol. 27 (100), 2019, 859-880, <https://doi.org/10.1590/S0104-40362019002701950> at 869.

¹⁷⁴ *Ibid* at 870-871.

¹⁷⁵ *Ibid* at 871.

¹⁷⁶ *Ibid* at 870 and 869.

¹⁷⁷ Eisenstadt, T. and West, K. *Who Speaks for Nature? Indigenous Movements, Public Opinion, and the Petro-State in Ecuador*, Oxford University Press, 2019.

¹⁷⁸ Howe, H. 'Making Wild Law Work – The Role of 'Connection with Nature' and Education in Developing an Ecocentric Property Law', *Journal of Environmental Law*, Vol. 29, 2017, 19-45, [doi:10.1093/jel/eqw029](https://doi.org/10.1093/jel/eqw029) at 20.

3.3 Outcome Indicators

3.3.1 Biodiversity Loss

Since 1998, Ecuador has been categorised as one of the world's 17 'megadiverse' countries, with only 0.06% of the global land mass but around 16% of Earth's birds, 8% of amphibians, 5% of reptiles and 8% of mammals.¹⁷⁹ Biodiversity is considered a strategic sector by the Ecuadorian Constitution, which means it comes under the control of the State who must regulate it 'following the principles of environmental sustainability, precaution, prevention and efficiency.'¹⁸⁰ Article 395 also stipulates that the State must adopt a sustainable model of development which 'conserves biodiversity and the natural regeneration capacity of ecosystems.'¹⁸¹ The Amazon ecosystem receives special mention under Article 259, which imposes a duty to the State to safeguard its biodiversity and adopt sustainable development policies.¹⁸² Article 403 declares that the State must not make agreements that undermine conservation of biodiversity, collective rights or RoN.¹⁸³ This prohibition could be interpreted to include oil drilling and mining activities. It is the only time Nature's rights are mentioned in the context of biodiversity within the Constitution. Otherwise, biodiversity is referenced using anthropocentric language, as a resource and strategic sector, even if one which must be managed sustainably. The National Policy for the Management of Wildlife (NPWM) was established by the MAE to ensure sustainable management of wildlife and the National Strategy of Biodiversity and its action plan aims to 'unlock the productive, industrial and commercial potential of biodiversity.'¹⁸⁴ Ecuador has also been a party to the Convention on Biological Diversity since 1993.¹⁸⁵

Despite this formal policy framework, data shows that the outlook for biodiversity in Ecuador is not positive. Overall, Ecuador suffers from the highest number of threatened species in South America, with over two thousand species under threat.¹⁸⁶ In the Environmental Performance Index, Ecuador scores above average but has not improved as much as other countries in the region and dropped twelve positions in 2022.¹⁸⁷ The main threat to biodiversity in Ecuador is deforestation, with 22% of forest ecosystems classified as threatened.¹⁸⁸ These numbers suggest that Nature's are weak with regard to species conservation.

¹⁷⁹ Mestanza-Ramon, C. Henkanathgedara, S. et al, 'In-Situ and Ex-Situ Biodiversity Conservation in Ecuador: A Review of Policies, Actions and Challenges', *Diversity*, Vol. 12 (8), 2020 at 1.

¹⁸⁰ Constitution, *supra* note 10, Article 313 and Article 400.

¹⁸¹ *Ibid*, Article 395.

¹⁸² *Ibid*, Article 259.

¹⁸³ *Ibid*, Article 403.

¹⁸⁴ World Bank, 'Ecuador: Systematic Country Diagnostic', 2018. at 84. [World Bank Diagnostic]

¹⁸⁵ United Nations, Convention on Biological Diversity, 1992 (1760 U.N.T.S. 69).

¹⁸⁶ Alves, B. 'Number of Species Under Threat in Ecuador 2022', Statista at <https://www.statista.com/statistics/978586/number-threatened-species-ecuador-type/#:~:text=Number%20of%20species%20under%20threat%20in%20Ecuador%202022%2C%20by%20type&text=In%202022%2C%20around%2077%20percent,second%20with%20183%20threatened%20species.>

¹⁸⁷ Environmental Performance Index, 'Ecuador: Biodiversity and Habitat', at <https://grale.23degrees.eu/report/epi2022/biodiversity-habitat-9166b5dc4ec354>. [EPI].

¹⁸⁸ Noh, J. et al. 'Warning About Conservation Status of Forest Ecosystems in Tropical Andes: National Assessment Based on IUCN Criteria', *PLoS One*, Vol. 15 (8), 2020, <https://doi.org/10.1371/journal.pone.0237877>, at 13.

3.3.2 Deforestation

At the time of its RoN adoption, Ecuador had the highest deforestation rate in South America, at 1.7% per year.¹⁸⁹ Deforestation is directly addressed in Article 409 of the Constitution, which establishes that the State must, ‘develop and promote reforestation’ in areas affected by degradation.¹⁹⁰ The impact of RoN on deforestation is unclear. In 2008, Ecuador had approximately 131,686 square kilometres of forest. By 2020, this had steadily fallen to 124,978, equating to 53 and 50.3% of the country’s land area, respectively.¹⁹¹ However, Ecuador’s deforestation rates fare marginally better than its neighbours.¹⁹²

RoN provisions have led directly to the Socio Bosque programme, which was launched in 2008 as part of the Government’s implementation of its duty under Article 71 to provide incentives to communities to protect and promote respect for Nature.¹⁹³ The programme aims to incentivise conservation and provides payments to (mostly Indigenous) communities to protect the forests they live in. The programme covers nearly 1.7 million hectares, 98% of which are fragile ecosystems.¹⁹⁴ Research comparing smallholders enrolled in the programme to those that were not found that it reduced average annual deforestation rates by 70%.¹⁹⁵ Around 26% of Ecuador’s forests lie within protected areas under the Sistema Nacional de Áreas Protegidas (SNAP) and data shows their number has almost doubled since 1990.¹⁹⁶ Research has found that the SNAP system protects forests relatively well, although buffer zones surrounding the areas often suffer high rates of deforestation which undermines conservation efforts.¹⁹⁷ In addition, many coastal forests are unprotected which has resulted in high deforestation.¹⁹⁸

Article 407 of the Constitution prohibits extraction of non-renewable natural resources in protected areas unless the President of the National Assembly deems it to be in the national interest.¹⁹⁹ However, many RoN cases have involved protected forests in which extractive projects have been approved by the Government, indicating an instrumental use of the public interest clause and a disregard for constitutional provisions relating to Nature’s rights.²⁰⁰ For example, the *Los Cedros* case arose from a challenge to two mining concessions granted by the

¹⁸⁹ Reinhard, M. Gunter, S. et al, ‘Ecuador Suffers the Highest Deforestation Rate in South America’ in *Gradients in a Tropical Mountain Ecosystem of Ecuador*, Ecological Studies Vol. 198, 2008 at 38; Tapia-Armijos, M. Homeier, J. et al. ‘Deforestation and Forest Fragmentation in South Ecuador since the 1970s – Losing a Hotspot of Biodiversity’, *PLoS ONE*, 2015, [DOI:10.5061/dryad.32451](https://doi.org/10.5061/dryad.32451) at 1.

¹⁹⁰ Constitution, *supra* note 10, Article 409.

¹⁹¹ World Bank Data, ‘Ecuador’ at https://data.worldbank.org/country/ecuador?most_recent_value_desc=false&year=2008.

¹⁹² Ritchie, H. And Roser, M. ‘Deforestation and Forest Loss’, Our World in Data, 2021 at <https://ourworldindata.org/afforestation>.

¹⁹³ Constitution, *supra* note 10, Article 71.

¹⁹⁴ Ministry of the Environment, Water and Ecological Transition, ‘Socio Bosque Programme’ at <https://www.ambiente.gob.ec/programa-socio-bosque/>.

¹⁹⁵ Jones, K. Holland, et al. ‘Forest Conservation Incentives and Deforestation in the Ecuadorian Amazon’, in *Environmental Conservation*, Vol 44 (1), 2017, 56-65, [doi:10.1017/S0376892916000308](https://doi.org/10.1017/S0376892916000308).

¹⁹⁶ World Bank, ‘Terrestrial Protected Areas (% of Total Land Areas) – Ecuador’ at <https://data.worldbank.org/indicator/ER.LND.PTLD.ZS?locations=EC>; Ministry of Environment, ‘National System of Protected Areas’, at https://www.ambiente-gob-ec.translate.google.com/sistema-nacional-de-areas-protegidas/?x_tr_sl=es&x_tr_tl=en&x_tr_hl=en&x_tr_pto=sc.

¹⁹⁷ Kleemann, J. et al. ‘Deforestation in Continental Ecuador with a Focus on Protected Areas’, *Land*, Vol. 11 (268), 2022, <https://doi.org/10.3390/land11020268>.

¹⁹⁸ ‘Lessmann, J et al. ‘Maximizing Species Conservation in Continental Ecuador: a Case of Systematic Conservation Planning for Biodiverse Regions’, *Ecology and Evolution*, Vol. 4 (12), 2014, 2410-2422, [doi: 10.1002/ece3.1102](https://doi.org/10.1002/ece3.1102).

¹⁹⁹ Constitution, *supra* note 10, Article 407.

²⁰⁰ Los Cedros Forest; Rio Blanco Mining Project, *supra* note 138.

Government which affected 68% of the Los Cedros Protected Forest.²⁰¹ The plaintiffs argued that the forest was entitled to protection under Article 71 of the Constitution. In 2021, the Constitutional Court ruled that the mining projects violated RoN and prohibited all mining activities in the forest.²⁰² The Court upheld the intrinsic value of Nature against economic interests which, ‘merit[s] the highest possible legal protection that a Constitution can grant: the recognition of rights inherent to a subject.’²⁰³ In another judgment, the Court ruled in favour of the rights of mangrove forests and highlighted that the economic value to conserve mangrove ecosystems is far greater than the value found in their exploitation.²⁰⁴ While many of these cases succeed, not all do. For example, the precautionary measures requested by Indigenous communities to halt the Condor Mirador Mining Project were dismissed twice by courts despite being rich in biodiversity.²⁰⁵

The proclivity of litigation concerning violation of forest rights due extractive activities indicates that the Government does not respect Nature’s rights or even at times its own conservation policies if they conflict with economic interests.²⁰⁶ For example, 41% of the Shuar Arutam People’s territories are part of the Socio Bosque programme, while 76% is part of the Condor Mirador mining concession.²⁰⁷ Deforestation therefore remains an intractable problem, although the courts have at times been effective in enforcing Nature’s rights against these interests.

3.3.3 Extractive Activities

Constitutional RoN do not prohibit extractive activities directly, although Article 403 prohibits the state from entering ‘agreements or accords that... undermine the conservation and sustainable management of biodiversity, human health, collective rights and rights of nature’.²⁰⁸ This provision could be interpreted to include contracts with oil and mining companies. Nature’s right to restoration stipulates that the State must adopt measures to eliminate severe environmental consequences as a result of non-renewable resource exploitation.²⁰⁹ This indicates a tacit endorsement of extractive activities as long as they do not reach a ‘severe’ threshold; presumably the level at which Nature cannot realise its Article 71 right to maintenance of its life cycles and processes.²¹⁰

The provisions have not stopped extractive activities. Ecuador’s economy remains reliant upon oil and large-scale mining has proliferated since the adoption of the 2009 Mining Law.²¹¹ The law, which sanctions large-scale mining, was passed just one year after the Constitution.²¹² Its enactment prompted one of Ecuador’s first RoN cases, in which CONAIE challenged the

²⁰¹ *Ibid.*

²⁰² *Ibid.*

²⁰³ *Ibid* at para. 48.

²⁰⁴ Mangrove Forests, *supra* note 138.

²⁰⁵ Condor Mirador, *supra* note 138.

²⁰⁶ For example Sinangoe; Los Cedros Forest; Condor Mirador; Rio Blanco; Llurimagua; Samama Forest, *supra* note 138.

²⁰⁷ Maldonado, P. et al. ‘Ecuador: A National Analysis on the Status of Territories of Life’, ICCA Consortium at <https://report.territoriesoflife.org/national-and-regional-analysis/ecuador/>.

²⁰⁸ Constitution, *supra* note 10, Article 403.

²⁰⁹ *Ibid.*, Article 72.

²¹⁰ *Ibid.*, Article 71.

²¹¹ Britannica, ‘Ecuador: Manufacturing’ at <https://www.britannica.com/place/Ecuador/Agriculture-forestry-and-fishing>; Ecuador Ley de Minería, 2009. [Mining Law]

²¹² *Ibid.*

Law's constitutionality and claimed it violated Nature's rights.²¹³ The Court found that the Government has the right to mine in environmentally sensitive areas if in the best interest of the nation.²¹⁴ The economic interests of the nation thereby supersede Nature's rights.

Government policies continue to utilise Nature as a resource and Governmental invocation of Nature's rights appears to be instrumental. This is highlighted by comparison of Government behaviour concerning the Condor Mirador and Esmeraldas Illegal Mining cases.²¹⁵ In 2012, the Government granted concessions to establish six mining sites in the Condor Highland, which is rich in biodiversity and home to the Shuar Indigenous communities.²¹⁶ In 2013, a protective action was submitted by environmental groups which claimed that the sites violated RoN.²¹⁷ The Pichincha Provincial Court found that the project did not contravene Nature's rights because, although two environmental impact assessments had found that it would cause environmental harms, it would not impact a protected area.²¹⁸ The Court also ruled that the claimants actions constituted a private goal, while the company was acting for development and therefore in the public interest.²¹⁹ The company's actions should therefore be prioritised and the claim was denied.²²⁰ During proceedings, the Government refused to acknowledge the same RoN provisions it utilised to bring the Esmeraldas Illegal Mining case, which authorised a military operation to crack down on illegal mining operations.²²¹

The Ministry of Energy and Non-Renewable Natural Resources (the Ministry of Energy) is responsible for development and implementation of government policy on extractive industries.²²² Its 2022 annual report provides details of eleven mines operational in 2022; it does not mention Nature's rights.²²³ It frames mining in terms of economic benefits and states that between 2007 and 2021, the 'gross added value' of the mining sector increased from 0.29% to 0.87% of Ecuador's GDP, with the expectation that this will continue to rise.²²⁴ In August 2021, the Government adopted an agenda which will increase mining and saw two new mining concessions awarded, with plans to issue twelve more.²²⁵ Ecuador also recently quit OPEC to increase its export revenue and announced a goal to double oil production to 1 million barrels per day by 2028.²²⁶ Recent mining concessions now cover more than ten percent of Ecuador's land and encroach upon more than two million hectares of SNAP areas.²²⁷

Non-renewable resources are thus where tensions surrounding RoN in Ecuador are at their greatest. The Government's actions imply that it advocates for Nature's rights only in instances

²¹³ Corte Constitucional, Case No. 0008-09-IN Y 0011-09-IN [Unconstitutionality of the Mining Law].

²¹⁴ *Ibid.*

²¹⁵ Esmeraldas Illegal Mining, *supra* note 138.

²¹⁶ Condor Mirador, *supra* note 138.

²¹⁷ *Ibid.*

²¹⁸ *Ibid.*

²¹⁹ *Ibid.*

²²⁰ Kauffman and Martin, *supra* note 117 at 135.

²²¹ Esmeraldas Illegal Mining, *supra* note 138.

²²² Ministry of Mining at <https://historico.mineria.gob.ec/>; Mining Law, *supra* note 211.

²²³ Banco Central del Ecuador, 'Boletín de Sector Minero, Resultados al Primer Trimestre de 2022', 2022, <https://contenido.bce.fin.ec/documentos/Estadisticas/Hidrocarburos/ReporteMinero072022.pdf>.

²²⁴ *Ibid* at 27.

²²⁵ U.S. Department of State, '2022 Investment Climate Statements: Ecuador' at <https://www.state.gov/reports/2022-investment-climate-statements/ecuador/>. [U.S. Department of State]

²²⁶ *Ibid*; Valencia, A. 'Ecuador to Quit OPEC in 2020 in Search of Bigger Export Revenue', Reuters, 1 October 2019 at <https://www.reuters.com/article/us-ecuador-opec-idUSKBN1WG4KB;>

²²⁷ Zorrilla, M. et al. 'New Mining Concessions Could Severely Decrease Biodiversity and Ecosystem Services in Ecuador, *Tropical Conservation Science*, Vol.11 (1), 2018, <https://doi.org/10.1177/1940082918780427> at 1.

where it does not conflict with its economic agenda, which largely relies upon extraction of non-renewable resources.

3.3.4 Marine Ecosystems

Marine and coastal areas are some of the least protected ecosystems in Ecuador.²²⁸ Ecuador is the world's second largest producer of tuna and after oil and the fisheries sector is its second largest export-sector.²²⁹ Overfishing, bycatch and illegal fishing, in addition to plastic contamination constitute threats to Ecuador's waters.²³⁰ Marine ecosystems have been the purview of the Undersecretariat for Marine and Coastal Management since its creation by the MAE in 2009.²³¹ The Undersecretariat is responsible for improving conservation through expansion of marine protected areas and protection of endangered species such as sharks.²³² There are twenty marine protected areas with various levels of protection ranging from National Recreation Areas to Protected Marine Reserves such as Galápagos.²³³ 19% of Ecuador's oceans are designated as protected from fishing, but only 4.2% of these are fully implemented.²³⁴ Since 2007, the Government has passed legislation that prohibits fishing of sharks (including hammerheads) and rays, in addition to closure of shrimp trawl fisheries and regulations for tuna vessels.²³⁵ Protection of species such as whales, dolphins and sea turtles were in place prior to the 2008 Constitutional change.²³⁶ However, bycatch of these and other species remains common, with no regulation to address it.²³⁷ Ecuador ranks 69th out of 180 countries by the Environmental Performance Index for its fish stock status and marine trophic index. Scores for both have decreased in the past ten years.²³⁸

Marine ecosystems remain some of the most vulnerable in the country. No Ecuadorian fishery has achieved international sustainable status, and in 2019 the European Union threatened to remove Ecuador from access to the Common Market as a result of failure by the Government to address illegal fishing practices.²³⁹ Ecuadorian legislators passed the Law on the Development of Aquaculture and Fisheries in 2020, which aims to promote sustainable practices, including providing incentives to those who improve sustainability outcomes.²⁴⁰

²²⁸ Lessmann, J et al. 'Maximizing Species Conservation in Continental Ecuador: a Case of Systematic Conservation Planning for Biodiverse Regions', *Ecology and Evolution*, Vol. 4 (12), 2014, 2410-2422, [doi: 10.1002/ece3.1102](https://doi.org/10.1002/ece3.1102).

²²⁹ Bello, M. 'Ecuador on the Frontier of a Changing Ocean: Understanding the Impacts of Illegal, Unreported, and Unregulated Fishing on Ecuador's International Economic Relations', *Latin America's Environmental Policies in Global Perspective*, Wilson Center, 2021 at 3. [Bello]

²³⁰ Jones, J. et al. 'Plastic Contamination of a Galápagos Island (Ecuador) and the Relative Risks to Native Marine Species', *Science of the Total Environment*, Vol. 789, 2021, <https://doi.org/10.1016/j.scitotenv.2021.147704>.

²³¹ Ministry of the Environment, Water and Ecological Transition, 'Conservation of the Coastal Marine Biodiversity of Ecuador' at https://www-ambiente-gob-ec./conservacion-biodiversidad-marino-costera/?x_tr_sl=es&x_tr_tl=en&x_tr_hl=en&x_tr_pto=sc.

²³² *Ibid.*

²³³ Marine Protection Atlas, 'Ecuador', Marine Conservation Institute at <https://mpatlas.org/countries/ECU/mpas>.

²³⁴ *Ibid.*

²³⁵ Ministry of the Environment, Order ARM/1647/2009, Which Regulates the Fishing of Highly Migratory Species (2009); Presidential Decree No. 168, Reglamento a la Actividad Marítima (2008).

²³⁶ Brewer et al. 'Implementation of the Marine Mammal Bycatch Assessment Project in Ecuador', Report to NOAA's Office of International Affairs to the Consortium for Wildlife Bycatch Reduction, 2015 at 14.

²³⁷ *Ibid.*

²³⁸ Environmental Performance Index, 'Ecuador: Scorecard' at <https://epi.yale.edu/epi-results/2022/country/ecu>.

²³⁹ Global Marine Commodities, 'Country Context: Ecuador' at <https://globalmarinecommodities.org/en/gmcecuador/>; Bello, *supra* note 229 at 2-5.

²⁴⁰ Ley General de Pesca y Acuicultura Sustentables (2020).

Ecuador has also introduced regulations to protect sea turtles from trawlers to avoid risking an embargo on the shrimp fishery.²⁴¹ It is notable that both laws were passed due to international economic pressure, rather than respect for Nature's constitutional rights.²⁴²

4 Qualitative Analysis

The impact assessment found that Nature's rights implementation in Ecuador are currently weak. This section will further explore themes which arose from the assessment and will argue that the main barriers to strong implementation of Nature's rights in Ecuador are: (1) constitutional contradictions, (2) political will; (3) institutional weakness; and (4) economic development.

4.1.1 Constitutional Contradictions

Ecuador's Constitution was heralded as a document which promised to upend traditional legal and development models, but it has also become a source of confusion. Its contradictions can be attributed to its development in the crucible of politics and represents a continuation of competing Indigenous and government priorities writ large.²⁴³

Nature's substantive rights are vague and raise definitional questions as to what constitutes 'Nature', and therefore what limitations are placed on human activities. Substantive rights are often broad to allow for universal appeal and political consensus, with enactment in more specific terms implemented via procedural rights.²⁴⁴ However, Nature's procedural rights also fall short. The Constitution's decision to take a holistic approach through exclusion of a rights hierarchy have at times resulted in confusion over conflicting rights until the Constitutional Court's intervention in 2015.²⁴⁵ The Constitution accords Nature protection by the supreme law of the land, but with the caveat that humans have a right to benefit from 'natural wealth' to enable 'living well'.²⁴⁶ The Constitution does not specify how these two conflicting rights are to be balanced. Constitutional provisions prohibit non-renewable resource exploitation in protected areas unless in the best interest of the nation, which is to be decided by the State.²⁴⁷ The power of the State is clear throughout the document, which codifies the Government's right to sovereignty over energy production, water, mineral rights and biodiversity.²⁴⁸ Article 72 positively outlines the State's duty to restore Nature, yet it does not specify what level of degradation can be reached before the Government must adopt restoration measures.²⁴⁹ Once again, it is implied that the State will determine when it must restore Nature and what measures are reasonable. The State as duty bearer and arbiter means that the State is accountable only to itself if it fails in its duties.

The result is that the Constitution's provisions seek to recentre Ecuador's legal system but instead entrench a normative conflict between anthropocentrism and ecocentrism which has

²⁴¹ Resolución Plan de Acción Tortugas Marinas (2021).

²⁴² Global Marine Commodities, 'Country Context: Ecuador' at <https://globalmarinecommodities.org/en/gmcecuador/>; Bello, *supra* note 229 at 6.

²⁴³ Humphreys, D. 'Rights of Pachamama: The emergence of an earth jurisprudence in the Americas', *Journal of International Relations and Development*, Vol. 20 (3), 2017, 459–484 at 15.

²⁴⁴ Nickel, J. 'Making Sense of Human Rights', Second Edition, Blackwell Publishing, 2007. at 3-8.

²⁴⁵ Capayas, *supra* note 138.

²⁴⁶ Constitution, *supra* note 10, Article 74.

²⁴⁷ *Ibid*, Article 407.

²⁴⁸ *Ibid*, Article 313.

²⁴⁹ *Ibid*, Article 72.

resulted in uneven application in public policies, secondary legislation and in the courts.²⁵⁰ However, there is also evidence that jurisprudence is developing regardless, due to the active role of the Constitutional Court. Where it has been invoked to bring a claim, RoN has had a relatively high success rate in courts and judges have begun to unilaterally apply RoN where claimants have not.

4.1.2 Political Will

Some of Ecuador's RoN policy framework are robust and faithful to the Constitution. The adoption of the Criminal Code in 2014 has resulted in prosecutions for crimes against fauna and flora, and the *sumak kawsay* development model is pioneering. But a slow establishment of secondary legislation and institutions with which to implement RoN signal a lack of political will to do so. In practice, Nature has also received selective support from the Ecuadorian Government. This is evidenced by the judgments discussed, particularly where they pertain to mining and oil projects.²⁵¹ The inclusion of clauses in the Constitution which justify Nature's exploitation in the case of public interest call into question the Government's commitment to Nature's rights, particularly given its inherently contradictory policies of *sumak kawsay* and non-renewable extraction. The Government has also enacted projects that have forced large-scale displacement of Indigenous communities with no consultation. A World Bank report in 2007 found that Government policies '[A]lmost always favored resource exploitation over collective ancestral rights. Conflict resolution strategies are reactive rather than proactive and emphasize cash compensation over territorial rights.'²⁵² The distance between formal rights and political reality are exemplified by the failure of the Yasuní-Ishpingo, Tambococha, and Tiputini (ITT) initiative. ITT was a project that sought to prevent oil extraction from the Yasuní National Park through recognition that an intact Amazon has more intrinsic value than economic benefit. Ecuador's Government announced it would leave the oil, representing 20% of the country's reserves, underground in return for a financial donation of half of its value from the international community.²⁵³ The initiative would have prevented 410 million tonnes of carbon emissions and was based on the idea of common responsibility. Just 0.37% of the financial target was reached, and in 2013 President Correa announced the oil would be extracted to fund poverty alleviation.²⁵⁴ The ITT initiative, which began as a project to protect Nature, transformed into one which exploited Nature due to economic and political realities. Given that the latest president is a free marketeer who in his first months in office overhauled regulations to attract more oil investors, it does not seem that political will is set to increase in the near future.²⁵⁵ Budgetary allocations often signal a government's priorities and there have been drastic cuts to the institution tasked with implementing RoN. This has impacted the MAE's efficacy and resulted in programmatic cuts, which has seen the Socio Bosque

²⁵⁰ Calzadilla, P. and Kotzé, L. 'Somewhere Between Rhetoric and Reality: Environmental Constitutionalism and the Rights of Nature in Ecuador', *Transnational Environmental Law*, Vol. 6 (3), 401-433, [doi:10.1017/S2047102517000061](https://doi.org/10.1017/S2047102517000061), 2017. at 425. [Calzadilla and Kotzé]

²⁵¹ Esmeraldas Illegal Mining; Condor Mirador, *supra* note 138.

²⁵² World Bank, 'Republic of Ecuador Country Environmental Analysis', Report No. 40249-EC, 2007 at 58.

²⁵³ Puig, J. 'The World Failed Ecuador on its Yasuní Initiative', *The Guardian*, 19 September 2013 at <https://www.theguardian.com/global-development/poverty-matters/2013/sep/19/world-failed-ecuador-yasuni-initiative>.

²⁵⁴ *Ibid*; Borràs, S. 'New Transitions from Human Rights to the Environment to the Rights of Nature', *Transnational Environmental Law*, Vol. 5 (1), 2016, 113-143, <https://doi.org/10.1017/S204710251500028X> at 143.

²⁵⁵ Osborn, C. 'Ecuador's Distant Dream of a Green Recovery', *Foreign Policy*, 19 April 2022 at <https://foreign-policy.com/2022/04/19/ecuador-lasso-oil-climate-imf-world-bank-debt-austerity/>. [Osborn]

programme's budget cut by 71% in the past two years.²⁵⁶ The SNAP budget has also been reduced by a third, from USD 6.7 million in 2018 to 4.5 million a year later.²⁵⁷

Despite these setbacks, Government policies as the main driver of RoN litigation strengthen Nature's rights through jurisprudence and establishment of legal precedents. The court cases and the Government's use of RoN political messaging could also lead to greater public awareness. For example, the Government's intention to drill for oil in the Yasuní National Park prompted large protests to protect the park.²⁵⁸ Therefore, despite weak political will to implement RoN, the Government is unintentionally strengthening Nature's rights through its actions.

4.1.3 Institutional Weakness

Ecuador has been plagued by weak institutions for decades and its rules and procedures respecting institutional independence are weak.²⁵⁹ More than twenty constitutions have been adopted since 1830 and there have been a high number of interruptions to the institutional order, including currency changes and coups.²⁶⁰ After election, President Correa extended State powers and in 2015 enacted constitutional changes which allowed him to seek indefinite re-election in addition to strengthening State powers over the media.²⁶¹

The institution responsible for planning and implementation of Nature's rights is an arm of the Government, which raises questions around its independence and ability to hold the Government to account. In addition, systemic weakness in the judicial system and its susceptibility to State intervention constitute challenges to enforcement.²⁶² During Correa's presidency, Human Rights Watch reported that high-level officials interfered in cases relating to government interests and in the appointment of judges.²⁶³ The former president was convicted in 2020 for accepting bribes in exchange for public contracts to fund electoral campaigns.²⁶⁴ The new administration has prioritised building the capacity of Ecuador's weak institutions, and in 2020 approved legislation which reforms the Organic Penal Code to combat corruption.²⁶⁵ However, the legal framework that allowed for interference remains in place and was used to remove 19 judges in 2019.²⁶⁶ According to the Global State of Democracy report, Ecuador scores 0.56 for access to justice.²⁶⁷ Trust in the country's institution has reduced by almost half since 2009, with 44% of respondents in the 2018 Global Corruption Barometer

²⁵⁶ Cardona, *supra* note 160.

²⁵⁷ *Ibid.*

²⁵⁸ Vidal, J. 'Race to save Ecuador's Yasuní National Park From Oil Lobby', The Guardian, 23 August 2013 at <https://www.theguardian.com/environment/2013/aug/23/ecuador-yasuni-national-park>.

²⁵⁹ Human Rights Watch, 'Ecuador: Events of 2021' at <https://www.hrw.org/world-report/2022/country-chapters/ecuador>.

²⁶⁰ Britannica, 'Ecuador from the Late 20th Century' at <https://www.britannica.com/place/Ecuador/Ecuador-from-the-late-20th-century>.

²⁶¹ *Ibid.*

²⁶² U.S. Department of State, *supra* note 225.

²⁶³ Human Rights Watch, 'Ecuador: Events of 2020', at <https://www.hrw.org/world-report/2020/country-chapters/ecuador>.

²⁶⁴ Valencia, A. 'Ecuador's Former President Found Guilty of Corruption', Reuters, 7 April 2020 at <https://www.reuters.com/article/us-politics-ecuador-idUSKBN21P373>.

²⁶⁵ U.S. Department of State, *supra* note 225.

²⁶⁶ Human Rights Watch, 'Ecuador: Events of 2019' at <https://www.hrw.org/world-report/2020/country-chapters/ecuador>.

²⁶⁷ BTI Index, *supra* note 100 at 12.

reporting that they have paid a bribe to access basic services.²⁶⁸ However, the Constitutional Court seems to retain relative independence from the legislature, evidenced by cases in which the Court has ruled in Nature's favour regardless of government policy. The Court's recent *Sinangoe* ruling, which annulled 52 mining concessions granted by the Government, shows its capacity to challenge powerful interests.²⁶⁹ The Court has also issued rulings which ordered the Government to develop new legislation to implement Nature's rights. In its *Estrilla Monkey* ruling, the Court elevated the legal status of individual nonhuman animals and ordered the Government to develop new legislation on the rights of animals, based on the principles developed in the ruling.²⁷⁰ In 2021, the Government tried to extend a 'state of exception' which restricted several rights in order to fight the Covid-19 pandemic. The Court suspended the extension and declared it to be unconstitutional; the Government complied.²⁷¹

Findings by the UN on environmental governance show the importance of strong institutions in fostering environmental protection by highlighting the case of Costa Rica, where well-designed laws implemented by capable government institutions that are held accountable has resulted in respect for institutions and a strengthened environmental rule of law.²⁷² Weak institutions erode the strength of the law and the perception of the strength of the law. Although the State has begun to implement secondary legislation, it has done so slowly. This has meant that upholding RoN has been mostly left to the courts and has resulted in reactive implementation. This could be overcome through the continued development of legislation to strengthen Nature's rights. One example is expansion of consultation provisions to include the international standard of free, prior and informed consent with regard to Indigenous Peoples, in particular.²⁷³ In addition, Nature's rights could benefit from an independent institution to hold the Government accountable and provide advice on development of environmental policy. The institution could be modelled on the Welsh Future Generations Commissioner, who promotes intergenerational equity in Wales by ensuring policy development considers the impact of decisions made now on future generations.²⁷⁴

4.1.4 Economic Development

Economic development as a barrier to Nature's rights has woven its way throughout each section of this paper. The Government justifies its extractive policies, which violate Nature's rights, by framing them as a way to achieve *sumak kawsay*, which requires a healthy economy. The conflict is baked in from the beginning: Constitutional provisions that enshrine Nature's rights also promulgate their greatest challenge. Gaining an understanding of why this might be requires context.

Although rich in natural capital, in the past Ecuador was once one of the poorest countries in South America.²⁷⁵ Currently, it is a middle-income country with an income per capita slightly

²⁶⁸ OECD, 'Public Integrity in Ecuador: Towards a National Integrity System', OECS Public Governance Reviews, OECD Publishing, <https://doi.org/10.1787/9623672c-en>, 2021.

²⁶⁹ *Sinangoe*, *supra* note 128.

²⁷⁰ *Estrellita Monkey*, *supra* note 138.

²⁷¹ BTI Index, *supra* note 100 at 11.

²⁷² U.N Environment Programme, 'Environmental Rule of Law: First Global Report viii', 2019 at 1. [UN Global Report]

²⁷³ United Nations, 'Free Prior and Informed Consent Manual', Food and Agriculture Organization of the United Nations, 2016.

²⁷⁴ Comisiynydd Cenedlaethau'r Dyfodol Cymru at <https://www.futuregenerations.wales/about-us/future-generations-commissioner/>.

²⁷⁵ Hurtig, A. and San Sebastián, M. 'Oil Exploitation in the Amazon Basin of Ecuador: A Public Health Emergency', *Pan Am J Public Health*, Vol. 15 (3), 2004 at 1.

below the South American average.²⁷⁶ 25% of the population is poor, with a higher poverty rate in rural areas and among Indigenous populations.²⁷⁷ The country has the third-biggest oil reserves in South America, although its economy depended on exports of cacao and bananas before the 1970s oil boom.²⁷⁸ At present, around two-fifths of export earnings and one-third of tax revenues are derived from oil.²⁷⁹ Agriculture contributes ten percent to the country's GDP and comprises 25% of the country's employed population.²⁸⁰ The sector represents the most important source of livelihood for those in low-income rural areas and women.²⁸¹ The fishing industry is the country's second-largest export sector and is also a major source of income for many Ecuadorians.²⁸² Both activities also feed a large proportion of the country through subsistence farming and fishing.²⁸³ Finally, Ecuador has largely-untapped mineral wealth in the form of gold, copper, silver and molybdenum.²⁸⁴ Reliance on the export of primary products means the country is vulnerable to external shocks and has suffered from economic instability throughout its history.²⁸⁵ The Covid-19 pandemic has exacerbated poverty, which increased by ten percent in 2020, affecting 1.8 million Ecuadorians.²⁸⁶ Unemployment had not returned to pre-pandemic levels by December 2021, with only 32% of Ecuadorians employed in full time work and earning higher than the minimum wage.²⁸⁷ Ecuador also possesses a large amount of debt which has been exacerbated by the pandemic. In 2020, the country agreed to a loan from the International Monetary Fund (IMF) on the condition that the Government undertake a series of harsh cuts to reduce its deficit by 5.5% of GDP by 2025.²⁸⁸ It plans to fund this through accelerating oil exports and cutting government agency budgets.²⁸⁹ Prior to Correa's administration, mining in Ecuador was mostly limited to small projects.²⁹⁰ However, a default of sovereign debt and a break with the IMF and World Bank during this time left the country isolated from funding sources.²⁹¹ Ecuador is therefore highly reliant on foreign investment to fund its policy initiatives; a reduction in oil prices in 2016, 2017 and 2019 further entrenched dependence.²⁹² External investment in the country is low as a result of the unstable regulatory environment, with the exception of China, which since 2008 has

²⁷⁶ BTI Index, *supra* note 100 at 18.

²⁷⁷ *Ibid* at 19.

²⁷⁸ Falconí-Benítez, F. 'Integrated Assessment of the Recent Economic History of Ecuador', *Population and Environment*, Vol. 22 (2), 2001, 257-280 at 258.; Monni, S. and Serafini, L. 'A Dangerous Alliance? The Relationship Between Ecuador and China', *Sustainability Environmental Economics and Dynamics*, 2018 at 5. [Monni and Serafini]

²⁷⁹ Britannica, 'Ecuador: Manufacturing' at <https://www.britannica.com/place/Ecuador/Agriculture-forestry-and-fishing>.

²⁸⁰ World Bank Diagnostic, *supra* note 184 at 91.

²⁸¹ *Ibid*.

²⁸² Bello, *supra* note 229 at 3.

²⁸³ Britannica, 'Ecuador: Economy' at <https://www.britannica.com/place/Ecuador/Agriculture-forestry-and-fishing>.

²⁸⁴ World Bank Diagnostic, *supra* note 184 at 23.

²⁸⁵ BTI Index, *supra* note 100 at 27.

²⁸⁶ *Ibid* at 3.

²⁸⁷ Osborn, *supra* note 225.

²⁸⁸ Osborn, *supra* note 225.

²⁸⁹ *Ibid*.

²⁹⁰ Nathanson, M. 'The Effects of Chinese Mining in Ecuador', *Dialogo Chino*, 7 September 2017 at <https://dialogochino.net/en/extractive-industries/9601-the-effects-of-chinese-mining-in-ecuador/>.

²⁹¹ Quiroga, M. et al. 'Footprints of the dragon: China's Oil Diplomacy and its Impact on Sustainable Development Policy in Ecuador and Ghana', *International Development Policy*, Vol. 8 (1), 2017, <https://doi.org/10.4000/poldev.2408>. [Quiroga et al.]

²⁹² *Ibid*; Quiliconi, C. Vasco, P. 'Chinese Mining and Indigenous Resistance in Ecuador', *Carnegie Endowment for Peace*, 2021 at 3 [Carnegie Endowment for Peace]; Monni and Serafini, *supra* note 287 at 3.

become Ecuador's largest lender.²⁹³ China now controls the majority of Ecuador's oil stock and Chinese-owned companies produce almost 11.2% of the country's oil barrels.²⁹⁴ China is also interested in Ecuador's copper mining potential and its Ecuacorriente consortium owns the contract to both of Ecuador's large-scale copper mining projects, including the Mirador Mining project which was the subject of an unsuccessful RoN case submitted by Indigenous communities and dismissed twice by courts in 2013.²⁹⁵ China has undertaken a pattern of investment in low-income, resource-rich countries around the world, particularly in South America and Africa to secure a steady supply of minerals it requires to support its own economic development and, some argue, to exert influence in countries and further its geopolitical goals.²⁹⁶

State reliance on investment from China caused a softening of regulations to allow for large-scale mining, which caused social conflict.²⁹⁷ In response, in 2008 the National Assembly enacted regulations which included suspension of concessions that affected water sources, those that had not consulted with local communities adequately and those that did not comply with legal obligations.²⁹⁸ This revoked most mining concessions and implied that large-scale mining would be prohibited in an effort to reassert resource sovereignty. However, reliance on foreign investment for development won out, leading to legislation more favourable to mining.²⁹⁹ For example, provisions excluding consultation requirements in the 2009 Mining Law were reportedly a consequence of pressure by Chinese officials to protect their interests.³⁰⁰ Ecuador's oil reserves are also diminishing, and Government analysts project that it may become an oil importer within the next ten years.³⁰¹ In this context, it is understandable that the Ecuadorian Government is eager to diversify the economy away from primary-exports; in fact, it is a necessity. It may also be an attempt to regain sovereignty over its own resources, particularly as its reliance on Chinese investment means the negotiated terms of agreements are often not in Ecuador's favour.³⁰² The framing of extractive policies as a way to achieve *buen vivir* thus seems more rational.

Economic development is a legitimate aim for a government. Economic rights are an important obligation and require progressive realisation and funding. Utilising oil as a resource has allowed the Ecuadorian Government to undertake ambitious programmes of industrialisation and technological innovation.³⁰³ Income per capita has doubled since 2005 and between 1990

²⁹³ CIA World Factbook, 'Ecuador: Economy' at <https://www.cia.gov/the-world-factbook/countries/ecuador/#environment>.

²⁹⁴ Monni and Serafini, *supra* note 278 at 4-5.

²⁹⁵ Condor Mirador, *supra* note 138.

²⁹⁶ Roy, D. 'China's Growing Influence in Latin America', Council on Foreign Relations, 12 April 2022 at <https://www.cfr.org/backgrounder/china-influence-latin-america-argentina-brazil-venezuela-security-energy-bri>; Nugent, C. and Campbell, C. 'The U.S. and China are Battling for Influence in Latin America, and the Pandemic Has Raised the Stakes', TIME Magazine, 4 February 2021 at <https://time.com/5936037/us-china-latin-america-influence/>; Shephard, W. 'What China is Really Up To in Africa', Forbes, 3 October 2019 at <https://www.forbes.com/sites/wadeshepard/2019/10/03/what-china-is-really-up-to-in-africa/?sh=494b03ae5930>; Quiroga et al., *supra* note 291.

²⁹⁷ Carnegie Endowment for Peace, *supra* note 292 at 12-14.

²⁹⁸ *Ibid.*

²⁹⁹ *Ibid.*

³⁰⁰ *Ibid.*

³⁰¹ Osborn, *supra* note 225.

³⁰² Monni and Serafini, *supra* note 278 at 14.

³⁰³ Andrade, P. 'The Government of Nature: Post-Neoliberal Environmental Governance in Bolivia and Ecuador', in *Environmental Governance in Latin America*, Palgrave Macmillan, 2016, 113-36 at 121-5.

and 2013, Ecuador’s Human Development Index increased by 11%.³⁰⁴ Life expectancy at birth increased by nearly eight years in the same period, and years of schooling by 0.3 years.³⁰⁵ However, economic development and Nature’s protection need not be mutually exclusive. Costa Rica, another middle-income nation heavily dependent on natural resources has tripled its GDP per capita since 1960 and now has the lowest poverty rates in the region.³⁰⁶ The country has also increased life expectancy, achieved 96% adult literacy and increased per capita income while achieving ambitious environmental goals.³⁰⁷ It is on target to become climate neutral by 2021, with almost all of its electricity needs already generated from renewable sources.³⁰⁸ It has achieved this through recognition of the aggregate value of its ecosystems if managed sustainably, primarily for tourism.³⁰⁹ It has also implemented innovative mechanisms similar to Ecuador’s Socio Bosque programme. However, unlike Ecuador’s programme, which is reliant on external financing, Costa Rica has implemented a National Forestry Fund to ensure sustainable funding.³¹⁰ The Payments for Environmental Services scheme has created 18,000 jobs and have allowed Costa Rica to reverse deforestation, with its forest cover doubling to more than 50% since 1983.³¹¹ Positive examples can also be found in Ecuador. Despite restricting fishing in the Galápagos Marine Reserve by 12.4%, creation of the protective zone has also benefited the local community.³¹² In the ten years following the creation of the Reserve, productivity nearly doubled and tuna exports grew by 67%.³¹³ This is attributed to a ‘spillover effect’ which occurs when species can grow to full size in protected areas, increasing fish populations.³¹⁴ The Islands also saw an increase in visitors during this time despite limits on the numbers allowed.³¹⁵ Tourism in all protected areas in Ecuador has increased substantially in recent years, benefiting local communities.³¹⁶ A 2018 World Bank analysis found that communities surrounding the five most visited protected areas generated USD 115 million between 2006 and 2013, and the areas sustained around 5,700 jobs.³¹⁷ These examples show that recognition of our dependence on Nature and subsequently treating it with respect can enable human economic interests whilst also protecting the health of ecosystems.

5 Conclusion

³⁰⁴ World Bank Data, ‘GDP Per Capita: Ecuador’ at <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?end=2021&locations=EC&start=2005>; Human Development Reports, ‘Ecuador’, UNDP at <https://hdr.undp.org/data-center/human-development-index#/indicies/HDI>.

³⁰⁵ Ordóñez, A. et al. ‘Sharing The Fruits of Progress: Poverty Reduction in Ecuador’, Overseas Development Institute, 2015 at 13.

³⁰⁶ Green Fiscal Policy, ‘Costa Rica – Country Profile’, 2019 at https://greenfiscalspolicy.org/policy_briefs/costa-rica-country-profile/. [Green Fiscal Policy]

³⁰⁷ U.N Environment Programme, Environmental Rule of Law: First Global Report viii, 98 (2019). at 1.

³⁰⁸ *Ibid*; Green Fiscal Policy, *supra* note 306.

³⁰⁹ Green Fiscal Policy, *supra* note 306.

³¹⁰ *Ibid*.

³¹¹ *Ibid*; World Bank, ‘The World Bank in Costa Rica’ at <https://www.worldbank.org/en/country/costarica/overview>.

³¹² Cirilla, A et al. ‘Marine Protections in the Galápagos Benefit Nature, Ecuadorian Fishing Fleet, and Local Economy’, PEW, 10 July 2021 at <https://www.pewtrusts.org/en/research-and-analysis/articles/2021/07/20/marine-protections-in-the-galapagos-benefit-nature-ecuadorian-fishing-fleet-and-local-economy#:~:text=The%20archipelago%2C%20which%20is%20part, long%20increases%20in%20commercial%20fishing>.

³¹³ *Ibid*.

³¹⁴ *Ibid*.

³¹⁵ *Ibid*.

³¹⁶ World Bank Diagnostic, *supra* note 184 at 84-85.

³¹⁷ *Ibid*.

Ecuador is the first country in the world to Constitutionally enshrine Nature's rights. The Constitution was forged after a period of political and economic turmoil, from a collaboration of conflicting interests, and this is reflected in the text. This paper sought to establish whether Nature's rights have been successfully implemented in Ecuador, and what impact they have had on environmental outcomes.

4.1.5 Summary of Findings

The assessment found that Nature's substantive rights are holistic and emphasise balance. While broad, substantive rights are often abstract to allow for consensus.³¹⁸ The provisions clearly outline rightholders, addressees and scope. The Constitution recognises all of Nature to have rights, with a universal standing doctrine; the most expansive RoN provisions in the world. However, the text also contains anthropocentric contradictions which allow Nature's exploitation.

Analysis of structural indicators identified a gap between policy and reality. Only one government body is tasked with implementing RoN and there are questions regarding its independence. For example, the National Plans contain contradictory objectives and use *sumak kawsay* to sanction extravism. Funding cuts in recent years have also impacted policy programmes. It was also found that weak political will exacerbated weak institutions, which has resulted in Government interference in judicial proceedings and lack of trust in institutions. Competing interests and politicisation of RoN stalled development of secondary legislation and as a result, RoN has mostly been strengthened through courts. Assessment of process indicators focused on Indigenous Peoples' participation because their territories are often situated in environmentally vulnerable areas. It identified that while participatory mechanisms include a right to consultation before non-renewable resources are extracted on Indigenous land, they remain weak because the international human rights standard of free, prior and informed consent is not required. This is exploited by the Government and companies, as highlighted by the number of court cases which cite violation of Indigenous Peoples' rights to consultation. Nature's rights have primarily developed through jurisprudence, making access to justice particularly important to study.

Analysis of cases identified through the scoping exercise found that RoN cases have an overall success rate of 71% which has never dropped below 50% in a year. In addition, the numbers of cases brought annually has modestly increased over time. Additional findings are that the Government uses RoN instrumentally and most cases that are successful are brought by government agencies. Most cases that fail are brought by civil society action, although their success rate is beginning to rise. Reasons given for dismissal include issues around standing, conflict with other constitutional rights, and because extractive activities are legal under constitutional exception clauses. At times, the judiciary misunderstand or are unaware of RoN provisions which is evidenced by case dismissal due to standing issues. Nature's rights have also conflicted with constitutional human rights at times, particularly regarding property and the right to work.. These issues arise more frequently in lower-level courts, where judges are generalists and not well-versed in Constitutional law which suggests that these problems could be overcome by targeting lawyers and judges with education on Nature's constitutional provisions. There are significant challenges around compliance, which underscores the weak rule of law in Ecuador and renders access to justice for Nature incomplete. Meanwhile, the

³¹⁸ Nickel, *supra* note 28 at 3-8.

Constitutional Court has been active in driving jurisprudence and setting precedent to strengthen RoN.

Education is an important tool to foster a relational conception of Nature. Achieving this is a core aspect of RoN theories, yet is not addressed concretely by the literature. Ecuador has implemented several innovative programmes within school curricula to foster closeness to Nature, including the Equatorial Garden policy which teaches regenerative environmental practice to students. Only one study was uncovered which found that attitudes toward Nature in Ecuador are primarily based on (already possessed) Indigenous worldviews and proximity to environmental degradation. However, it can be extrapolated from court cases that awareness of RoN remains relatively low among the general public but high in groups such as environmental activists.

Ecuador's environmental outcomes were then assessed to establish whether Nature's rights have led to better protection of Ecuador's key environmental components. When examining deforestation, it found that RoN provisions led directly to implementation of the Socio Bosque programme, which has been hailed as a success. On the other hand, deforestation continues in fragile, legally protected ecosystems and remains one of the country's gravest environmental threats. Extractive industry activities constitute the frontline of conflict around Nature's rights. RoN has not stopped them; the Constitution regulates them as traditional environmental regulations would. Ecuador's economy is reliant on extractive industries; primarily oil but increasingly also mining. Government policy around such activities contravene its RoN duties and chosen development model of *sumak kawsay*. It has attempted to justify this through framing extractive activities as necessary to achievement of 'good living' and this is reflected in the development and environmental policy framework. Biodiversity has not improved under RoN and Ecuador has the highest number of threatened species in South America. The main threat to biodiversity is deforestation caused by oil exploration. Marine and coastal ecosystems are some of the most vulnerable in the country. Most legislation to promote more sustainable practices have been implemented due to international pressure rather than respect for Nature. There have however been several cases which have invoked RoN to protect Ecuador's marine species and the success of these cases highlights the power of RoN to challenge powerful interests.

The assessment revealed large gaps between Nature's formal rights and implementation. It is argued that the implementation of RoN in Ecuador is therefore weak, and their impact is uneven. Themes emerged from the assessment which, when explored further, explain why: three interconnected barriers were found to implementation. First, constitutional contradictions entrench rather than resolve the inherent normative conflict between anthropocentrism and ecocentrism. The Constitution provides Nature with the maximum national protection possible but qualifies it with a human right to benefit from the environment and the right of the State to exploit non-renewable resources in protected areas if in the national interest. The text also contains weak consultation mechanisms which leaves Indigenous Peoples, whose territories account for most of the country's fragile ecosystems, unable to refuse extractive activities on their land. The document extends State powers and denotes it as both duty bearer and arbiter, leaving it accountable only to itself. This has resulted in a protraction of social conflict between the Government and Indigenous communities due to uneven application of RoN in legislation and policy.

The second barrier stems from lack of political will, as evidenced by recent funding and programmatic cuts to the only institution tasked with implementing RoN. The Government has consistently enacted a political agenda which is comprised of the inherently conflicting policies of *sumak kawsay* and non-renewable extraction and favoured economic interests over Nature's

rights. Lack of political will has also contributed to slow development of secondary legislation and institutionalisation following RoN adoption. Exacerbating these issues are Ecuador's institutional weaknesses. Corruption and interference in institutional independence, particularly the judiciary and legislative body, erode the rule of law and the effectiveness of rights. Although recent administrations have begun to grapple with these issues through passing anti-corruption legislation and replacing corrupt judges, trust in institutions remains low. It is suggested that secondary legislation should be enacted to strengthen Nature's rights, particularly around inclusion of the requirement of consent on Indigenous lands. In addition, an independent institution should be established to hold the Government accountable and to ensure that all policy considers impacts upon Nature.

Finally, economic development was identified as a leading factor in all the above barriers. The paper sought to understand why economic interests conflict with Ecuador's formal RoN provisions; the literature often points to oil extraction as Ecuador's primary source of income but does not explore why Ecuador's Government pursues such conflicting policies.³¹⁹ A deeper analysis found that sovereign debt default combined with a break with international lending institutions around the time of the new Constitution's adoption rendered the country dependent on foreign investment to fund its policy agenda. Ensuing its interest in Ecuador's natural resources, China has become Ecuador's most important investor and controls much of its oil stock and mining projects. Ecuador's dependence on financial support from China has led to a softening of regulations which allows for large-scale mining. Many of the cases studied cite mining as the reason for invoking RoN in litigation. In this context, the Ecuadorian Government's pursuit of an agenda based on the inherently conflicting policies of *sumak kawsay* and extraction makes more sense. By regaining resource sovereignty, Ecuador can break away from dependency on foreign investment and move away from an extractivist model of development toward *sumak kawsay*. Nonetheless, examples from Ecuador's protected areas and policies adopted in Costa Rica underscore what can be achieved if Ecuador were to instead embrace interdependence with Nature.

Although lessons learned from Ecuador's implementation are valuable, they are also unique to Ecuador; international replication would depend on different national contexts. As a developing nation, Ecuador retains the same barriers that often prolong human rights implementation, such as weak rule of law and institutions.³²⁰ Rights realisation is often progressive, and it is important to mark that Nature's rights are still in their infancy.³²¹ Despite weak enforcement in much of the world, human rights have improved the lives of millions and changed meta-norms irrevocably.³²² The Ecuadorian Constitution is legally innovative and promotes a worldview that is in line with scientific knowledge and humanity's place within the planetary ecosystem. RoN is now part of the national discourse in Ecuador and the Government must justify activities which harm the environment as they are no longer sanctioned by law. Cases have led to more awareness of Nature's importance and orders to protect or restore eight forests, seven rivers and six species of wildlife from thirteen mining, oil and infrastructure projects. However, the biggest impact of Ecuador's Constitution may be in its capacity to inspire. Nature's rights have now been recognised in 39 countries in all four corners of the world.³²³ It has inspired courts in India and Bangladesh, governments in Bolivia and New Zealand and small communities in

³¹⁹ See for example: Kauffman and Martin, *supra* note 117; Calzadilla and Kotzé, *supra* note 250.

³²⁰ Bantekas and Oette, *supra* note 26.

³²¹ *Ibid* at 416-420.

³²² UNICEF, 'The United Nations and Human Rights: Creating a Culture of Human Rights Throughout the World' at <https://www.unicef.org/child-rights-convention/united-nations-human-rights>.

³²³ United Nations Harmony with Nature at <http://www.harmonywithnatureun.org/rightsOfNature/>.

the USA and Europe.³²⁴ Ecuador's proclamation of Nature's rights demonstrates that what was once a theory viewed as radical by legal scholarship can be elevated to the highest level of law. Rights of Nature thus has the potential to emerge as an international right to complement human rights. Doing so would recentre our legal systems to recognise our place within the planetary ecosystem and may succeed in protecting the environment where existing law has failed.

4.1.6 Limitations and Recommendations for Further Research

The main difficulties in performing the research were encountered during the scoping exercise. Collection of the data relied upon access to public information and there were difficulties around unclear and anecdotal information on RoN initiatives, inclusive of the UN Harmony with Nature website. For example, sometimes evidence of an initiative constituted a Facebook post without official documentation or news articles to confirm the existence of the initiative. The decision was made early in the process to only include RoN initiatives with verifiable documentation, which meant that many initiatives were not included. All RoN initiatives were correct as of the time of writing but more have been implemented in the time since the mapping exercise was undertaken, showing the impact the concept is having around the world. The research was initially planned as a global study but had to be narrowed due to the breadth of findings. There were also several topics which the research was unable to delve deeply into due to word count constraints, including nonhuman animal rights. Future research could thus focus on what form Nature's rights is taking in other countries, particularly within Europe where there is a growing movement to adopt RoN, higher incidence of institutional strength and service-based economies but a culture based on Western concepts of rights. A global study of lessons learned, particularly around institution-building, would strengthen RoN application, particularly if the international community adopts the UN Declaration on the Rights of Mother Earth in the future. The impact of Nature's legal rights on societal conceptions and environmental outcomes is understudied and could provide valuable insight into the measurable benefits of adopting RoN. Finally deeper analysis regarding why cases fail could be used to develop a good practice handbook to enable civil society groups, lawyers and Indigenous communities to claim Nature's rights.

³²⁴ *Ibid.*

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Annex of Cases

Location	Date	Name	Document	Successful/ Unsuccessful/ Ongoing
Corte Constitucional del Ecuador	2009	Challenge to 2009 Mining Law	Article (Kauffman & Martin, 2016)	Unsuccessful
Tsachila, Ecuador	2009	Biodigestor	Page 5-8	Successful
Gulf of Mexico	2010	BP Deepwater Horizon Oil Spill	Court judgment	Unsuccessful
Vilcabamba River	2011	Vilcabamba River	Court judgment	Successful
Shushufindi	2011	Secoya Palm Plantation	Court judgment	Successful
Cayapas Ecological Reserve	2011	The Cayapas Shrimper	Court judgment	Successful
Eloy Alfaro	2011	Esmeraldas Illegal Mining Case	Court judgment	Successful
Santa Cruz, Ecuador	2012	Iguanas	Court judgment	Successful
Galapagos, Ecuador	2012	Unconstitutionality of the Organic Law of Galapagos	Page 17	Successful
Pedro Moncayo, Ecuador	2012	Moncayo Mining	Page 15	Successful
Pasta, Ecuador	2012	La Cero	Court judgment	Successful
Cordillera del Condor	2013	Condor Mirador Mining	Court judgment	Unsuccessful
Esmeraldas	2013	Esmeraldas Oil Spill	Court judgment	Successful
Samama Forest	2013	Samama Protected Forest	Court judgment	Successful
Galapagos Marine Reserve	2015	Shark Fins	Court judgment	Successful
Valdiva	2015	Marine Reserve, Valdivia Community	Court judgment	Unsuccessful
Azuay	2015	Condor Hunt	Court judgment	Successful
Pastaza	2015	Protective action No. 115-2012	Court judgment	Successful
Chimborazo, Ecuador	2015	Tangabano Paramos	Court judgment	Unsuccessful
Manabi Province, Ecuador	2015	Verdun	Page 4	Successful
Pichincha, Ecuador	2015	Unconstitutionality of the of the Food Sovereignty Law	Court judgment	Unsuccessful
Alamor, Ecuador	2016	Alamor	Official document	Successful
Quimsacocha, Ecuador	2016	Creation of the Quimsacocha Recreation Area	Page 6+13	Unsuccessful
San Cristobal, Ecuador	2016	Sea Cucumbers	Court judgment	Successful
Azuay, Ecuador	2016	Failure to comply with Constituent Mandate No.6	Court judgment	Unsuccessful
La Chiquita, Ecuador	2017	Cultivation of African Palm in Ancestral Territory La Chiquita	Point 5.3 (page 40-50)	Successful

Taisha, Ecuador	2017	Carretera Macuma - Taisha (Defensoría del Pueblo)	Point 47 (Page 13-14)	Successful
Rio Blanco	2018	Rio Blanco Mining Project	Court judgment	Successful
Alpayacu River	2018	Mera Canton	Court judgment	Successful
Rio Grande, Ecuador	2018	Hydroelectric Project in Rio Grande	Page 3	Ongoing
Collay Forest	2019	Collay Forest	News article	Successful
Condor Mirador	2019	Condor Mirador Tailings	Court judgment	Unsuccessful
Yasuni National Park	2019	Waorani Block 22	Court judgment	Successful
Sinangoe	2019	Sinangoe	Court judgment	Successful
Ecuador	2019	Genetically Modified Organisms (GMOs)	Court judgment	Successful
San Jose del Tambo, Ecuador	2019	San José del Tambo Hydroelectric Project	Points 8-10 (page 2)	Ongoing
Nangaritza River, Ecuador	2019	Nangaritza	Page 8	Unsuccessful
Galapagos, Ecuador	2019	Illegal Transport of Sharks	Court judgment	Successful
Arutam, Ecuador	2019	Piatua River	Court judgment	Successful
Canton Flavio Alfaro	2019	River and Air Pollution in Canton Flavio Alfaro	Court judgment	Ongoing
Ecuador	2019	Instructions for the application of the Pre-Legislative Consultation	Official document	Successful
Llurimagua, Ecuador	2020	Llurimagua	Court judgment	Successful
Azuay, Ecuador	2020	Azuay Mining	Point 23 (page 38)	Successful
Sucumbios, Ecuador	2020	Mecheros Petroleros	Page 21	Successful
Putumayo Canton, Ecuador	2020	Unconstitutionality of the Cuembí Triangle as Protected Forest	Point 4 (page 40)	Unsuccessful
Los Cedros Forest	2021	Los Cedros Forest	Court judgment	Successful
Constitutional Court of Ecuador	2021	Case No. 22-18-IN/21	Court judgment, News article	Successful
El Guabo, Ecuador	2021	Tala de manglar en Cantón El Guabo	Page 11	Successful
Pinas, Ecuador	2021	Minería “La Chuva” in Piñas	Unavailable (# 51)	Successful
San Rafael, Ecuador	2021	San Rafael Oil	Point 13 (page 3)	Ongoing
Monjas River	2022	Monjas River	Court judgment	Successful
Constitutional Court of Ecuador	2022	Estrellita Monkey	Court judgment	Successful