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Olivia Moore

Western Washington University

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Western Washington University

Ecuador's Amazon, Rights of Nature, and the Dilemma of the 2008 Constitution

Olivia Moore

Honors Capstone Project

Advised by Dr. Kirsten Drickey

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Introduction

Ecuador became the first country in the world to recognize the rights of nature in its 2008 Constitution. In general, the rights of nature are constitutional legal rights that hold a similar weight to the rights designated to people. A summary of the rights of nature include “the right to integral respect for its existence” and “the right to be restored,” among others (“Ecuador's Constitution of 2008” 35). Despite recognizing these rights, Ecuador faces a dilemma. As an extractivist state, it is difficult for Ecuador to pursue environmental protection while also exploiting natural resources like oil for economic gain. Ecuador treats its Amazon region as a commodity, a mere resource that adds to the economic wealth of the state. Ecuador's two conflicting goals of strengthening the economy and protecting the environment thus cannot be successfully achieved simultaneously. The decision to stop drilling does not have to be black and white. Economic losses can be combated with compensation that follows the decision to halt drilling and subsequent climate change. Additionally, enhancing the recognition of Indigenous rights and their autonomy over their territories can save the Amazon from further destruction. Indigenous peoples in Ecuador utilize legal pathways to strengthen and protect their Constitutional rights, and these groups unite in order to fight against their shared problems and injustices that stem from the exploitation of their territories, demonstrating why the preservation and protection of the rights of nature and Indigenous peoples in the Amazon matter.

Indigenous peoples in the Ecuadorian Amazon who seek to protect their land from drilling, mining, and deforestation do so because of the negative effects those industries have on their livelihoods. For Nemonte Nenquimo, a Waorani leader and an environmental activist, she is against drilling because she believes that “if given ‘a foothold in our lands,’ the oil industry ‘will bring money, sickness and contamination. They will try to divide our families and change our

way of thinking” (Loki). Nenquimo also believes that the natural value of nature outweighs any economic value, asserting that ““Water matters, life matters, [but] money doesn’t matter”” (Aguilar, “Ecuador: Tribe sees how oil industry”). When Waorani members visited the province of Orellana, they recalled that ““The water they drink is dirty”” (Aguilar, “Ecuador: Waorani people map”). Drilling in the Amazon region brings contamination, and a member of the A’I Cofán tribe, Nixon Narvaez, affirms that he is against the oil industry in his territory because ““We live along the banks of the river,’... ‘It is fundamental to our lives. We drink the water, we bathe in it, we fish. Maybe the fish are being contaminated and our health will be endangered”” (Hill). Alex Lucitante, a member of the Cofán, says that nature is important because ““Since the beginning of our life as a people, this territory has been our supermarket, our pharmacy, our hardware store”” (Zaitchik, “How Conservation Became Colonialism”). These accounts from Indigenous people in Ecuador’s Amazon demonstrate the importance of preserving the environment. Nature is intricately tied to their livelihoods. Oil exploration does not only ruin the health of nature, it can ruin the lives of the inhabitants.

Despite there being Indigenous groups in the Ecuadorian Amazon that are fighting to save their forests, Indigenous peoples are not a monolith. It is worth noting that ““different ethnic groups exhibit different land use patterns depending on local conditions, migratory and settlement histories and location, level of exposure to markets, and external factors,” so “indigenous stewardship of natural resources cannot be taken for granted” (Vasco et al.). Oil and mining industries can also offer employment opportunities to Indigenous communities that can benefit economically from these industries. This though, is a capitalistic conceptualization of wealth that is not reflective of all Indigenous communities. Whether or not Indigenous peoples in the Ecuadorian Amazon seek to preserve nature or exploit it for economic gain primarily comes

down to location, as “indigenous households near market communities likely act to improve their livelihoods through market agriculture and expansion of the cultivated area” (Gray et al. 107). Generally, it can be broadly argued that Indigenous peoples ““know if they degrade the land, they will lose the basis of their subsistence economies. They hunt, they fish, and use the land. But they do so in a way that is communal and sustainable”” (Zaitchik, “How Conservation Became Colonialism”). Sustainability involves the “resilience of social-ecological systems” (Raygorodetsky), as well as valuable knowledge about “how to adapt, mitigate, and reduce climate and disaster risks” (The World Bank). The Indigenous peoples in Ecuador that are the focus of this paper specifically are those who wish to protect their territory from further destruction.

The climate crisis is upon us, and Indigenous peoples in Ecuador have the solutions. The rights of nature and Indigenous peoples that are embedded in Ecuador’s 2008 Constitution need to be acknowledged, respected, and strengthened in order to ensure that the Amazon is safe from exploitation. The increased visibility of Indigenous people’s fight against the state’s extractivist agenda shifts the conversation away from typical notions of economic development and towards the notion of Buen Vivir, a social concept that highlights an alternative way of viewing development that focuses on people’s relationship to nature, and Indigenous conservation. The increased visibility of Indigenous groups and their struggles to protect themselves and their land from exploration and exploitation in recent decades highlights Ecuador’s dilemma: the state cannot simultaneously be an extractivist state and a true environmental protection advocate. The rights of nature and Indigenous peoples are laid out in Ecuador’s 2008 Constitution, yet conflict arises when the rights of the state trump the rights of everyone else.

Why Does the Amazon Matter?

The Amazon Rainforest is important not only for the people who live there, but for the whole world as well since the planet depends on the Amazon for survival. Because “the Amazon rainforest ‘inhales’ carbon dioxide and ‘exhales’ oxygen,” it “stabilize[s] the global climate by safely storing up to 140 billion metric tons of carbon” (Loki). Furthermore, Reynard Loki explains that “Deforestation by extractive and agricultural industries releases this carbon into the atmosphere, further accelerating global warming, the effects of which are felt across the world, from rising seas along U.S. coasts and melting Arctic glaciers, to wildfires in Europe and droughts in Africa.” Extractive events that occur in the Amazon have a ripple effect that impacts the globe. Unfortunately, it is difficult for Ecuador’s government to see the value of the Amazon as anything other than economic because of the Amazon’s oil deposits. Protecting the Amazon region and exploiting it for financial gain are two competing goals that are difficult to achieve together. Luckily, there are Indigenous groups at the frontline of the struggle who aim to protect their land and advocate for the respect and recognition of both their rights and those of the environment.

Environmental protection in Ecuador cannot be fulfilled without the recognition of Indigenous rights. Because of their proximity to the decimation of the Amazon and their knowledge on how to care for the region, Indigenous groups must have their Constitutional rights acknowledged and respected. The formal, legal recognition full implementation of the rights of Indigenous people and the knowledge they have to combat climate change can be a powerful tool to save nature from further destruction. Indigenous groups in Ecuador’s Amazon region are directly impacted by the destruction caused by the oil industries that exploit the vulnerable rainforest. Pacayacu, the home of Indigenous communities and one of the areas in

Ecuador that is “most heavily impacted by human activity,” recorded in 2017 “530 sources of contamination in the village, including 128 pools, 272 pits, and 130 oil spills” (Aguilar, “Ecuador: Tribe sees how oil industry”). These groups are severely affected by an exploitative industry that they lack control over. While it is important to remember that every person is affected by what happens in the Amazon, one cannot forget about the people most affected on the frontlines of the climate disaster and facing the direct consequences of the exploitation of their territories. A report from the World Resources Institute found that “Recognizing Indigenous rights to dictate how their land is used... is not just a human rights necessity; it is essential to protecting the world from the worst effects of climate change” (Skene). This is in addition to the statistic that “protecting and restoring the world’s forests could produce natural solutions to climate change impacts, and would go over 30 percent of the way to achieving the cost-effective mitigation necessary to bring down runaway carbon emissions” (Volckhausen). Additionally, mitigating the climate “is a low-cost, high-benefit investment” (Veit). Indigenous peoples have the answers. The solutions to the climate crisis are already available, they just need to be more widely recognized as solutions. If Ecuador’s main focus truly is the economy and what is the best economically, preserving what remains of the Amazon should be considered a step in the right direction towards saving money and the planet.

The recognition of Indigenous rights would involve allowing Indigenous communities autonomy over their land and the natural resources that reside within the land. The United Nations Environment Programme claims that “The world’s 370 million indigenous people are only 5 per cent of the total population but they officially hold 18 per cent of the land and lay claim to far more” (UN Environment Programme). They have the potential to make decisions that affect one fifth of the planet’s land. They thus have a responsibility to use their power to

improve the environment for both their own health and safety as well as for others. In order to continue leading the way towards a livable future, the lessons given by Indigenous leaders and activists require more attention. As Cristián Samper explains, “if they are to continue their vital stewardship role, indigenous peoples need national governments to recognize and support their legitimate authority to govern their lands and waters.” Through the recognition of formal rights granted in the Constitution, Ecuador in turn appears to recognize the value of nature. However, the Constitution underscores the conflicting goals and competing needs faced by the country.

The Constitution

The success of the referendum to rewrite the Constitution in 2007 was in large part “due to the support of indigenous communities” (Becker 49). Indigenous social movements saw the Constitution as a way to achieve the changes they desired. Indigenous groups placed pressure on the constituent assembly, and “emphasized that the revisions they had proposed to Ecuador’s constitution would benefit everyone in the country, not just indigenous peoples” (Becker 51). Unfortunately, “Once the constituent assembly was in session, it became increasingly apparent that it would provide little possibility of fundamental societal change” (Becker 52). Indigenous groups still saw the Constitution as a ticket for change and as a tool to advance the Indigenous agenda, since there were aspects of the new Constitution that catered towards Indigenous desires (Becker 59). Indigenous organization Ecuarrunari, as well as other Indigenous individuals and social movements, campaigned to pass the referendum to rewrite the Constitution (Becker 59). Marc Becker stresses that “it is not sufficient to draft new legislation; social movements need to remain ever vigilant to ensure that the government follows through on its promises and implements its progressive policies.” The new Constitution is not enough to reflect the needs of

Indigenous groups in Ecuador if all it is is empty words. The promises of the Constitution need to be reflected in reality.

Ecuador is a state whose economy depends on oil extraction yet claims to value the rights of nature. The Constitution is designed to avoid confronting this dilemma. Ecuador mentions the rights of nature and Indigenous peoples in their 2008 Constitution and claims to value these rights but has no real intentions of following through on its promises. Article 57 section 7 states that Indigenous peoples have the right “To free prior informed consultation, within a reasonable period of time, on the plans and programs for prospecting, producing and marketing nonrenewable resources located on their lands and which could have an environmental or cultural impact on them” (“Ecuador's Constitution of 2008” 27). Indigenous people must receive consultation of plans involving their land, but there are no systems in place that ensure that Indigenous peoples’ consent is respected. The consultation process involves the government “consult[ing] with indigenous communities prior to the concession of their territory for oil exploration and exploitation, although the way to do so has been debated” (Aguilar, “Ecuador: Waorani people map”). Despite receiving consultation, industries can still extract from their land without their consent. The Constitution does not actually provide any protection from exploitative industries. The result of the consultation does not matter as much as the act of consulting itself. As long as the consultation took place, there are few obstacles in the way of oil exploration on Indigenous territory. Because there appears to be no real intentions behind respecting the consultation process, some suggest that “the consultations were treated as a box that needed to be checked off, rather than as a serious discussion with the community about the impact of introducing oil extraction into the forest lands and rivers where they hunt and fish” (Riederer). The consultation process can be seen as simply one step towards reaching a goal of

extracting resources from Indigenous territory. It is not a process that appears to be taken seriously or one that works to protect Indigenous people or the environment. Instead, this clause in the Constitution is just empty words that hold little weight. There is nothing preventing groups from lying or simply leaving out information in the consultation process in order to achieve the goals of extraction.

Additionally, section 17 of article 57 states that Indigenous people have the right “To be consulted before the adoption of a legislative measure that might affect any of their collective rights” (“Ecuador's Constitution of 2008” 28). However, in 2019 “lawmakers in Quito are writing the bill without the participation of the Indigenous communities that will be impacted by the law” (Fox). The bill in question is a law that “could weaken Indigenous communities’ constitutional right to free, prior, and informed consent over issues regarding their territories” (Fox). While Indigenous peoples may be consulted about the legislation, they have no say or control in the result. Consultation means nothing when the opinions of Indigenous communities are not considered. Without any involvement in the legislation, “loopholes may be created for approving extractive operations on Indigenous territories without their consent” (Fox). This highlights the recurring theme of consent. In this circumstance, Indigenous groups are left out of decision-making processes that directly affect them.

Article 57 of Ecuador’s 2008 Constitution clearly does not live up to its intentions. While it insists that Indigenous groups be consulted before the legislation is enacted, it does not include anything about what the consultation entails. Simply letting Indigenous people know about legislation that affects them is not the same as receiving feedback. There is no point in consulting with Indigenous groups if they are left out of the legislation process altogether. It is important that Indigenous groups are included in these conversations as these groups overwhelmingly have

the best interests for the environment in mind and are not solely focused on the economic interests of the state. These Indigenous groups can be seen as an obstacle for the state, and thus their input on legislation may be ignored or avoided. However, one must consider the impact Indigenous groups have in Ecuador and be reminded of the Indigenous rights that are enshrined in the Constitution.

Furthermore, Article 407 states that “Activities for the extraction of nonrenewable natural resources are forbidden in protected areas and in areas declared intangible assets, including forestry production” (“Ecuador's Constitution of 2008” 137). This article also includes a large exception, which states that “these resources can be tapped at the substantiated request of the President of the Republic and after a declaration of national interest issued by the National Assembly, which can, if it deems it advisable, convene a referendum” (“Ecuador's Constitution of 2008” 137). What this suggests is that whatever is deemed “the national interest” trumps environmental rights and protections. It can be inferred, then, that the rights of nature are not compatible with the national interests. This is what is happening with Yasuni National Park. Protected areas are set aside for conservation purposes, but conservation is contradictory to the state’s goals of economic development. These areas are not technically protected when their oil is seen as necessary to achieve Ecuador’s extractivist agenda. This article of the Constitution is interesting as it claims to care about the protections of nonrenewable resources in “protected” zones but then immediately implies that these areas are no longer protected when resources are needed to achieve other goals. It highlights the conflict within Ecuador. It is hard to recognize the rights of nature and the need to protect against extraction while simultaneously privileging the oil industry in Ecuador’s economy. Due to the work of Indigenous activists increasing visibility of Indigenous related issues, the Constitution attempts to address Indigenous rights, yet includes

loopholes designed to avoid accountability for falling short of promises. Nature is not fully protected, and there is still a long way to go to increase protection for Indigenous groups and their territories. The Constitution recognizes the rights of nature, but Ecuador has yet to prove its commitment to respecting its value.

An Alternative Plan to Development

Ecuador faces another dilemma. There are two conflicting mindsets among the population, as highlighted in the different interpretations of Buen Vivir. Buen Vivir is an alternative to the typical notion of development that loosely translates to English as “Good Living.” There are two distinct cultures, one stemming from colonialism and capitalism and one stemming from ancient Indigenous traditions. These two cultures have drastically different views on what development should mean. This makes the idea of Buen Vivir difficult to define. “According to indigenous authors ‘living well’ would be the expression suitable to the indigenous peoples’ ontology, whereas ‘living better’ would correspond to capitalism” (Villalba 1431). Living well suggests that it is how one lives their life that matters. There is no comparison to others’ lives. The Indigenous perspective of living well is based in a more sustainable life that cherishes the inherent value of nature and is less focused on economic values. The focus is on the life one has. Living better, on the other hand, implies a comparison. Living better suggests that there is a goal of obtaining a life that is different from the life of others or from the life lived previously. Living better corresponds to capitalism since what qualifies as “better” appears to be mostly calculated in terms of monetary interests. While there are many different interpretations of what exactly Buen Vivir entails, “the common denominator of Buen Vivir discourse is to assert the defence of living in community and in harmony with nature according to the principles

of reciprocity, complementarity, solidarity and relationality” (Villalba 1434). What one can learn from the interpretation of the reciprocal relationship between people and the planet is the possibility of living a life that is communal and focuses on the environment. There are ways to live that are not solely individualistic, and the value of the environment goes beyond monetary value. In order to truly acknowledge and respect the rights of nature, Indigenous perspectives must be incorporated into society, including Buen Vivir.

Even though Buen Vivir is cemented in Article 14 of Ecuador’s Constitution, Ecuador’s extractivist interests get in the way. After the Constitution passed, former “President Correa immediately launched a public campaign to pass a mining law that greatly expanded existing mining operations and initiated new sites” (Kauffman and Martin 132). For Correa, “profits from mining and oil extraction were necessary to develop a post-fossil fuel energy sector, reduce poverty, and expand access to education, healthcare, and other public goods” (Kauffman and Martin 132). With that said, while the mining law was argued to benefit the development of Ecuador, the benefits did not fall under Buen Vivir. The fact that “the government is using Buen Vivir to legitimize measures that are in clear contradiction to its principles” suggests that Buen Vivir is a performative function used to construct an Ecuadorian identity (Caria and Domínguez 27-8). Buen Vivir has not been realized in reality as an alternative to development as seen when “The traditional concept of development reappear[ed] when Correa justifie[d] the decision to exploit the ITT bloc [in Yasuni National Park] by explaining that ‘it will contribute to GDP growth’” (Caria and Domínguez 29).

Because Buen Vivir has not been fully realized, and it appears as though it was never the government's intention to follow through with what Buen Vivir entails, it is worth wondering why Buen Vivir was included in the Constitution in the first place. The answer lies in

Ecuadorians' dissatisfaction with the neoliberal concept of development. For Ecuadorians, "the concept of development, so deeply rooted in the discourse that justified three decades of neoliberalism, had gained such a bad reputation that it was necessary to exclude it from official political discourse until some kind of catharsis, profound renewal, had occurred in the state and in the society" (Caria and Domínguez 29). Buen Vivir was an idealized concept that Ecuadorians could rally behind, something to appeal to the masses who were disappointed with previous ideas of development. When it came to methods of development, Indigenous groups were able to influence the way Ecuador views develop and offer alternatives when they were incorporated into the national conversations about environmental protection. Buen Vivir is proof of the effect Indigenous groups have in formulating and framing goals that reflect the way Indigenous people view development. Buen Vivir is also an important aspect of justifying the need for the protection of nature and Indigenous rights and highlights the roles in Indigenous groups in Ecuador have in influencing the rest of the country to adapt for sustainable goals, even if these goals are less attainable in reality.

What is Conservation?

The government of Ecuador needs an economic incentive to preserve the environment, meaning that the rights of nature only apply when the state believes that they can benefit economically. Yasuni National Park demonstrates the difficulty of the government preserving land when there is little economic incentive to do so. The Yasuni ITT (Ishpingo-Tambococha-Tiputini) initiative was formed to protect what may arguably be one of the most biodiverse regions on the planet. However, while Correa promised to protect this region, the promise was conditional. He insisted that to keep the area protected, "international

donors would have to pay Ecuador to offset the oil revenues the country would forgo by leaving the oil in the ground” (Minority Rights Group International 100). He wanted compensation for protecting the area, an area that provides the planet for oxygen that everyone needs, and therefore other countries would have to chip in to reap the benefits. However, “After collecting a few million US dollars – only a fraction of the funds sought – the Correa administration decided in the summer of 2013 to discontinue the campaign and drill for oil in the National Park” (Minority Rights Group International 100). The rights of nature thus only apply when the state believes that they can benefit economically by recognizing those rights.

In order to understand Ecuador’s reasoning behind choosing oil exploration over environmental protection, one must look at how oil impacts Ecuador’s well-being. As long as it is an extractivist state that depends on oil, it will be hard for Ecuador to prioritize nature over oil. The U.S. Energy Information Administration’s Country Analysis Brief of Ecuador reveals that oil “represented 76% of the country’s total energy consumption in 2016” (U.S. Energy Information Administration 1). Additionally, “The oil sector accounts for more than half of the country’s export earnings” (U.S. Energy Information Administration 2). Crude oil is also Ecuador’s “primary export responsible for 35 percent of its total exports in 2019” (Smith). These statistics reveal the importance of oil to Ecuador and explain why Yasuni National Park’s protection is seen as a secondary priority compared to oil. The area of the park that was previously protected through The Yasuni ITT initiative holds “an estimated 4 billion barrels of oil reserves” (U.S. Energy Information Administration 4). The initiative to keep the oil in Yasuni National Park in the ground failed because of this economic importance that is placed on petroleum.

The Yasuni National Park controversy also highlights the problems that arise when the government is the one in control of land use, instead of the Indigenous people that know how to care for the land. There needs to be an alternative way of viewing conservation. Indigenous people have the knowledge to both live on and conserve land simultaneously and deserve to have the relationship with their ancestral land recognized as playing an important part in the dialogue of conservation. While the goal of having these parks under the control of the government is ultimately conservation, the government cannot always separate extractivist goals with those of conservation. It is also worth noting that “A 2017 study found that deforestation rates in the Amazon are five times lower inside indigenous peoples’ territories and conservation units than they are outside” (Samper). Data thus shows the benefits of having Indigenous groups having control over the land instead of the self-interested state or industries. Since Indigenous knowledge is crucial, this also implies that governments must work with Indigenous communities. As Annie Sneed highlights, “governments and scientists need to be allies with these communities by amplifying their voices, including them in scientific assessments, recognizing territorial rights and creating partnerships between scientists and indigenous and local communities” (Sneed). Indigenous peoples can be the solution to the climate crisis if only their contributions towards climate conversations are recognized and valued.

Indigenous peoples should not be left out of conversations that directly affect them and the land they reside on. The government may prefer to believe that they have the best interests for the land in mind, but these interests are undeniably tied to economic interests that seek further development. As Marcus Colchester, a senior policy advisor at the Forest Peoples Programme, points out: “‘Underpinning the dominant conservation approach in the 20th century was the idea that ‘wilderness’ must be kept uninhabited’” (Zaitchik, “How Conservation Became

Colonialism”). This is seen in many national parks around the world. But this approach is wrong. Indigenous people know how to conserve, as they did it centuries before Westernization. Additionally, scientific studies show that “Nature is healthier on the more than quarter of the world’s lands that Indigenous people manage or own” (Sengupta et al.). Allowing governments to control all aspects of conservation is the incorrect approach. If anything, Indigenous people have to be invited to places where conversations about conservation take place. In order to make progress towards conservation, Ecuador needs to recognize the value of Indigenous peoples.

The conflicting goals of the state reappear as the state tries to preserve and exploit nature simultaneously. Dialogue in regard to conservation must include Indigenous peoples. In order to ensure that Indigenous and environmental rights are protected, there needs to be the inclusion of all groups affected. The increased visibility of Indigenous groups improves the way conservation is viewed and approached. The goal of conservation lies in the conception of Buen Vivir, and Indigenous people have the key to conservation and thus need their contributions to the dialogue on conservation to be visible and acknowledged by the government.

The Value of Unity and Political Mobilization

The political mobilization of Indigenous groups both draws attention to Indigenous problems in Ecuador and achieves solutions. The Ceibo Alliance demonstrates what can be accomplished when multiple Indigenous groups unite under a common goal. The Ceibo Alliance was formed in 2017 and is composed of the Siona, Waorani, Kofan, and Secoya (Zaitchik, “Ecuador’s Ceibo Alliance”). The Ceibo Alliance works to protect their land from exploitation and destruction. One of their successful methods of defense is their mapping strategy. The Waorani have created an interactive map that “depicts historic ceremonial and battle sites,

ancient cave-carvings, jaguar trails, medicinal plants, animal breeding grounds, important fishing holes, creek-crossings, and sacred waterfalls” (Zaitchik, “Ecuador’s Ceibo Alliance”). It is part of the method of showing the importance and value of their land. It emphasizes the idea that their land is sacred no matter what monetary value is attached to it. It characterizes nature and illustrates its importance, whereas most other maps do not include those details. In addition, Waorani activist and leader Nemonte Nenquimo explains the importance of these maps. She insists that the maps of their territory are tools that can be used to “explain what we have within the community, within the territory ... so that the world can see how we live” (Aguilar, “Ecuador: Waorani people map”). It is important to highlight the character of nature. Ecuador acknowledges the rights of nature, but there is a failure to understand what nature is and signifies to these Indigenous communities.

The Kofan were also able to successfully map their territory and use it to win a court case to protect their land from mining in 2018. Their victory of preventing mining concessions was greatly due to the work they did with the partnership of the Ceibo Alliance. Nicolas Mainville explains that “they had documented every step made by the miners through rigorous and systematic monitoring using high tech mapping, filming, archiving all evidence, and then they used legal tactics to pressure every single level of government to act to stop the operations” (Mainville). This strategy helped them to develop evidence of right violations, and “helped build a solid case against a negligent concession-granting system” (Mainville). Illustrating the importance of their territory helps the Indigenous communities that make up the Ceibo Alliance better advocate on behalf of their land. Importantly, these strategies help the Ceibo Alliance educate others on the importance of nature and illustrate for others why they need protection. Indigenous people have the strength and motivation to fight for themselves and their rights that

are guaranteed in the Constitution. They have methods and strategies that are extremely helpful in achieving their goals of environmental and Indigenous protection.

Another, even bigger, example of what can be accomplished when Indigenous groups unite is seen when looking at the work of CONAIE over the past few decades. Founded in 1986, CONAIE, which stands for the Confederation of Indigenous Nationalities in Ecuador, plays a large role in the political mobilization of Indigenous peoples. In 2019, President Lenin Moreno agreed to an IMF loan deal and austerity measures that would greatly impact Indigenous groups (Human Rights Watch; Ricci). This resulted in a weeks-long protest led by CONAIE in Ecuador's capital that eventually resulted in an end to the deal. In a statement released by CONAIE, they state that their "movement aims to reverse the Ecuadorian government's closed-door agreement with the International Monetary Fund and protect our territories from the social, economic and environmental fallout of the accelerated extractive agenda that will follow" (Amazon Frontlines "Statement from Ecuador's").

CONAIE's political mobilization efforts helped create a sphere in politics for Indigenous activists to enter. Christine E. Schulz writes that, due to the formation of CONAIE, "Throughout the early 1990s, indigenous leaders were running for local and regional office, and winning" (Schulz). CONAIE demonstrates what Indigenous people can achieve in Ecuador when they mobilize and make their demands visible. Indigenous and non-Indigenous people alike were able to unite under a common goal that would attempt to transform the politics of Ecuador and make their voices heard. The Ceibo Alliance showcased what can happen when different groups unite, but CONAIE demonstrates the power Indigenous groups have when everyone unites under one common agenda. Protests organized by CONAIE or simply participated in by Indigenous people have the capability to change the country and influence decisions. Indigenous political

mobilization is integral in the fight to protect and preserve the rights of nature and Indigenous peoples in Ecuador.

The 2021 Presidential Election further highlights the power of Indigenous mobilization. Ecuador's Indigenous political party, Pachakutik, cannot be ignored by those in power, despite the party not even making it into the runoff election. Pachakutik became "the second-largest presence in Congress and transform[ed] the agendas" of the remaining presidential candidates in the race (Cabrera and Kurmanaev). This led both candidates to promise "to enact greater environmental safeguards and to grant Indigenous communities more say over the extraction of resources" (Cabrera and Kurmanaev). The "new generation of leaders", including Pachakutik leader Yaku Pérez, are "challenging their countries' historical reliance on large mining, oil and agribusiness projects for economic growth" (Cabrera and Kurmanaev). In addition to their influence on the president's agenda, Pachakutik and their allies "soared from nine to 43 congressional seats in the election, becoming kingmakers in the country's fractured 137-seat legislature" (Cabrera and Kurmanaev). Achieving Indigenous goals through electoral means is drastically different from the tactic used a year and a half earlier to pressure President Lenin to repeal the subsidy cuts. Both mobilizations show that there are multiple ways to advocate for change in society. Indigenous people are more capable of changing the political landscape if they band together, as demonstrated by both CONAIE and the Pachakutik political party. Political mobilization is a huge part of increasing the visibility of Indigenous groups. It is necessary to recognize the work of Indigenous groups in formulating policy and agendas that shape the nation. Indigenous mobilization is also an integral part of protecting both their rights and the rights of nature. The Constitution would not be what it is today, including both Buen Vivir as an

accepted understanding of development and nature having recognizable rights, if it were not for the political engagement of Indigenous groups.

Legal Pathways and their Utilization

The 2008 Constitution outlines the rights of Indigenous peoples and nature, and there are multiple legal pathways to both apply and implement these rights (Kauffman and Martin). First, there are four legal tools through which the rights of nature are applied. The first two are the civil and constitutional courts. Lawsuits in these courts “ask that damaged ecosystems be restored (a form of restitution for Nature) and/or that preventive action be taken to avert expected future violations” (Kauffman and Martin 133). The third tool is the criminal court, which punishes “crimes against biodiversity and against natural resources, including water, soil, and air” (Kauffman and Martin 133). And then the fourth tool is administrative action by a government agency. This tool is seen in the cases where “the Ministry of Environment has invoked RoN to justify punitive action (e.g., fines, removal of licenses, and eviction of companies from ecological reserves) and restoration of damaged ecosystems” (Kauffman and Martin 133),

There are also four pathways for implementing the rights of nature. The first pathway is civil society pressure. This way is “most successful when the cases are not nationally politicized, for example, by challenging the state’s extractivist agenda” (Kauffman and Martin 136). Additionally, “judges in civil society lawsuits have generally ruled that economic development activities are protected by individual rights (e.g., property rights, right to work) that supersede Nature’s rights” (Kauffman and Martin 134). This once again demonstrates the state’s competing goals of resource exploitation and recognition of the rights of nature. The second pathway is instrumental government action, and the third pathway is bureaucratic institutionalization

(Kauffman and Martin 136-8). Lastly, the fourth pathway is the application by the judges (Kauffman and Martin 138). This fourth pathway is very important for implementing the rights of nature since it must be seen as a norm in the legal community. Judge's applications of these rights develop "as a norm within Ecuador's legal epistemic community, empowering judges to apply RoN even when claimants do not originally ask for it" (Kauffman and Martin 138). Courts and government action set precedent, ensuring that nature's rights are protected and implemented. The more court cases involve the rights of nature, the more these rights will be normalized and recognized in the legal field.

The first court ruling that explicitly related to the rights of nature was not until 2017. This ruling was in response to the actions of an oil company that polluted land in the Esmeraldas. The ruling, however, did little to actually protect the environment or the people living there. This is evident when considering that "A month after the judge has made his sentence public—as of Feb. 12, 2017—Los Andes Oil palm company continues to dump chemicals and boiling waste water into the river and extract palm oil from plantation fruit" (Hazlewood and The Communities of LaChiquita and Guadualito). The ruling did not result in any substantial consequences that could remediate the harm caused to nature. Alejandro Pérez explains that "Two years have passed since the Jan. 2017 ruling of Esmeraldas' Provincial Court of Justice, and those affected in La Chiquita are still waiting for the judge to order the provision of drinking water, among other compensations" (Pérez). Additionally, "Isaha Ezequiel and his neighbors say two years have passed and they have seen no progress towards court-mandated reparations" (Pérez). The first explicit rights of nature case is important because it shows the faults of the nation. Ecuador has failed to follow through on the case's sentence. The groups affected have not been helped despite their victory. This example shows how legal pathways sometimes fail. Even though

navigating through the court systems and winning does not always guarantee positive outcomes, there are not many alternative options for Indigenous groups to turn towards. Ecuador needs to follow through on its promises to groups that have been harmed by the extractivist agenda of the nation. It is up to the government to make sure orders are carried out in order to protect its citizens and demand accountability from those at fault, which means holding themselves accountable.

On April 26th, 2019, the Indigenous Waorani won their case in Pastaza Provincial Court to stop the auctioning off of their territory subject to drilling. The Waorani's case demonstrates the power of Indigenous people when they utilize the courts to defend their constitutionally granted rights. After an appeal from the government, the appellate court upheld the sentence, "represent[ing] a major setback for the Ecuadorian Government, and mark[ing] a watershed moment in the indigenous movement to permanently protect their rainforest from oil drilling, and other extractive projects" (Amazon Frontlines, "Waorani People Win"). It showcases the Indigenous group's desire to preserve their land and protect both their rights and the rights of nature. The Waorani recognized the rights guaranteed to them by the Constitution and were able to use the Constitution to keep drilling off their territory. It is also worth noting that "Key to the victory was the Waorani's global digital campaign to warn the Ecuadorian government that 'Waorani territory is not for sale', which has built a global movement of solidarity with the struggle" (Amazon Frontlines, "Waorani People Win"). Increasing the visibility of their plight against the oil industry was an integral part of their success and demonstrates what happens when the world supports Indigenous causes. This highlights what Indigenous people can accomplish when they utilize the media and draw attention to their cause. The Indigenous peoples' fights for their rights and land can lean on global support. Indigenous groups can also

lean on international organizations, such as Amazon Frontlines, to further the cause and draw more international attention to situations in the Amazon. It was societal pressure, one of the pathways for implementing the rights of nature, that influenced the decision and helped the Waorani's case.

The Waorani argued that the auctioning of their land could not happen because of the absence of free and informed consultation. Loki explains that “the ruling voids the consultation process with the Waorani that was undertaken by the Ecuadorian government in 2012, which the judges said violated the Waorani's right to free, prior and informed consultation and to self-determination” (Loki). As mentioned in the 2008 Constitution, consultation is a key right granted to Indigenous peoples by the state. The judges ruled that the consultation process in this case was not correctly executed. Instead, “the consultation was done in bad faith, failed to properly inform the Waorani of the risks and impacts of the government's plans to auction off their territory, and didn't take into consideration Waorani culture or traditional decision-making ‘methods’” (Loki). An important aspect of this victory is the Constitution, as the right to consultation proved to play an important role in the victory of the Waorani. In this case, the Constitution proved to be more than just empty words, as the Waorani were able to utilize it as a tool to achieve change. When the consultation process is not properly implemented, Indigenous groups are able to argue against it. This case is also significant since “the judgment should also be interpreted to mean that ‘the State cannot auction off the territories of the six other indigenous nations in the southern Ecuadorian Amazon, which were subject to the government's same flawed and unconstitutional prior consultation process’” (Riederer). The Waorani case shows what Indigenous people can achieve when they utilize legal support and lean on global solidarity.

On April 7, 2020, “an estimated 15,000 barrels of crude oil gushed into two of the country’s most important rivers following the rupture of two major oil pipelines in Ecuador’s northern Amazon” (DTE Staff). This spill did not receive the media coverage it deserved, as it heavily affected the Kichwa people in the region and disrupted their livelihoods while in the beginning of the Covid19 pandemic. The Kichwa case stresses the effects and devastation caused by the oil industry, showing how courts are not always the answer. One of the most eye-opening aspects of this devastation was how the spill could have been avoided. In 2001, “scientists and environmental groups joined Indigenous protests to warn of the catastrophic risks” of building the Heavy Crude Pipeline (Anderson). Since the beginning stages of the pipeline’s operation, “there have been 72 spills along its 300-mile route” (Anderson). The spills were preventable. Ecuador’s former Minister of Energy and Mines, Alberto Acosta, insists that ““These spills are part of the business of an oil industry that is predicated on breaking the ecological equilibrium”” (Anderson). His comment shows the extent of Ecuador’s goals as an extractivist state. Acosta further explains that ““Our enormous dependence on extractive industries trumps all social and environmental considerations”” (Anderson). It is difficult to put the rights of nature before the economy. What happened to the Kichwa community should not be seen as an isolated incident, but it also should not be normalized. It is understandable to want to place the economic needs of a country before the needs of the environment, but one cannot forget the inherent values of nature. One also cannot forget about the Indigenous communities that were incredibly impacted by the massive spill, which “has affected over 2,000 indigenous families and left an estimated 120,000 people without access to the river’s fresh water” (DTE Staff). This event demonstrates how Indigenous groups are affected by the catastrophes that result from the carelessness of the state and private oil companies.

In this case, the Indigenous groups were not able to achieve justice through a lawsuit. “In his verdict, the judge said it was undeniable that an oil spill had affected the communities living along the river. But he rejected the lawsuit, saying his court - which processes constitutional rights violations - was the incorrect legal venue” (Brown). This ties in with the different methods of implementing the rights of nature. The ecosystem was undeniably negatively impacted by the spill, yet no rights were proven to have been violated. As stated previously, lawsuits in constitutional court cases “ask that damaged ecosystems be restored... and/or that preventive action be taken to avert expected future violations” (Kauffman and Martin 133). Even while acknowledging the damages done by the spill, the judge refused to recognize the need for reparation that were demanded by the Indigenous communities. Instead, “He told the plaintiffs to try administrative or criminal avenues” (Brown). This means that these affected communities will have to hope for administrative action to be taken by the government to restore the ecosystem or try their luck in the criminal court to punish the company’s actions.

This case is a clear demonstration that not all legal tools are successful. It also directly demonstrates the harm and destruction faced by Indigenous groups in Ecuador’s Amazon at the hands of the oil industry. There is a need for further protection that is at odds with the economic agenda of the country. The spill was disastrous, yet there is no one being held accountable. This situation highlights the dire need to emphasize the importance of the rights of nature and also the rights of Indigenous groups who are guaranteed safety under the Constitution. But the Kichwa are not protected. The oil spill, as well as the hundreds of oil spills that occurred in the region over the past half century, shines light on the need for more respect for Indigenous people and their land. The existence of conflict between the state’s goals and the rights of nature is clear. The courts sometimes side with the state instead of recognizing the rights of nature, and court

decisions can stress the value of nature's rights and the rights of Indigenous groups that are embedded in the Constitution and support Buen Vivir, playing a role in conservation.

Why do Indigenous Rights and the Rights of Nature Matter?

The Amazon rainforest supports all of us and is so much more than just its economic value. Indigenous people in the Amazon are the most affected by the decimation of the rainforest and lack real choices in determining what happens with their land. Indigenous peoples do not always have much of a say in what happens to their land. Alexandra Ameida explains to Daniela Aguilar that Indigenous groups were told to “sign a paper that said, ‘If this block is tendered, the community will receive \$5 million in exchange’” (Aguilar, “Ecuador: Waorani people map”). Indigenous communities are faced with few other alternatives. With that in mind, “some indigenous people have, out of desperation, joined those who view the forest as nothing more than a collection of commodities easily exploited for short-term commercial gain” (Zaitchik, “How Conservation Became Colonialism”). The economic interests of the extractivist state prevail. Biologist Kelly Swing appears to agree that Indigenous groups have few options, stating that in her experience, they ““get manipulated into accepting anything the oil company wants”” (Goldman). Swing further explains that Indigenous communities are offered resources to further persuade them to allow them access to their territory, but ““the financial incentive is for companies to follow through on as little as possible to save themselves money in the long run”” (Goldman). Indigenous people are manipulated and bribed in order to consent to their destruction of their land. The inherent value of land is not recognized unless the value is monetary, which goes against Buen Vivir. Indigenous peoples, whether or not they have intentions to protect themselves and their territory, are often given very few alternatives. This is how the land is able

to be exploited by the oil industry and the state. Alternative income sources are scarce, especially considering the alternatives tend to be agricultural-based and also harm the environment. This is a problem with no easy solution. Indigenous peoples' consent has to be fully and freely given, and a bribe does not seem to equate to free and informed consent. They lack real choices in determining what happens to the land and they face manipulation by people more powerful than themselves.

Indigenous leader Nemonte Nenquimo appears as one of the most outspoken activists when it comes to Indigenous rights. She affirms that ““The government’s interest in oil is not more valuable than our rights, our forests, our lives”” (Loki). What it ultimately comes down to is the health and safety of Indigenous peoples and their way of life. By keeping the interests of Indigenous peoples in mind, the interests of nature are also kept in mind. The two interests are intertwined. The capacity to keep the oil industry off of their lands is an additional reason for why Indigenous rights matter. Mario Criollo, the president of the Sinangoe people, when explaining why he is against mining concessions, states that ““Our interest in [the concession upriver from Sinangoe] isn’t about obtaining more land...It’s not that we want to cut that forest down ourselves, or mine for gold, or exploit oil. It’s just that we don’t want the water to be contaminated”” (Hill). Criollo’s statement highlights the impact exploiting nature has on Indigenous people in Ecuador’s Amazon. Decisions that neglect the rights of nature and those of Indigenous groups for the financial gain of the drilling and oil industries immensely affect the groups living there and deny them basic rights such as the right to clean water. Awane Ahua, an elderly member of the Waorani community, also adds insight into why protecting and preserving the Amazon is important, insisting that there is no need for the oil in the earth to be exploited (Aguilar, “Ecuador: Waorani people map”). Her reasoning is connected more to the ideas of

Buen Vivir than to the ideas prevalent in capitalism. She explains that ““We have enough wealth, we have enough with everything you see around you... We are not poor, we are rich in resources and it is unnecessary for anyone to come here to build because it is already built and that is enough for us”” (Aguilar, “Ecuador: Waorani people map”). Awane’s ideas of what constitutes wealth showcases the diversity of ways to quantify what being wealthy and having a good life entail. For Indigenous people, it can be difficult to understand the reasoning of a capitalist whose focus is on the good of the extractivist state, while, for a capitalist who seeks to exploit the land for resources, it can be hard to understand Awane’s conception of wealth.

Conclusion

The struggles faced by the Indigenous peoples in the Ecuadorian Amazon are not unique. Worldwide, Indigenous peoples fight to protect their rights and the rights of nature. Tuntiak Katan, a member of the Ecuadorian Shuar people in the Amazon, explains that ““We are well-coordinated with our brothers and sisters from Indonesia, the Congo, communities in the Arctic and from the Pacific”” (Greenfield). Indigenous peoples’ fight for further recognition of their rights and the rights of nature is a global occurrence, including in the United States. Jon Waterhouse claims that Indigenous peoples in the United States ““continue to teach and lead by example, from the restoration of eel grass and salmon by the Samish Nation, to the bison reintroduction by the Kainai Nation of the Blackfoot Confederacy, to the restoration of traditional 800-year old Hawaiian fish ponds.”” This shows that people in the United States do not necessarily have to look at Indigenous groups abroad for lessons on how to care for nature in their own country. People can look towards the local Indigenous populations for the knowledge and leadership required to protect and preserve the planet. Additionally, Indigenous people in

Alaska, the Gwich'in, are currently struggling to protect their land in the Arctic Refuge from oil exploration. The hardships faced by the Gwich'in mirror the hardships faced by the Indigenous groups in Ecuador's Amazon region. It will be difficult for the Gwich'in to protect the refuge, as the US District Court upheld the sale of an area of the refuge for oil development since the plaintiffs "have not established that they are likely to suffer imminent irreparable harm' from the sale as it will not in itself trigger any immediate on-the-ground exploration" (Morin). Courts, as demonstrated in both this case and in Ecuador, do not always keep what is best for the environment in mind. On June 1, 2021, The Interior Secretary Deb Haaland, an Indigenous woman, suspended oil drilling leases in the refuge; however, the suspension will not result in blocking drilling in the region unless Haaland's agency finds legal grounds for doing so (Davenport et al.).

Meanwhile, In New Zealand, the Māori tribe of Whanganui were able to establish legal rights for their river, Te Awa Tupua, in 2017 (Roy). The tribe considers the river to be their ancestor, and "The new status of the river means if someone abused or harmed it the law now sees no differentiation between harming the tribe or harming the river because they are one and the same" (Roy). This recognition of the river as essentially a human being is similar to the rights of nature that are guaranteed in Ecuador's 2008 Constitution. The rights of nature are thus recognized in other cases besides Ecuador, and these rights are strengthened when Indigenous groups fight for further respect. In addition to facing similar struggles worldwide, Indigenous peoples also must deal with effects of climate change, something that affects them disproportionately "since they often live in environmentally sensitive ecosystems – such as the Arctic region, tropical forests, grasslands, mountains, or deserts – and frequently depend on surrounding biodiversity for their physical, material, cultural and spiritual well-being" (The

World Bank). By looking at examples of Indigenous fights for nature outside of Ecuador, the realization that nature is important everywhere, not just in the Amazon, is gained. International examples add important insight into the conversation of environmental protection and Indigenous rights. Ecuador's 2008 Constitution is unique in the sense that it was the first constitution in the world to recognize and outline inherent rights of nature. Many other countries do not have this same framework that enables Indigenous groups and environmental activists to advocate for nature in the same way. Other countries can learn from Ecuador. Ecuador is an example of what can be achieved when Indigenous rights and the rights of nature are codified, as well as what flaws and mistakes arise when there are conflicting economic goals and interests.

The Constitution's recognition of Indigenous rights and the rights of nature play an important role in ensuring the Amazon is protected, but the conflicting goals of the state complicate the protection. Indigenous peoples in Ecuador's Amazon region advocate for both their rights and the rights of nature that are embedded in the 2008 Constitution. Ecuador's dilemma stems from the inability to value the rights of nature while relying heavily on extracting natural resources. The inherent value of the rainforest is explained in the notion of Buen Vivir. And, since conservation is valuable and should be in the hands of Indigenous peoples, Indigenous rights should not be undermined. The narratives of the Indigenous peoples demonstrate how legal pathways are used and how it is Indigenous peoples who are at the frontlines, motivated to work together to fight against their collective injustice and fight for the planet.

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