The Rights of Nature as a Bridge between Land Ownership Regimes

The Potential of Institutionalized Interplay in Post-Colonial Societies

Abstract

Despite the Rights of Nature's (RoN) growing use and promising perspectives, doubts remain on their effect on environmental protection efforts. By analysing two initiatives in post-colonial societies, we argue that they can influence the creation of institutionalized bridges between differing land ownership regimes. Applying the methodology of inter-legality, we examine the Ecuadorian Constitution of 2008 as well as the Ugandan National Environment Act 2019. We identify five normative spheres that influence land ownership regimes. Whereas the established Ecuadorian RoN do have an institutionalized effect on the national system, their more recent Ugandan counterpart offer the potential to go in the same direction.

Keywords

Rights of Nature, Ownership, Inter-Legality, Legal Pluralism, Post-Colonialism, Indigenous Legal Traditions, Chthonic Legal Traditions

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1. THE RIGHTS OF NATURE AND OWNERSHIP

Have you noticed that the emotions involved are not the same when you're asked to defend nature - you yawn, you're bored - as when you're asked to defend your territory - now you're wide awake, suddenly mobilized?

Bruno Latour[1]

The *Rights of Nature* (RoN) are 'calling for acknowledgement of the fact that [non-human Nature has] rights that humans are morally [and legally] obligated to respect and protect'.[2] This increasingly popular concept attempts to address the Earth's manifold ecological crises[3] by challenging, among others, anthropocentric mindsets. So far, at least 157 legal RoN initiatives have emerged across 29 countries.[4] Despite its mounting use, Darpö, in a recent report for the European Parliament, does not believe that RoN are a 'paradigmatic revolution for environmental law'.[5] For him, the movement faces the same problems as conventional protection efforts, including insufficient access to justice or the financial and other difficulties of representing Nature. We agree with Darpö that RoN are not a silver bullet to save Nature. However, as we will argue in this article, RoN can be a promising ally in bridging conflicting land ownership regimes.[6] Our study is guided by the following research question:

How do the Rights of Nature affect land ownership regimes in post-colonial societies?

The ownership of Nature has long been identified as an important factor within environmental protection efforts.[7] Relatively new is the consideration in connection with RoN. Boyd sees the

[1] B. Latour, *Down to Earth: Politics in the New Climatic Regime* (Polity Press, 2018), p. 8. We are aware of the debate surrounding Latour's eurocentrism. We nevertheless chose one of his quotes to introduce an article debating non-Western perspectives to underline the deeply rooted connections between ownership and protection. The quote stands symbolically for the Rights of Nature themselves, i.e. an indication that parts of Western thought are becoming increasingly aware of and willing to reconsider their dated belief systems.

[2] D. Boyd, *The Rights of Nature: A Legal Revolution That Could Save the World* (ECW Press, 2017), p. 219. RoN is a relatively recent movement, beginning in the early 1970s. See C.D. Stone, 'Should Trees Have Standing? Toward Legal Rights for Natural Objects' (1972) 45 *Southern California Law Review*, pp. 450-501. For recent introductions see D.P. Corrigan & M. Oksanen (eds), *Rights of Nature: A Re-examination* (Routledge, 2021), C.M. Kauffman & P.L. Martin, *The Politics of Rights of Nature: Strategies for Building a More Sustainable Future* (MIT Press, 2021), and M. Tănăsescu, *The Rights of Nature as Politics* (Routledge, 2022). Even though some authors rightfully claim conceptual differences, for this article, we see like-minded concepts including Rights of Nature, Earth Jurisprudence, Wild Law, or Earth-Centred Law as synonymous.

[3] For an overview of some crises see W. Steffen et al., 'Planetary boundaries: Guiding human development on a changing planet' (2015) 347(6223) *Science*, pp. 736-47.

[4] The numbers were taken from the UN Harmony with Nature Law List on 30 November 2021. Available at http://www.harmonywithnatureun.org/rightsOfNature/.

[5] J. Darpö, *CAN NATURE GET IT RIGHT? A Study on Rights of Nature in the European Context* (European Parliament Committee on Legal Affairs, 2021), p. 50. We are aware that Darpö's comments consider the position of RoN within the EU. The premise of his criticism to which we refer to, however, is applicable to the RoN movement as a whole.

[6] We use a very broad definition of ownership throughout this article, i.e. the 'right to use, possess, and dispose of property'. (E.A. Martin (ed), *A Dictionary of Law* (Oxford University Press, 2003), p. 349). We treat region-specific alternatives as synonymous. Our focus lies on the ownership of land in particular, as it underlines the competition between territorial claims.

[7] Some examples include E. Brubaker, *Property Rights in the Defence of Nature* (Routledge, 1995) and T. Steinberg, *Slide Mountain: Or, The Folly of Owning Nature* (University of California Press, 1996). For a more recent analysis see F. Obeng-Odoom, *The Commons in an Age of Uncertainty: Decolonizing Nature, Economy, and Society* (De Gruyter, 2020).

vision of Nature as property as one of 'three damaging ideas' that stand as the root for the 'ongoing use and misuse of other animals, species, and nature'.[8] Brendon looks at private property, reconceptualizing it 'as a relationship between and among members of the Earth community'.[9] Bradshaw discusses an extension of property rights holders to include non-human animals.[10] Kauffman et al. reject a complete abandonment of property, reflecting upon an interplay between RoN, property, and markets instead.[11]

We expand these reflections with a geographical focus on post-colonial societies where, historically, varying understandings of land ownership have frequently clashed. This is due to, at times, fundamentally opposing understandings of Nature. While colonising normative spheres have largely reproduced an anthropocentric concept of land ownership, colonised ones have offered non-anthropocentric alternatives. Chthonic legal traditions stand exemplary for the latter.[12] National and international efforts[13] are increasingly considering the perspectives of a global chthonic population of 476,6 million.[14] While they represent little more than 6 % of humanity, their share in Nature is disproportionately higher.[15] In 2018, Garnett et al. estimated that chthonic peoples 'influence land management across at least 28.1% of the [world's] land area'.[16] 20 % of that territory overlaps with at least 40 % of global protected area and intact

[8] Boyd 2017. xxi-xxvii The other two are anthropocentrism and an unlimited-growth economy.
[9] P.D. Burdon, *Earth Jurisprudence: Private Property and the Environment* (Routledge, 2017), p. 225.
[10] K. Bradshaw, *Wildlife as Property Owners* (University of Chicago Press, 2020).
[11] Kauffman et al., n. 2, pp. 228-30.
[12] Since we are aware that the concept can be perceived as contentious within an African context, we maintain the term 'indigenous' only in citations. To avoid any misinterpretation, throughout the text, we will use 'chthonic', a term coined by Edward Goldsmith which describes "people who live ecological lives [...] in or in close harmony with the earth." E. Goldsmith, *The Way: An Ecological World-View* (University of Georgia Press, 1992), pp. xvii. We consequently follow Glenn who speaks about 'chthonic legal traditions' and 'chthonic peoples'. H.P. Glenn, Legal Traditions of the World: Sustainable Diversity in Law, 2004), pp. 59-91. As compared to other concepts, such as 'indigenous', or 'aboriginal', chthonic's comparatively low popularity makes the reader intentionally stumble over it on each occasion. Our intention is to remind of and keep open the debate about the difficulty of such homogenizing terminologies. For an evaluation see M.A. Peters, 'Aborigine, Indian, indigenous or first nations?' (2017) 49(13), *Educational Philosophy and Theory*, pp. 1229-34.
[13] Next to a variety of national laws, the most important international advances include the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), the *American Declaration on the Rights of Indigenous Peoples, the United Nations Permanent Forum on Indigenous Issues* (UNPFII), the *Expert Mechanism on the Rights of Indigenous Peoples* (EMRIP), and the *UN Special Rapporteur on the Rights of Indigenous Peoples* (UNSR). Anonymous, 'Indigenous Peoples' (The World Bank, 2021), available at: https://www.worldbank.org/en/topic/indigenouspeoples. Academic efforts include G. Raygorodetsky, *The Archipelago of Hope: Wisdom and Resilience from the Edge of Climate Change* (Pegasus Books, 2017), H. Fukurai & R. Krooth, *Original Nation Approaches to Inter-National Law* (Palgrave Macmillan, 2021), A. Roothaan, Indigenous, Modern and Postcolonial Relations to Nature: Negotiating the Environment (Routledge, 2019), and A. Ross, K.P. Sherman, J.G. Snodgrass, H.D. Delcore & R. Sherman, *Indigenous Peoples and the Collaborative Stewardship of Nature* (Routledge, 2011).
[14] R.K. Dhir et al., *Implementing the ILO Indigenous and Tribal Peoples Convention No. 169: Towards an inclusive, sustainable and just future* (International Labour Organization, 2019), p. 139.
[15] Many authors see the concept's roots in the legal traditions of chthonic peoples. These include but are not limited to T. Berry, *The Great Work: Our Way Into the Future* (Harmony/Bell Tower, 1999) and C. Cullinan, *Wild Law: A Manifesto for Earth Justice* (Green Books, 2003). While there are indeed many striking similarities, most RoN initiatives have emerged independently of chthonic influences (Harmony with Nature, n. 4). An explanation for this missing consideration might be the contemporary absence of chthonic legal traditions in most parts of the world.
[16] S.T. Garnett et al., 'A spatial overview of the global importance of Indigenous lands for conservation' (2018) 1 *Nature Sustainability*, pp. 369-74, at 370.

landscapes. Put differently, chthonic peoples, while accounting for little more than 1/16 of the global population, manage 2/5 of the world's protected land.[17]

A major limitation to making efficient use of this disproportionately high share is the ambiguous 'influence on land management' which can range from full governance to occasional consultancy.[18] Furthermore, the modern multiplicity of territorial claims by various normative spheres creates unavoidable interactions with other land ownership regimes. A clear vision in this regard becomes crucial, not only for chthonic peoples.[19] As Roothaan describes such protective pragmatism, "survival requires countering the scramble for resources".[20]

With these connections and overlapping interests in mind, we compare two cases, namely the 2008 Ecuadorian Constitution and the 2019 Ugandan National Environment Act. Whereas both countries share similar histories regarding their evolution of land ownership regimes, we compare the differing institutionalization[21] effects of their respective RoN initiative. To render manifest what we call the resulting 'bridge', we use inter-legality, a method formally considering all 'vantage points' which contribute to the creation of a specific law.[22] We consider this perspective as promising because it explicitly avoids enforcing or reproducing post-colonial legal hegemonies.[23] By scrutinizing every relevant normative sphere and evaluating its respective importance in a given context, inter-legality aims at heightening the legitimacy of any process.

Keeping such an inclusive approach in mind, we examine both case studies following a similar structure. We start with a general introduction and subsequently identify the relevant normative spheres that have historically influenced land ownership regimes. These are post-colonial political and legal systems, chthonic legal traditions, civil society organizations, international (soft) law, and local and multinational corporations. In a second step, we identify the creation

[17] Often cited, a 2008 World Bank Report claims that 80 % of remaining biodiversity lies within chthonic territories (C. Sobrevila, *The role of indigenous peoples in biodiversity conservation: the natural but often forgotten partners* (The World Bank, 2008), p. 5, 50). However, it remains unclear where this number comes from. The referenced 'World Resources Report 2005: The Wealth of the Poor – Managing Ecosystems to Fight Poverty' does not contain the relevant data.
[18] Not all chthonic legal traditions are beneficial for environmental protection efforts, some even clashing with them. See M. Tengö, 'Weaving knowledge systems in IPBES, CBD and beyond—lessons learned for sustainability' (2017) 26-27 *Current Opinion in Environmental Sustainability*, pp. 17-25. See also Glenn, n. 12, pp. 66-9.
[19] Clear ownership structures combat legal uncertainty and help with conflict management. See J.B. Alcorn, *Strengthen tenure security. Conflict-sensitive Adaptation: Use Human Rights to Build Social and Environmental Resilience* (Indigenous Peoples of Africa Co-ordinating Committee & IUCN Commission on Environmental, Economic and Social Policy, 2014). Various initiatives track the global advancement of regulated land ownership. Among them are http://www.landmarkmap.org/, https://rightsandresources.org/tenure-tracking/, https://www.landrightsnow.org/, and https://www.landcoalition.org/en/.
[20] Roothaan, n. 13, p. i.
[21] We conceive the concept of 'institutional' as both including and broader than law.
[22] J. Klabbers & G. Palombella, ‚Introduction: Situating Inter-Legality', in J. Klabbers & G.Palombella (eds), *The Challenge of Inter-Legality* (Cambridge University Press, 2019), pp. 1-20, at 2.
[23] The concept is increasingly used with regard to German legal hegemony in an EU context. For a recent debate see A. von Bogdandy et al., ‚GERMAN LEGAL HEGEMONY?'(MPIL Research Paper Series No. 2020-43).

of the RoN initiative. While we do find elements of a bridging function, we remain only cautiously optimistic with regard to future developments.

2. THE CHALLENGE OF INTER-LEGALITY

Legal pluralism is the 'idea that in any one geographical space defined by the conventional boundaries of a nation state, there is more than one "law" or legal system'.[24] Whereas legal positivist theories 'emphasize the practical or conceptual separation of state law from other normative contexts',[25] legal pluralism appeals for a more dynamic and interactive understanding of a fragmented reality. The approach recognizes the dominance of international and national law but takes into account also the overlapping influence of customary norms, soft law, or unofficial regulations and guidelines from NGOs or private actors.[26]

A variety of theories describe the interactions within legally pluralist societies. One such model has been described by Swenson, who identifies four archetypes, i.e. combative, competitive, cooperative, and complementary legal pluralism, each describing a different range of relationships between state and non-state actors.[27] While such frameworks certainly have some explanatory value, they fail to challenge the primacy of state law. The existing legal hierarchy remains intact, consequently perpetuating possible injustices.

The primacy of state law is one dominant form of political framing. While it is impossible to circumvent the framing of a given society, it is crucial to recognize, acknowledge, and reflect upon this bias. With the framework of 'inter-legality', Klabbers and Palombella attempt to formalize such a consideration. Instead of defining a theory which regulates jurisdiction a priori, inter-legality analyses a case study, identifies the overlapping normative spheres, and judges their relevance 'from within'. Similar to other pluri-legal theories, it recognizes how various normative orders are interwoven. Different from them, it goes beyond the idea of 'self-contained systems'.[28] Inter-legality does not try to establish or reproduce hierarchies or dependencies of autonomous normative spheres, e.g. international law trumping national legislation, as this could impede just applications. The authors use HIV/Aids as an example to illustrate their point. They reckon that interpreting the issue 'as a matter of intellectual property

[24] M. Davies, 'Legal Pluralism', in P. Cane & H.M. Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (Oxford University Press, 2012), pp. 805-27, at 805.
[25] ibid. 806.
[26] ibid. 809-12. Legal pluralism in connection with RoN has attracted some scholarship. H. Dancer, 'Harmony with Nature: towards a new deep legal pluralism' (2020) 53(1) *The Journal of Legal Pluralism and Unofficial Law*, pp. 21-41. A. Pelizzon, 'Earth laws, rights of nature and legal pluralism', in M. Maloney & P. Burdon (eds), *Wild Law - In Practice* (Routledge, 2014), pp. 173-88.
[27] G. Swenson, 'Legal Pluralism in Theory and Practice' (2018) 20(3) *International Studies Review*, pp. 438-62.
[28] Klabbers et al., n. 22, 1.

law is not problematic per se, provided it results in a decent solution. If not, people will suggest it should have been approached as a health issue, or a human rights issue, or perhaps even a security issue'.[29]

The authors set three defining elements for inter-legality to operate. First, 'it must concern a variety of norms from different systems; second, these are all valid within their own legal spheres; and third, they are in principle all applicable to a particular set of facts'.[30] Following this, 'no layer can stand apart; they are not fossils but, instead, exist in dynamic interplay with each other'.[31] Through this, 'interconnectedness [becomes] itself a legal situation'.[32] As a result, any 'legal solution must [...] be considered normatively acceptable, for when other frames are available, the chosen frame must be able to convince on grounds of fairness or justice – lest it be considered a mere exercise of naked power'.[33]

Klabbers et al. repeatedly emphasize how relevant spheres are inductively identified. For them, 'the very point of inter-legality is that the law will possibly indicate the solution to a dispute [...] by showing the relevance of - and the caring for - all the relevant normativities actually controlling the case'.[34] *Relevance* is admittedly a vague concept. Rather than a weakness, we see this feature as a strength of the method. Inter-legality does not exclude any influence beforehand. On the opposite, it 'forces' the consideration of all normative spheres. The closing of 'legal black holes' consequently strengthens a 'culture of justification'.[35] Eventually, a 'lame verdict',[36] as Palombella calls an unjust decision, becomes increasingly unlikely.

In order to account for the constantly changing inter-legal reality of post-colonial societies, in what follows, we place great emphasis on the thorough elaboration of each case study's historical context. While it is impossible to account for every single legislation and norm change throughout the complex histories of the societies in question, we employ representative elements and point to further information in the footnotes.[37] Eventually, we deem those spheres relevant that have or had a tangible impact, i.e. identifiable normative power on land ownership regimes.

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[29] ibid. 11.
[30] ibid. 10.
[31] ibid. 12.
[32] G. Palombella, 'Theories, Realities, and Promises of Inter-Legality: A Manifesto', in J. Klabbers & G. Palombella (eds), *The Challenge of Inter-Legality* (Cambridge University Press, 2019), pp. 363-90, at 378.
[33] Klabbers et al., n. 22, 12.
[34] ibid. 3. 'In other words, it speaks to contacts between legal orders or spaces, but does not itself decide what counts as a legal order.' (ibid. 10).
[35] S.E. Biber, 'Inter-Legality and Surveillance Technologies. Looking at the Demands of Justice beyond Borders' (Working Paper No. 06/2021), pp- 7-8.
[36] Palombella, n. 32, 369.
[37] By considering research from cultural anthropology, among others, we hope to ensure the most adequate representation of these realities.

To summarise, inter-legality offers a promising perspective on a legally pluralist society by (1) not assuming the primacy nor the independence of any particular set of rules, as well as (2) recognizing and formalising the complexity of relevant norms applicable to a particular case, whatever their source. Following this approach, inter-legality does not consider the post-colonial legal order as an undisputed point of departure. Rather, by keeping a focus on land ownership regimes and the RoN initiatives in question, we hope to identify a middle ground between the various influences at play.

3. CASE STUDY ANALYSIS

The legal reality of global RoN initiatives is vastly heterogeneous, making adequate case selection crucial for meaningful comparisons. We use Hirschl's 'most similar cases' principle, which compares 'cases that have similar characteristics [...] on all variables or potential explanations that are not central to the study, but vary in the values on the key independent and dependent variables'.[38] We have identified two RoN initiatives in Ecuador and Uganda that can be compared according to the principle.

Whereas the two countries are located on different continents, they still share significant aspects of legal ownership that allow comparative analyses. Both countries have a colonial past (from the Kingdom of Spain and the United Kingdom, respectively) and a post-colonial non-Western pluri-ethnical present. Chthonic and non-chthonic legal traditions are widely used and practiced. The abundance of natural resources has frequently caused disputes concerning land ownership and clashes between different interest groups. Environmental depletion led both countries to adopt, among others, nation-wide RoN initiatives. The key difference considers the timing of implementation. In contrast to Uganda, we consider Ecuador a country with established RoN. 'Established', here, does refer to both institutional success as well as relatively early implementation.[39] The Constitution of Ecuador entered into force in 2008, while the National Environmental Act of Uganda was adopted in 2019. We thus compare the institutional impact (or lack thereof) of a long-running RoN initiative with one without.

[38] Rather than 'cherry picking' initiatives and only offering a 'concept formation through multiple description', we want to reach 'the ultimate goal of social inquiry: theory building through causal inference'. R. Hirschl, 'The Question of Case Selection in Comparative Constitutional Law', (2005) 53(1) The American Journal of Comparative Law, pp. 125-55, at 131-4.
[39] Legal RoN initiatives are commonly perceived to have started with a municipal ordinance in Tamaqua Borrow in the USA in 2006. See Kauffman et al., n. 2, 14.

3.1 ESTABLISHED RIGHTS OF NATURE IN ECUADOR

The Republic of Ecuador[40] is a country on the Pacific west coast of South America, bordering Colombia in the north and Peru in the south and east. Even though Ecuador is the third-smallest nation on the continent, due to its unique geography, it counts as one of Earth's 17 megadiverse hotspots.[41] In order to preserve the many ecologically sensitive areas, the country has signed various international treaties. Nevertheless, deforestation, desertification, and pollution through extractive and other industries keep jeopardising meaningful protection efforts.[42] Consequently, Ecuador serves as a prime example for the ongoing struggle between (ab)using national resources and protecting them.

Since the country declared its independence in 1830, Ecuador has been a civil law presidential republic.[43] Between 2007 and 2017, President Rafael Correa governed the country and oversaw 'a reorganization of the state around citizen's revolution'.[44] He did so, among others, through the draft of the current Constitution.[45] Since it introduced constitutional RoN to the world, our focus lies upon this document. In order to better contextualize this process, in the following, we identify all relevant normative spheres relating to land ownership regimes.

Ecuador is made up of three major geographical areas, i.e. the coastal plan (Costa), the inter-Andean central highlands (Sierra), as well as the flat to rolling eastern jungle, more commonly known as the Amazon rainforest (Oriente).[46] Each area has distinct features that go beyond geography. One regards the distribution of a population of approximately 17,5 million. Most of them live along the coast and the intermontane basins and valleys. A considerably smaller part calls the Amazon their home. Among them are 10 of the country's 14 chthonic groups, a minority totalling 1,1 million.[47] They are remnants of a history dating back aeons.[48] Ecuador has ratified the 1989 ILO Convention 169 on Indigenous and Tribal Peoples (ILO 169) and signed both the 2007 United Nations Declaration on the Rights of Indigenous Peoples

[40] Several chthonic translations of the name exist. However, since the modern borders do not align with the traditional ones, descriptions of former territories appear more suitable. The Quechua, for instance, use *tawantinsuyu* to describe a region which covers parts of Peru, Bolivia, Ecuador, Colombia, Chile, and Argentina. T.L. Ajacopa et al., *DICCIONARIO BILINGÜE/Iskay simipi yuyayk'ancha: Quechua - Castellano, Castellano - Quechua* (Our Project, 2007), p. 114.
[41] R.A. Mittermeier, 'Primate Diversity and the Tropical Forest: Case Studies from Brazil and Madagascar and the Importance of the Megadiversity Countries', in E.O. Wilson (ed), *Biodiversity* (National Academy Press, 1988), pp. 145-54.
[42] CIA, 'Ecuador' (The World Factbook, 2021), available at: https://www.cia.gov/the-world-factbook/countries/ecuador/.
[43] J.A. Fuentes, *The Basic Structure of the Ecuadorian Legal System and Legal Research* (New York University School of Law, 2021), available at: https://www.nyulawglobal.org/globalex/Ecuador1.html.
[44] M. Tănăsescu, 'Rights of Nature, Legal Personality, and Indigenous Philosophies' (2020) 9(3) *Transnational Environmental Law*, pp. 429-53, at 6.
[45] Asamblea Nacional Constituyente de Ecuador de 2007-2008, 'Constitución de la República del Ecuador' (República de Ecuador, 2008), available at: https://www.oas.org/juridico/pdfs/mesicic4_ecu_const.pdf. When citing the document, we will refer to the unofficial English translation provided by Georgetown University, available at: https://pdba.georgetown.edu/Constitutions/Ecuador/english08.html.
[46] CIA Ecuador, n. 42.
[47] D. Mamo, *The Indigenous World 2021* (International Work Group for Indigenous Affairs, 2021), p. 380.
[48] E.A. Mora, *RESUMEN HISTORIA DEL ECUADOR* (Corporación Editora Nacional, 2008).

(UNDRIP) as well as the 2016 American Declaration on the Rights of Indigenous Peoples. In addition, the country's Constitution puts particular emphasis on 'plurinationality'.[49] However, overall protection efforts remain insufficient.

A crucial feature of the three geographical areas regards their distinct land ownership regimes. Said division began with the first European-American encounters in the early 16th century. Upon their arrival, in order to enhance the agricultural productivity of the Inca Empire, the Spanish conquistadores implemented a system of private ownership called *latifundio,*[50] replaced by the similar *huasipungo*[51] during the early 20th century. These systems gave huge plots of land, *haciendas*, to catholic parishes and people of European descent, while forcing chthonic peoples to work on them through a contracted debt called *concertajes*.[52] Ongoing abuses led to increasing tensions. Even though various agrarian reforms attempted to improve the situation,[53] injustices persist.

Not all geographical areas were reformed equally. As for the early 21st century, most parts of the Sierra are privately owned. In the Oriente, large plots of land are in public hand, with the remaining areas falling under a predominantly communal tenure system. The Costa applies a mixture of the three. We will focus on the Oriente since it contains most of the country's biodiversity and natural resources, a fact which historically led to many conflicts.

Up until 2016, the 1936 *Ley de Tierras Baldías y Colonización* defined all uncultivated terrain as wasteland (tierras baldías). This law was aimed specifically at the vast areas of the Amazon. With the exception of the ancestral territory of chthonic peoples,[54] huge parts of the rainforest became the property of the *Instituto Nacional de Desarrollo Agrario* (INDA).[55] INDA divided most of the Amazon into square areas. Each plot was left untouched until either chthonic communities or private parties showed interest. For the latter, INDA was entitled to sell the plot to the highest bidder.[56] The 2008 Constitution seeks to counter this increasingly lucrative privatisation process. Art. 408 defines natural resources as 'the unalienable property of the State'.[57] Any products deriving from them should be 'in strict compliance with the

[49] Asamblea Nacional Constituyente de Ecuador de 2007-2008, n. 45, Art. 6, 257, and 380(1).
[50] The Editors of Encyclopaedia Britannica, 'Latifundium' (Britannica, 2021), available at: https://www.britannica.com/topic/latifundium.
[51] M. Becker, *Indians and Leftists in the Making of Ecuador's Modern Indigenous Movements* (Duke University Press, 2008), pp. 251-4.
[52] ibid.
[53] T.M. Tamayo, 'La política agraria en Ecuador (1965-2015)' (2018) 70(112) *Revista Economía*, pp. 89-120.
[54] ibid. Section 1.
[55] National Institute for Agrarian Development.
[56] Tamayo, n. 53, Capítulo II.
[57] Ecuador distinguishes between public, private, communal, state, associative, cooperative, and mixed property (Asamblea Nacional Constituyente de Ecuador de 2007-2008, n. 45, Art. 321).

environmental principles set forth in the Constitution'. Art. 250 goes even further and emphasizes that the Amazon should be treated in compliance with the so-called *Sumak Kawsay*. In order to understand this concept and any possible conflict of interest, we need to take a look at two of Ecuador's major alternatives to the dominant land ownership regimes.

The first concept is the chthonic *Pachamama* (Mother Earth). Since pre-Hispanic times, Andean peoples have worshipped the world embodied in this goddess-like figure, considered to be a conscious living being. In present times, they make ritual offerings to Pachamama, in order for her to provide everything humans need to survive. The relationship is one of mutual giving, an equilibrium being of utmost importance.[58] This harmonious interaction is also described by a second concept, *Buen Vivir* (Good Living). No single definition exists, as the idea differs in its various social and historical contexts. It generally counters the dominant Western ideology of development, overlapping with many aspects of degrowth, but also mixes chthonic with non-chthonic legal traditions, e.g. by referring to and being inspired by Pachamama. One of the most famous versions of Buen Vivir is the Ecuadorian *Sumak Kawsay*. Originating from the country's biggest chthonic group, the Quechua, Sumak Kawsay strives for a way of living which does not disturb the balance with Nature. Humanity should live in harmony among themselves as well as with their surroundings.[59] Crucially for our investigation, none of these concepts regards Nature as particularly ownable, focusing instead on the importance of an overall equilibrium. Such a rather abstract perspective is the strength and weakness of both concepts, as it can be instrumentalized to protect as well as destroy Nature.[60]

The logic underlying Pachamama and Buen Vivir is increasingly recognized internationally. In the 2005 *Moiwana Community vs. Surinam*, the Inter-American Court of Human Rights (IACtHR) writes that 'in the case of indigenous communities who have occupied their ancestral lands in accordance with customary practices – yet who lack real title to the property – mere possession of the land should suffice to obtain official recognition of their communal ownership'.[61] Countering such promising decisions is a harsh reality. Haga claims no reliable system of registration of chthonic ancestral land is in place, likely the result of complex and time-consuming procedures and widespread corruption.[62] Together with the aforementioned Ley de Tierras Baldías, many chthonic ownership issues must be arduously proven on a case-

[58] D. di Salvia, 'Pachamama', in H. Gooren (ed), *Encyclopedia of Latin American Religions* (Springer, 2015).
[59] E. Gudynas, 'Buen Vivir: Today's tomorrow' (2011) 54(4) *Development*, pp. 441-7.
[60] By invoking Article 407 of the Constitution, President Correa justified a 2009 mining project by referring to economic revenues needed to ensure a certain level of *Buen Vivir*, thus reducing the concept to its material component: reduction of poverty, access to education, health care, etc. C.M. Kauffman & P.L. Martin, 'Can Rights of Nature Make Development More Sustainable? Why Some Ecuadorian lawsuits Succeed and Others Fail' (2017) 92, *World Development*, pp. 130-42.
[61] *Moiwana Community v. Suriname*, Judgment, 15 June 2005, Inter-American Court of Human Rights, p. 131.
[62] K. Haga, 'Land Tenure, Security, and Reform in Ecuador' (Master's thesis, University of Pittsburgh, April 1995).

by-case basis.[63] In addition to this, land grabbing as well as illegal activities further complicate the situation.[64] These practices are powerfully opposing equally distributed ownership practices.

Following this contextualization, we can take a closer look at the elaboration of the RoN initiative in question, i.e. articles 71, 72, and 73 of the 2008 Constitution.[65] Ecuadorian traces of legally recognizing Nature as a subject of rights date back to the mid-1990s. However, it was not until the mid-2000s that political leaders picked up the idea. Initially, President Correa was a strong advocate for chthonic and environmental causes.[66] However, he changed this approach throughout the years of his presidency and particularly during the constitutional drafting process, placing more emphasis on economic development and extractive industries.[67] The ousting of senior figures during the constitutional drafting stands symbolically for the deep divisions which persisted even within the ruling party.[68]

A similarly heterogeneous field can be observed beyond the political sphere.[69] The aforementioned concepts of Pachamama and Buen Vivir/Sumak Kawsay were introduced in the document.[70] They were promoted by, among others, CONAIE,[71] Ecuador's largest chthonic organization. They issued a proposal to the assembly,[72] which does not mention RoN. It was another Ecuadorian NGO, Fundación Pachamama,[73] which advanced the idea in collaboration with the US-Based Community Environmental Legal Defence Fund (CELDF), the latter being a major player in global RoN initiatives.[74] Through the dissemination of strategic press articles, the focus on RoN gathered international recognition even in its early stages. As a consequence

[63] Anonymous, 'Ecuador' (Land Links, 2011), available at: https://www.land-links.org/country-profile/ecuador/.
[64] P. Cisneros, 'Ecuador', in C. Heck & J. Tranca (eds), *La realidad de la minería ilegal en países amazónicos* (Sociedad Peruana de Derecho Ambiental, 2014), pp. 143-73.
[65] Between its independence in 1830 and 2008, Ecuador changed its constitution, on average, every nine years. The current text is the 20th in the country's history. 'The intellectual genealogy [...] in the Ecuadorian case can be traced back to the work of Stone, and particularly to its reinterpretation in the works of Berry and Cullinan, as well as the practical legal advocacy of the Community Environmental Legal Defence Fund (CELDF)' (Tănăsescu, n. 44, 7.). See also n. 15.
[66] The 2008 Constitution can be seen as the socialist response to the neoliberal ones from 1979 and especially 1998. J.J. Paz, M. Cepeda, ,Visión histórica de las constituciones de 1998 y 2008' (institut gouvernance, 2008), available at: http://www.institut-gouvernance.org/es/analyse/fiche-analyse-449.html.
[67] During the ceremony celebrating the adoption of the constitutional text, President Correa declared that the 'major dangers' against his 'civil revolution' do not originate from the opposition, but from 'childish leftism, ecologism [and] indigenism'. E. Gudynas, 'La ecología política del giro biocéntrico en la nueva Constitución de Ecuador' (2009) 32, *Revista Estudios Sociales*, pp. 34-47, at 44.
[68] This included Alberto Acosta, President of the Constitutional Assembly and RoN-advocate. ibid. 41.
[69] ibid 40-1.
[70] By mentioning both Nature and Pachamama to have 'the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes', the Constitution recognizes post-colonial and chthonic perspectives (Asamblea Nacional Constituyente de Ecuador de 2007-2008, n. 45, Art. 71).
[71] *Confederación de Nacionalidades Indígenas del Ecuador* (Confederation of Indigenous Nationalities of Ecuador).
[72] Available at: https://www.yachana.org/earchivo/conaie/ConaiePropuestaAsamblea.pdf.
[73] Following protests of a water privatization law in 2009, the NGO was one of many closed down by the government. It could only reorganize after the departure of President Correa in 2017. For the history see https://www.pachamama.org/advocacy/fundacion-pachamama.
[74] As Tănăsescu rightfully observes, the specific formulation is inspired by Cullinan and Berry (Tănăsescu, n. 44, 8). See also n. 15.

of their eventual inclusion, the Constitution contained both anthropocentric and ecocentric elements. This made RoN 'one set among an [...] array of rights, and therefore nature should be understood as one entity among a range of entities to be considered'.[75]

Upon its implementation, opinions were divided. The vast majority of European constitutionalists consulting the assembly viewed RoN as an 'eccentricity'.[76] Multinational companies, seeking to exploit the vast resources of the country, oil in particular, also disapproved of business-inhibiting environmental protection. Tănăsescu sees a reproduction of Western hegemonies since the local RoN were modelled on the idea of universal human rights.[77] Nina Pacari, chthonic leader, former Ecuadorian foreign minister, and current judge of the country's Constitutional Court, counters this perspective and views RoN as 'a natural outgrowth of the relationship of humans to Mother Earth'.[78]

The opponents' strength became clear in the immediate legal aftermath. Instead of following up and strengthening constitutional RoN with secondary laws and institutions, mining and development projects were prioritized.[79] Nevertheless, as Kauffman et al. point out, predominantly low profile court litigations allowed for some sort of backdoor institutionalization.[80] With regard to legal ownership regimes, two developments helped the institutional effect of RoN. These are the 2014 Penal Code as well as a 2015 ruling by Ecuador's Constitutional Court.

Esmeraldas is a province on the north-eastern coast of the country. In 2011, a local court cited constitutional RoN to address ongoing illegal mining activities. It specifically allowed the state to destroy private property to protect RoN. Three years later, this decision was institutionalized in title IV, chapter 4 of the country's 2014 revision of its Penal Code which identifies a variety of crimes against Nature. Article 551 allows for the destruction of 'heavy machines', i.e. private property.[81] The following year, the country's Constitutional Court strengthened this statement.[82] On 20th May 2015, RoN and Buen Vivir were declared to be 'transversal'. Citing Art. 83, point 6 and Art. 395, point 2 of the Constitution, the judges decided that the actions of

[75] ibid. 7.
[76] Gudynas, n. 67, 41.
[77] Tănăsescu, n. 44.
[78] N. Pacari, ‚Naturaleza y Territorio desde la Mirada de los Pueblos Indigenas', in A. Acosta & E. Martinez (eds), *Derechos de la Naturaleza: El Futuro Es Ahora* (Abya Yala, 2009), pp. 31-8, at 35.
[79] Kauffman et al., n. 60, 133.
[80] For an analysis on the success of Ecuadorian RoN cases, see ibid. For a non-exhaustive list of cases see www.derechosdelanaturaleza.org.
[81] Asamblea Nacional, 'Artículo 551. - Órdenes especiales', (2014) *Registro Oficial N° 180*', pp. 1-144, at 89. 'While the original intention was to consolidate state control over mining, the law theoretically can now be used in other circumstances.' (Kauffman et al., n. 60, 133).
[82] Corte Constitucional del Ecuador, 20 May 2015, *Sentencia No. 166-15-SEP-CC, Caso No. 0507-12-EP*, pp. 1-28, at 10-2.

both state and individuals need to be in accordance with RoN. This resulted in 'RoN affect[ing] all other rights, including property rights'.[83]

Even though the original focus concerned the private property of miners, the subsequent ruling enlarged it to all other constitutional provisions. This consequently institutionalized an effect on the aforementioned 'land ownership articles' 250 and 408. While it needs to be seen how far this institutionalization can go, Ecuadorian RoN have already resulted in a bridge between various normative spheres, in particular, dominant anthropocentric and dominated non-anthropocentric ones. Even though this does not represent Darpö's 'paradigmatic revolution', Ecuadorian RoN have indeed altered national land ownership regimes.

3.2 RECENT RIGHTS OF NATURE IN UGANDA

The Republic of Uganda[84] is a landlocked country in East-Central Africa, bordering South Sudan to the north, the Democratic Republic of Congo to the west, Tanzania and Rwanda to the south, and Kenya to the east. Many of these borders lie along mountain ranges, valleys, lakes, or rivers, circling a central plateau tilting from the south to the north. Lake Victoria, the world's second-largest freshwater lake and source of the Victorian Nile, is representative of an abundance of hydric resources, which are increasingly depleted.[85] Since 72 % of the workforce is employed in agriculture, the well-being of a total of 44,7 million people highly depends on the country's substantial natural resources.[86] This dependence is likely to continue in the future since, with a median age of 16,7 years, the country has got one of the youngest and fastest-growing populations in the world.[87]

In 2019, Uganda became the first African nation to adopt a legal RoN initiative by amending Section 4 of its National Environmental Act. Based on it, one year later, the Buliisa District Council recognized the customary laws of the Bagungu Peoples to access their sacred natural sites and territories, thus marking a smaller, regional initiative. It is too early to sufficiently judge any impact. However, by contextualising the complex history first and the process of the initiative second, we are able to draw some tentative conclusions about the normative spheres at play.

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[83] Kauffman et al., n. 60, 137.
[84] The name Uganda was given in 1894 and derives from the Buganda Kingdom. G. Mwakikagile, *Ethnicity and National Identity in Uganda: The Land and Its People* (New Africa Press, 2009), p. 9.
[85] T.M. Rwakakamba, 'How Effective are Uganda's Environmental Policies? A Case Study of Water Resources in 4 Districts, With Recommendations on How to Do Better' (2009) 29(2) *Development*, pp. 121-7.
[86] CIA, 'Uganda' (The World Factbook, 2021), available at: https://www.cia.gov/the-world-factbook/countries/ecuador/. M. Lyons, 'Uganda' (Britannica, 2021), available at: https://www.britannica.com/place/Uganda.
[87] Anonymous, 'Uganda Population' (Worldometer, 2021), available at: https://www.worldometers.info/world-population/uganda-population/.

Historically, the people living in the area of what is now known as Uganda can be traced back to two main ethnic groups, the Bantu and the Nilotic.[88] Around 1830, Arab and Swahili traders entered the region, British explorers in search of the spring of the Nile followed 30 years later. Upon the arrival of protestant and catholic missionaries at the end of the 1870s, Uganda was experiencing early signs of colonisation. Following the 1888 *General Act of the Berlin Conference*, the foreign domination became official with the establishment of the Imperial British East Africa Company, subsequently divided into the Uganda Protectorate (1894) and East Africa Protectorate (1895, now Kenya).[89]

The Victorian Nile, flowing from the southeast to the northwest, split the Ugandan Protectorate into roughly two parts. The aforementioned Nilotic peoples lived to the north of the river, whereas the Bantu lived to the south. While the northern groups were organized in clans, the southern ones formed larger states or 'kingdoms' as Europeans would call them.[90] Throughout the time of European occupation, Buganda was the most dominant and prominent kingdom, establishing strong yet volatile ties with the colonial rulers. Consequently, the Western settlers considered the cooperative south as more civilized than the resisting north, investing disproportionately more in its infrastructure and economy.

While remaining in the Commonwealth of Nations, Uganda declared its independence from the United Kingdom in 1962. Nevertheless, the cleavage between north and south as well as within various ethnic groups remained a major source of resentment, tensions, and quarrels, leading to some successful and many more attempted coups.[91] The division continues until today, with current President Yoweri Museveni being from the south and his main opponent throughout the 1980s, 90s, and early 2000s, the infamous Lord Resistance Army under Joseph Kony, originating from the north.

During his decades-long rule,[92] Museveni was unable to significantly better the situation of a country, where only one in five people have access to electricity.[93] Nevertheless, he oversaw the adoption of the most recent Constitution of 1995, the National Environmental Statute of the same year, as well as the Land Act of 1998, which represent the basis for the country's current official land ownership regimes.

[88] Mwakikagile, n. 84.
[89] The contemporary borders of the country were finalised in 1914.
[90] Kingdoms are made up of chiefdoms who themselves consist of clans.
[91] These volatile times included a temporary abolishment of all kingdoms between 1966 and 1993.
[92] Museveni took power in 1986. As of 2021, he is the 6th longest-serving non-royal national leader in the world.
[93] As of 2021, over 50 % of Ugandans live in poverty and over 30 % are unemployed. J. Losh, 'Uganda joins the rights-of-nature movement but won't stop oil drilling' (National Geographic, 2021), available at: https://www.nationalgeographic.com/environment/article/uganda-joins-the-rights-of-nature-movement-but-wont-stop-oil-drilling.

Article 237 of the Constitution, with specifications from the Land Act, determines that the citizens of Uganda can hold land under four tenure systems. (1) *Freehold Tenure* corresponds closest to the British-imported idea of land ownership, where an individual is a registered owner for life, being able to use or sell the land as he[94] wishes. (2) *Mailo Tenure* applies mainly in the central territory of the Buganda kingdom. Even though the rights are the same as for the freehold system, the owners must respect the interests of both registered occupants and *Kibanja* (customary owners). (3) *Leasehold Tenure* describes rented ownership for a period of three years or more. Such a temporarily limited form of ownership is the only way in which non-citizens are allowed to own land in the country. It is also the one employed by the government to secure transnational land deals with companies from China or India, among others. This practice of land grabbing is used for a variety of industries, ranging from oil drilling to monoculture plantations of non-native species. The latter include palm oil trees or eucalyptus and pine as a lucrative carbon offset.[95] Despite this increasing practice, the most common form of landholding in the country remains the fourth system. (4) *Customary Tenure* describes land ownership deriving from the norms and traditions of a traditional community.[96]

As a means of regulation, since 2015, Uganda issues so-called Certificates of Customary Ownership (CCOs). However, since there is no clear definition of 'customary view', the CCOs' impact is rather ambiguous, with the state frequently undermining them.[97] The problem is that the same laws that acknowledge customary authorities allow the government to nullify them and exclude all human activity by declaring an area as protected land.[98]

For Uganda, protected land is a double-edged sword, a fact which becomes evident with regard to the country's forests. Between 1990 and 2015, the proportion of nationally protected forests, as opposed to privately owned ones, grew from 30 % to 55 %.[99] While this might indicate an increase in protection efforts, this change is the direct result of different rates of deforestation. Supposedly protected trees (minus 31 %) were simply cut at a slower rate than privately owned

[94] Given Uganda's very low positioning on the UN Gender Inequality Index, any landowner is most likely a man. United Nations Development Programme, 'Gender Inequality Index (GII)' (Human Development Reports, 2021), available at: http://hdr.undp.org/en/content/gender-inequality-index-gii.
[95] J.K. Maiyo, 'Transnational land deals, agrarian change and land governance in central Uganda' (Ph.D. thesis, VU University Amsterdam, Feb. 2018).
[96] Uganda Consortium on Corporate Accountability, *Handbook on Land Ownership, Rights, Interests and Acquisition in Uganda* (UCCA, 2018).
[97] M. van Leeuwen, 'Renegotiating Customary Tenure Reform - Land Governance Reform and Tenure Security in Uganda' (2014) 39, *Land Use Policy*, pp. 292-300, at 299.
[98] Art. 2 + 32 of the Land Act 1998; Art. 46 of the National Environment Statute 1995.
[99] Since the late 1960s, the overall size of protected areas in Uganda has remained largely unchanged. For an overview see https://www.protectedplanet.net/country/UGA.

ones (minus 76 %).[100] Much of the clearing derives from the need for timber and agricultural fields.[101] However, a growing population with little to no access to electricity also cuts increasing amounts of firewood.[102] To protect parts of the land from being used by a growing agricultural population, national legislation led to 'a common experience of state-induced landlessness and historical injustices caused by the creation of conservation areas'.[103]

On the one hand, in 2020, the overall forest cover has bounced back to 12,5 %, from a low of 9 % in 2015.[104] Uganda has also committed to many international climate change mitigation strategies.[105] On the other hand, even though the Constitution mentions chthonic peoples, it does not stipulate their explicit protection.[106] Uganda has never ratified the ILO 169 and was absent during the voting of the UNDRIP. Despite the country's officially combined legal system,[107] British-induced common law frequently overrules local customary law. Such a track record is concerning for a country that counts 65 ethnicities speaking 30 different languages.[108]

Across many parts of sub-Saharan Africa, the traditional bond between chthonic peoples and Nature takes the form of custodianship, i.e. a person or a group of persons holding responsibility for a part of Nature. For the emerging African RoN movement, custodianship rooted in customary chthonic legal traditions plays a crucial role, as it unites the recognition of chthonic with Nature rights. One major step towards this double goal was taken in 2017 when the African Commission on Human and Peoples' Rights (ACHPR) passed Resolution 372 which regarded the 'Protection of Sacred Natural Sites and Territories'.[109] Herein, the ACHPR emphasized the importance of recognizing traditional land ownership.[110]

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[100] Anonymous, 'Environment Information Network Bulletin' (NEMA, 2019; available at: https://nema.go.ug/sites/all/themes/nema/docs/Uganda%20Environment%20Information%20Network%20Bulletin%20Issue%201.pdf, p. 3.

[101] Forestry Outlook Study for Africa, 'Country Report - Uganda' (FOSA, 2020), available at: http://www.fao.org/3/AC427E/AC427E07.htm.

[102] E. Biryabarema, 'Uganda reverses forest destruction by inviting in ... loggers' (Reuters, 2020), available at: https://www.reuters.com/article/us-uganda-deforestation-idUSKBN2681IB.

[103] Mamo, n. 47, 156. For an exemplary case study see https://indigenousafrica.org/the-benet/. Additional problems derive from the necessity to get 'licences' to carry out virtually all activities in the national forests. (See, for instance, Art. 32 of The National Forestry and Tree Planting Act, 8/2003).

[104] However, it is still far from the 24 % of 1990.

[105] Anonymous, 'Ugandan Government Steps Up Efforts to Mitigate and Adapt to Climate Change' (The World Bank, 2019), available at: https://www.worldbank.org/en/news/feature/2019/05/31/ugandan-government-steps-up-efforts-to-mitigate-and-adapt-to-climate-change.

[106] However, Article 32 imposes a mandatory duty on the state to take affirmative measures in favour of historically disadvantaged and discriminated groups. Mamo, n. 47, 156.

[107] J. Oloka-Onyango, 'AN OVERVIEW OF THE LEGAL SYSTEM IN UGANDA', Presentation at the China-Africa Legal Forum, 25 Nov. 2015. Available at: https://www.researchgate.net/publication/341776281_AN_OVERVIEW_OF_THE_LEGAL_SYSTEM_IN_UGANDA.

[108] Uganda Bureau of Statistics, *The National Population and Housing Census 2014* (Uganda, 2016), p. 71-2.

[109] ACHPR/Res.372(LX), of 22 May 2017, on the Protection of Sacred Natural Sites and Territories, available at: https://www.achpr.org/sessions/resolutions?id=414.

[110] The resolution is representative of an overall shift towards more inclusive, inter-legal land ownership regimes.

The increasing awareness of alternative conceptions of land ownership led to the African continents' first and second RoN initiatives. The first one formed in 2019 when the Ugandan Parliament passed a revision of their 1995 National Environment Statute.[111] In its introduction, the newly called National Environment Act (NEA) states its goal 'to repeal, replace and reform the law relating to environmental management in Uganda'.[112] Among others, they amended Section 4, which now recognizes Nature's 'right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution'. The inclusion has been made possible by 'three years of sustained advocacy' by a compound of NGOs and interest groups. They include Ugandan-based Advocates for Natural Resources and Development (ANARDE),[113] the National Association of Professional Environmentalists (NAPE), and the African Institute for Culture and Ecology (AFRICE). International support came from the Open Society Initiative for Eastern Africa (OSIEA), the African Biodiversity Network (ABN), as well as the UK-based Gaia Foundation.[114]

The NEA RoN link back to the human right to a clean and healthy environment, as established in, among others, Art. 39 of the 1995 Constitution as well as Art. 24 of the African Charter on Human and Peoples' Rights, as well as Berry's interpretation of Earth Jurisprudence.[115] The country's second RoN initiative resides closer with local traditions. Adopted in late 2020, it is the first and, so far, only NEA follow-up regulation. The Buliisa District Council recognized the customary law of the Bagungu,[116] chthonic peoples who are part of the Bunyoro-Kitara Kingdom and live along the shores of Lake Albert[117] in western Uganda. The ordinance was initiated by the Association of Bagungu Custodians of Sacred Natural Sites, which already played an important role in the adoption of the ACHPR Resolution 372 three years earlier.[118] In order to address the deteriorating health of local ecosystems,[119] the ordinance is the first to implement said Resolution and legitimizes the *Balamansi* (Bagungu Custodians) to access their

[111] The 1995 version already protects customary interests in land and traditional uses of forests.
[112] *National Environmental Act 2019*, Legislation, 24 Feb. 2019, Parliament of Uganda, preamble.
[113] S. Nabwiiso, 'Environmentalists want 'Rights of Nature' added to new bill' (EABW News, 2018), available at: https://www.busiweek.com/environmentalists-want-rights-of-nature/. See also F. Tumusiime, 'Recognising Rights of Mother Earth: Entrenching Earth Jurisprudence in Uganda' (ANARDE, 2018), available at: https://anarde.org/img/pdf/Earth-Jurisprudence-in-Uganda.pdf.
[114] M.W. Hopewell, 'The Rights of Nature in Uganda: Exploring the Emergence, Power and Transformative Quality of a 'New Wave' of Environmentalism' (Master's thesis, University of London, Sept. 2019), p. 21.
[115] Anonymous, 'RIGHTS OF NATURE GAIN GROUND IN UGANDA'S LEGAL SYSTEM' (The Gaia Foundation, 2019), available at: https://www.gaiafoundation.org/rights-of-nature-gain-ground-in-ugandas-legal-system/. Similar to Ecuador, also Uganda refers to Berry, n. 15.
[116] In the most recent 2014 census, they made up less than 0,3 % of the total population (Uganda Bureau of Statistics, n. 108).
[117] Similar to Lake Victoria, also Lake Albert has a variety of chthonic names. F.D. Lugard, 'Travels from the East Coast to Uganda, Lake Albert Edward, and Lake Albert' (1892) 14(12) Proceedings of the Royal Geographical Society and Monthly Record of Geography, pp. 817-41.
[118] Anonymous, 'Custodians of Life: Reviving Culture and Nature in Uganda's Great Lakes' (The Gaia Foundation, 2019), available at: https://vimeo.com/373875301.
[119] H. Rhoades, 'Reviving nature and culture in Uganda' (Ecologist, 2020), available at: https://theecologist.org/2020/apr/02/reviving-nature-and-culture-uganda.

Mpuluma (sacred natural sites) as well as care for *Butaka* (Mother Earth) by carrying out their 'ancestral responsibility to protect the well-being of the land, and of the planet'.[120]

Since both NEA, as well as the Buliisa District Council ordinance, reflect very recent developments, the impact has yet to solidify. Most of them seem to show a repetition of Ecuador's early experiences, with resource extraction and economic development frequently trumping environmental protection efforts.[121] While it is impossible to predict future legal changes, the example of Ecuador shows that the institutionalization of RoN takes several years to consolidate. Important first steps, both on a national and local level, have nevertheless been taken. The next chapter will explore a more detailed comparison.

4. THE INTER-LEGALITY OF THE RIGHTS OF NATURE

The previous section identified two 'ecosystem[s] of inter-legality'[122] out of which national RoN initiatives emerged. For each case, we were able to identify five relevant normative spheres, namely: a post-colonial political and legal system, chthonic legal traditions, civil society organizations, international (soft) law, as well as local and multinational corporations. In the following, we compare their respective relevance.[123]

The biggest impact on land ownership comes from the first sphere, i.e. the post-colonial political and legal system. It represents the dominant authority that all other spheres have to compete with, regulating, among others, private, public, or common forms of ownership. Each country had its particular way of merging the imported law with local traditions. These historical arrangements keep influencing present realpolitik, with land ownership being one of the most prominent examples of ongoing conflicts within post-colonial societies.

The second sphere regards chthonic legal traditions. With 500 and 150 years respectively, each country's native population has endured centuries of ostracization.[124] A gradual increase in the recognition of chthonic rights, both on a national and international level, helps to acknowledge alternative land ownership regimes.[125] In particular, the Ecuadorian concepts of Pachamama and Sumak Kawsay/Buen Vivir do not focus on ownership but on a harmonious equilibrium

[120] *Resolution on The Customary Laws of Bagungu Custodian Clans by Buliisa District Council*, Legislation, 6 Nov. 2019, Buliisa District Local Government Council.
[121] Losh, n. 93.
[122] S.E. Biber & N. Hogic, 'Inter-Legality and Online States' (Working Paper No. 04/2021), p. 8.
[123] For sources see footnotes 1 to 122.
[124] Colonial rule, while differing in time, does not differ in intensity (Glenn, n. 12, 60).
[125] In the most recent 5th volume of the *State of the World's Indigenous Peoples*, focusing specifically on 'Rights to Lands, Territories and Resources', the United Nations Department of Economic and Social Affairs writes that states should not look at how chthonic peoples 'use lands in manners common to the majority society to establish property rights. On the contrary, if an indigenous community has utilized lands, territories and resources in ways characteristic to its culture, this has resulted in a property right'. UN ST/ESA/375, *State of World's Indigenous Peoples Vol. V* (United Nations, 2021), pp. 12-3.

between humanity and Nature. The Ugandan Bugundu peoples prefer custodianship provisions.[126]

The third sphere covers civil society organizations. In many countries, they stimulated cooperation among local stakeholders and spearheaded RoN initiatives. Their flexible form and local, regional, and international networking capacities help to efficiently bundle and effectively communicate the view of marginalized communities. Thus, these organizations are gaining increasing power in environmental decision-making processes.

The fourth sphere considers international (soft) law. The 'soft' is put in brackets as we also identified binding provisions, including ILO 169 as well as judgments by the Inter-American Court of Human Rights and the African Commission on Human and People's Rights. As such, both Ecuador and Uganda are legally bound to some degree. While an increase in both binding and non-binding international law document a shift towards a pluralistic understanding of societies and their relationship with the land, the nevertheless frequent lack of binding force considerably weakens their enforceability.

The fifth and final sphere regards local and multinational corporations. While we only briefly addressed economic markets and refrained from naming any concrete actors due to their vast numbers and varying lobbying power, we do not want to underestimate the sector's de facto influence on land ownership regimes. The sphere's preference for environmental protection-opposing/ignoring natural resource ownership has been extensively documented.[127]

Table 1 presents an overview of our findings.[128] With the exception of local and multinational organizations, the central fields list the relevant actors we identified for the respective normative spheres in our two cases. The first and second as well as most of the third column are predominantly situated within a national context, while parts of the third and fifth as well as the entire fourth one regard international influences. Law-wise, we only included the most pertinent examples. Three concepts, namely the South-American Pachamama and Sumak Kawsay/Buen Vivir as well as Berry's Earth Jurisprudence, remain within square brackets, as they cover more than one normative sphere.[129]

[126] Both the first as well as the second sphere contain elements which we at times termed customary law. Nevertheless, given its very general connotation, we chose to split them up.
[127] For an exemplary account of the corporate influence on property see Fukurai et al., n. 13, 125.
[128] While our attempt was to be as exhaustive as possible, we welcome future additions. The scientific sphere, for instance, has the potential to inform as well as influence the viability of land ownership regimes. Through some iterations of RoN, the normative sphere of Nature herself might also be considered.
[129] In order to maintain clarity, we assigned both to their most relevant sphere (chthonic legal traditions).

		RoN as a Bridge between				
Normative Spheres		Post-Colonial Systems	Chthonic Legal Traditions	Civil Society Organizations	International (Soft) Law	Local and Multinational Corporations
Case Studies	Ecuador 2008 Constitution	*Constitutional Assembly,* Presidency, Ley de Tierras Baldías y Colonización	[Pachamama] [Sumak Kawsay/ Buen Vivir] *[Earth Jur. et al.]*	*Fundación Pachamama, CELDF,* CONAIE	ILO 169, UNDRIP, ADRIP, Moiwana Community vs. Surinam	
	Uganda 2019 NEA (2020 Buliisa Ordinance)	*National Parliament*, Presidency, Land Act, *Buliisa District Council*	*Association of Bagungu Custodians of Sacred Natural Sites* *[Earth Jur.]*	*ANARDE, NAPE, AFRICE, OSIEA, ABN, Gaia Foundation*	ACHPR Resolution 372	

Table 1: The relevant normative spheres influencing land ownership regimes inside two post-colonial societies

Considering the normative spheres at play, we identify inter-legal ecosystems occurring on three different levels. The first one regards the direct interplay of various actors in the creation of the specific RoN initiative, including foremost civil society organizations, post-colonial authorities, as well as chthonic groups.[130] In Table 1, these direct stakeholders are presented in *italics*. The second ecosystem encompasses the changes of land ownership regimes on a local, national, as well as international level. Such a wider normative shift towards historical reconciliation and emancipation reaches beyond strictly RoN-related processes. Table 1 shows those in roman style. The third inter-legal ecosystem is not visualized as it describes the legal interpretation and implementation, i.e. the effect, of these more comprehensive provisions regarding land ownership regimes.

It is the third ecosystem where the comparison between the two case studies offers substantial insights. Ecuador, as an established RoN country, institutionalized a bridge between different property regimes on two occasions. In 2014, the national Penal Code was amended to include the possibility of destroying private property in order to protect RoN.[131] In 2015, this provision was widened when the Constitutional Court declared RoN as 'transversal', i.e. RoN affect property as well as all other rights.[132] The decision can be seen as being metaphorically

[130] 'When we are not invited to the table, it means we are on the menu.' S. Drissi, 'Indigenous peoples and the nature they protect' (UN Environment Programme, 2020), available at: https://www.unep.org/news-and-stories/story/indigenous-peoples-and-nature-they-protect.
[131] Asamblea Nacional, n. 81.
[132] Corte Constitucional del Ecuador, n. 82.

equivalent to a bridge that connects different normative spheres. Up until now, Uganda's more recent RoN have not reached this stage. While it is impossible to predict future legal developments, we can nevertheless identify reasons that speak in favour of RoN affecting institutionalized bridges between land ownership regimes.

First, even though the overall 'tide of history'[133] seems to still buoy the Westernization of global law - we should indeed not forget that the current understanding of the concepts of *Rights* and *Nature* themselves were dominantly shaped by western thought[134] - we can nevertheless observe in both countries an increase in the recognition of non-colonial land ownership regimes, stimulated either by international declarations, national reconsiderations, or both. RoN themselves have momentum as well, with more than half of global cases taking place since 2017.[135] Second, Ecuador's institutionalization was substantially aided by the judiciary. Contrary to common law regimes, judicial activism is less frequent in civil law countries.[136] This puts Uganda in a position that theoretically favours far-reaching rulings that could institutionalize RoN effects. The concept is generally inclined to be advanced by court decisions.[137] One example is India, where almost all RoN initiatives, including the highly publicized Ganga and Yamuna River judgements, were advanced by the judiciary.[138] Frank Tumusiime, a lawyer engaged with the Ugandan NGO ANARDE, emphasized that court decisions certainly represent one opportunity. However, local judges consulted shortly after the adoption of the NEA were varied about this possibility.[139] Thus, Tumusiime argues for extensive capacity-building coupled with secondary legislation, both elements that would encourage the creation of specific guidelines for all relevant stakeholders.[140]

Limiting these possible trajectories is the perseverance of historically dominant normative spheres. The combination of powerful extractive industries (sphere five) in combination with legal institutions that remain vulnerable to lobbying efforts and have traditionally favoured

[133] In an infamous case about land claims by the Australian Yorta Yorta peoples, the trial judge claimed that '[t]he tide of history has indeed washed away any real acknowledgment of [chthonic] traditional laws and any real observance of their traditional customs'. D. Ritter, 'The Judgement of the World: The Yorta Yorta Case and the 'Tide of History' (2004) 35(123) *Australian Historical Studies*, p. 107. It would take another couple of years to arrive at the conclusion that 'traditional laws and customs [...] evolve over time in response to new or changing social and economic exigencies to which all societies adapt as their social and historical contexts change'. M. Holmes, 'Victoria Developments - The Turning of the Tide: Native Title in Victoria' (2006) 25(1) *Australian Resources and Energy Law Journal*, p. 25.

[134] A potential mistrust is understandable since the use of rights themselves can be interpreted as a form of 'deep colonization'. The concept describes the act of 'conquest embedded within institutions and practices which are aimed toward reversing the effects of colonisation' D.B. Rose, 'Land Rights and Deep Colonising: the Erasure of Women' (1996) 69 3(85) *Aboriginal Law Bulletin* 6. Available at: http://www.austlii.edu.au/cgi-bin/viewdoc/au/journals/AboriginalLawB/1996/69.html#fn0.

[135] UN Harmony with Nature, n. 4.

[136] B. Dickson, *Judicial Activism in Common Law Supreme Courts* (Oxford University Press, 2007).

[137] UN Harmony with Nature, n. 4. See also Kauffman et al., n. 60.

[138] Anonymous, 'Judge who gave living entity status to Ganga, Sukhna Lake retires' (The Tribune, 2020), available at: https://www.tribuneindia.com/news/punjab/judge-who-gave-living-entity-status-to-ganga-sukhna-lake-retires-152490.

[139] (Frank Tumusiime, interview by author via telephone, 26 November 2021).

[140] ibid.

economic development over environmental protection (sphere one) can and do limit the success of RoN initiatives. After all, inter-legality is about the interdependence of normative spheres. Eroded trust among those spheres consequently hinders advancements. To name one indicator for trust, neither Uganda nor Ecuador rank high in the Corruption Perception Index (with 27 and 39 out of 100 points respectively).[141] Ecuador's RoN nevertheless managed to have an effect on land ownership regimes.

5. RIGHTS OF NATURE'S EFFECT ON LAND OWNERSHIP REGIMES

For this investigation, we attempted to identify the effect RoN has on land ownership regimes in post-colonial societies. By using the framework of inter-legality, we compared the respective provisions in the 2008 Constitution of Ecuador with the ones in the 2019 National Environmental Act of Uganda. In particular, this entailed an analysis of various normative spheres with a relevant impact on land ownership. We examined the (used or unused) potential of a RoN-inspired institutionalized interplay, or bridge, between them.

The RoN movement is fairly new and heterogeneous. As such, any generalizations need to be interpreted very carefully. Based on our findings, however, we are confident that it can serve as an institutionalized bridge within the more established Ecuadorian context and has the potential for becoming one in the more recent Ugandan case. The institutionalization works on various levels. Applying a wide interpretation, the soft power that comes with the adoption of a non-anthropocentric concept like RoN might already influence other normative spheres. As for Ecuador, time and perseverance translated this symbolism into an institutionalization across different spheres in the strict sense. Uganda offers some similar conditions and has shown parallel developments. It is thus not impossible that they head in the same direction.

We have introduced the image of a bridge as an adequate metaphor for inter-legal RoN. Some parts of the bridge are, and can be, more developed than others. Due to this, we imagine the bridge as both a descriptive as well as a cautiously normative structure. The description derives from the institutionalized interplay we identified in Ecuador. The normative component is set to project the institutionalization process in Uganda.

Importantly, we define RoN as a complementary tool to bridge land ownership regimes in post-colonial societies. Rather than an active mediator, the idea is one among many mediums. The strength of RoN, in contrast to traditional approaches, is its ability to offer a shared vocabulary. As such, it represents a gateway of communication between previously (mostly) irreconcilable

[141] Transparency International, 'Corruption Perception Index' (Transparency International, 2021), available at: https://www.transparency.org/en/cpi/2020/index/uga.

normative spheres.[142] This holds true especially for anthropocentric and non-anthropocentric legal traditions as well as the overlapping of non-chthonic and chthonic legal regimes.

With regard to the bridge's effect on the overall vision of ownership, we conclude that it does not abolish but rather alters the idea. Nature that 'owns itself', to refer to one of the more extreme RoN conceptualizations, does not represent a departure from but an integration within a traditional (property) rights context.[143] It also aligns with the idea of responsibilities.[144] Consequently, a more fluid conception of ownership appears to be a promising arrangement, as it covers everything from private to public to common arrangements as well as from human to non-human perspectives.[145]

Even though some of the presented findings offer a possible path for the evolution of legal systems, RoN implementations are still by far the exception rather than the rule. Nevertheless, the potential to bridge differing normative spheres, in this case, land ownership regimes, should not be underestimated.

[142] For an elaboration on the difficulties of translating and codifying chthonic legal traditions see Ross et al., n. 13, 267-9.
[143] The balance between different rights is difficult. Some authors doubt the possibility of a complete realignment between RoN and humanity. F.S. Campaña, 'Derechos de la naturaleza: ¿innovación trascendental, retórica jurídica o proyecto político?' (2013) 13(15) *Iuris Dictio*, p. 15.
[144] Lubbers et al. write that the *Rights* of Nature ironically imply both rights and obligations since land ownership entails responsibility towards both Earth and humanity. R. Lubbers et al., *Inspiration for Global Governance: The Universal Declaration of Human Rights and the Earth Charter* (Kluwer Books, 2008). For an elaboration on the idea of 'green grabbing' see A. Tittor, 'Green Grabbing' (InterAmerican Wiki, 2016), available at: https://www.uni-bielefeld.de/cias/wiki/g_Green_Grabbing.html.
[145] V. Strang & M. Busse, *Ownership and Appropriation* (Taylor & Francis Group, 2011).