

## SYMPOSIUM ARTICLE

# *The Rights of Nature as a Bridge between Land-Ownership Regimes: The Potential of Institutionalized Interplay in Post-Colonial Societies*<sup>Ψ</sup>

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### Abstract

Despite the growing prominence and use of Rights of Nature (RoN), doubts remain as to their tangible effect on environmental protection efforts. By analyzing two initiatives in post-colonial societies, we argue that they do influence the creation of institutionalized bridges between differing land-ownership regimes. Applying the methodology of inter-legality, we examine the Ecuadorian Constitution of 2008 and the Ugandan National Environment Act 2019. We identify five normative spheres that influence land-ownership regimes. We find that the established Ecuadorian RoN have an institutionalized effect on the nation's legal system. Their more recently established Ugandan counterpart shows potential to develop in the same direction.

**Keywords:** Rights of Nature, Ownership, Inter-legality, Legal pluralism, Post-colonialism, Indigenous 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<sup>1</sup>

Rights of Nature (RoN) do not represent one single train of thought, but many – they ‘have both multiple histories and multiple meanings’.<sup>2</sup> Despite, or precisely because of, this heterogeneity, the idea is increasingly used to address Earth’s ecological crises<sup>3</sup> by challenging overly anthropocentric mindsets. Up to June 2021, at least 409 legal RoN initiatives have emerged across 39 countries.<sup>4</sup> Regardless of their mounting use, Darpö, in a recent report for the European Parliament, submits that RoN are not a ‘paradigmatic revolution for environmental law’.<sup>5</sup> He argued that the movement faces the same problems as conventional protection efforts, including insufficient access to justice and financial difficulties. We agree that RoN are not a panacea for nature protection issues. However, as we argue in this article, RoN can be a promising ally in bridging conflicting land-ownership regimes.<sup>6</sup>

<sup>1</sup> B. Latour, *Down to Earth: Politics in the New Climatic Regime* (Polity Press, 2018), p. 8 (quoting a western scholar, he stands symbolically for the Rights of Nature, i.e. an indication that parts of western thought are becoming increasingly aware of and willing to reconsider established belief systems). Even though Latour distinguishes between nature and territory, we use the two terms synonymously. Next to the fact that ‘territorial’ or ‘owned’ nature is the focus of this article, such use also reflects a lack of formalized distinction between the two ideas in non-western worldviews. For an overview of the etymological and semantic diversity of the word ‘nature’ see F. Ducarme, F. Flipo & D. Couvet, ‘How the Diversity of Human Concepts of Nature Affects Conservation of Biodiversity’ (2021) 35(3) *Conservation Biology*, pp. 1019–28, at 1022–3.

<sup>2</sup> M. Tănăsescu, *Understanding the Rights of Nature: A Critical Introduction* (transcript, 2022), p. 15. The ‘ecothological take’ (Tănăsescu, *ibid.*, p. 26) used in the two case studies of this article can be defined as ‘calling for acknowledgement of the fact that [non-human nature has] rights that humans are morally [and legally] obligated to respect and protect’; D. Boyd, *The Rights of Nature: A Legal Revolution that Could Save the World* (ECW Press, 2017), p. 219. Historically, RoN emerged 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; G. Stutzin, ‘Un Imperativo Ecológico: Reconocer los Derechos de la Naturaleza’ (1984) 1(1) *Ambiente y Desarrollo*, pp. 97–114. For 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* (The MIT Press, 2021). Even though some authors rightfully claim conceptual differences, for this article we see like-minded concepts including RoN, earth jurisprudence, wild law, or earth-centred law as synonymous.

<sup>3</sup> 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.

<sup>4</sup> A. Putzer et al., ‘Putting the Rights of Nature on the Map: A Quantitative Analysis of Rights of Nature Initiatives Across the World’ (2022) 18 *Journal of Maps*.

<sup>5</sup> 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, however, applies to the RoN movement as a whole.

<sup>6</sup> We use a very broad definition of ownership throughout this article, i.e. the ‘right to use, possess, and dispose of property’; see 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.

The ownership of nature has long been identified as an important factor within environmental protection efforts.<sup>7</sup> Relatively new is the connection of ownership rights with RoN. Among the authors who do address it is Boyd, who sees the 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’.<sup>8</sup> Burdon looks at private property, reconceptualizing it ‘as a relationship between and among members of the Earth community’.<sup>9</sup> Bradshaw discusses an extension of property rights holders to include non-human animals.<sup>10</sup> Kauffman and Martin reject a complete abandonment of property, reflecting upon an interplay between RoN, property, and markets instead.<sup>11</sup> Similarly, Sanders writes about natural self-ownership.<sup>12</sup> It becomes evident that the relationship between RoN and ownership has all but a common trajectory. Consequently, rather than adopting any particular prescription, we conduct an empirical analysis of the practical implementation. In particular, we look at how RoN affect land-ownership regimes in post-colonial societies.

Post-colonial societies experience frequent conflict with regard to land ownership; the reasons for this vary. A dominant explanation refers to economic growth as a motivator for colonial land grabs.<sup>13</sup> A less scrutinized explanation looks at the, at times, fundamentally opposing understandings of nature.<sup>14</sup> While colonizing normative spheres have largely reproduced an anthropocentric concept of land ownership, colonized ones have offered non-anthropocentric alternatives.<sup>15</sup> Chthonic legal traditions are exemplary of the latter.<sup>16</sup> National and international

<sup>7</sup> Some examples include E. Brubaker, *Property Rights in the Defence of Nature* (Routledge, 1995); 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).

<sup>8</sup> Boyd, n. 2 above, pp. xxi–xxvii. The other two are anthropocentrism and an unlimited-growth economy.

<sup>9</sup> P.D. Burdon, *Earth Jurisprudence: Private Property and the Environment* (Routledge, 2017), p. 225.

<sup>10</sup> K. Bradshaw, *Wildlife as Property Owners* (University of Chicago Press, 2020).

<sup>11</sup> Kauffman & Martin, n. 2 above, pp. 228–30.

<sup>12</sup> K. Sanders, “Beyond Human Ownership?” Property, Power and Legal Personality for Nature in Aotearoa New Zealand’ (2018) 30(2) *Journal of Environmental Law*, pp. 207–34.

<sup>13</sup> For an analysis see R. Grier, ‘Colonial Legacies and Economic Growth’ (1999) 98 *Public Choice*, pp. 317–35; M.S. Alam, *Poverty from the Wealth of Nations: Integration and Polarization in the Global Economy since 1760* (Palgrave Macmillan, 2000). For an overview of corporate land grabs in postcolonial societies see A. Zoomers & M. Kaag, ‘The Global Land Grab as Modern Day Corporate Colonialism’, *The Conversation*, 25 Apr. 2014, available at: <https://theconversation.com/the-global-land-grab-as-modern-day-corporate-colonialism-25844>.

<sup>14</sup> Ducarme, Flipo & Couvet, n. 1 above,

<sup>15</sup> Following Klabbers & Palombella (n. 25 below), we use the expression ‘normative spheres’ rather than ‘legal systems’ both to emphasize the element’s guiding power and to avoid confusion with legal systems in the sense of post-colonial governmental organizations. See also n. 24 below.

<sup>16</sup> We are aware that ‘Indigenous’ can be perceived as contentious within an African context; we consequently maintain it only in citations. Throughout the text, we prefer ‘chthonic’: a term coined by 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), p. xvii. Even though chthonic reproduces, rather than confronts, the *ecologically noble savage* stereotype, we do analyze philosophies that actively promote some variation of ‘harmony with the earth’. In addition, the use of this term allows us to follow Glenn, who speaks about ‘chthonic legal traditions’ and ‘chthonic peoples’: H.P. Glenn, *Legal Traditions of the World: Sustainable Diversity in Law* (Oxford University Press, 2004), pp. 59–91. Finally, as compared with other concepts, such as ‘indigenous’ or ‘aboriginal’, chthonic’s

efforts<sup>17</sup> are increasingly considering the perspectives of a global chthonic population of 476.6 million.<sup>18</sup> While they represent little more than 6% of humanity, their ‘ownership’ of nature is disproportionately higher.<sup>19</sup> In 2018, Garnett and co-authors estimated that chthonic peoples ‘influence land management across at least 28.1% of the [world’s] land area’;<sup>20</sup> 20% of that territory overlaps with at least 40% of global protected areas and intact landscapes. Put differently, while accounting for little more than 1/16th of the global population, chthonic peoples manage 2/5ths of the world’s protected land.<sup>21</sup>

A major limitation to making efficient use of this disproportionately high share is these people’s ambiguous ‘influence on land management’, which can range from full governance to occasional consultancy.<sup>22</sup> Conceptual clarity is crucial to combat legal uncertainty, not only for chthonic peoples.<sup>23</sup>

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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 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.

- <sup>17</sup> Next to a variety of national laws, the most important international advances include the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the UN General Assembly, New York, NY (United States (US)), 29 June 2006, UN Doc. A/RES/61/295, 13 Sept. 2007, available at: [http://www.un.org/esa/socdev/unpfi/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfi/documents/DRIPS_en.pdf); the American Declaration on the Rights of Indigenous Peoples, adopted by the Organization of American States General Assembly, Santo Domingo (Dominican Republic), AG/RES.2888 (XLVI-O/16), 15 June 2016, available at: <https://www.oas.org/en/sare/documents/DecAmlND.pdf>; the UN 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. The World Bank, ‘Indigenous Peoples’, updated 14 Apr. 2022, 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); A. Ross et al., *Indigenous Peoples and the Collaborative Stewardship of Nature* (Routledge, 2011).
- <sup>18</sup> 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 (ILO), 2019), p. 139.
- <sup>19</sup> Many authors see the roots of the concept 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); 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: Putzer et al., n. 4 above. An explanation for this missing consideration might be the contemporary absence of chthonic legal traditions in most parts of the world.
- <sup>20</sup> S.T. Garnett et al., ‘A Spatial Overview of the Global Importance of Indigenous Lands for Conservation’ (2018) 1(7) *Nature Sustainability*, pp. 369–74, at 370.
- <sup>21</sup> Often cited, a 2008 World Bank Report claims that 80% of remaining biodiversity lies within chthonic territories; see C. Sobrevilla, *The Role of Indigenous Peoples in Biodiversity Conservation: The Natural but often Forgotten Partners* (World Bank, 2008), pp. 5, 50. It remains unclear, however, where this number comes from. The referenced report does not contain the relevant data: B. Lipinski, *The Wealth of the Poor: Managing Ecosystems to Fight Poverty* (UN Development Programme, 2005).
- <sup>22</sup> Not all chthonic legal traditions are beneficial for environmental protection efforts; some even clash 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; E. Ellis et al., ‘Involve Social Scientists in Defining the Anthropocene’ (2016) 540 *Nature*, pp. 192–3, at 193; see also Glenn, n. 16 above, pp. 66–9.
- <sup>23</sup> 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

With these connections and overlapping interests in mind, we analyze 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<sup>24</sup> effects of their respective RoN initiatives. To explicate the resulting ‘bridge’, we use inter-legality – a method that formally considers all ‘vantage points’ that contribute to the creation of a specific law.<sup>25</sup> We consider this perspective to be promising because it explicitly avoids enforcing or reproducing post-colonial legal hegemonies.<sup>26</sup> By scrutinizing every relevant normative sphere and evaluating its respective importance in a given context, inter-legality aims to heighten the legitimacy of any legal norm-creation 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 spheres include (i) post-colonial political and legal systems; (ii) chthonic legal traditions; (iii) civil society organizations; (iv) international (soft) law; and (v) local and multinational corporations (Sections 2 and 3). In the second step, we analyze the process that led to the respective RoN initiatives (Section 4). While we find elements of a bridging function, we remain only cautiously optimistic regarding future developments (Section 5).

## 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’.<sup>27</sup> In contrast, legal positivist theories ‘emphasize the practical or conceptual separation of state law from other normative contexts’.<sup>28</sup> Legal pluralism appeals for a more dynamic

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Commission on Environmental, Economic and Social Policy, 2014). Various initiatives track the global advancement of regulated land ownership, e.g., Landmark, available at: <http://www.landmarkmap.org>; Rights and Resources: Tenure Tracking, available at: <https://rightsandresources.org/tenure-tracking>; Land Rights Now, available at: <https://www.landrightsnow.org>; and International Land Coalition, available at: <https://www.landcoalition.org/en>.

<sup>24</sup> We define ‘institutions’ as ‘stable, valued, recurring patterns of behavior’: S.P. Huntington, *Political Order in Changing Societies* (Yale University Press, 1996), p. 12. For a reflection on the ability of institutions to influence land-ownership regimes see M. Cai, I. Murtazashvili & J. Murtazashvili, ‘The Politics of Land Property Rights’ (2019) 16(2) *Journal of Institutional Economics*, pp. 151–67.

<sup>25</sup> 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.

<sup>26</sup> The concept is increasingly used with regard to German legal hegemony in a European Union (EU) context. For a recent debate see A. von Bogdandy et al., ‘German Legal Hegemony?’ (2020) *Max Planck Institute for Comparative Public Law & International Law (MPIL)*, Research Paper No. 2020-43.

<sup>27</sup> 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. For an introduction see N. MacCormick, *Legal Reasoning and Legal Theory* (Oxford University Press, 1994).

<sup>28</sup> Davies, *ibid.*, p. 806. For an overview see T. Spaak, ‘Kelsen on Monism and Dualism’, in M. Novakovic (ed.), *Basic Concepts of Public International Law: Monism & Dualism* (University of Belgrade Faculty of Law, 2013), pp. 322–43; C.E. Pavel, ‘Is International Law a Hartian Legal System?’ (2018) 31(3) *Ratio Juris*, pp. 307–25.

and interactive understanding of a fragmented reality. The approach recognizes the dominance of international and national law but also considers the overlapping influence of customary norms, soft law, and unofficial regulations and guidelines from non-governmental organizations (NGOs) or private actors.<sup>29</sup>

A variety of theories describe the interactions within legally pluralist societies. One such model has been described by Swenson, who identifies four archetypes – for example, combative, competitive, cooperative, and complementary legal pluralism – each describing a different type of relationship between state and non-state actors.<sup>30</sup> 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. Klabbbers and Palombella attempt to formalize such consideration with the framework of ‘inter-legality’. Instead of defining a theory that regulates jurisdiction *a priori*, inter-legality analyzes a case study, identifies the overlapping normative spheres, and judges their relevance ‘from within’. Similar to other plurilegal theories, it recognizes how various normative orders are interwoven. Unlike them, it goes beyond the idea of ‘self-contained systems’.<sup>31</sup> Inter-legality does not try to establish or reproduce hierarchies or dependencies of autonomous normative spheres – for instance, international law trumping national legislation – as this could impede just applications. The authors use the institutional response to HIV/AIDS as an example to illustrate their point. They reckon that interpreting the issue ‘as a matter of intellectual property 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’.<sup>32</sup>

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’.<sup>33</sup> Following this, ‘no layer can stand apart; they are not fossils but, instead, exist in dynamic interplay with each other’.<sup>34</sup> Through this, ‘interconnectedness [becomes] itself a legal situation’.<sup>35</sup> As a result, any ‘legal solution must ... be considered normatively acceptable, for when other frames are available, the chosen frame

<sup>29</sup> Davies, n. 27 above, pp. 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.

<sup>30</sup> G. Swenson, ‘Legal Pluralism in Theory and Practice’ (2018) 20(3) *International Studies Review*, pp. 438–62.

<sup>31</sup> Klabbbers & Palombella, n. 25 above, p. 1. Legal pluralism attempts to overcome the shortcomings of legal positivist theories (monism and dualism). Inter-legality attempts to overcome the shortcomings of legal pluralist theories.

<sup>32</sup> *Ibid.*, p. 11.

<sup>33</sup> *Ibid.*, p. 10.

<sup>34</sup> *Ibid.*, p. 12.

<sup>35</sup> G. Palombella, ‘Theories, Realities, and Promises of Inter-Legality: A Manifesto’, in Klabbbers & Palombella, n. 25 above, pp. 363–90, at 378.

must be able to convince on the grounds of fairness or justice – lest it be considered a mere exercise of naked power'.<sup>36</sup>

Klabbers and Palombella 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'.<sup>37</sup> Relevance admittedly is 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 contrary, it 'forces' the consideration of all normative spheres. The closing of 'legal black holes' consequently strengthens a 'culture of justification'.<sup>38</sup> Eventually, a 'lame verdict'<sup>39</sup> – as Palombella refers to an unjust decision – becomes increasingly unlikely.

In order to account for the constantly changing inter-legal reality of post-colonial societies, in the following we place great emphasis on the thorough elaboration of the historical context of each case study. While it is impossible to account for every single legislative enactment and norm change throughout the complex histories of the societies in question, we employ representative elements and point to further information in the footnotes.<sup>40</sup> Eventually, we deem those spheres relevant that have or had a tangible impact, such as identifiable normative power on land-ownership regimes.

To summarize, inter-legality offers a promising perspective for a legally pluralist society by (i) not assuming the primacy or the independence of any particular set of rules, as well as (ii) recognizing and formalizing the complexity of relevant norms applicable to a particular case. Following this approach, inter-legality does not consider the post-colonial legal order an undisputed point of departure. Instead, by focusing on land-ownership regimes and the RoN initiatives in question, we hope to identify a common point of overlapping legalities 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'.<sup>41</sup> We have identified two RoN initiatives in Ecuador and Uganda which can be compared according to the principle.

<sup>36</sup> Klabbers & Palombella, n. 25 above, p. 12.

<sup>37</sup> Ibid., p. 3; also 'In other words, it speaks to contacts between legal orders or spaces, but does not itself decide what counts as a legal order': *ibid.*, p. 10.

<sup>38</sup> S.E. Biber, 'Inter-Legality and Surveillance Technologies: Looking at the Demands of Justice beyond Borders', Center for Inter-legality Research Working Paper No. 06/2021, pp. 1–18, at 7–8, available at: [https://www.cir.santannapisa.it/sites/default/files/Biber%20-%20Surveillance%20Revisited\\_0.pdf](https://www.cir.santannapisa.it/sites/default/files/Biber%20-%20Surveillance%20Revisited_0.pdf).

<sup>39</sup> Palombella, n. 35 above, p. 369.

<sup>40</sup> By considering research from cultural anthropology, among others, we hope to ensure the most adequate representation of these realities.

<sup>41</sup> Rather than 'cherry picking' initiatives and offering only a 'concept formation through multiple description', we want to reach 'the ultimate goal of social inquiry: theory building through causal inference':

Whereas the two countries are located on different continents, they still share significant aspects that allow comparative analyses. Both countries have experienced a violent colonial past (from the Kingdom of Spain and the United Kingdom (UK), respectively) and live in a post-colonial non-western pluri-ethnic present. With Ecuador counting 14 chthonic groups and Uganda championing 65 ethnicities, chthonic and non-chthonic legal traditions are widely used and practised. Politicians in both countries attempt to help industrialization efforts by accessing an abundance of natural resources: Ecuador is considered to be a megadiverse country and Uganda has substantial reserves. Both land-ownership regimes are characterized by a mix dominated by communal tenure and are increasingly influenced by commercial privatization. Competing disputes concerning said land ownership have frequently led to clashes between different interest groups. Emblematic of such a resource curse are the historic troubles of opposing normative spheres, where the interests of chthonic people in both countries were systematically played off against the exploitation of their lands, resulting in both common disenfranchisement and widespread environmental depletion. While the former is being addressed on distinct levels, for the latter both countries have adopted, among others, nationwide RoN initiatives.

The key difference is in the timing of implementation. In contrast to Uganda, we consider Ecuador to be a country with established RoN. ‘Established’ here refers to both institutional success as well as relatively early implementation.<sup>42</sup> 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 a more recent example.

### 3.1. *Established Rights of Nature in Ecuador*

The Republic of Ecuador<sup>43</sup> 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, because of its unique geography it counts as one of 17 global megadiverse hotspots.<sup>44</sup> To preserve the many ecologically sensitive areas, the country has signed various international treaties. Nevertheless, deforestation, desertification, and pollution through extractive and other industries continue to

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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.

<sup>42</sup> The institutional success is defined by favourable court decisions. Legal RoN initiatives are commonly perceived to have started with a municipal ordinance in Tamaqua Borrow in the US in 2006; see Kauffman & Martin, n. 2 above, p. 14. All sources for this comparison are found in the analyses.

<sup>43</sup> Several chthonic translations of the name exist. However, as the modern borders do not align with the traditional borders, descriptions of former territories appear more suitable; the Quechua, for instance, use *tauwantinsuyu* 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.

<sup>44</sup> 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.

jeopardize meaningful protection efforts.<sup>45</sup> Consequently, Ecuador serves as a prime example of 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.<sup>46</sup> Between 2007 and 2017, President Rafael Correa governed the country and oversaw ‘a reorganization of the state around citizen’s revolution’.<sup>47</sup> He did so, among others, through the draft of the current Constitution.<sup>48</sup> As this 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: the coastal plain (Costa), the inter-Andean central highlands (Sierra), as well as the flat-to-rolling eastern jungle, more commonly known as the Amazon rainforest (Oriente).<sup>49</sup> Each area has distinct features that go beyond geography. One such feature is the distribution of a population of approximately 17.5 million, most of whom 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.<sup>50</sup> They are remnants of a history dating back aeons.<sup>51</sup> Ecuador has ratified the 1989 International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (ILO 169)<sup>52</sup> and signed both the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP)<sup>53</sup> as well as the 2016 American Declaration on the Rights of Indigenous Peoples.<sup>54</sup> In addition, the country’s Constitution emphasizes ‘plurinationality’.<sup>55</sup> Overall, however, protection efforts remain insufficient.

<sup>45</sup> CIA, ‘Ecuador’, *The World Factbook*, updated 21 July 2022, available at: <https://www.cia.gov/the-world-factbook/countries/ecuador>.

<sup>46</sup> J.A. Fuentes, ‘The Basic Structure of the Ecuadorian Legal System and Legal Research’, New York University School of Law, Apr. 2021, available at: <https://www.nyulawglobal.org/globalex/Ecuador1.html>.

<sup>47</sup> It is important to note that President Correa himself did not consider RoN to be part of this revolution; he was a staunch critic – before, during, and after the drafting process; see M. Tănăsescu, ‘Rights of Nature, Legal Personality, and Indigenous Philosophies’ (2020) 9(3) *Transnational Environmental Law*, pp. 429–53, at 434.

<sup>48</sup> República de Ecuador, Asamblea Nacional Constituyente de Ecuador de 2007–2008, Constitución de la República del Ecuador (2008), available at: [https://www.oas.org/juridico/pdfs/mesicic4\\_ecu\\_const.pdf](https://www.oas.org/juridico/pdfs/mesicic4_ecu_const.pdf) (Constitution of the Republic of Ecuador). 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>.

<sup>49</sup> CIA, n. 45 above.

<sup>50</sup> D. Mamo, *The Indigenous World 2021* (International Work Group for Indigenous Affairs, 2021), p. 380.

<sup>51</sup> E.A. Mora, *Resumen Historia del Ecuador* (Corporación Editora Nacional, 2008).

<sup>52</sup> Geneva (Switzerland), 27 June 1989, in force 5 Sept. 1991, available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312314:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312314:NO).

<sup>53</sup> N. 17 above.

<sup>54</sup> N. 17 above.

<sup>55</sup> Constitution of the Republic of Ecuador, n. 48 above, Arts 6, 257, 380(1).

A crucial feature of the three geographical areas relates to their distinct land-ownership regimes. This division began with the first European-American encounters in the early 16<sup>th</sup> 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*,<sup>56</sup> replaced by the similar *huasipungo*<sup>57</sup> during the early 20<sup>th</sup> 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*.<sup>58</sup> Ongoing abuses led to increasing tensions. Even though various agrarian reforms attempted to improve the situation,<sup>59</sup> injustices persist.

Not all geographical areas were reformed equally. Since the early 21<sup>st</sup> century, most parts of the Sierra are privately owned. In the Oriente, large plots of land are in public hands, and the remaining areas fall under a predominantly communal tenure system. The Costa applies a mixture of the three. We will focus on the Oriente as it contains most of the country's biodiversity and natural resources, which historically have led to many conflicts.

Until 2016, the 1936 Ley de Tierras Baldías y Colonización defined all uncultivated terrain as wasteland (*tierras baldías*).<sup>60</sup> This law was aimed explicitly at the vast areas of the Amazon. Except for the ancestral territory of chthonic peoples,<sup>61</sup> huge parts of the rainforest became the property of the Instituto Nacional de Desarrollo Agrario (INDA).<sup>62</sup> 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.<sup>63</sup> The 2008 Constitution seeks to counter this increasingly lucrative privatization process. Article 408 defines natural resources as 'the unalienable property of the State'.<sup>64</sup> Any products deriving from such resources should be 'in strict compliance with the environmental principles set forth in the Constitution'. Article 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.

<sup>56</sup> The Editors of Encyclopaedia Britannica, 'Latifundium' (Britannica, 2021), available at: <https://www.britannica.com/topic/latifundium>.

<sup>57</sup> M. Becker, *Indians and Leftists in the Making of Ecuador's Modern Indigenous Movements* (Duke University Press, 2008), pp. 251–4.

<sup>58</sup> Ibid.

<sup>59</sup> T.M. Tamayo, 'La política agraria en Ecuador (1965–2015)' (2018) 70(112) *Revista Economía*, pp. 89–120.

<sup>60</sup> República de Ecuador, Congreso Nacional, Ley de Tierra Baldías y Colonización (1963), available at: <https://www.ecolex.org/es/details/legislation/ley-de-tierras-baldias-y-colonizacion-texto-codificado-lex-faoc067390>.

<sup>61</sup> Ibid., Art. 1.4.

<sup>62</sup> National Institute for Agrarian Development.

<sup>63</sup> Tamayo, n. 59 above, Capítulo II.

<sup>64</sup> Ecuador distinguishes between public, private, communal, state, associative, cooperative, and mixed property: Constitution of the Republic of Ecuador, n. 48 above, Art. 321.

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 that humans need to survive. The relationship is based on mutual giving, an equilibrium being of the utmost importance.<sup>65</sup> This harmonious interaction is also described by a second concept, ‘Buen Vivir’ (Living Well). No single definition exists, as the idea differs in 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, such as 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 largest chthonic group, the Quechua, Sumak Kawsay strives for a way of living which does not disturb the presumed balance with nature. Humanity should live in harmony with its surroundings.<sup>66</sup> Crucially for our investigation, none of these concepts regard nature as capable of being owned, but focus instead on the importance of an overall equilibrium. This rather abstract perspective is the strength and weakness of both concepts, as it can be instrumentalized to protect as well as destroy nature.<sup>67</sup>

The logic underlying Pachamama and Buen Vivir is increasingly being recognized internationally. In the 2005 case of *Moiwana Community v. Surinam*, the Inter-American Court of Human Rights (IACtHR) stated 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’.<sup>68</sup> Countering such promising decisions is the harsh reality. Haga claims that no reliable system of registration of chthonic ancestral land is in place, which is likely to be the result of complex and time-consuming procedures and widespread corruption.<sup>69</sup> Together with the aforementioned Ley de Tierras Baldías, many chthonic ownership issues must be arduously proved on a case-by-case basis.<sup>70</sup> In addition to this, land grabbing, as well as illegal activities, further complicate the situation.<sup>71</sup> These practices powerfully oppose equally distributed ownership practices.

<sup>65</sup> D. di Salvia, ‘Pachamama’, in H. Gooren (ed.), *Encyclopedia of Latin American Religions* (Springer, 2015).

<sup>66</sup> E. Gudynas, ‘Buen Vivir: Today’s Tomorrow’ (2011) 54(4) *Development*, pp. 441–7. For a reflection on the science behind the balance of nature see J. Kricher, *The Balance of Nature: Ecology’s Enduring Myth* (Princeton University Press, 2009).

<sup>67</sup> By invoking Art. 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.

<sup>68</sup> IACtHR, *Moiwana Community v. Suriname*, Judgment, 15 June 2005, Ser. C No. 124, p. 131.

<sup>69</sup> K. Haga, ‘Land Tenure, Security, and Reform in Ecuador’ (Master’s thesis, University of Pittsburgh (US), Apr. 1995).

<sup>70</sup> Land Links, ‘Ecuador’, 2011, available at: <https://www.land-links.org/country-profile/ecuador>.

<sup>71</sup> 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.

Following this contextualization, we can take a closer look at the elaboration of the RoN initiative in question, in Articles 71 to 73 of the 2008 Constitution.<sup>72</sup> Ecuadorian traces of legally recognizing nature as the 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.<sup>73</sup> 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.<sup>74</sup> The ousting of senior figures during the constitutional drafting stands symbolically for the deep divisions that persisted even within the ruling party.<sup>75</sup>

A similarly heterogeneous field can be observed beyond the political sphere.<sup>76</sup> The aforementioned concepts of Pachamama and Buen Vivir/Sumak Kawsay were introduced in the document.<sup>77</sup> They were promoted by, among others, CONAIE,<sup>78</sup> Ecuador's largest chthonic organization. They issued a proposal to the Assembly,<sup>79</sup> which does not mention RoN. It was another Ecuadorian NGO, Fundación Pachamama,<sup>80</sup> which advanced the idea in collaboration with the United States (US)-based Community Environmental Legal Defence Fund (CELDF), a major player in global RoN initiatives.<sup>81</sup> Through the dissemination of strategic press articles, the focus on RoN gathered international recognition even in its early stages. Consequently, the Constitution contained both anthropocentric and non-anthropocentric elements.

<sup>72</sup> Between its independence in 1830 and 2008, Ecuador changed its constitution, on average, every nine years. The current text is the 20<sup>th</sup> in the country's history. 'The intellectual genealogy [of RoN] 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. 47 above, p. 435. See also n. 19 above.

<sup>73</sup> The 2008 Constitution can be seen as the socialist response to the neoliberal responses of 1979 and especially 1998: J.J. Paz & M. Cepeda, 'Visión histórica de las constituciones de 1998 y 2008', *Institut Gouvernance*, Nov. 2008, available at: <http://www.institut-gouvernance.org/es/analyse/fiche-analyse-449.html>.

<sup>74</sup> 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.

<sup>75</sup> This included Alberto Acosta, President of the Constitutional Assembly and RoN-advocate: Gudynas, *ibid.*, p. 41.

<sup>76</sup> Gudynas, n. 74 above, pp. 40–1.

<sup>77</sup> By mentioning both nature and Pachamama as having '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: Constitution of the Republic of Ecuador, n. 48 above, Art. 71.

<sup>78</sup> Confederación de Nacionalidades Indígenas del Ecuador (Confederation of Indigenous Nationalities of Ecuador).

<sup>79</sup> CONAIE, 'Propuesta de la CONAIE Frente a la Asamblea Constituyente', 2007, available at: <https://www.yachana.org/earchivo/conaie/ConaiePropuestaAsamblea.pdf>.

<sup>80</sup> Following protests against a water privatization law in 2009, the NGO was one of many that was closed down by the government; it could reorganize only after the departure of President Correa in 2017. For the history see Pachamama Alliance, available at: <https://www.pachamama.org/advocacy/fundacion-pachamama>.

<sup>81</sup> As Tănăsescu rightfully observes, the specific formulation is inspired by Cullinan and Berry (Tănăsescu, n. 47 above, p. 436). See also n. 19 above.

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’.<sup>82</sup>

Upon its implementation, opinions were divided. The vast majority of European constitutionalists consulting the assembly viewed RoN as an ‘eccentricity’.<sup>83</sup> 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.<sup>84</sup> 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’.<sup>85</sup>

The strength of the opposition 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.<sup>86</sup> Nevertheless, as Kauffman and Martin point out, predominantly low-profile court litigation allowed for some sort of backdoor institutionalization.<sup>87</sup> With regard to legal-ownership regimes, two developments helped the institutional effect of RoN. These are the 2014 Penal Code<sup>88</sup> and a 2015 ruling by the Ecuadorian Constitutional Court.<sup>89</sup>

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).<sup>90</sup> In the following year, the country’s Constitutional Court strengthened this statement.<sup>91</sup> On 20 May 2015, RoN and Buen Vivir were declared to be ‘transversal’. Citing Articles 83(6) and 395(2) of the Constitution, the judges decided that the actions of both state and individuals need to be in accordance with RoN. This resulted in ‘RoN affect[ing] all other rights, including property rights’.<sup>92</sup>

<sup>82</sup> Ibid., p. 435.

<sup>83</sup> Gudynas, n. 74 above, p. 41.

<sup>84</sup> Tănăsescu, n. 47 above.

<sup>85</sup> N. Pacari, ‘Naturaleza y Territorio desde la Mirada de los Pueblos Indígenas’, in A. Acosta & E. Martínez (eds), *Derechos de la Naturaleza: El Futuro Es Ahora* (Abya Yala, 2009), pp. 31–8, at 35.

<sup>86</sup> Kauffman & Martin, n. 67 above, p. 133.

<sup>87</sup> For an analysis of the success of Ecuadorian RoN cases, see Kauffman & Martin, *ibid.* For a non-exhaustive list of cases see Observatorio Jurídico de Derechos de la Naturaleza, <https://www.derechosde-lanaturaleza.org.ec>.

<sup>88</sup> Republic of Ecuador, Asamblea Nacional, ‘Artículo 551: Órdenes especiales’, *Registro Oficial N° 180*, 2014, available at: <http://www.asambleanacional.gob.ec/es/system/files/document.pdf>.

<sup>89</sup> Corte Constitucional del Ecuador, 20 May 2015, Sentencia No. 166-15-SEP-CC, Caso No. 0507-12-EP.

<sup>90</sup> Republic of Ecuador, n. 88 above, p. 89. ‘While the original intention was to consolidate state control over mining, the law theoretically can now be used in other circumstances’: Kauffman & Martin, n. 67 above, p. 133.

<sup>91</sup> Corte Constitucional del Ecuador, n. 89 above, pp. 10–2.

<sup>92</sup> Kauffman & Martin, n. 67 above, p. 137.

Even though the original focus concerned the private property of miners, the subsequent ruling extended it to all other constitutional provisions. This consequently institutionalized an effect on the aforementioned ‘land-ownership’ Articles 250 and 408. While it remains to be seen how far this institutionalization can go, Ecuadorian RoN have already resulted in a bridge between various normative spheres, particularly those of a dominant anthropocentric and non-anthropocentric nature.

### 3.2. *Recent Rights of Nature in Uganda*

The Republic of Uganda<sup>93</sup> 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.<sup>94</sup> As 72% of the workforce is employed in agriculture, the well-being of a total of 44.7 million people depends highly on the country’s substantial natural resources.<sup>95</sup> This dependence is likely to continue in the future as, with a median age of 16.7 years, the country has one of the youngest and fastest-growing populations in the world.<sup>96</sup>

In 2019, Uganda became the first African nation to adopt a legal RoN initiative by amending Section 4 of its National Environmental Act.<sup>97</sup> It is too early to assess any impact sufficiently, although by, firstly, contextualizing the complex history and, secondly, the process of the initiative, we can draw some tentative conclusions about the normative spheres at play.

Historically, the people living in what is now known as Uganda can be traced back to two main ethnic groups: the Bantu and the Nilotic.<sup>98</sup> 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 colonization. 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

<sup>93</sup> 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.

<sup>94</sup> 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.

<sup>95</sup> CIA, ‘Uganda’, *The World Factbook*, 2021, available at: <https://www.cia.gov/the-world-factbook/countries/uganda>; M. Lyons, ‘Uganda’, *Britannica*, updated 12 July 2022, available at: <https://www.britannica.com/place/Uganda>.

<sup>96</sup> Worldometer, ‘Uganda Population’, 2021, available at: <https://www.worldometers.info/world-population/uganda-population>.

<sup>97</sup> Parliament of Uganda, National Environmental Act 2019, 7 Mar. 2019, available at: [https://nema.go.ug/sites/all/themes/nema/docs/National%20Environment%20Act,%202019%20\(1\).pdf](https://nema.go.ug/sites/all/themes/nema/docs/National%20Environment%20Act,%202019%20(1).pdf).

<sup>98</sup> Mwakikagile, n. 93 above.

into the Uganda Protectorate (1894) and East Africa Protectorate (1895), now Kenya.<sup>99</sup>

The Victorian Nile, flowing from the south-east to the north-west, split the Ugandan Protectorate into 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 groups formed larger states or ‘kingdoms’, as Europeans would call them.<sup>100</sup> 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 to be more civilized than the resisting north, and invested disproportionately more in its infrastructure and economy.

While remaining in the Commonwealth of Nations, Uganda declared its independence from the UK 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.<sup>101</sup> The division continues today, with the current President Yoweri Museveni being from the south and his main opponent throughout the 1980s to the early 2000s, the infamous Lord Resistance Army under Joseph Kony, originating from the north.

During his decades-long rule,<sup>102</sup> Museveni was unable to significantly improve the situation of a country where only one in five people have access to electricity.<sup>103</sup> Nevertheless, he oversaw the adoption of the most recent Constitution of 1995, the National Environment Statute of the same year, as well as the Land Act of 1998,<sup>104</sup> which represent the basis for the country’s current official land-ownership regimes.

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 most closely 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<sup>105</sup> wishes.

<sup>99</sup> The contemporary borders of the country were finalized in 1914.

<sup>100</sup> Kingdoms are made up of chiefdoms, which themselves consist of clans.

<sup>101</sup> These volatile times included a temporary abolition of all kingdoms between 1966 and 1993.

<sup>102</sup> Museveni took power in 1986. As at 2021, he is the 6<sup>th</sup> longest-serving non-royal national leader in the world.

<sup>103</sup> As at 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*, 2 June 2021, available at: <https://www.nationalgeographic.com/environment/article/uganda-joins-the-rights-of-nature-movement-but-wont-stop-oil-drilling>.

<sup>104</sup> Republic of Uganda, Constituent Assembly, Constitution of Uganda, 8 Nov. 1995, available at: [https://constituteproject.org/constitution/Uganda\\_2017.pdf?lang=en](https://constituteproject.org/constitution/Uganda_2017.pdf?lang=en); Parliament of Uganda, National Environment Statute 1995, 19 May 1995, available at: <http://faolex.fao.org/docs/pdf/uga8957.pdf>; Parliament of Uganda, Land Act 1998, 2 July 1998, available at: <https://mlhud.go.ug/wp-content/uploads/2019/03/Land-Act-1998-as-amended-CAP-227.pdf>.

<sup>105</sup> Given Uganda’s very low positioning on the UN Gender Inequality Index, any landowner is most likely to be a man: UN Development Programme, Human Development Reports, ‘Gender Inequality Index (GII)’, 2021, available at: <http://hdr.undp.org/en/content/gender-inequality-index-gii>.

- (2) *Mailo tenure* applies mainly in the central territory of the Buganda kingdom. Even though the rights are the same as those under the freehold system, owners must respect the interests of both registered occupants and *Kibanja* (customary owners).
- (3) *Leasehold tenure* describes rented ownership for 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. The government also employs this type of tenure to secure transnational land deals with companies from China or India. 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.<sup>106</sup> 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.<sup>107</sup>

Since 2015, Uganda has issued so-called Certificates of Customary Ownership (CCOs) as a means of regulation. However, as there is no clear definition of ‘customary view’, the impact of CCOs is somewhat ambiguous, with the state frequently undermining them.<sup>108</sup> 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 to be protected land.<sup>109</sup>

For Uganda, protected land is a double-edged sword, a fact that becomes evident when considering the country’s forests. Between 1990 and 2015, the proportion of nationally protected forests, as opposed to those that are privately owned, grew from 30% to 55%.<sup>110</sup> 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 trees (minus 76%).<sup>111</sup> Much of the clearing derives from the need for timber and agricultural fields.<sup>112</sup>

<sup>106</sup> J.K. Maiyo, ‘Transnational Land Deals, Agrarian Change and Land Governance in Central Uganda’ (Ph.D. thesis, VU University Amsterdam (The Netherlands), Feb. 2018).

<sup>107</sup> Uganda Consortium on Corporate Accountability (UCCA), *Handbook on Land Ownership, Rights, Interests and Acquisition in Uganda* (UCCA, 2018).

<sup>108</sup> 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. For a case study of this phenomenon see D.D. Brockington, *Fortress Conservation: The Preservation of the Mkomazi Game Reserve* (Indiana University Press, 2002).

<sup>109</sup> Constitution of Uganda, n. 104 above, Arts 2, 32 (Land Act 1998), and Art. 46 (National Environment Statute 1995).

<sup>110</sup> Since the late 1960s the overall size of protected areas in Uganda has remained largely unchanged; for an overview see Protected Planet, ‘Uganda’, available at: <https://www.protectedplanet.net/country/UGA>.

<sup>111</sup> ‘Forest Cover Changes in Uganda’, *Environment Information Network Bulletin*, Jan–Mar. 2019, p. 3, available at: <https://nema.go.ug/sites/all/themes/nema/docs/Uganda%20Environment%20Information%20Network%20Bulletin%20Issue%201.pdf>.

<sup>112</sup> Forestry Outlook Study for Africa, ‘Country Report: Uganda’, 2020, available at: <http://www.fao.org/3/AC427E/AC427E07.htm>.

However, a growing population with little to no access to electricity also cuts increasing amounts of firewood.<sup>113</sup> 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’.<sup>114</sup>

On the one hand, in 2020, the overall forest cover had bounced back to 12.5%, from a low of 9% in 2015;<sup>115</sup> Uganda has also committed to many international climate change mitigation strategies.<sup>116</sup> On the other hand, even though the Constitution mentions chthonic peoples, it does not stipulate their explicit protection.<sup>117</sup> Uganda has never ratified ILO Convention 169 and was absent during the voting of the UNDRIP. Despite the country’s officially combined legal system,<sup>118</sup> 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.<sup>119</sup>

Across many parts of sub-Saharan Africa, the traditional bond between chthonic peoples and nature takes the form of custodianship – for example, 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 on the Protection of Sacred Natural Sites and Territories.<sup>120</sup> The ACHPR emphasized in this resolution the importance of recognizing traditional land ownership.<sup>121</sup>

The increasing awareness of alternative conceptions of land ownership led to the African continent’s first RoN initiative. It was formed in 2019 when the Ugandan

<sup>113</sup> E. Biryabarema, ‘Uganda Reverses Forest Destruction by Inviting in ... Loggers’, *Reuters*, 17 Sept. 2020, available at: <https://www.reuters.com/article/us-uganda-deforestation-idUSKBN26811B>.

<sup>114</sup> Mamo, n. 50 above, p. 156. For an exemplary case study see Violations Against Indigenous Africa, ‘The Benet vs. Mount Elgon National Park’, 3 Oct. 2020, available at: <https://indigenouafrica.org/the-benet>. Additional problems derive from the necessity to obtain ‘licences’ to carry out virtually all activities in the national forests; see Parliament of Uganda, National Forestry and Tree Planting Act 2003, 8 Aug. 2003, Art. 32, available at: <http://faolex.fao.org/docs/pdf/uga87770.pdf>.

<sup>115</sup> However, it is still far from the 24% of 1990.

<sup>116</sup> The World Bank, ‘Ugandan Government Steps Up Efforts to Mitigate and Adapt to Climate Change’, 31 May 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>.

<sup>117</sup> However, Art. 32 imposes a mandatory duty on the state to take affirmative measures in favour of historically disadvantaged and discriminated groups: Mamo, n. 50 above, p. 156.

<sup>118</sup> 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](https://www.researchgate.net/publication/341776281_AN_OVERVIEW_OF_THE_LEGAL_SYSTEM_IN_UGANDA).

<sup>119</sup> Uganda Bureau of Statistics, ‘The National Population and Housing Census 2014: Main Report’, 2016, pp. 71–2, available at: [https://www.ubos.org/wp-content/uploads/publications/03\\_20182014\\_National\\_Census\\_Main\\_Report.pdf](https://www.ubos.org/wp-content/uploads/publications/03_20182014_National_Census_Main_Report.pdf).

<sup>120</sup> 22 May 2017, OAU Doc. ACHPR/Res.372(LX)2017, available at: <https://www.achpr.org/sessions/resolutions?id=414>.

<sup>121</sup> The resolution is representative of an overall shift towards more inclusive, inter-legal land-ownership regimes.

Parliament passed a revision of its 1995 National Environment Statute.<sup>122</sup> In its introduction, the newly named National Environment Act (NEA) states its goal ‘to repeal, replace and reform the law relating to environmental management in Uganda’.<sup>123</sup> Among others, it 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 collection of NGOs and interest groups. They include Ugandan-based Advocates for Natural Resources and Development (ANARDE),<sup>124</sup> 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.<sup>125</sup>

The RoN in the NEA link back to the human right to a clean and healthy environment, as established in, among others, Article 39 of the 1995 Constitution, Article 24 of the African Charter on Human and Peoples’ Rights,<sup>126</sup> as well as Berry’s interpretation of earth jurisprudence.<sup>127</sup>

As the NEA reflects very recent developments, the impact has yet to solidify.<sup>128</sup> Most of these seem to show a repetition of Ecuador’s early experiences, with resource extraction and economic development frequently trumping environmental protection efforts.<sup>129</sup> 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 have nevertheless been taken. The next section will explore a more detailed comparison.

<sup>122</sup> The 1995 version already protects customary interests in land and traditional uses of forests.

<sup>123</sup> National Environmental Act 2019, n. 97 above, Preamble.

<sup>124</sup> S. Nabwiiso, ‘Environmentalists Want “Rights of Nature” Added to New Bill’, *EABW News*, 10 Aug. 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>.

<sup>125</sup> 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 (United Kingdom), Sept. 2019), p. 21.

<sup>126</sup> Constitution of Uganda, n. 104 above, and African Charter on Human and Peoples’ Rights, adopted by the Organisation of African Unity 18<sup>th</sup> Assembly, Nairobi (Kenya), 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, available at: [https://www.achpr.org/public/Document/file/English/banjul\\_charter.pdf](https://www.achpr.org/public/Document/file/English/banjul_charter.pdf).

<sup>127</sup> ANARDE, ‘Rights of Nature Gain Ground in Uganda’s Legal System’, The Gaia Foundation, 2 Apr. 2019, available at: <https://www.gaiafoundation.org/rights-of-nature-gain-ground-in-ugandas-legal-system>. Similar to Ecuador, Uganda also refers to Berry, n. 19 above. These common sources are the likely reason for partially identical legal phrasings.

<sup>128</sup> An initiative unrelated to RoN was adopted in 2020 by the Buliisa District Council, which implemented ACHR Resolution 372 (n. 120 above), legitimizing the Balamansi (Bagungu Custodians – the chthonic people leaving the area) to access their *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’: Resolution on the Customary Laws of Bagungu Custodian Clans, adopted by the Buliisa District Local Government Council, Buliisa (Uganda), 6 Nov. 2019.

<sup>129</sup> Losh, n. 103 above.

#### 4. THE INTER-LEGALITY OF THE RIGHTS OF NATURE

The previous section identified two ‘ecosystem[s] of inter-legality’<sup>130</sup> from which national RoN initiatives emerged. For each case, we were able to identify five relevant normative spheres, namely (i) a post-colonial political and legal system, (ii) chthonic legal traditions, (iii) civil society organizations, (iv) international (soft) law, and (v) local and multinational corporations. In the following, we compare their respective relevance.

The most significant impact on land ownership comes from the first sphere – the post-colonial political and legal system. It represents the dominant authority with which all other spheres have to compete, regulating, among others, private, public, or common forms of ownership. Each country had its particular way of merging 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 relates to chthonic legal traditions. Each country’s native population has endured centuries of ostracization – 500 and 150 years, respectively.<sup>131</sup> A gradual increase in the recognition of chthonic rights, at both the national and international levels, helps to acknowledge alternative land-ownership regimes.<sup>132</sup> In particular, the Ecuadorian concepts of Pachamama and Sumak Kawsay/Buen Vivir do not focus on ownership but on a harmonious equilibrium between humanity and nature.<sup>133</sup>

The third sphere covers civil society organizations. In many countries they have stimulated cooperation among local stakeholders and spearheaded RoN initiatives. Their flexible form and local, regional, and international networking capacities help to 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. ‘Soft’ is put in brackets as we also identified binding provisions, including ILO Convention 169 and judgments of the Inter-American Court of Human Rights and the ACHPR. As such, both Ecuador and Uganda are legally bound to some degree. Despite the fact that an increase in both binding and non-binding international law documents a shift towards a pluralistic understanding of societies and their relationship with the land, the frequent lack of binding force considerably weakens their enforceability.

<sup>130</sup> S.E. Biber & N. Hovic, ‘Inter-Legality and Online States’, Center for Inter-legality Research Working Paper No. 04/2021, pp. 1–16, at 8, available at: [https://www.cir.santannapisa.it/sites/default/files/BIBER%26HOGIC\\_ONLINE%20STATES.pdf](https://www.cir.santannapisa.it/sites/default/files/BIBER%26HOGIC_ONLINE%20STATES.pdf).

<sup>131</sup> Colonial rule, while differing in time, does not differ in intensity: Glenn, n. 16 above, p. 60.

<sup>132</sup> In the most recent (5<sup>th</sup>) volume of the *State of the World’s Indigenous Peoples*, focusing specifically on ‘Rights to Lands, Territories and Resources’, the UN 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 Department of Economic and Social Affairs, *State of World’s Indigenous Peoples, Vol. V*, UN ST/ESA/375 (UN, 2021), pp. 12–3.

<sup>133</sup> Both the first and the second sphere contain elements which, at times, we have termed ‘customary law’. Nevertheless, given its very general connotation, we chose to split them up.

**Table 1** The Relevant Normative Spheres Influencing Land-Ownership Regimes Inside Two Post-Colonial Societies

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

The fifth and final sphere regards local and multinational corporations.<sup>134</sup> While we only briefly addressed economic markets and have refrained from naming any concrete actors because of their vast numbers and varying lobbying power, we do not wish to underestimate the sector's de facto influence on land-ownership regimes. The sphere's preference for environmental protection and opposing/ignoring natural resource ownership has been extensively documented.<sup>135</sup>

Table 1 presents an overview of our findings.<sup>136</sup> Except for local and multinational organizations, the central fields list the relevant actors that we identified for the respective normative spheres in our two cases. The first, second, and most of the third column are situated predominantly within a national context, while parts of the third and the entire fourth column relate to international influences. Law-wise, we included only the most pertinent examples. Three concepts – namely the South-American Pachamama and Sumak Kawsay/Buen Vivir and Berry's earth jurisprudence – remain within square brackets, as they cover more than one normative sphere. In order to maintain clarity, we assigned all three to their most relevant sphere.<sup>137</sup>

<sup>134</sup> Even though it can be argued that corporations operate widely within the post-colonial normative sphere, their *raison d'être* as profit-oriented entities is different from the *raison d'état* of nation-states. For multinational corporations, in particular, strategies such as 'base erosion and profit shifting' counter the fundamental interests of governments: OECD, 'Combating International Tax Avoidance', 2022, available at: <https://www.oecd.org/about/impact/combatinginternationaltaxavoidance.htm>.

<sup>135</sup> For an exemplary account of the corporate influence on property see Fukurai & Krooth, n. 17 above, p. 125.

<sup>136</sup> 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.

<sup>137</sup> For each concept, that sphere is chthonic legal traditions.

Considering the normative spheres at play, we identify inter-legal ecosystems occurring at three different levels. The first is in respect of the direct interplay of various actors in creating the specific RoN initiative, including foremost civil society organizations, post-colonial authorities, and chthonic groups.<sup>138</sup> In Table 1, these direct stakeholders are presented in *italics*. The second ecosystem encompasses the changes in land-ownership regimes at the local and national, as well as the international level. Such a wider normative shift towards historical reconciliation and emancipation reaches beyond strictly RoN-related processes. Table 1 shows these in roman style. The third inter-legal ecosystem is not visualized as it describes the legal interpretation and implementation (for example, the effect) of these more comprehensive provisions regarding land-ownership regimes.

It is the third ecosystem where comparing the two case studies offers substantial insights. As an established RoN country, Ecuador 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.<sup>139</sup> This provision was widened in 2015 when the Constitutional Court declared RoN to be ‘transversal’, leading RoN to affect, among others, property rights.<sup>140</sup> The decision can be seen as being metaphorically equivalent to a bridge that connects different normative spheres. 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 in favour of RoN affecting institutionalized bridges between land-ownership regimes.

Firstly, the overall ‘tide of history’<sup>141</sup> still seems to buoy the westernization of global law. We should indeed not forget that the current understanding of the concepts of *rights* and *nature* were dominantly shaped by western thought.<sup>142</sup> Nevertheless, we can observe in both countries increased 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

<sup>138</sup> ‘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, 8 June 2020, available at: <https://www.unep.org/news-and-stories/story/indigenous-peoples-and-nature-they-protect>.

<sup>139</sup> Asamblea Nacional, n. 88 above.

<sup>140</sup> Corte Constitucional del Ecuador, n. 89 above.

<sup>141</sup> In an infamous case about land claims by the Australian 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 Case and the “Tide of History”’ (2004) 35(123) *Australian Historical Studies*, pp. 106–21, at 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*, pp. 24–6, at 25.

<sup>142</sup> A potential mistrust is understandable as 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) 3(85) *Aboriginal Law Bulletin*, pp. 6–13, at 6, available at: <http://www.austlii.edu.au/cgi-bin/viewdoc/au/journals/AboriginalLawB/1996/69.html#fn0>.

taking place since 2017.<sup>143</sup> Secondly, Ecuador's institutionalization was substantially aided by the judiciary. Contrary to common law regimes, judicial activism is less frequent in civil law countries.<sup>144</sup> This puts Uganda in a position that historically favours far-reaching rulings that could institutionalize effects of RoN. The concept is generally inclined to be advanced by court decisions.<sup>145</sup> One example is India, where almost all RoN initiatives – including the highly publicized Ganga and Yamuna River judgments – were advanced by the judiciary.<sup>146</sup> 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 had varied opinions about this possibility.<sup>147</sup> 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.<sup>148</sup>

Limiting these possible trajectories is the perseverance of historically dominant normative spheres. The combination of powerful extractive industries (sphere five) and legal institutions that remain vulnerable to lobbying efforts, and have traditionally favoured 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 advancement. To name one indicator for trust, neither Uganda nor Ecuador rank highly in the Corruption Perception Index (with 27 and 39 out of 100 points, respectively).<sup>149</sup> Ecuador's RoN nevertheless managed to affect land-ownership regimes.

## 5. EFFECT OF RIGHTS OF NATURE ON LAND-OWNERSHIP REGIMES

We set out, in this article, to identify the effect that RoN have 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 those in the 2019 National Environmental Act of Uganda. This entailed an analysis of various normative spheres with a relevant impact on land ownership. We examined the (used or unused) potential of an RoN-inspired institutionalized interplay, or bridge, between them. The RoN movement is developing and is in many ways heterogeneous. It is therefore difficult, and undesirable, to generalize our findings. However, based on our case studies, we are confident that RoN have served as an institutionalized bridge within the

<sup>143</sup> Putzer et al., n. 4 above.

<sup>144</sup> B. Dickson, *Judicial Activism in Common Law Supreme Courts* (Oxford University Press, 2007).

<sup>145</sup> Putzer et al., n. 4 above. See also Kauffman & Martin, n. 67 above.

<sup>146</sup> 'Judge Who Gave Living Entity Status to Ganga, Sukhna Lake Retires', *The Tribune*, 7 Oct. 2020, available at: <https://www.tribuneindia.com/news/punjab/judge-who-gave-living-entity-status-to-ganga-sukhna-lake-retires-152490>.

<sup>147</sup> F. Tumusiime, interview with the author via telephone, 26 Nov. 2021.

<sup>148</sup> *Ibid.*

<sup>149</sup> Transparency International, 'Corruption Perception Index', 2021, available at: <https://www.transparency.org/en/cpi/2020/index/uga>.

more established Ecuadorian context, and have the potential to become such a bridge in the Ugandan context.

Institutionalization works at various levels. Applying a wide interpretation, the soft power that comes with adopting 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. Even though Uganda has not changed any constitutional provisions, national amendments, in combination with largely similar other normative spheres, offer comparable conditions.

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, without weakening the entire structure. We imagine the bridge as both a descriptive and cautiously normative structure. The description derives from the institutionalized interplay we identified in Ecuador. The normative component can potentially guide 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, RoN act as one among many mediums. The strength of RoN, in contrast to traditional approaches, is their ability to offer a shared vocabulary. As such, they represent a gateway of communication between previously (mostly) irreconcilable normative spheres.<sup>150</sup> This holds especially true for anthropocentric and non-anthropocentric legal traditions as well as the overlapping of non-chthonic and chthonic legal regimes.

With regard to the effect of the bridge on the overall vision of ownership, we conclude that it does not abolish but rather alters the idea. Nature that ‘owns itself’, to recall one of the more extreme RoN conceptualizations, does not represent a departure from but an integration within a traditional (property) rights context.<sup>151</sup> It also aligns with the idea of responsibilities.<sup>152</sup> 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.<sup>153</sup>

Even though some of the present findings show possible paths for the evolution of legal systems, RoN implementations are still the (rare) exception rather than the rule. Nevertheless, RoN represent a window of opportunity to bridge multiple normative spheres and, consequently, offer a vision of an inter-legal world that is composed of both anthropocentric and non-anthropocentric worldviews.

<sup>150</sup> For an elaboration of the difficulties of translating and codifying chthonic legal traditions see Ross et al., n. 17 above, pp. 267–9.

<sup>151</sup> 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*, pp. 9–38, at 15.

<sup>152</sup> Lubbers and co-authors write that the *rights* of nature ironically imply both rights and obligations in that land ownership entails responsibility towards both earth and humanity: R. Lubbers, W. van Genugten & T. Lambooy, *Inspiration for Global Governance: The Universal Declaration of Human Rights and the Earth Charter* (Kluwer Books, 2008). For an elaboration of 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](https://www.uni-bielefeld.de/cias/wiki/g_Green_Grabbing.html).

<sup>153</sup> V. Strang & M. Busse, *Ownership and Appropriation* (Taylor & Francis Group, 2011).