



Indigenous Biocultural Rights Enforcement in Ecuador and Colombia

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Introduction

- Ecuador constitutionalized nature's rights (2008) with Indigenous language
Art. 71 “Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes. All persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature.”
- Colombia hasn't, yet, has secured rights for various Indigenous ecosystems
 - Why this paradox?
- Argument: Indg. movement, Ecuador's top-down constitutional provisions vs. Colombia's bottom-up judicial victories
- Analysis: structural and strategic explanations for the divergence
- Implications for global RoN adoption



Section I

Background & Key Concepts

Environmental Personhood & Rights of Nature

- Stone (1972): nature should have legal standing - rivers, forests, and ecosystems as rights-holders
 - Conservation through non-anthropocentric law
- Rights already extended historically to corporations, children, formerly enslaved people - why not nature?
- Natural ecosystems can sue in court for damage to them, locals would represent their rights
- First application: Tamaqua Borough, Pennsylvania (2006) - local ecosystems recognized as legal persons to stop waste
- Latin America becomes the global center of RoN implementation in the 21st century, specifically in the Andes

Indigenous Cosmologies: U'wa & Kichwa

- U'wa (Colombia): earth's blood is oil; humans are part of nature, not above it; forest = umbilical cord between humans and earth
 - Threatened mass suicide to prevent Occidental Petroleum drilling on their territory
- Kichwa (Ecuador): Pacha Mama as Mother Earth; sumak kawsay ('good living') H
 - Pacha mama must be cared for: Harmony with nature over capitalist extraction
- Both cosmologies provide philosophical foundations receptive for RoN legal frameworks



Members of the U'wa Indigenous Guard. Photo credit: ASOU'WA

Section II - Findings

Ecuador: Rights Enshrined, Unenforced

CONAIE's Strategy & The Yasuni Collapse

- CONAIE (Latin America's largest indigenous federation) lobbied top-down for constitutional enshrinement
- Fringe movement in 1986 → 1990 Uprising → 1998 Consulted on new constitution → 2008 integral part of national politics
- Strategy succeeded symbolically but left movement entirely dependent on executive political will



Ecuador 2008 Constitution: Pacha Mama Provisions

- First nation to enshrine Rights of Nature constitutionally - Articles 71–74
- Nature granted the right to exist, persist, regenerate, and be respected
- Any person authorized to invoke these rights before public authorities
- Critical flaw: no standing doctrine, no designated tribunal, no enforcement body, no contempt power
- Whittenmore (2011): amendments would 'linger in the constitution without any real bite'

Ecuador's Continued Environmental Degradation

- Highest deforestation rate in Latin America: ~200,000 hectares lost per year
- Oil and mining = 26.8% of GDP - economic dependency made enforcement structurally impossible
- Vilcabamba River case (2011): court ruled for nature, but local government never fully complied
- Kauffman & Martin (2017): civil society litigation was the least successful enforcement pathway
- Ecuador's constitutional court had a decades-long history of political manipulation - independent adjudication unreliable



Section II - Findings

Colombia: Rights Built from the Ground Up

The Tutela: Colombia's Procedural Toolbox

- Colombia's 1991 Constitution: no explicit RoN language - but contains the acción de tutela (Article 86)
- Tutela available to any person, any court, mandatory 10-day decision requirement
- 'Dialogical judicial activism': courts maintain jurisdiction after verdicts, supervise implementation
- Solved three problems Ecuador couldn't: clear plaintiff pathway, clear forum, post-verdict enforcement
- Each tutela ruling became a legal resource for the next case - cascade of ecosystem rights decisions

The Atrato River Ruling (2016)

- Tierra Digna NGO filed tutela on behalf of Afro-descendant and Indigenous communities in Chocó
- Claimed state's failure to control illegal gold mining violated rights to life, health, water, culture, territory
- Constitutional Court declared Atrato River an 'entidad sujeto de derechos' - a legal subject with rights
- Introduced 'biocultural rights': collective rights of communities whose survival is linked to ecosystem health
- Created River Guardian Commission: community representatives at equal standing with Ministry of Environment



Future Generations v. Ministry of Environment (2018)

- Dejusticia filed tutela on behalf of 25 children - Amazon deforestation had risen 44% from 2015 to 2016
- Supreme Court: Colombian Amazon declared a legal subject with rights of protection, conservation, restoration
- Ordered government to create 'Intergenerational Pact for the Life of the Colombian Amazon'
- Short-term data showed ~10% deforestation reduction in 2018, though data validity contested
- Atrato precedent enabled Amazon case; both enabled a cascade of over a dozen subsequent rulings

Section III

Analysis: Structural & Strategic Divergence

Structural Comparison: Ecuador vs. Colombia

Ecuador - Enforcement Gap

- Rights without standing doctrine
- No designated tribunal for RoN claims
- No independent enforcement body
- No contempt power for courts
- No post-verdict supervisory mechanism
- Executive can override RoN in 'national interest'

Colombia - Procedural Toolbox

- Tutela: clear plaintiff pathway for any person
- Any court of law can hear tutela claims
- 10-day mandatory decision requirement
- Courts maintain jurisdiction post-verdict
- Monitoring by Procurator's & Comptroller's offices
- Disciplinary sanctions for non-compliant officials

Strategic Comparison: Top-Down vs. Bottom-Up

Ecuador - CONAIE Lobbying

- Concentrated capital in constitutional assembly
- Secured landmark provisions quickly
- Entirely dependent on executive political will
- No court-built precedent to survive govt. change
- Unified movement = single target to neutralize
- When Correa turned, no judicial backstop existed
- Major cases 10 years apart: revocation of mining rights in Vilecamba River (2011) and Los Cedros forest (2021)

Colombia - Coalition Litigation

- Incremental precedent-building through courts
- Each tutela ruling enabled the next case
- Precedent survived changes of government
- Fragmentation of 115 groups = distributed resilience
- NGOs (Tierra Digna, Dejusticia) provided legal expertise
- Desperation drove legal creativity
- Consistent action since Atrato 2016
- Magdalena, Cauca, Río de la Plata, Coello, Combeima, Cocora and Otún Rivers, as well as other ecosystems, such as Lake Tota, the Pisba Páramo, Los Nevados National Park

Why Formal Recognition Without Enforcement Fails

- Whittenmore (2011): rights without procedure are constitutional directives, not enforceable rights
- Kauffman & Martin (2017): government-initiated enforcement outperformed civil society litigation - the problem is architecture, not concept
- Boelens et al. (2017): Correa government simultaneously championed Pacha Mama rhetorically and dismantled it practically
- Wesche (2021): even Colombia's robust approach produced no measurable environmental improvement in four years - but created durable legal architecture Ecuador never did
- The distinction: legal durability vs. environmental outcome - Colombia achieved the former; Ecuador achieved neither

Section IV

Conclusions & Implications

Key Findings & Central Argument

- Ecuador enshrined RoN without enforcement architecture - provisions became aspirational language
- Colombia achieved biocultural rights protections through the tutela without any explicit RoN constitutional language
- Divergence is both structural (enforcement mechanisms) and strategic (lobbying vs. litigation)
- Central takeaway: effectiveness of biocultural rights depends on enforceable legal pathways and sustained judicial mobilization - not on the boldness of constitutional language
- Nations adopting RoN frameworks should prioritize procedural design over constitutional innovation
- Note: RoN is still useful

Implications & Future Research Directions

- For RoN adoption: existing human rights mechanisms (like the tutela) can outperform novel constitutional provisions if they carry procedural teeth
- Guardianship bodies need clear legal mandates, financial resources, and independence from the executive to function effectively (Wesche 2021)
- Future research: post-2023 Yasuni referendum - does a democratic mandate produce more effective enforcement than the 2008 Constitution did?
- Longitudinal study of Atrato River environmental conditions beyond Wesche's four-year window
- Replication study: do Bolivia, Peru, and Chile show similar structural patterns?