Somewhere between Rhetoric and Reality: Environmental Constitutionalism and the Rights of Nature in Ecuador and Bolivia

Louis Kotzé & Paola Villavicencio
North West University
New Frontiers Symposium, Pothcefestroom, 12-14 April, 2016
Structure

1. Anthropocentric environmental rights
2. From humans’ right to nature to the rights of nature
3. Rights of nature in Ecuador and Bolivia
Anthropocentric environmental rights

• The gradual constitutionalization of environmental law has become popular
  • Globally, more than 100 countries have constitutional environmental provisions.

• The expression of environmental constitutionalism is generally accepted
  • Through human rights
  • More particularly, through environmental rights.
  • Approximately ¾ of the world’s constitutions contain references to environmental rights.

• BUT environmental rights have remained resolutely anthropocentric.
UN Declaration on the Human Environment in 1972 (Stockholm Declaration)

“In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights [including] the right to life itself (Principle 1).
Anthropocentrism

- The centrality and privileged position of humanity
  - In the relation with the rest of the world
  - Natural resources are open to human manipulation.

- The ecosystems have only instrumental value, not intrinsic worth.

- It “has fundamentally informed not only the way modern law constructs, categorizes and orders nature, but also the manner in which law protects nature” primarily for the benefit of humans.
Nature = The inert machine
Anthropocentric environmental rights  

New geological epoch:
The anthropocentrism of environmental law
The idea that humans are part (not centre) of nature and that the conservation of nature is, above all, a duty of human beings.

All being and not human being have rights. Nature becomes a legal subject, bearer of rights and recipient of law’s regulatory protection and benefits.
Ecocentric Approach in international documents

  - “Mankind is a part of nature”
  - “Civilization is rooted in nature”
  - “living in harmony with nature”

- Universal Declaration of the Rights of Mother Earth adopted at the World People’s Conference on Climate Change and the Rights of Nature (2010):
  - “Mother Earth and all beings are entitled to all the inherent rights recognized in this Declaration (including the rights to life, to existence, and to continue its vital cycles and processes free from any human interference) without distinction of any kind, such as may be made between organic and inorganic beings, species, origin, use to human beings, or any other status”
Rights of Nature
The Ecuadorian and Bolivian experience
Ecuador

- The Citizens’ Revolution of Rafael Correa called to the construction of a new country:
  ...where human beings live side by side in harmony with the nature, its plants, its animals, its rivers and lakes, its sea, its air, its soils, and all these elements and spirits which make life possible and beautiful. A country where the predatory commodification of the nature is not possible, in which the human being is part of her and not its destructive master. (Government Plan 2007-2013)

- Constituent Assembly (2007)
- New Ecuadorian Constitution (2008):
  - Participatory democracy
  - Plurinational framework
  - Economic Model
  - New understanding (harmonic) with nature
Preamble:

... Recognizing our age-old roots, wrought by women and men from various peoples, celebrating nature, the Pacha Mama (Mother Earth), of which we are part and which is vital to our existence...calling up the wisdom of all the cultures...[h]ereby decide to build a new form of public coexistence, in diversity and in harmony with nature, to achieve the **buen vivir**, the **sumak kawsay** (living well)
Ecuadorian Constitution

• It recognizes *Pacha Mama* as a subject of rights with its own values, and not just as an object to meet the human needs (article 10).

• It recognizes constitutional rights for Pachamama (where life is reproduced and occurs):
  • The right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes (article 71)
  • The right to be restored (article 72)

• Any person can stand up for the rights of nature without need for a direct interest (article 72)
The applicability of the rights of nature

- Constitutional jurisprudence: First Court ruling worldwide:

- Legislative development and government policy taken afterwards:
  - Mining Law 045, 29 January 2009.
  - Reform of the Hydrocarbons Law 244, 27 July 2010.
  - The experience of the Yasuni-Ishpingo Tambococha Tiputini (ITT) Initiative.
Bolivia

- Political crisis at the beginning of the twenty-first century because the debilitation of the economic, social, political and legal structures:
  - The “water war” (2000)
  - The “gas war” (2003).

- First indigenous president of Bolivia, Evo Morales (2005)

- First Constituent Assembly (2006) with the mission to “refound Bolivia”.

- Bolivian Constitution was approved in a Constitutional Referendum and came into force in 2009.
The Constitution does not recognize rights of nature but it incorporate a particular language regarding nature or Mother Earth that provide the foundations for legislative development:

- “...In ancient times mountains arose, rivers moved, and lakes were formed. Our Amazonia, our swamps, our highlands, and our plains and valleys were covered with greenery and flowers. We populated this sacred Mother Earth with different faces, and since that time we have understood the plurality that exists in all things and in our diversity as human beings and cultures. Thus, our peoples were formed, and we never knew racism until we were subjected to it during the terrible times of colonialism”.

- It incorporates ancestral values and principles, especially from the Aymara culture, as the suma qamaña or vivir bien (living well) in harmony with Mother Earth or Pachamama.
First secondary legislation worldwide that recognizes the rights of nature or Mother Earth


- Both laws arises from a proposal of law (Law on Rights of Mother Earth- Ley sobre los derechos de la Madre Tierra) that was submitted by the main indigenous organization (Unity Pact) in 2010: “Manifiesto Politico y Cultural de la Madre Tierra”.
The Law recognizes inherent rights of nature: to life, to the diversity of life, to water, to clean air, to equilibrium, to restoration and to pollution-free living (article 7). Thus Mother Earth is considered subject of rights.

The Law endorses guiding principles: harmony, collective good, guarantee of regeneration, respect and defense of the rights of Mother Earth, no commercialization and multiculturalism.

It recognizes obligations and duties of the State and society to ensure respect for rights of nature.

The Law also provides for an Ombudsman for Mother Earth to protect nature’s interests.
The applicability of the rights of nature

- Absence of new legislations enforcing the Law of the Rights of Mother Earth and the Office of Mother Earth has not been established yet.

- In 2014 Morales’ Government approved a new Mining and Metallurgy Law.

- In 2015 Evo Morales approved a Supreme Decree 2366 that allows the development of oil and gas exploration in protected areas.

LAS PROPUESTAS DE CARRETERAS Y EL INTERÉS PETROLERO EN EL TERRITORIO INDÍGENA PARQUE NACIONAL ISIBORO SÉCURE (TIPNIS)

La propuesta de construcción de carretera de la AGC
El gobierno de Evo Morales comenzó a construir una carretera en tres tramos que tendrá una extensión total de 306 km que atraviesará el TIPNIS, con un costo de 145 millones de bolivianos financiados por el Fondo Monetario Internacional.

REFERENCIAS
- Carretera Pavimentada
- Carretera Ripariána
- Carretera en Construcción
- Carretera en Definición
- Red funcional

Propuesta del Subalcaldía del Isiboro Secure
El Subalcaldía Pedro Temo indicó que ya se plantearon al gobierno alternativas de ruta.

Áreas de exploración petrolera en el TIPNIS
El Gobierno reveló que habría reservas de hidrocarburos que estarán siendo estudias por la empresa Petroandina.

REFERENCIAS
- Chuquisaca
- Símbolo con 20
- Símbolo con 19

Las cuatro alternativas de explotación del CADES, según el ambientalista Juan Terrazas, cuatro son las alternativas que se plantearon para no desperdiciar los recursos naturales.
THANK YOU FOR YOUR ATTENTION!