

Paradigm Lost?

Exploring Earth Jurisprudence in Bolivia



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Abstract

Earth jurisprudence stands out as a state-level approach to sustainability due to its potential to transform perspectives on nature at both the national and individual levels by establishing legal rights to nature to which the state is held accountable. Bolivia's progressive embrace of Earth jurisprudence, as demonstrated through the recognition of Mother Earth and Her rights in its 2009 constitution and national legislation (such as the *Ley de Derechos de la Madre Tierra*), offers a compelling case study for evaluating the impact and efficacy of this approach.

This article delves into the historical, political, and social contexts of Bolivia to provide a deeper understanding of the application and effectiveness of Earth jurisprudence. Through original interviews with Bolivian activists, this research finds that Earth jurisprudence has had limited to no discernible influence on the effectiveness of environmental policy and protection in Bolivia. This research attributes this lack of impact to several factors, such as a weak democratic system, an economic dependence on extractive industries, a fragmentation of social movements, and a lack of international accountability.

Keywords

Bolivia; Earth Jurisprudence; Indigenous; Legal Rights; Nature; Accountability

Introduction

In a *New York Times* article addressing the environmental degradation of the Great Salt Lake, American writer and conservationist, Terry Tempest Williams, raises a thought-provoking question: “Why not grant personhood rights to Great Salt Lake, which in 2021 was voted ‘Utahn of the Year’ in The Salt Lake Tribune?”¹ Williams’ call for granting personhood to nature is not an isolated one. In the past ten years, there has been a notable increase in the recognition of legal rights for natural entities. For example, the Whanganui River in New Zealand, and the Ganges and Yamuna Rivers in India, were all granted personhood in 2017. These handful of cases represent a seismic shift in legal systems and environmental policy. As we face the challenges of mitigating the effects of climate change it is critical to ask how the momentum of these progressive efforts can be used to bring about a larger paradigm shift concerning nature in the eyes of the law. Earth jurisprudence offers precisely such a method of transitioning legal systems from being anthropocentric to becoming ecocentric.

With sovereign states being pushed toward accountability and action in the effort to mitigate climate change by grassroots and international movements, it is pertinent to begin investigating the different means by which states can reshape themselves to center the environment. This article is specifically interested in the choice by some states to approach sustainability and mitigate climate change through Earth jurisprudence which radically recenters the environment through legal and constitutional reform. Earth jurisprudence stands out as a state-level approach to sustainability because it can transform attitudes toward nature at both the national and individual level while holding the state accountable for the rights of nature. Through an

¹ Terry Tempest Williams, “I Am Haunted by What I Have Seen at Great Salt Lake,” *New York Times*, March 25, 2023, <https://www.nytimes.com/2023/03/25/opinion/great-salt-lake-drought-utah-climate-change.html>.

analysis of its principles and a study of its application in Bolivia, this research seeks to foster the global proliferation of Earth jurisprudence. It is tempting to envision Bolivia as a beacon of hope in a world on the precipice of environmental catastrophe. However, this research found that this form of jurisprudence in Bolivia demands a more nuanced examination, compelling us to remove our rose-tinted glasses and acknowledge its full complexities. While the *Ley de Derechos de la Madre Tierra* represents global progress and sets an exemplary standard for the state to uphold, its real-world impact on environmental protection and policy in Bolivia has been limited. This fact assumes greater significance when considering that these policies play a pivotal role in safeguarding irreplaceable biodiversity hotspots, environmental services, and the rights of indigenous communities.

The title of this article, reminiscent of John Milton's "Paradise Lost," alludes to my overarching conclusion: While Earth jurisprudence embodies a paradigm shift offering hope and a novel approach to our relationship with nature, the persistence of extractive practices and the exploitation of both humanity and the environment divert us from this utopian vision. It raises the question of whether a fundamental paradigm shift, such as that embodied by Earth jurisprudence, can greatly contribute to solving the climate crisis.

Earth Jurisprudence

The concept of Earth jurisprudence involves repositioning law so that it is no longer solely anthropocentric, or human-centered, but rather ecocentric. Central to the development of Earth jurisprudence in Western philosophy and its application in nation-states through environmental constitutionalism is Thomas Berry. Berry is a cultural historian whose work and intellectual wonderings in the second half of the 20th century served as a push toward reconsidering the role

legal systems play in how individuals and society value nature and the environment.² His work had a strong influence on the first instances of Earth jurisprudence in state constitutions and the UN adoption of the Harmony of Nature resolutions in 2009.³

Berry formed his foundational approach to Earth jurisprudence out of a belief that the current climate crisis is also a crisis of Western culture and identity.⁴ Instead of merely focusing on the immediate cause of the climate crisis, Berry points to modern Western culture as the culprit that led humans to create environmental degradation. Particularly, a cultural binary, or a separation, between humans and nature spiraled to the catastrophe we are facing in this day and age. Furthermore, nature became viewed as an entity that humans have a right to dominate and use to their benefit even if the ramifications were deadly or unhealthy for the Earth as a whole. Because this way of viewing the world has had deep implications for how humans interact with nature, Berry proposed a radical transformation of society, culture, systems, and institutions.⁵ With the immense challenge and threat that climate change poses to modernity, Berry advocates that humans need to radically change their views on their relationship to nature. This need to “reinvent the human” is the foundation of Berry’s conception of Earth jurisprudence. Rather than being separate entities from nature, Berry posits that human beings should begin to reconceptualize themselves and nature as a united “Earth community.” Berry’s Earth community may be defined as an Earth-centered community of all living species of equal value to one another. Instead of seeing nature as a resource to be used, humans must be reacquainted with how their actions have

² Peter D. Burdon, *Earth Jurisprudence: Private Property and the Environment* (New York: Routledge, 2014), 1, <https://doi.org/10.4324/9780203797013>.

³ Jeremy J. Schmidt, “Of Kin and System: Rights of Nature and the UN Search for Earth Jurisprudence,” *Transactions of the Institute of British Geographers*, 47, no. 1 (March 2022): 820–834, <https://doi.org/10.1111/tran.12538>.

⁴ Thomas Berry, *The Great Work: Our Way into the Future* (New York: Random House, 1999), 101.

⁵ Berry, *The Great Work*, 160.

effects on the greater Earth community. Humans must also be intimately reacquainted with nature and the Earth systems we live alongside in a relationship of reciprocity.⁶

Berry's theory of Earth jurisprudence specifically calls for the transition to an ecocentric society through the reform of legal systems. According to Berry, the legal system needs to change to mitigate climate change and shift attitudes concerning the environment. The inclusion of Earth jurisprudence in law would "provide for the legal rights of [the] geological and biological as well as human components for the Earth community."⁷ The solely human-centered status of law is not sustainable in the long term and makes the cultural and structural transition to serving the Earth community as a whole unfeasible.⁸

The importance of law in transitioning to an ecocentric society lies in its ability to reshape and influence the values and structures a society holds. Like a two-way "magic mirror," the law reflects values onto society while reflecting society's values.⁹ A change in the law to be more inclusive of nature would finally reflect a recognition that the traditional Western relationship with nature has significantly contributed to the alarming and potentially catastrophic climate crisis the Earth is facing. Moreover, law has the potential to reshape society, pushing it to build sustainability and relationships of reciprocity with nature. Hence, changing the law assists in setting up the parameters for a new way for humans to interact with the Earth community. This creates a system of "mutual enhancement" where the law imposes values to society that centers the Earth community as a whole.¹⁰

⁶ Berry, *The Great Work*, 104.

⁷ Berry, *The Great Work*, 161.

⁸ Berry, *The Great Work*, 161.

⁹ Burdon, *Earth Jurisprudence*, 5.

¹⁰ Burdon, *Earth Jurisprudence*, 81.

The explanation of Earth jurisprudence provides clarity on how we may explore the value of its real-life application. In the next section, we will begin to evaluate the history and social movements that allowed for the implementation of Earth jurisprudence in Bolivia through the *Ley de Derechos de la Madre Tierra*.

What Made Bolivia an Ideal Place for Earth Jurisprudence?

Bolivia's enactment of the *Ley de Derechos de la Madre Tierra* in 2010 did not emerge spontaneously but was the culmination of deeply rooted cultural beliefs held by indigenous communities, coupled with complex historical and political consequences stemming from centuries of colonialism and resource exploitation in South America.¹¹ When assessing the current achievements and challenges of Earth jurisprudence in Bolivia, it is imperative to examine the social and political contexts that paved the way for its legislative establishment.

Bolivia boasts one of the largest concentrations of self-identifying indigenous citizens in Latin America, with estimates and survey results spanning from 40% to 60%.¹² At a broad level, Bolivian politics and history are marked by the exclusion of indigenous people. Nevertheless, despite their historical marginalization from democratic mechanisms and systems, the influence of

¹¹ David Humphreys, "Rights of Pachamama: The Emergence of an Earth Jurisprudence in the Americas," *Journal of International Relations and Development* 20, no. 1 (Summer 2017): 464. <https://doi.org/10.1057/s41268-016-0001-0>.

¹² Maria Amparo Cruz-Saco and Joanne Toor Cummings, "Indigenous Communities and Social Inclusion in Latin America," (New York: United Nations Expert Group Meeting on Families and Inclusive Societies, May 15-18, 2018), 4, <https://www.un.org/development/desa/family/wp-content/uploads/sites/23/2018/05/2-1.pdf>; Leonardo Tamburini, "Bolivia," *The Indigenous World 2022*. (Copenhagen: International Work Group for Indigenous Affairs, April 2022), 339, <https://pdba.georgetown.edu/CLAS%20RESEARCH/Working%20Papers/WP17.pdf>.

indigenous communities has been decisive in shaping some of the most significant political and historical movements witnessed by the nation. It is plausible to argue that, without the voices and power of indigenous communities in Bolivia, the nation would likely not have adopted the progressive policies exemplified by the *Ley de Derechos de la Madre Tierra*.

Central Principles Leading to the Ley de Derechos de la Madre Tierra

Preexisting knowledge and belief systems of indigenous communities in the Andes played a vital role in creating a path toward ecocentrism being acknowledged and implemented at a national and legislative level in Bolivia.¹³ This can be exemplified by the Andean values of *Pachamama*, *sumaj kamaña*, and *buen vivir*.

The concept of *Pachamama* is rooted in Andean theology, with the term itself originating from Aymara.¹⁴ Beyond its modern association with ecocentrism, *Pachamama* is a figure that is often represented as “Mother Earth” or a goddess of fertility. Acknowledging the importance and authority of *Pachamama*’s existence as a deity that enforces the constant creation of all, the principles of *sumaj kamaña* provide how individuals and indigenous people may honor *Pachamama*.¹⁵ *Sumaj kamaña* recognizes a sense of gratitude people have for the life they are given and sustained through *Pachamama*, repaying this debt through a way of life that harmonizes with nature, ensuring sustainability for current and future generations.¹⁶

The principles of *sumaj kamaña* have created shared practices in Bolivia. For example, many Bolivians or individuals of Andean descent who embrace principles of *sumaj kamaña* have

¹³ Humphreys, “Rights of Pachamama,” 461.

¹⁴ Kirra Klein, “Vivir Bien: Tracing the Ethos of Plural Progress in Bolivia,” *The Interdependent: Journal of Undergraduate Research in Global Studies* 1, no. 1 (Spring 2020): 13, <https://doi.org/10.33682/xv99-dccp>.

¹⁵ Klein, “Vivir Bien,” 92.

¹⁶ Samuel Flores, interview by author, March 16, 2023, 00:36:57-00:38:17.

norms such as adopting and changing life to align with seasonal cycles and eating or using all parts of an animal that is killed for consumption to ensure the sacrifice of its life is not wasted. It is crucial to emphasize that *Pachamama* is not merely an ideology or set of practices; rather, it is a deity within the holistic Andean understanding of the universe.

Another commonly valued concept in Bolivia, closely associated with the *Ley de Derechos de la Madre Tierra*, is *buen vivir*, which translates to "good living." Distinct from Western and modern conceptions of what "good living" means (which usually connotes certain measurements of social and economic status), *buen vivir* accounts for a way of life that includes a spiritual connection to and harmony with nature. The concept is not specifically used in the Bolivian constitution, but it can be considered a foundational philosophy to developing a law, like the *Ley de Derechos de la Madre Tierra*, that relates human rights and a good life to the health of the environment.¹⁷

Additionally, my interviews have often alluded to *buen vivir* being connected to the idea of a common good and coexistence with one's community. Community in this concept aligns with Earth jurisprudence, as community refers not just to a community of people but to interconnected Earth systems. Notable is that, unlike *Pachamama*, *buen vivir* is a relatively new belief and approach to life, emerging in Latin America in the early 2000s as an alternative measurement and approach to development.¹⁸ *Buen vivir*'s development can be connected, however, to the long-standing indigenous practice of *sumaj kamaña*.

Understanding the basic meanings and conceptions of the terms *Pachamama*, *sumaj kamaña*, and *buen vivir* provides a background through which to analyze the ways they have been

¹⁷ Humphreys, "Rights of Pachamama", 471.

¹⁸ Jocelyn Mercado, "Buen Vivir: A New Era of Great Social Change," Pachamama Alliance, December 25, 2017, <https://blog.pachamama.org/buen-vivir-new-era-great-social-change>.

redeveloped and deployed in the context of politics, national mythmaking, and policymaking. The growing tendency to lump *Pachamama*, a deity, with the approaches of *sumaj kamaña* and *buen vivir* is connected to *Pachamama* becoming more and more often used in political rhetoric, being removed from its indigenous origins.

Evo Morales, Bolivia's first indigenous president whose administration pushed for the decolonization of Bolivia, used his indigenous identity and beliefs in the concept of *buen vivir* and honoring *Pachamama* to supplement his platform and unite the demands of the political left of Bolivia.¹⁹ Although *buen vivir* and *Pachamama* existed and were already a part of Andean consciousness before the rise of Morales, Morales' presidency and the rise of *Movimiento al Socialismo* (MAS)²⁰ transferred these beliefs and ways of living into a political discourse, which previously had been dominated by creole and neoliberal values and control. These values and indigeneity itself have been appropriated for the benefit of political figures. As environmental activist Rosa Maria Ruiz alluded to,

These words and concepts have been so commercialized by our government that they have lost their meaning. Undoubtedly, many of our peoples have lived much, much closer to nature and its spirits than others, and there is enormous wisdom that they could have shared if they had been respected. But just as we have become the greatest per capita destroyers of the forest globally, I believe we are also the fastest losers of ancient indigenous knowledge.²¹

It is also important to highlight that although many indigenous groups hold common practices and beliefs, there is a diverse and large number of indigenous groups in Bolivia. This means that among indigenous groups in Bolivia, there is by no means a united practice of and belief in the ideological values of *buen vivir* and *sumaj kamaña*. Altogether, because Bolivia is a

¹⁹ Humphreys, "Rights of Pachamama", 466.

²⁰ MAS translates to mean "Movement Towards Socialism". It is a leftist Bolivian political party founded in 1998 and has been governing the country since 2006.

²¹ Rosa Maria Ruiz, correspondence with author, April 9, 2023, 5.

plurinational state consisting of many indigenous communities with differing backgrounds, beliefs, and values of a new form of *Pachamama*, *buen vivir*, and *sumaj kamaña* have been produced in political discourse to exist as shared national values.

The inclusion of indigenous cosmovisions, values, and practices into state approaches is a historic reversal to a global history of erasure and silencing of indigenous peoples in Bolivia and Latin America. Yet, at the same time, there is a question of whether these values are corrupted or appropriated upon their inclusion into legal and political systems. As previously mentioned, while Morales should be rightfully celebrated as Bolivia's first indigenous leader, one can question whether he is truly changing the political systems that made his rise to power centuries in the making, or whether he is just changing the rhetoric of the system.

The Bolivian Water and Gas Conflict

Bolivia's adoption of Earth jurisprudence sits upon a colonial legacy that profoundly affected both the environment and indigenous communities. The wealth extracted during colonial times fueled Europe's economic growth, driving Western technological advancements and industrialization. While Europe's economy prospered from the looting of natural resources, Latin America's self-determination was stifled.

Colonization and extraction of natural resources from Bolivia have placed the country in a pernicious position on the global periphery. However, as indigenous peoples were given political power through the rise of MAS after the Gas War in 2003, Bolivia became a place where Earth jurisprudence could blossom, even in the wake of colonialism's destruction of the environment and indigenous communities.

This section details the Bolivian Gas and Water Conflict, a set of social movements in the early 2000s that led to the creation of the Plurinational State of Bolivia. The Gas and Water

Conflict was a large mobilization of indigenous and national-popular movements that fought against years of social and economic oppression from neocolonial control and internal colonialism. After the Gas and Water Conflict, Bolivia began the process of reshaping itself into a democratic socialist, post-colonial society. This reclamation of indigenous identity and the country itself from colonialism brought about the push to also reclaim the country's natural resources, recentering respect for *Pachamama* and the practice of *sumaj kamaña* through *buen vivir*.

Starting with the fourth presidency of Víctor Paz Estenssoro in 1985, sweeping neoliberal economic reforms were introduced through the New Economic Policy (NPE), aligning with the principles advocated by the Washington Consensus, in an effort to revitalize the economy.²² A significant aspect of this economic strategy involved the dismantling of Bolivia's underperforming nationalized mining corporation.²³ Over the subsequent 15 years, these neoliberal reforms persisted, including during the presidency of Gonzalo Sánchez de Lozada, who introduced *Plan de Todos*.²⁴

However, the *Plan de Todos* promised economic reforms and educational initiatives but ultimately leaned toward neoliberal policies, resulting in the decentralization of Bolivia's government and further privatization of its industries.²⁵ This period of neoliberal reform, marked by increased resource extraction benefiting the Global North at the expense of indigenous and working-class people, harkened back to the resource extraction during Bolivia's colonization by Spain. The late 1990s saw a growing awareness in Bolivians of these historical parallels, fostering

²² Herbert S. Klein, *A Concise History of Bolivia* (Cambridge: Cambridge University Press, 2021), 244, <https://doi.org/10.1017/9781108953719>.

²³ Klein, *Concise History of Bolivia*, 245.

²⁴ Klein, "Vivir Bien," 104.

²⁵ Klein, "Vivir Bien," 105.

mainstream support for indigenous empowerment and the dismantling of colonial structures in Bolivia.²⁶

Bolivian tolerance of neoliberal reform reached its breaking point over the privatization of water and gas through the Hydrocarbons Law no. 168 in 1997. With the leverage of the World Bank through a debt relief package, two of Bolivia's largest industries fell into the hands of transnational energy corporations. Some of the first organized efforts of resistance by Bolivian citizens, over this law, occurred in Cochabamba after the privatization of the city's water, through a contract with the Bechtel Corporation, led to a 40-59% raise in the cost of water bills, an unsustainable cost for the average Bolivian.²⁷ This first practice of resistance created the impetus of the political and social change that occurred in Bolivia in the early 2000s and was termed the 2000 Bolivian Water War.

Drawing upon collective action activist groups (such as farmers, laborers, and environmentalists) in Cochabamba united to form *La Coordinadora*.²⁸ With overwhelming anger expressed through protests and the installation of barricades, demonstrators were able to express their ire to the Bolivian government and the Bechtel Corporation. Under public pressure, Bechtel's CEO pulled out of the deal and removed itself from Bolivia, signifying a loss for neo-liberal privatization efforts.

The 2000 Water War was significant in that it challenged two historical legacies and patterns in Bolivia. First, the Water War defied colonialism and its modern manifestation, neocolonialism. The Water War is a modern event that marks itself in Bolivian history as a reversal of the early colonization and its concomitant extraction of massive wealth. Secondly, the 2000

²⁶ Klein, "Vivir Bien," 105.

²⁷ Klein, "Vivir Bien," 106-7.

²⁸ Which can be translated to mean the "Coalition for the Defense of Water and Life."

Water War also stands out as an event of significant collective action in opposition to privatization and was organized through a diverse number of social movements and historically divided constituents. This unity and action made way for collective action that no longer prioritizes the political needs and whims of social and ethnic elites, but now democratically recognizes the needs of the indigenous majority in Bolivia.²⁹ The lessons gleaned from the Water War played a pivotal role in the subsequent conflict over gas, ultimately leading to the presidency of Evo Morales and the enactment of the *Ley de Derechos de la Madre Tierra*.

Similar to the Water War, the Gas War of 2003 took place as a reaction to foreign control and profiteering from Bolivia's natural resources. A result of neoliberal policies, the Gas War was a call to halt a project led by multinational hydrocarbon firms to construct an oil pipeline for exporting Bolivian oil to the Pacific Ocean, where it would be processed and sold abroad. Not only would the wealth from Bolivia's natural resources be diverted by exportation, but also having a pipeline reach the Pacific through Chile, as planned, ignited historical resentment held against Chile by Bolivians. The Gas War also gained momentum due to the arrest of Edwin Huampu over a conflict involving indigenous communal justice practices versus state legal practices.³⁰ This incident, coupled with various smaller regional conflicts with the state government, provided fertile ground for channeling the energy from the Water War into a broader national reform movement.

In September 2003, La Paz and El Alto saw the commencement of strikes, marches, demonstrations, and road blockades led by Aymara peasants, students, neighborhood associations, and truckers. Their demands included the abandonment of the gas export project to Chile, rejection of the Free Trade Area of the Americas agreement, repeal of the "Citizen Protection and Security"

²⁹ Klein, "Vivir Bien," 83, 85, 105-6.

³⁰ Klein, "Vivir Bien," 83, 105-6.

law, and the resignation of President Sánchez de Lozada.³¹ This initial agenda evolved into the October Agenda, which expanded the demands to include just trials for those responsible for protester deaths, the complete repeal of the 1996 Hydrocarbons Law, and the establishment of a constitutional assembly to transform Bolivia into a new republic.

From early October up until the 17th, protests and demonstrations multiplied, especially as demonstrators converged on La Paz and El Alto. Other major cities, such as Cochabamba, also mobilized and became centers of public discontent. Being unable to suppress the number of protesters entering La Paz, Sánchez de Lozada retreated from Bolivia and the presidency was passed over to Carlos Mesa. Mesa immediately acknowledged the demands of the October agenda and stated his presidency was dependent upon the approval of the people.³² However, Mesa's tenure was brief, as he failed to address the demands of the October agenda promptly and adequately. Following his resignation, a national election propelled Evo Morales to the presidency in 2005.

In 2005, under Evo Morales' leadership, a democratically elected constitutional assembly was convened. After initial failure to produce a constitution and a lengthy period of work, the assembly created the current constitution which established Bolivia as a plurinational state. This new constitution garnered international attention for its emphasis on indigenous rights. Domestically, due to the participation of indigenous groups in the decision-making process, the constitution was seen as “the culmination of more than 500 years of struggle for liberation by indigenous people against colonial and republican rule and oppression.”³³

³¹ Forrest Hylton and Sinclair Thomson, *Revolutionary Horizons: Past and Present in Bolivian Politics* (London: Verso, 2007), 113.

³² Hylton and Thomson, *Revolutionary Horizons*, 117.

³³ Paola Villavicencio Calzadilla and Louis J. Kotzé, “Living in Harmony with Nature? A Critical Appraisal of the Rights of Mother Earth in Bolivia,” *Transnational Environmental Law* 7, no. 3 (2018): 401, <https://doi.org/10.1017/S2047102518000201>.

Admittedly, and most importantly to this research, the Bolivian constitution does not explicitly grant rights to nature and the environment but rather guarantees its protection. Yet, the Bolivian constitution does recognize and make references to *Pachamama* and indigenous principles such as *buen vivir* and *sumaj k'ataña*. While not giving constitutional rights to nature and the environment directly, the references to *Pachamama*, *buen vivir*, and *sumaj k'ataña* recognize the importance and foundational presence of nature in Andean culture and the creation of the plurinational state.³⁴ In this manner, the constitution recognizes that without *Pachamama* the new constitution itself would not have been possible.³⁵

Beyond the constitution, Bolivia adopted *Ley de Derechos de la Madre Tierra* in 2010. *Ley de Derechos de la Madre Tierra* is significant as it is the first statutory law in the world to grant nature and Mother Earth rights. Besides its international significance, this law also underscores the unity and interconnectedness of the Earth community, the role of indigenous people in guiding environmental protection and policy, and the importance of maintaining ecological systems and environmental integrity. The *Ley Marco de la Madre Tierra*, developed in 2012, was passed to provide mechanisms to reaffirm the protection and rights of nature promised in the constitution and *Ley de Derechos de la Madre Tierra* by acknowledging the intersectional nature of rights and potential approaches to protecting the environment.³⁶

Interview Overview

This final section summarizes the general findings and trends I observed from my independent research through interviews on the current state of environmental protection and

³⁴ Calzadilla and Kotzé. "Living in Harmony with Nature?" 401-3.

³⁵ Calzadilla and Kotzé. "Living in Harmony with Nature?" 402.

³⁶ Calzadilla and Kotzé. "Living in Harmony with Nature?" 397-424.

policy in Bolivia. All the interviews, with one exception, were conducted and recorded by myself, they are not publicly available.³⁷ All of the interviewees worked for many years in advocacy in Bolivia. The individuals I spoke to for this research agreed to have their interviews recorded and to have their name publicly referenced in this research without the use of a pseudonym. Additionally, most of the interviews in this research were conducted in Spanish and have been translated into English to be quoted throughout this section.

Looming over all the interviews was a sense of disillusionment concerning the Bolivian government's success and efforts to protect the environment. The disillusionment stemmed from the stark contrast between the current state of Bolivia and the hope and progress that originally existed after the Gas and Water Conflict, the rise of MAS, and Evo Morales' presidency. To many activists, the status of environmental degradation symbolizes a complete reversal of the promises and momentum that originally arose during Morales' tenure.

Overall, the most pressing threats to the environment in Bolivia came from extractive industries and agriculture. Most often referred to in my interviews was mercury contamination, a byproduct of gold mining, found in Bolivian waterways. A swell in gold mining, due to its surge in price in the international market in recent years, has created more than 1,000 artisanal mining operations in forested and mountainous areas, such as Madidi National Park, and has made Bolivia

³⁷ The exception to this is one pre-recorded interview, available online, with Pablo Solon where he speaks about the progressive nature of Earth jurisprudence in Bolivia alongside its failures. Solon was, for a period of just over 2 years, the Ambassador of the Plurinational State of Bolivia to the United Nations and played a significant role in resolutions such as the Rights of Indigenous Peoples, International Mother Earth Day, and Harmony with Nature. Solon was repeatedly mentioned as a vital source in understanding why Bolivia was able to enact Earth Jurisprudence and why it has failed to produce significant change in protecting nature in Bolivia. I was unable to interview Solon, but this recorded and transcribed interview with Solon was similar to my own set of questions for this research and Solon's answers adequately addressed the information I was trying to gather for my senior thesis project. This interview, in fact, generally summarized the general findings of my research and the general commentary of my interviewees. "Pablo Solón - Buen Vivir, The Economy and the Rights of Nature," interview by Silver Donald Cameron, *The Green Interview*, January 1, 2014, 1-11, <https://thegreeninterview.com/wp-content/uploads/solon-pablo-the-green-interview-transcript.pdf>.

one of the largest importers of mercury.³⁸ As researcher and activist with Centro de Documentación e Información Bolivia (CEDIB)³⁹ Jorge Campanini noted, “We are a country that has the highest mercury contamination rates in the Amazon, in the world, and in people.”⁴⁰

Beyond mining, interviewees reported alarming trends of deforestation in Bolivia. My research, conducted outside of the interviews, supports this observation, as Bolivia ranks tenth in total tree cover loss from 2001 to 2021, according to findings from Global Forest Review and Global Forest Watch.⁴¹ The consequences of deforestation in Bolivia are far-reaching, impacting biodiversity, precipitating climate shifts, and resulting in deteriorating water access for communities in the country.⁴²

There is also a new environmental threat on the horizon in Bolivia due to the ramifications of lithium production. This will soon be tangible after the announcement in January 2023 that the Chinese battery company, Contemporary Amperex Technology Co., Limited (Catl), had won the bidding process for Bolivia’s lithium reserves and has set the goal to start exporting lithium batteries in 2025.⁴³ CEDIB Researcher Jorge Campanini acknowledged that while the extraction of lithium brings the promise of jobs and development into Bolivia, there are concerns regarding its environmental impacts. These concerns encompass ecosystem degradation and species loss, issues that have already been observed in neighboring Chile because of lithium production.⁴⁴

³⁸ Thomas Graham. “In Bolivia, Mercury Pollution Spreads Amid a Surge in Gold Mining,” *Yale Environment 360*, December 8, 2022, <https://e360.yale.edu/features/bolivia-mercury-gold-mining>.

³⁹ Which translates to “The Bolivian Documentation and Information Centre.”

⁴⁰ Jorge Campanini, interview by author, April 3, 2023, 00:18:02-00:18:12.

⁴¹ “Top 10 Lists,” World Research Institute and Global Forest Review, <https://research.wri.org/gfr/top-ten-lists#bolivia>.

⁴² Antonio Sanjinez, interview by author, March 21, 2023, 00:44:21-00:43:42.

⁴³ “Chinese Firm Catl to Develop Huge Bolivian Lithium Deposit,” *BBC*, January 21 2023, <https://www.bbc.com/news/world-latin-america-64355970>.

⁴⁴ Jorge Campanini, interview by author, April 3, 2023, 00:04:21-00:04:08.

After analyzing my interviews, I narrowed down four specific issues that resulted in Earth jurisprudence through the *Ley de Derechos de la Madre Tierra* having a low impact on environmental protection in Bolivia: the failures of the state government and politicians, a reliance on and inability to break from extractivist economic practices, a fracturing and silencing of indigenous people, and the silence of the international community.

The Failures of the State Government and Politicians

The failure of the state government and politicians to actualize the principles enshrined in *Ley de Derechos de la Madre Tierra* was repeatedly attributed throughout my interviews to weak democratic systems, internal colonialism, and an appropriation of indigenous identity and values by politicians and political parties for their gain.

While elaborating on a lack of accountability and due process in Bolivia, Friar Carmelo Galdos (a veteran of social justice and peace initiatives in Bolivia for nearly four decades) noted, “Today, there is no separation of the four branches in the country. What the Legislative says, the Executive says, the Judiciary says, and the Electoral Body says.”⁴⁵ Echoing Fr. Galdos, Alejandro Almaraz, a lawyer who served as the Vice Minister of Lands in the early years of Evo Morales’ presidency, also emphasized a diminishing separation of these branches of government, commenting, “Another characteristic [of Bolivia’s state structure] is the independence of the powers. In Bolivia there never, ever was, an independence of powers except in appearance. And there is less and less.”⁴⁶

More specifically, within Bolivia’s dysfunctional system of checks and balances, citizens face significant challenges when it comes to holding both public and private entities accountable

⁴⁵ Carmelo Galdos, interview by author, March 22, 2023, 00:30:57-00:31:11.

⁴⁶ Alejandro Almaraz, interview by author, March 23, 2023, 00:42:48-00:43:02.

for actions that contravene the norms outlined in *Ley de Derechos de la Madre Tierra* through the judicial system. As Antonio Sanjinez, project coordinator at the Bolivian environmental NGO PROBIOMA, stated:

Independence of powers is a fiction. The judiciary is subjugated, subordinated to the executive power. The executive power has a short-term vision and wants to move forward and needs to implement these extractive projects as fast as possible. And then the judiciary is managed in this way. So, there is not even the trust of the population toward the judiciary, which should be, if it were independent, there would be a better management of the regulations, of the laws, and then they would be applied.⁴⁷

Lack of trust for the judiciary system, which is accused of drawing out legal battles to the point of exhausting those seeking justice, leads many advocates and individuals who are being affected by environmental degradation to seek justice through international courts.⁴⁸ Samuel Flores, an activist from the Qhuara Qhuara nation, elaborated on his own decision to turn to international courts after gaining little justice from the state judicial system:

I spent 2019 with the government, the president of the state, when I asked him, “Is this Constitution to be complied with and are the rights there to be respected, or to be stepped on?” The president asked me, “Are you insinuating that I am incompetent?” Then I said to him, “Well then, you should no longer be in government, if you are not going to comply with the Constitution.” That took place around February third at the latest. That is my lived experience with the state, I exhausted the administrative and legal channels as well. And that is why we are taking the international route, although it is very costly, very tiring, but there is no other way to go if we want to seek justice.⁴⁹

The cases that do go through, according to activists, are those that are in the interest of the government and Bolivian elites. Specifically cited throughout the interviews is the perspective that the government is highly influenced by the will of foreign entities when deciding whether to comply with the values and norms set by the *Ley de Derechos de la Madre Tierra*. Undeniably, neocolonialism coming from the external influences of the United States, Europe, and international

⁴⁷ Antonio Sanjinez, interview by author, March 21, 2023, 00:31:44-00:33:27.

⁴⁸ Jorge Campanini, interview by author, April 3, 2023, 00:4:36-00:55:28.

⁴⁹ Samuel Flores, interview by author, March 16, 2023, 00:41:09-00:41:50.

organizations such as the World Bank have drastically changed since the Gas and Water Conflict. The re-nationalization of certain Bolivian industries has made a larger share of wealth from extractive activities stay within the state and be more equitably distributed across economic classes.⁵⁰ Nonetheless, interviewees expressed apprehension over the amount of power foreign companies and countries still wield over the Bolivian government, specifically citing concern over the influence of Chinese companies and the Chinese government. According to Rosario Baptista, a lawyer and former advocate for gender equality and indigenous rights,

The Chinese government and Chinese companies have a free hand wherever they feel like going in and doing what they feel like doing. The Bolivian government has an agreement with the Chinese government because they have made us a loan of money on the condition that they can enter Bolivia [...] Mining concessions are granted to Chinese companies because we have a large external debt with the Chinese government, so we are stuck with the influence of their government in our political system.⁵¹

There is due recognition of Bolivia's ability to regain control of its economic sovereignty after years of neoliberal influence. While the government's rhetoric centers the narrative that Bolivia has escaped from the economic imperialism of Europe and the United States, reality points to a situation where colonialism and the environmental destruction that comes with it have only changed form. Bolivia is still participating in economic relationships that exert pressure on it to participate in resource extraction with inadequate checks and balances to ensure that the government remains committed to its promises to respect and protect *Pachamama*.

One additional criticism that links the shortcomings of the Bolivian government to the minimal impact of *Ley de Derechos de la Madre Tierra* is the ongoing presence of internal colonialism within the state noted by my interviewees. Differentiating neocolonialism and internal colonialism, Alejandro Almaraz explained that while neocolonialism is used to describe Bolivia's

⁵⁰ In fact, after the Bolivian Water and Gas Conflict and under Evo Morales' presidency, from 2005 to 2015 the percentage of Bolivians who lived under the poverty line decreased from 59.6% to 38.6%.

⁵¹ Rosario Baptista, interview by author, March 2, 2023, 00:46:23-00:47:04.

oppression by and dependence on external entities (such as the World Bank or the United States), internal colonialism describes the oppression that Bolivians face from the internal “domination of Creole groups over indigenous populations.”⁵² Internal colonialism has played a role in oppression and the eventual impetus to create the *Ley de Derechos de la Madre Tierra*. Despite the success of indigenous people in pushing for legislation that centered on indigenous principles, other systems of internal colonialism are still present in Bolivia that are destructive to indigenous people, rights, and values. Alejandro Almaraz ties internal colonialism to indigenous rights and environmental protection in this way:

And today, after, let's see how many years, 16 years since Evo Morales took office, there is still internal colonialism. It still exists today [...] Many indigenous territories have been titled. That is a reality. Property has been recognized, but it turns out that this does not prevent extractive industries, particularly the mining, hydrocarbon, and oil industries, from entering these territories and causing very serious environmental damage. So it is of little use that their territories have been titled because these industries are destroying the natural assets of their territories. And the right to consultation, which is the safeguard—the legal defense against this destruction of extractivism—is not fulfilled.⁵³

With the internal colonialism in Bolivia that occurs despite the rise of MAS—a party that has deep ties to indigenous peoples’ movements within the country—many state systems, practices, and values still exist that contradict the norms of *Ley de Derechos de la Madre Tierra*.

A Paradox and an Unending Cycle of Environmental Destruction

The tension between the paradigm shift toward Earth jurisprudence and the continued presence of liberalism and capitalism has had heavy implications on *Ley de Derechos de la Madre Tierra* in Bolivia.

Most outspoken about the paradox between capitalism, liberalism, and *Ley de Derechos de la Madre Tierra* is Pablo Solón, a former UN ambassador under Evo Morales’ presidency who

⁵² Alejandro Almaraz, interview by author, March 23, 2023, 00:22:50- 00:26:05.

⁵³ Alejandro Almaraz, interview by author, March 23, 2023, 00:31:28-00:33:20.

significantly contributed to organizing the international conferences and discourse that gave momentum to the Universal Declaration of the Rights of Mother Earth.⁵⁴ Despite his extensive involvement in international climate efforts and his leadership in advocating for Ley de Derechos de la Madre Tierra, Solón publicly admonished the Bolivian government for failing to fulfill their commitments to progressive environmental policies within their domestic sphere after he relinquished his position.⁵⁵

Speaking about Bolivia's failure to follow through on its discourse on Earth jurisprudence, Solón predominantly cites both the state's inability to shift away from extractive, capitalistic economic practices and its challenge in prioritizing Earth jurisprudence in the face of global capitalist norms.⁵⁶ Solón asserts that while there is change in Bolivia's natural resources being nationalized, it is still a capitalist economy that prioritizes the wealth of the state above the rights of indigenous people and *Pachamama*. This reliance on extractivism is exasperated by the political incentive to create more wealth to maintain popularity and gain reelection. Solón expresses the loss of this progressive policy, stating that,

They are still in the framework of capitalism, and they are very much focusing on how to develop, create more growth, economic growth, through extractive industries. In that sense they have not gotten out of this paradigm that is basically based on the extraction from natural resources and the commodification of that. And the issue is that there was a dream, the dream of *buen vivir*, the dream of the rights of Mother Earth, that was something different, it was something that was supposed to be post-capitalist, and that didn't happen. [...] Why? I think that because they have begun to think of the re-election more than the long perspective and if you want to be re-elected as a government you need to have money in order to develop some popular mechanisms that allow you to win support in the elections. Where do you get money fast? From extractive industries. So, this government has become very pragmatic, and they use extractivism because it is easier and faster to get

⁵⁴ "Pablo Solón - Buen Vivir," 1.

⁵⁵ "Pablo Solón - Buen Vivir," 8.

⁵⁶ "Pablo Solón - Buen Vivir," 3.

the money in order to do these programs, in order to get support, and the Right of Nature, the *buen vivir* remains as a speech; as a discourse.⁵⁷

While he believes that there is rightful criticism that the Bolivian government could take larger steps in shifting its economy to match the values of *buen vivir*, the state will also not be truly able to make a full paradigm shift until other key entities in the global economy also change (such as the U.S., Europe, and China). Samuel Flores offered a critical perspective on the current economic practices vis-à-vis the state's discourse on *buen vivir*, asserting, "It is not a socialist government; it is a totally capitalist government."⁵⁸ Undeniably, Bolivia's continued reliance on resource extraction mirrors a historical pattern of colonialism. Interviewees drew connections between this pattern, dependency theory, and neo-colonialism, which have perpetuated the state's extractive cycle.

A Fracturing and Silencing

"They think that by having indigenous governments or indigenous representatives in the Assembly or the Parliament, the solution is already given. When the problem is deep, it is harder to fight against your people when they do not want to comply with the Constitution," remarked Samuel Flores toward the end of our conversation.⁵⁹ Throughout my interviews the issue of activists, particularly indigenous activists, facing suppression emerged. Since the Gas and Water Conflict, the rise of the MAS party, and Evo Morales' presidency, there has been inarguable progress for indigenous rights. Indigenous groups economically benefited from the *Plan Nacional*, indigenous cultural spaces and programs were facilitated by the government, and indigenous

⁵⁷ "Pablo Solón - Buen Vivir," 2.

⁵⁸ Samuel Flores, interview by author, March 16, 2023, 00:49:36.

⁵⁹ Samuel Flores, interview by author, March 16, 2023, 00:42:21-00:42:38.

people are participating and recognized more in state political systems.⁶⁰ However, in the process of advocating against environmental degradation and violation of indigenous rights, activists have felt that indigeneity, as an identity and in ideological form through *Ley de Derechos de la Madre Tierra*, has been repeatedly weaponized against activists when they critique the government. Flores further elaborated on his experience and observations:

The influence we have on the government is little to nothing because the government that claims to be a government of an indigenous state, thinks that it is already complying with the rights of Mother Earth and that it is complying with the constitution. But that is not the reality, because the organizations that are represented at the national level have risen to political power and are silent, they are accomplices. And the only thing we are doing, the little that we are doing in defense for the rights of Mother Earth, is to promote constitutional compliance through legal defense and activism through grassroots action. There is also criminalization of the leaders who speak for the people and demand legal action. The state is treating us like we have no right to our own land and so they are taking away our own territory. The state tramples us, it is not respecting us.⁶¹

Antonio Sanjinez expressed similar views, voicing that while Bolivia's diverse indigenous nations are now recognized in the constitution, indigenous people "continue to be oppressed, the indigenous territories continue to be plundered by their own, by the first indigenous president. There are still activities that existed in the previous governments that were not indigenous."⁶²

Alejandro Almaraz brings up the term *paradoja señoral*⁶³ while describing the face-value appropriation of indigeneity. A term coined by René Zavaleta Mercado, a highly influential Bolivian philosopher, and sociologist, *paradoja señoral* is used to describe the ability of the traditional ruling elites to "appropriate all ideas, all the political postulates that questioned them."⁶⁴ Almaraz further stated that through the *paradoja señoral*, elites throughout Bolivia's history have transitioned from liberal to socialist and, most recently, to the embrace of indigenous ideologies. The perceived appropriation of indigenous values by politicians prioritizing extractivist economic

⁶⁰ Klein, "Vivir Bien," 106.

⁶¹ Samuel Flores, interview by author, March 16, 2023, 00:12:23-00:13:25.

⁶² Antonio Sanjinez, interview by author, March 21, 2023.

⁶³ *Paradoja señoral* means "the stately paradox."

⁶⁴ Alejandro Almaraz, interview by author, March 23, 2023, 00:47:24-00:48:25.

growth over *buen vivir* has eroded the previously cohesive social movements that contributed to MAS' ascent.

Bolivia's left-wing movements, particularly concerning the perception that indigenous values are being exploited merely for rhetorical purposes without effective policy implementation. This poses a heightened threat to the potential of *Ley de Derechos de la Madre Tierra*, as the superficial recognition of indigenous values and identity can be used to stifle activists and indigenous individuals advocating for accountability and justice. As aptly articulated by Cecilia Barja Chamas, a co-founder of the *Movimiento Sin Miedo* political party in 1999 and a former La Paz councilwoman:

These movements have been broken [...] So we don't have the movements that we used to have 15 years ago, the movements that approved this specific law [...] It was our best ideal moment of when we were changing elites and power, and we were trying to do things differently. But then the whole process corrupted.⁶⁵

On International Silence

One of the most significant frustrations expressed throughout my interviews centered on the seemingly willful ignorance exhibited by the international community regarding the state of environmental policy and protection in Bolivia. A compelling illustration of the international community's readiness to embrace MAS' rhetoric as truth comes from Alejandro Almaraz, who previously served as the vice minister of Lands during the early years of Evo Morales' presidency. Almaraz asserted:

When the process of change was born, when Evo Morales came to power, we all said with the greatest conviction that there would be a revolution, but a revolution for democracy, with presidents and public authorities who are elected by the people, who respect the rights and above all, who do not act like the military who governed us before, who imprisoned those who did not agree with them. But that is exactly what they continued to do and did not change [...] So, the reality is very different from the rhetoric. I hope that American

⁶⁵ Cecilia Barja-Chamas, interview by author, March 16, 2023, 00:13:30-00:14:42.

academics, as is their moral obligation, will deal with the facts and not only with the rhetoric.⁶⁶

Speaking about her observations as to how the government has tapped into an international and Western interest in the incorporation of indigenous rights and values into environmental discourse, environmental activist Rosa Maria Ruiz describes Morales' utilization of indigenous values in political rhetoric:

Evo and MAS have been brilliant in their international marketing. By the time this law was brought out, northern countries had already been acknowledging indigenous peoples as more experienced in sustainable use of the environment, and as good models. It was easy to tap into these to take them to the UN and leave many in awe of this supposed commitment. The reality has to be seen in the field [...] The international image has cost Bolivia a fortune, but it has been effective.⁶⁷

Although it is the international community's place to check the Bolivian government or its politics, it is irresponsible and willingly ignorant to ignore the government's failure to fulfill its promise of protecting and respecting the environment and indigenous rights. With indigenous and activist voices being silenced within Bolivia, international systems and organizations offer critical alternative avenues for Bolivians to hold their government accountable. The gravity of the international community's blind spot is compounded by the crucial role these policies play in safeguarding biodiversity hotspots, environmental services, and indigenous communities. By persistently portraying Bolivia as a paradise due to its progressive environmental policies, the international community, particularly Western nations, unwittingly contributes to environmental and human rights violations by failing to see beyond the idealized tenets of Earth jurisprudence.

Conclusion

⁶⁶ Alejandro Almaraz, interview by author, March 23, 2023, 55:11:00-57:22:00.

⁶⁷ Rosa Maria Ruiz, correspondence with author, April 9, 2023, 5.

Earth jurisprudence offers an alternative approach to shifting our anthropocentric paradigms. It acknowledges the inherent interconnectedness and interdependence of nature and humans within the Earth community, emphasizing their equal intrinsic value.

To understand Earth jurisprudence outside of its theoretical existence and in a real-world application, I chose to study Bolivia's *Ley de Derechos de la Madre Tierra* as it was the first statutory law in the world to grant nature and *Pachamama* (Mother Earth) rights.⁶⁸ My exploration of this subject encompassed an in-depth examination of Bolivia's history, culture, and politics. Through this investigation, I discerned that Bolivia's historical backdrop, characterized by centuries of colonialism and the marginalization of its substantial indigenous population, set the stage for the Gas and Water Conflict in the early 2000s. This conflict marked a mobilization of indigenous and national-popular movements striving to break free from years of social and economic oppression linked to neocolonial control and internal colonialism.

Following the Gas and Water Conflict, Bolivia began the process of reshaping itself into a democratic socialist, post-colonial society that defined itself as a plurinational state comprised of its indigenous nations. This reclamation of indigenous identity and the country itself from colonialism brought about the push to also reclaim the country's natural resources, recentering respect for *Pachamama* and the practice of *sumaj kamaña*. The recovery of indigenous identity, rights, values, and the country's natural resources led to the state recognition of *Pachamama* and Her rights through the constitution, *Ley de Derechos de la Madre Tierra*, and *Ley Marco de la Madre Tierra y Desarrollo Integral para Vivir Bien*. A historical reversal—driven by indigenous

⁶⁸ Lorna Muñoz, "Bolivia's Mother Earth Laws: Is the Ecocentric Legislation Misleading?" *ReVista: Harvard Review of Latin America*, February 6 2023, <https://revista.drclas.harvard.edu/bolivias-mother-earth-laws-is-the-ecocentric-legislation-misleading/>.

and popular advocacy—from centuries of colonial oppression and environmental degradation placed Bolivia among the pioneering nations embracing Earth jurisprudence.

The conducted interviews consistently presented a sobering perspective on the effectiveness of the *Ley de Derechos de la Madre Tierra*. Generally, the interviewees pointed to the failure of the government, a reliance on extractivism, a fracturing and silencing of indigenous unity and popular movement, and international ignorance as reasons why the law lacked efficacy.

Although the implementation of Earth jurisprudence through the *Ley de Derechos de la Madre Tierra* in Bolivia fell short of its promise, I maintain that Earth jurisprudence is central to shifting our current paradigms and forging a sustainable future. Other countries, particularly Western nations, should follow in the footsteps of Bolivia in acknowledging the interconnectedness of the Earth community, the rights of Mother Earth, and the rights of indigenous peoples. My largest critique from my research is directed at the international community, although there is unrefutably a need for the Bolivian government to uphold its own laws. Currently, one of the only means through which activists in Bolivia can seek justice is through international systems and support. At the same time, the international environmental policy community prefers to ignore the reality of failed environmental protection in Bolivia because the illusion of success provides hope for radical change around national environmental policy.

Despite uncovering an alarming failure of Earth jurisprudence's efficacy in Bolivia, at a time when Earth jurisprudence presents a new hope in the face of society's urgent need to adapt to the challenges of climate change, the inclusion of a question mark in my title symbolizes the potential for change. A recognition of the failures of Earth jurisprudence in Bolivia leaves the potential for change in the paradigm's application and its future success in other nations. In total,

this research highlights the challenges of applying any new paradigm to the complex reality of society, political systems, and history.

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