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Faculty of Natural Resources and Agricultural Sciences

Defining Nature: Who's Talking? The concept of nature in legal cases with Rights of Nature in Ecuador

– A frame/framing analysis of interpretations of nature, underlying factors and recommended actions

Laura Elisabeth Wolf

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Laura Elisabeth Wolf

Supervisor:	Hanna Bergeå, Swedish University of Agricultural Sciences, Department of Urban and Rural Development
Examiner:	Sara Holmgren, Swedish University of Agricultural Sciences, Department of Urban and Rural Development
Assistant Examiner:	Lars Hallgren, Swedish University of Agricultural Sciences, Department of Urban and Rural Development

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Abstract

Since 2008, the Ecuadorian constitution grants intrinsic rights to nature. However, scholars highlight the stark contrast between the intended philosophy of rights of nature (RoN) and its implementation. The concept of "nature" in the constitution is left relatively undefined, hence open for interpretation of any actor in court. Departing from social constructivism, nature is being defined and possibly legally determined by involved actors through every legal case, resulting in different socially constructed realities with differing representations of nature. Exploring these different frames/framing of nature in the context of RoN is valuable seeing their potential impact as jurisprudence, and can contribute to constructive future policy improvement (Van Hulst & Yanow, 2016). Furthermore, recommendations of actors, involved in RoN, on subsequent courses of action teaches us about concrete possibilities for improvement of RoN implementation.

In 14 semi-structured interviews with various actors involved in Ecuadorian RoN cases, information was gathered to ultimately answer the research question: "*Which interpretations of "nature" can be distinguished in the context of legal cases with Rights of Nature in Ecuador, what are they based on and which recommended subsequent courses of action are part of these frames?*". Frame- and framing analysis was used to explore different frames, including understanding why actors define nature as they do and why they recommend certain subsequent courses of action. The analysis aims to "translate back" the definitions of nature within cases and recommended subsequent actions expressed during the interviews, to their underlying reasonings that influence actors' sense-making. It is shown how four definitions of nature and two recommendations subsequent courses of action are underpinned by worldviews, beliefs, legislative articles, identities and roles and power relations, perceived by interviewees based on their experiences, emotions, expectations and personal backgrounds (Van Hulst & Yanow, 2016).

Resulting are four frames prevailing in Ecuadorian RoN rulings, based on the definitions of nature as 1) constitutional article 71; 2) only air, water and soil; 3) something irrelevant; and 4) resources to be exploited. These definitions are coupled to underlying factors, including i.a. a focus on restauration in trials, limited knowledge of judges and an occidental background with anthropocentric worldview. Influenced by these and other factors, interviewees also recommended 1) defining nature's standards with an interdisciplinary group of experts and 2) educating the juridical community. Furthermore, which frames actually prevail in rulings as well as the frames themselves, is highly influenced by unequal power relations between the juridical community and the government. Economic interests of the government indirectly cause judges, who tend to feel governmental pressure, to favor interests of extractive sector companies *over* the RoN, so governmental frames of nature dominate the rulings. However, this is the current situation; diminishing governmental influence could lead to different frames appearing in future rulings. Exploring these frames is recommended for future research.

Keywords: Rights of nature, Ecuador, framing, frames, nature, Ecuadorian constitutional court, defining nature, social constructivism

Resumen

Desde 2008, la constitución de Ecuador concede derechos intrínsecos a la naturaleza. Sin embargo, académicos destacan un marcado contraste entre la filosofía prevista de los derechos de la naturaleza (DDN) y su implementación. El concepto "naturaleza" dentro de la constitución queda relativamente indefinido, por lo tanto está sujeto a la interpretación de cualquier actor en la corte. Partiendo del constructivismo social, la naturaleza se está definiendo, y posiblemente determinando jurídicamente, por actores involucrados a través de cada caso legal. Esto resulta en múltiples realidades, construidas socialmente, con diversas representaciones del concepto de naturaleza. Explorar estos encuadres y efectos encuadre (*frames* y *framing)* de la naturaleza en el contexto de DDN es útil teniendo en cuenta su potencial impacto como jurisprudencia, y puede contribuir a una mejoría de la política en el futuro de una manera constructiva (Van Hulst & Yanow, 2016). Además, las recomendaciones de actores, los cuales han estado involucrados con DDN, en cursos de acciones posteriores pueden enseñarnos sobre posibilidades concretas para una mejoría de la implementación de DDN.

En 14 entrevistas semiestructuradas con varios actores involucrados en casos legales con DDN en Ecuador, se ha obtenido información para dar respuesta a la pregunta de investigación: "*Cuáles interpretaciones de "naturaleza" se pueden distinguir en el contexto de casos legales con los derechos de la naturaleza en Ecuador, en qué están basadas, y cuáles cursos de acción posteriores recomendados son parte de estos encuadres?*". El análisis de encuadres y el efecto encuadre fueron usados para explorar diferentes encuadres, incluyendo entender por qué los actores definen la naturaleza en la manera en la que lo hacen, y por qué recomiendan ciertos cursos de acción posteriores. El análisis aspira a "traducir" las definiciones de naturaleza en casos legales, y los cursos de acción posteriores expresados en las entrevistas, a sus razonamientos subyacentes que influyen el proceso de percepción *(sensemaking)* de los actores. Se muestra cómo cuatro definiciones de naturaleza y dos cursos de acción posteriores recomendados están basados en visiones del mundo, creencias, artículos legislativos, identidades y roles y relaciones de poder, los cuales son percibidos por los entrevistados basándose en sus experiencias, emociones, expectativas y trayectorias personales (Van Hulst & Yanow, 2016).

El resultado son cuatro encuadres prevalecientes en fallos judiciales en Ecuador, basados en las definiciones de naturaleza como 1) el artículo constitucional 71; 2) solamente aire, agua y suelo; 3) algo irrelevante; y 4) recursos para explotar. Estas definiciones son acopladas a factores subyacentes, incluyendo, entre otras cosas un enfoque en la restauración en juicios, el conocimiento limitado de los jueces y un entorno occidental con una visión del mundo antropocéntrica. Influenciados por estos y otros factores, los entrevistados también recomendaron 1) definir los estándares para equilibrios en la naturaleza con un equipo interdisciplinario de expertos y 2) educar a la comunidad judicial. Además, cuales encuadres prevalecen actualmente en sentencias así como los encuadres por sí mismos, parece ser altamente influenciado por las relaciones de poder desiguales entre la comunidad judicial y el gobierno. Los intereses económicos del gobierno indirectamente causa que los jueces, sintiendo presión gubernamental, favorezcan los intereses de empresas del sector extractivo por a de los DDN, así que los encuadres gubernamentales de naturaleza predominan en las cortes. Sin embargo, esta es la situación actual; una disminución de la influencia gubernamental puede llevar a que diferentes encuadres se presenten en futuras decisiones. Se recomienda explorar estos encuadres para una investigación futura.

Palabras clave: Derechos de la Naturaleza, Ecuador, framing, frames, encuadres, el efecto encuadre, naturaleza, la corte constitucional del Ecuador, definir naturaleza, constructivismo social

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Abbreviations

Art.	Article
CC	Constitutional Court
COA	Código Orgánico del Ambiente
EIA	Environmental Impact Assessment
ENGO	Environmental Non-Governmental Organisation
RoN	Rights of Nature
UN	United Nations
US	United States

1 Introduction

Imagine a world where people depend on nature. A world where nature allows us to live because it provides us with resources to eat, drink, wash ourselves, build our houses, generate electricity, print books, found schools and companies, and guess what, even to breath. In this world, would it be smart to deplete nature's resources and let it degrade? Further, would it be fair? Would it be fair to human populations elsewhere, geographically and temporally? Would it be fair to nature itself?

Worldwide, the environment is subject to big pressure from human use. In many countries, this use is regulated by environmental laws and regulations, regulating and permitting to what extent a natural resource can be exploited. This rests on the assumption that nature is there for human's instrumental use; it is out there to provide us with whatever we want to take from it, and it does not have any right on itself (Mari Margil, 2017; Pietari, 2016; Tanasescu, 2015). However, the last 45 years a development in the opposite direction, labelled by scholars as an ecocentric approach (Garzón, 2017), has gained more and more ground – slowly starting with publications on the question of who, or what, should be granted legal rights. Granting rights to nature is something relatively new in our westernized culture and legal world, however some indigenous cultures (like the Kichwa in Ecuador) already intrinsically grant rights to nature for centuries– although not explicitly (Pietari, 2016). Often mentioned when discussing granting rights to nature is the expanding moral circle of Singer, where increasingly more beings are granted rights and incremental shifts are made from an anthropocentric towards an ecocentric approach to rights-granting (see Singer, 1981). It is argued that nature should be granted rights as a logical continuation of the rights expansion to slaves, women and animals, after having been owned objects for a long time (Tanasescu, 2015). In 1982, the UN stated nature's rights morally, saying that "every form of life is unique and deserves to be respected, whatever its usefulness to the human being" (Garzón, 2017, p.15). From 2006, some US municipalities granted legal rights to nature and, as a crowning achievement, in 2008 Ecuador granted nature constitutional rights (CELDF, 2018). In 2016, around 200 US municipalities had incorporated RoN and other versions of giving rights to nature can be found in New Zealand, India and Bolivia (Pietari, 2016; CELDF, 2018).

Rights of Nature (RoN) comes in various forms- their specific formulation, interpretation and legal details differ around the world (Tanasescu, 2017). However, Ecuador is, to date, the only country which incorporated the concept as fundamentally and widely as stating it in the constitution. The process through which this happened, in 2007-2008, has been one full of lobbying described in detail by Tanasescu (2013; 2015). In brief, after a period of social and economic instability, the so-called revolutionary new president Correa initiated a re-writing of the constitution. Attempting to assure a participatory democracy, Correa included viewpoints of different parties, including indigenous people like the Kichwa, claiming to start a citizen revolution (Tanasescu, 2013). Key to Kichwa´s life philosophy is the concept "Sumak Kawsay", translated to "buen vivir" (good living), based on the belief that humans are part of nature and humans and nature should live in harmony (Cotzé & Calzadilla, 2017). According to the constitution's pre-amble, all constitutional articles have

to be based on this concept. Equally based on buen vivir, and focusing specifically on the for the Kichwa fundamental concept of nature, RoN are stated in four constitutional articles[1], the first starting with:

> "Nature, or Pachamama, 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. To enforce and interpret these rights, the principles set forth in the Constitution shall be observed, as appropriate."

(Political Database of the Americas, 2008)

Since nature is an entity that does not have a physical voice, representation is essential, it being at the core of employing the concept of rights (Tanasescu, 2015). The representative, according to the Ecuadorian constitution, can be anyone. However, what exactly is being represented? This question leads us slowly towards the research problem.

1.1 Open definitions

Initially, what is to be represented is not defined as a physical piece of nature; it is an "idea" of nature. In the constitutional art. 71-74, the discourse around the concept of nature is noticeably diverse and simultaneously has fairly general terms. In the articles, nature is also being defined as "pachamama", "where life is reproduced and occurs", "all the elements comprising an ecosystem", "natural systems", "natural cycles", "the environment", "the natural wealth" and "environmental services". As Tanasescu points out, "all of these different terms can be held at once if we adopt a very large view of nature and the natural" (2015, p.140). In the constitution, nature seems to be portrayed as a big whole, which whilst comprising smaller components still should be seen and treated holistically. This is also illustrated by the term pachamama, Kichwa for something similar to Mother Earth, which shows the personification of- and a holistic view on nature. "The scientific world has realized that there is no aspect of nature that can be understood without looking at it in the context of the systems of which it forms part." (Cullinan, 2011, quoted in Garzón, 2017, p.15) - the Ecuadorian constitution seems to have incorporated this insight. However, within this holistic approach which defines nature so broadly, what is being represented - what exactly has legal rights - is being defined (made concrete) by the involved actors throughout the processes of representing nature in legal cases. This connects to social constructivism, where different actors connect certain meanings to a concept (nature) and, through working with these meanings, by socially interacting, "construct" their different corresponding realities (Burr, 2003). I will elaborate more on the constructionist worldview later. Hence, since definitions are left so open, they are freely interpretable by any actor in court, resulting in different socially constructed realities with differing representations of nature. This issue is the core of this thesis and will be explored further below.

1.2 The problem

Briefly having discussed the openness of the definition of nature in the Ecuadorian constitution, now I will elaborate on the consequences of this. There are many more consequences than the ones described here, see e.g. Tanasescu (2015) elaborating on

[1] See app.1, A

conceptual problems[2]. However, in this study I will focus on a particular area, rather practical both in its form and its consequences. This area concerns the definition of nature and will be explored below. As said before, many different actors can represent nature and through this construct the meaning of nature. Below, a brief discussion of various actors' interpretation of nature provides background information leading to the research question.

1.2.1 Defining Nature: Who's Talking?

Above it has been pointed out that from a social constructivism point of view, different definitions of nature lead to different constructed realities. Since different kinds of interpretation of an issue also result in different kind of human actions (Burr, 2003; Grey, 2003), how one defines these terms in such a fundamental document as a country's constitution can possibly have far-reaching effects, firstly for legal cases and, via this, on nature and society. Having such a wide, broadly interpretable definition of nature leaves room for arbitrary, subjective interpretations, that can be framed suiting the preferences of a specific group or person. Pietari (2016) confirms that art.71 can lead to a broad variety of concretizations. Having such a broad definition leaves it up to how the concept of nature is socially constructed by particular people, leading to a corresponding constructed reality – a reality in which nature is being recognized, understood and defined in a certain way. When writing the RoN articles, the constitutional assembly members might have assumed that anyone representing nature with the help of the articles would share *their* very moral viewpoints towards nature – what is considered nature and what's best for it. However, social constructivism teaches that many realities are possible, how it is defined depending on i.a. culture, time-period, and the people themselves. Hence it denies that there is one reality in which nature is something pre-defined (Burr, 2003). Different interpretations of nature result in different realities being created, as part of particular frames.

Various factors play a role in this process of defining nature. The constitutional articles can be considered the "basis" of the definition. However, subsequently the government has its influence, just as plaintiffs, judges and lawyers within legal cases. Below, there will be touched upon how these different actors have been interpreting RoN and/or nature. The paragraphs below are based on background research in academic- and grey literature. They serve to introduce the factors and actors I recognized as important previous to the fieldwork, including some impressions of how they can influence the process of socially constructing nature. Next to providing background information, these paragraphs argue for why these factors have been chosen to function, to a certain extent, as structuring the different frames that this thesis aims to reveal. Even though the aim is not to show different frames *based on* the different (f)actors, they are an important starting point for the methodology.

'Nature' in the constitution

An international example shows clearly how much difference the constitutional definition of nature can make. In New Zealand, RoN has also gained ground – but on a different basis. Its Whanganui river has rights too, but it is much more specified since only two specific humans can represent the river; and only the river, so *only the river* is a subject with rights[3]. This example shows the contrast with the definition of nature in the Ecuadorian law. In

[2] In addition, article 74 states that components of nature can be used to satisfy human needs, but that it cannot affect the conservation of nature as a whole. The fact that 'the whole' must be protected, but smaller parts may be used, however, may turn out as something impossible when one takes into account the concept of the tragedy of the commons.

[3] Apart from the fact that having only two representatives already means a smaller chance on abuse (since not every random person can state he knows what's best for the river), this also provides much more clarity regarding who exactly *has* rights. (Tanasescu, 2015).

New Zealand, the rights of nature are applicable to "The Whanganui river"; in Ecuador RoN apply to "nature".

Considering all terms for nature in art.71-74[4], nature is basically broken down into "natural systems" and "environmental services". Seeking to concretize, Pietari (2016, p.45) points out that art. 72[5] implies that "the government has an affirmative duty to enforce the right to restoration when the degree of degradation meets a certain threshold", however these thresholds are not defined. There are many other constitutional articles in which complementing or clarifying statements can be found –although also these still remain vague (Pietari, 2016). Analysing RoN throughout the entire constitution is out of this thesis' scope. Yet, arguably contrary to the intrinsic protection RoN grants, many other constitutional articles are legitimizing human use of nature (Pietari, 2016). All this illustrates the confusion within the constitution on how to interpret RoN. It seems possible to use this openness, or confusion, to argue in line with one's personal interests.

Actors in practice

Next to this constitutional discourse and frame, through practice other frames evolve. Kaufmann and Martin (2017) identify four different implementation pathways through which RoN can be made concrete. Since "a pathway incorporates the activities that the frame fosters" (Lindahl et al., 2018, p.404), for looking at different frames this categorization provides a useful structure in discussing the various meanings of nature. The pathways can be attributed to three main actors: civil society as a plaintiff, the government and the juridical epistemic community (Kaufmann & Martin, 2017). By these actors, RoN and nature have been interpreted and defined in various ways. Of course, the social construction of nature related to RoN does not only happen in legal cases. In any place and time, conversations between people about RoN socially construct its meanings. However, what is ruled in legal cases is legally binding, so what follows from people's utterings in this realm could ultimately evolve into juridical "hard facts" that can turn into jurisprudence[6]. This way, people are creating the possible future legally enforceable RoN in more detail through every case. The practical importance of this meaning-making is the reason for a focus on nature framing in legal RoN cases. In addition, with regards to their close involvement with RoN cases, the category RoN advocates will be considered as well. Now, I will touch upon some framing practices by different actors involved in RoN cases.

First of all, having said that what is considered nature is dependent on culture, time period and people, even *within* the government of Ecuador and in current times, what is considered nature is ambiguous. The framing of RoN and nature under the Correa government has been inconsistent and contradictive, depending on situated political relations (see Aguas & Angiolani, 2018) and language in RoN cases has been reformulated to fit the government's economic and political agenda (Valladares & Boelens, 2017). This in stark contrast with the intentions of the constitutional assembly to include indigenous worldviews into the constitution.

Second, RoN cases have been issued by various plaintiffs: NGOs, civilians and the government. E.g. in the first two cases nature has been represented by respectively two American landowners representing a river[7], and the Ecuadorian government filing against an illegal mining project. Reading about them it becomes clear that representation and framing have a huge impact on the course and outcome of the cases (Tanasescu, 2015).

Third, judges have been and continue to be a very important part of RoN discourse. Jurisprudence is a mechanism to support and complement constitutional articles, formed by legal cases (Garzón, 2017) - its great potential stressed by R. Ávila, dr. of law and RoN advocate (Valadares & Boelens, 2017). Kaufmann & Martin (2017) show that judges' lack of knowledge on RoN led to many misinterpretations in legal RoN cases, resulting in

[4] See app.1, A
[5] Idem
[6] Rulings are not automatically jurisprudence. See app. 2
[7] Río Vicabamba case

illegitimate outcomes. Yet, even though judges' lack of knowledge can be negative for RoN development (norm- and jurisprudence-wise), proper RoN interpretation in court can have positive consequences. It all depends how judges interpret the nature being represented; what meaning do they give to it; how do they *frame* it.

1.2.2 Framing and research question

The described activity of giving meaning to concepts through social practice, the social interaction approach, can also be seen as the practice of framing. Framing is the process of creating frames and is happening through social interaction (Weick, 1979, cited in Van Hulst & Yanow, 2016). Frames are "social structures which organize symbolic material in ways that promote a specific perspective." (Tucker, 2009, p.143). Organizing symbolic material in this study is the ongoing activity of defining nature through social practices, which results in meanings of these concepts that can be considered a (in this study fundamental) part of a specific perspective that a frame promotes, or constitutes.

According to Entmann (1993, p.52), "To frame is to select some aspects of a perceived reality and make them more salient in a communicating text, in such a way as to promote a particular problem definition, causal interpretation, moral evaluation, and/or treatment recommendation". Hence how nature is framed fundamentally decides not only the primary definitions, but also influences the subsequent course of action since it both connects to the perceived problem in the legal case, its perceived causes, the moral judgement on severity and the judge's final ruling. This means getting more clarity on different frames and framing processes can help us understand both how different actors define nature in the context of RoN, what factors this is based on and how these factors also determine their perception on what should be done subsequently.

Scholars (Valadares & Boelens, 2017; Pietari, 2016; Tanasescu, 2015) highlight the stark contrast between the originally intended RoN philosophy and the way it is mostly practically working out in a society based on capitalism and extractivism. Van Hulst & Yanow (2016) argue that frame/framing analysis can explain a discrepancy between an intended policy and its practical application (as argued before by Rein & Schön, 1986, 1993), here RoN being interpreted as a policy. Frame/framing analysis is useful to study the underlying reasons of why a policy is not functioning optimally because it focusses on the root of the problem. To analyse why a certain policy does not work out, analysing the policy itself may not be enough, instead, more thorough is analysing the different frames through which disagreeing actors see the problem at which the policy is aimed at solving and the policy itself. Making frames and underlying assumptions explicit, any framing activity of actors involved might be discovered to be a reason for policy failure (Van Hulst & Yanow, 2016). This approach might eventually even lead to a more constructive policy improvement, since it will not try to fix an already broken model but will question the model itself. Besides, Schön & Rein (1994) argue that if policy actors discuss problems based on different frames, this will not result in solving the problem because they are basically talking past each other. The whole conflict might even "become intractable because of the conflicting ways in which the stakeholders frame the issues and the conflict itself" (Lewicki, Gray, & Elliott, 2003, in Gray, 2004, p.166). Although our goal is not policy improvement per se, for this goal in the future it can be relevant understanding the problem from the viewpoint of frames and framing.

Exposing different definitions of nature and using them as a basis to define frames can help structuring different viewpoints of the most important actors in the RoN implementation stage. Because of the open constitutional definition, the implementation stage is and will be decisive for how RoN ultimately take shape. In this stage, nature is being defined and moreover legally determined and narrowed down through every case. The (practical) importance of this stage, together with the mentioned discrepancy between the intended policy and how it works out in practice, and possibilities for policy

improvement, argue for the relevance of having a clear overview and deeper understanding of

- the involved actors´ main interpretations of nature in RoN cases;
- what are underlying factors causing them to have these interpretations;
- how these factors also underpin viewpoints on necessary action.

This way, we can learn more about different views/frames related to RoN, including actors' interpretation of the concept of nature; what they base these interpretations on and their perceptions on "treatment recommendation" (Entmann, 1993), here called "recommended subsequent courses of action". Firstly, learning about these very aspects from actors who are close to the issue of RoN policy discrepancy itself can provide new ideas as to overcome this discrepancy. Second, having an overview and understanding of frames in general is, as argued above, concluded to be beneficial to overcome policy discrepancy because it can make policy improvement more constructive. This leads to the following research question:

Which interpretations of "nature" can be distinguished in the context of legal cases with Rights of Nature in Ecuador, what are they based on and which recommended subsequent courses of action are part of these frames?

1.3 Reader´s guide

In chapter 2, the theoretical and conceptual framework discusses the concepts of frames and framing and argues why frame- and framing analysis are useful to answer the research question. Chapter 3 elaborates on the research method, the fieldwork, the research design and methadological reflections. Chapter 4 and 5 include the results, in which different perceptions of nature and recommended subsequent actions are discussed, in combination with their underlying factors. Chapter 6 critically discusses the results. Chapter 7 completes the thesis with an answer on the research question.

2 Theoretical and conceptual framework

Going deeper into frames and framing, introduced in 1.2, this chapter discusses the study's underlying theory. It contains an overview of frame/framing theory and what can be discovered, throughout which is argued further why this is a suitable theoretical framework.

2.1 Frames and framing

Frames are "implicit theories of a situation" (Van Hulst & Yanow, 2016, p.98). It can be seen as a personal package of interpretations of a specific part of the world, including "what is going on" and where one locates himself and others related to this (Gray, 2003). In a frame, some aspects of reality are emphasized, some are backgrounded and some are left out. This is a very personal process (see below): although frames can be categorized through generalization, every single frame is unique since they are dependent on an individual's specific background (Van Hulst & Yanow, 2016). A frame is like a lens through which someone sees (a specific part of) the world (Gray, 2003).

Framing is the process through which these frames are formed. Framing happens when actors (implicitly or explicitly) negotiate about defining concepts around a situation perceived as "in need of change" (Benford & Snow, 2000). Grey (2003; 2004) points out that frames are constructed through social interaction when actors try to make sense of a situation, just as Van Hulst & Yanow (2016, p.98) derive from Weick (1995) that the sense-making during framing "draws upon […] interaction with other actors"; Entman (1993) states that in communication, communicators are "guided by frames […] that organize their belief systems"(p.52). In this way, framing, frames and social interaction are very closely related: frames have an influence in the social practice of communicating and constituting realities, and simultaneously the practice of framing is carried out during social interaction.

Van Hulst & Yanow (2016, p.98) argue that during framing, "both a model of the world—reflecting prior sense-making—and a model for subsequent action in that world" are produced. This corresponds to Burr's (2003) and Gray's (2003) claim that frames indirectly determine or shape actions. Drawing on Van Hulst & Yanow (2016), framing happens through a couple of steps: sense-making, selecting, naming and categorizing, and storytelling. Sense-making is the activity of interpreting situations and making sense of them, which happens based on "previous experiences, expectations, and/or emotions" and the personal background (Van Hulst & Yanow, 2016, p.97). Hence frames are situational and personal. In this stage, social interaction plays the biggest role. Through selecting, naming and categorizing, actors decide which elements of this previously defined situation are to be given which amount of attention – which elements are considered most important, which are 'backgrounded' and which are left out. This is an important activity as through this, "framing lays the conceptual groundwork for possible future courses of action" (Van Hulst & Yanow, 2016, p.99). Furthermore, commonly associated but not explicitly mentioned elements of one explicitly named element can confirm (or deny) the context in which this named element should be seen (Van Hulst & Yanow, 2016). This means that

previous speeches and experiences can have great influence during framing. Thirdly, in storytelling, the outcome of the previous stages are compiled in a coherent whole, where a narrative elaborates on the context and often on the alleged action, however not everything is made explicit. This rhetorical practice often includes stereotypes and the provided context often includes the particular history of the problem for the respective actor. In this possibly persuasive phase, discursive power issues become most clear (Van Hulst & Yanow, 2016). Persuasive storytelling is found to be happening in the implementation phase- but until now it has only been coupled to a policy's target group. In the case of RoN, persuasive storytelling is also happening during the "implementation phase of the policy" (legal cases with RoN), however this is because the "policy" is not completely defined yet, so remains open for contestation on details.

Furthermore, based on Dewulf et al. (2009), Van Hulst & Yanow (2016) highlight that during framing, both the policy issues themselves *and* the "policy-relevant actors' identities and relationships" are framed (p.102), the first more related to frames in their static manner; the latter related to the dynamic part where e.g. power comes in. These identities correspond with what Gray (2003) calls identity frames – a self-image of having a certain social identity, constructed by framing, which might reveal more than the taxonomies of a frame, and "can become strongly intertwined with a particular framing of a policy issue" (Van Hulst & Yanow, 2016, p.102).

2.2 Frame analysis and Framing analysis

Analysing this activity of framing can be distinguished from analysing the frames itself. As said, framing is the process of creating frames and is happening through social interaction (Weick, 1979, cited in Van Hulst & Yanow, 2016). Since they are very closely related and both have their upsides, in this study, both frames and framing will be addressed. *Frame* analysis is the descriptive analysis of frames at a particular moment in time, and will be considered for three reasons. Firstly, simply, "the frame's basic components are capable of being itemized" (Van Hulst & Yanow, 2016, p.94). These components are useful knowing because it helps to understand actors´ basic assumptions they have, structuring their perceptions. Second, even though it can be argued that frames are too static hence not realistic (Van Hulst & Yanow, 2016), an analysis which encapsulates one moment in time is not necessarily bad, especially considering that people tend to stick with a frame once they have adopted it (Schön, 1963/2001, p.8, quoted in Van Hulst & Yanow). Third, frame analysis is the initial "Goffmanian" theorizing of framing, widely used in social movement studies (Van Hulst & Yanow, 2016).

However, *framing* analysis offers a more dynamic picture. It considers the process through which frames are created, and is done in this study for the following reasons. Firstly, the rigidness of categorizing, concretizing and generalizing characteristics of viewpoints into frames might not serve a thorough analysis because frames are situated, making an analysis deceptive (Van Hulst & Yanow, 2016). These authors also argue that most part of the meaning-making process happens through interaction with the concepts that actors try to make sense of, and is not based on previously formed frames. Second, the connection of social interaction and framing gives away that frames are dynamic, since they are constituted through the dynamic practice of social interaction. Likewise, the implementation stage of RoN is in movement; the last ten years different cases might have led to different social constructions of nature.

2.3 What can be explored

Whereas in storytelling not everything is made explicit (as discussed above), framing analysis can help to explore implicit parts of a frame. It can help to understand why actors

define things as they do and why they consider a certain subsequent action as recommended. The analysis aims to "translate back" the definitions of nature within cases and recommended subsequent actions expressed during the interviews, to their underlying reasonings.

Referring to the earlier mentioned definition of framing of Entmann (1993), areas which frame/framing analysis can explore are ways to define the issue; if there is a problem or not and how it is defined; perceived causes; moral/ethical judgements; and underlying beliefs – how one justifies his stance and how a frame is related to a particular worldview (Entmann, 1993; Gray, 2004).

Next to these "fundamental" concepts that relate mostly to *frames*, areas more related to the dynamic *framing* that can be explored are power relations; the perceived role of actors (their own and others'); how one defines himself and others related to the problem (identity); which subsequent action is desirable (Sciubba, 2014; Ott & Aoki, 2002; Gray, 2004, 2003; Entmann, 1993); and perceived possibilities for the actors to come closer to one another or collective action, possibly by shared interests or values (Gamson, 1992, cited in Perri 6, 2005).

These factors can influence the activity of sense-making (the first stage of framing according to Van Hulst & Yanow (2016)). This is because sense-making happens based on an actor's previous experiences, expectations and emotions, and personal background (Van Hulst & Yanow, 2016); and, firstly, perceptions of one's own identity and roles can both originate from experiences and emotions, and can influence expectations and emotions. E.g. the identity of "being tied to corporate interests" can influence how this person frames nature. Hence, these perceptions can be an important factor influencing the stage of sense-making. Secondly, expectations and emotions can be influenced by how the actor perceives *other* actors' identities and roles (including power relations). E.g., feeling uncertainty towards having to define nature (an emotion) could originate partly in the perception that it is someone else's role to do this. Or, feeling responsible to define nature could originate partly in the perception that other actors are not knowledgeable enough to do this (the identity of being uninformed about natural processes). Next to this, experiences are often formed in practices with- or related to other actors. I.e., relationships with other actors are part of someone's experiences. Hence, three of the four factors mentioned by Van Hulst & Yanow (experiences, expectations and emotions) are influenced by- and influence how actors perceive their own and other actors' identities, roles and their relationships. Since the sense-making stage is based on these four factors, *indirectly* these perceptions on identities and roles are influencing actors' sense-making of nature.

Moreover, next to connecting these factors to the actor's perceptions of nature, they can be connected to actors' perception on needed action. In the dynamic process of framing, it becomes clear for the actor what should be the subsequent course of action (Van Hulst & Yanow, 2016) – exactly this dynamic process is subject to social interactions with other actors. This stage, equally to the above, is influenced an actor's previous experiences, expectations and emotions, and personal background.

In summary, the factors above can serve as explanations of how an actor makes sense of nature and of the recommended subsequent course of action.

3 Method

In this chapter, the research method, different aspects of the practice of fieldwork, and the research design are discussed. Lastly I reflect on the methodology.

3.1 Research method

In the field of environmental communication the social constructivism approach is very common (see the work of e.g. Hallgren, L.). As shown before, framing, frames and social constructivism are very closely related. Looking at different *frames* regarding RoN, the focus is on different meanings people give to nature, causes, problems, etc., and looking at *framing* the focus is on the processes of this meaning-creation, taking into account contextual factors – all typical for the constructivist worldview as described by Creswell (2014). This worldview is characterized with the assumption that individuals construct meanings of things in the world around them, by making sense of them through their experiences, this practice often happening during social interaction. With the help of a social constructivist approach, frames and framing processes can be uncovered; they are both *constituted* through social interaction and *form* social interactions by being the lens through which an individual sees the topic he discusses. Within this worldview it is common to take into account not only external contextual factors, but also the background of the interviewee – his/her culture and former experiences (Creswell, 2014): exactly what forms the basis for sense-making within framing (Van Hulst & Yanow, 2016). The constructivist approach fits within a qualitative research approach, in which it is common to study interpretations of people within their social reality (Mohajan, 2018), inductively discover variables and describe a pattern, having a holistic approach in which the aim is to provide an overview of multiple perspectives (Creswell, 2014). This is precisely what the research question asks for, as it aims at discovering meaning-makings and their backgrounds and contexts, and subsequently organizing them into common frames.

For this research there was chosen to conduct semi-structured interviews. Inductively discovering how people make sense of things asks for gathering personal, qualitative information, however in large quantities, making sure that sense-making on various topics can be examined. Since sense-making happens on a personal level, it matches with "look[ing] for the complexity of views rather than narrowing meanings into a few categories or ideas" (Creswell, 2014, p.46). Semi-structured interviews were held with informants knowledgeable on the application of RoN in Ecuador. Some of these actors had been involved directly in RoN cases, being able to give first-hand impressions on sense-making of nature within these cases. Other actors have been close to RoN cases, being able to provide more general impressions on sense-making of nature throughout one or multiple RoN cases. This method has also been successfully used by other researchers doing frame-analysis (e.g. Sciubba, 2014; Lindahl et al, 2018). The interviews provided the basis for understanding and organizing different RoN frames. Even though the interview data was leading, a review of the constitutional RoN articles and some other literature reviews (ch.1)

provided a background against which contextual analysis was carried out and frames could be better understood and described. During the data gathering, I have been flexible considering the focus of interview questions. The interview questions are based on both the literature review on RoN and on concepts the theory in chapter 2 argues framing and frames can uncover (see 2.3). However, these concepts were *leading* for the interviews. When during the interviews, any other interesting consequence, context, background or other aspect of frames emerged, this has been considered as well. Creswell (2014) calls this 'emergent design' of qualitative research.

3.2 The practice of fieldwork

This section discusses the practice of fieldwork, including identifying and finding informants, the practice of interviewing and the interview guide.

3.2.1 Identifying and finding informants

Seeing the importance what is being said and ruled during RoN legal cases, studying frames of Ecuadorian judges and lawyers who have been working with RoN cases is interesting in particular. Additionally, learning *from* them is very useful since they have been closely involved. This requirement has been leading in finding informants: close involvement with the implementation phase of RoN. Next to actors in the juridical community and plaintiffs of RoN cases, also RoN advocates are approached since they meet this requirement. The latter category have been both ENGO representatives and (other) academics.

First, I contacted people from Sweden sending introducing emails in both English and Spanish (when I had the impression that was necessary) and got around 10 positive replies. I had 5 interviews planned when I left to Quito, Ecuador's capital.

In Quito, I noticed the importance and power of the snowball-effect. I got new informants both via my interviewees, but also through people I met via-via through friends, who knew people involved with RoN cases. Another channel I used was the Facebook group 'Expats in Quito', from where I got many valuable contacts. Ultimately my network expanded until around 20 extra people, however not all of them turned out to have been involved with RoN cases, which was my main criteria. Some other people would have been valuable to interview but were not in Quito. Some Skype interviews were loosely planned without date, but due to time issues ultimately those were not held. However, in the end I had 6 qualitative proper extra interviews thanks to the snowball effect. One danger of the snowball effect is expanding the group of interviewees to more people with the same worldview, profession, or set of values. E.g., environmental conscious people tend to know environmental conscious people. Because of the limited time available I have not been able to tackle this issue fully. However, I tried extra hard to obtain interviews with a wide range of actors in terms of professions, and e.g. F. Simón who was recommended as an "RoN critic", to make sure not only RoN advocates were interviewed.

3.2.2 The practice of interviewing

In qualitative interviews one aims for a deep understanding and obtaining a rich, diverse picture (Creswell, 2014). Therefore, to explore interviewees' answers deeper and make meanings explicit, I asked them to elaborate on what they already said, asked them for examples, and to clarify their answers (Charmaz, 1996). Another tactic I used was asking for examples and then mirroring, asking if generalization was possible. E.g., if an interviewee told me about how an actor defined nature in one specific RoN case, I repeated the definition and asked if this is a general definition amongst this actor. This way, I let people talk without steering, but still asked for possibility of generalization.

As in qualitative studies "the researcher is the key instrument" (Creswell, 2014, p.294), and the more direct the interaction the better I personally tend to understand people on a deeper level, the interviews are carried out face to face in Ecuador. Being present in person also means less chance on noise (e.g. bad skype connection). I aimed at around 10 interviews. As many interviews as possible in 4 weeks were carried out: 14 in the end. Before and during the fieldwork trip I was constantly looking for interviewees in Quito who met my requirement of having close affinity with RoN cases.

The interviews were held at a location preferred by the interviewee (interviewees' offices, home or a café). To enable comfortable interviews and as many interviews as possible, I have been flexible considering location and time. The average interview had a length of around 2 hours.

To ensure that interviewees felt comfortable on the use of their interview, a consent form was asked to be signed prior to the interview (see app. 3). This form includes referencing-, confidentiality- and integrity matters. Considering language, some interviewees were not fluent in English. I speak some Spanish, however, for fluency and not missing details, I took a translator with me when the interviewee considered this necessary. I have worked with three translators, either translating to English or Dutch (my mother tongue): how the translator felt best expressing her/himself. The translators were bilingual in Spanish/English or Spanish/Dutch, and had some affinity with the topic making it easier for them to translate, since they knew the necessary terminology. During my stay, my Spanish improved considerably, which resulted in an increase in fluency during the Spanish interviews and sometimes almost no need of a translator.

3.2.3 The interview guide

Qualitative interviewing means asking open-ended questions (Creswell, 2014), to discover views, opinions and detailed inside information about RoN cases, which might not have been explicitly made public before. The interview guide (app. 4) is based on the concepts that can be revealed through frame/framing analysis, described in 2.3. This means the leading concepts for questions are:

1. Definitions of nature
2. Consequences of definitions for subsequent action/non-action
3. Underlying beliefs of frames
4. Actors and their perceived identities/roles
5. Power relations
6. Throughout these, the development of frames during the last 10 years.

Most of the above themes turned out to be very relevant, especially theme 1, 3, 4 and 5. Some other themes turned out to be incorporated in- or overarching others; to be 'too big' or "too small". Hence, in the end, during the process of coding, the themes changed slightly.

3.3 Research design: Analysing frames/framing

To analyse the frames, coding was used. Strauss (1987, cited in Mohajan, 2018) distinguishes different steps: open coding, meaning identifying categories by looking at important words and labelling them, followed by axial coding - discovering a pattern and explaining phenomena. Open coding in this study applies to the itemization of a frame's basic components; taxonomization of the elements constituting a frame (Van Hulst & Yanow, 2016). This part considers predominantly the factual definitions/interpretations of nature used in legal RoN cases, and other, relatively static elements that can be ascribed to

a frame. Next, during the axial coding, the other interview data considering consequences of these definitions, underlying beliefs, perceived roles and identities, power relations and over-time changes can be interpreted continuously being related to these itemized frames. This considers more the framing analysis since these topics are more dynamic and can be seen as possibly influencing the constitution of the 'static' frames. Strauss' third step, selective coding, considers "explicating a story from the interconnection of these categories" (Creswell, 2014, p.309). Whereas the first two steps were more analytical, this third step connected the discovered definitions with their underlying factors back into a coherent story in the results chapters.

Coding was done manually. Based on Creswell (2014), the recorded and transcribed interviews were analysed focussing on parts considered relevant concluded from prior literature review and aspects emerging during fieldwork. Themes were identified and labelled, some emerging during this process; some predetermined from background knowledge and the research question (e.g. "definition of nature" as a theme did not change). I realized that recommendations of actors on subsequent action were a big part of the frames that emerged during interviews. Even though this theme was not a part of the interview guide, it appeared such a prominent part of interviewees' frames and, moreover, a constructive addition for the purpose of policy improvement, that I decided to add this aspect to the research question and integrate it into chapter 1, 2 and 3. From the obtained overview, chapter 4 and 5 were written. Some initially separated themes I eventually took together, like relationships and power issues. The themes were used to structure discovered connections of how actors have been defining nature, what these definitions were based on, and their recommended subsequent courses of action. This is discussed with references to frame/framing theory. This way, I sketched dynamic pictures of the different frames. The definition of nature serves as a basis per frame, labelled after this (using an 'in vivo term', meaning a term used by the interviewee(s) (Charmaz, 1996)).

3.4 Methodological reflections

The qualitative research process is subject to various personal factors of the researcher, like "biases, values, and personal background, such as gender, history, culture, and socioeconomic status that shape their interpretations formed during a study" (Creswell, p.298). Being from a western country like The Netherlands, my culture, socioeconomic status, but also my experiences with power relations in society are very different than those present in Ecuador. E.g., in The Netherlands, the division of powers is way more clear than in Ecuador, just like corruption is not as common. It is likely that interviewees often were aware of these differences (sometimes they were made explicit); they might have adapted their answers accordingly. Additionally, my background might have influenced my interpretation of their answers, however, during the fieldwork I noticed my understanding of Ecuadorian society grew and made me less naïve and more sensible considering the questions I asked, which I think positively influenced the perception my interviewees had of me hence they provided me with better answers. Moreover, my flexibility at the coding process considering modifying the predefined themes from the interview data can also be influenced by my biases, values and/or personal background (Charmaz, 1996). It might be that things remarkable to me are very normal in Ecuadorian society, and vice versa. E.g. I noticed some things were taken for granted easily by interviewees, like the presence of corruption, whereas in the beginning this sometimes surprised me. Inasmuch as it might have made me disregard or overlook aspects, I think this outsider's view on the Ecuadorian situation also makes the research more analytic.

Often, when asking about the definitions of nature, interviewees elaborated on more theoretical bases on which definitions could be based, on personal experiences, injustices related to RoN, and many other things. Even though these insights were also useful, it required much insistence to obtain information about actual definitions of nature. In

retrospect, one of the reasons for this was the actual *lack* of defintions of nature in legal cases.

An important limitation of the method of interviewing people who have been close to RoN cases is that the information obtained is indirect, coloured by the interviewee's perceptions (Creswell, 2014). E.g., obtaining emperical material from judge's experiences is also coloured by *their* background (even though I am trying to analyze this afterwards). This might limit the scope of their answers to only answers that fit their worldview, i.e., their answers will be coloured by their frames. However, these frames are also the subject of analysis hence as a researcher I have granted great attention to this issue. A direct analysis of RoN cases would have led to more reliable data, however, due to limited time, money, language skills, knowledge on law, and thesis scope, this was not possible. However, the interviewees were all closely involved with RoN, hence this research method has brought me data as reliable as practically possible within the scope of this thesis.

Another limitation considering the interviewees is the absence of non-environmental lawyers. Even though the impression arose that the frame of this group often corresponds with the frame of judges (they both lack education on environmental topics), it would have been valuable to include this actor since they have been involved in the majority of RoN cases; moreover they were often mentioned by other actors as hindering proper RoN implementation and the environmental lawyers distinguished themselves clearly from this group.

A limitation on interpreting the results is my limited knowledge on law. However, during the research process I have considerably increased my knowledgeability on law; Ecuadorian constitutional law in particular.

Furthermore, I had the impression that being from a developed western country, being interested in Ecuadorian law, gave me a certain advantage that allowed me to interview key figures and people like constitutional judges, of which there are only 9 in Ecuador.

Considering generalizability, the relatively low number of interviewees makes generalizations on actor's opinions quite unreliable. During the interviews, there was asked for the possibility to generalize the given answers; however even this perception is subjective. Therefore it has to be stressed that the results are only giving an *impression* of actors' perceptions.

4 Definitions of nature and factors influencing the sense-making stage

This is the first chapter with findings resulting from the open-, axial- and selective coding. Different perceptions of nature are discussed, together with underlying factors they are based on. When analysing the interview data, next to definitions/interpretations of nature, different factors that can influence these definitions/interpretations have been identified, based on- and referring to the factors mentioned in theory chapter 2.3. These factors include worldviews, beliefs, constitutional and legislative articles, power relations and perceptions of one's role or identity. These factors, influencing the sense-making stage, are all in some way based on experiences, expectations, emotions and personal backgrounds of the actors. Before going to the concrete results, below, first an important general finding is discussed for the reader to be able to adequately understand the results.

Concrete definitions that end up in cases, hence could turn into jurisprudence, turned out to mostly come from the actors judges, lawyers, the government and – to a lesser extent – plaintiffs. This can be explained by intricate unequal power relations between the government, extractive sector companies and the judicial community, described by both interviewees and literature (e.g. Tanasescu, 2013; Valladares & Boelens, 2017; Kaufmann & Martin, 2017). These unequal power relations can be explained by Ecuador's economic model, in which, according to the interviewees *and* scholars (e.g. Valladares & Boelens, 2017; Tanasescu, 2015), the government financially relies on oil- and mining companies. Since non-renewable natural resources are providing a substantial part of the government's financial resources, nature and economic interests are competing for the favour of the government. Especially under the government of Correa (2008-2017), there was a big governmental influence in the judicial community, the government protecting their own economic interests through protecting corporate interests. Correa did this by threatening judges with immediate dismissal in case of ruling against the state's interests. Even though this control has diminished under the current president Moreno (since May 2017), the fear amongst judges still remains; moreover there still exists a legal tool with which the government likely starts a process against any judge who rules against the state's interests. One interviewee illustrated the governmental control of the judicial community like:

> "Here the president of the republic takes the phone and says "listen you have to rule in this and this way" and it's over. That's how it was, during 10 years."
>
> (M. Melo, own translation)

Seeing this tight relationship, it turns out the government often indirectly determines how nature is interpreted in rulings. Because of this the interpretations of nature are often the same across these three actors. However, the factors influencing their sense-making are sometimes differing. Of course there are alternative interpretations of nature, e.g. by ENGOs, indigenous communities or academics, which did not (yet) make it through the

judicial system. These interpretations are not discussed, and neither are the corresponding underlying factors nor the recommended subsequent courses of action.

Who defines nature and how is very case- and actor specific. Legal cases are always about one specific part of nature being harmed, hence it is difficult to arrive at a general definition of nature as a whole. This means the interpretations of nature in cases are, until now, very dispersed. However, when looking generally at RoN cases, 4 general interpretations of nature can be distinguished, discussed in 4.1 to 4.4. In app. 6, additionally, some specific cases are discussed in which other frames can be distinguished. In this thesis' scope, these could not be discussed here, however they are concrete, illustrative and possibly relevant to consider seeing the small amount of RoN cases until now[8]. The categorization below is made based on general, more or less concrete interpretations of nature by various actors, that have been occurring throughout cases. Together with the underlying factors these defintions are based on (factors influencing the sense-making stage), they form the various frames of nature. Associated recommended courses of action are discussed in chapter 5.

Throughout this- and coming chapters, quotes are used to illustrate or clarify (originals in Spanish in app.5). In case of multiple speakers, initials indicate the speaker[9]. Names of interviewees are used because of the added value of the source; short biographies can be found in the list of interviewees at the end of this thesis.

4.1 Nature as article 71

The first frame is based on nature as art. 71. Firstly, judges mostly just cite art. 71 and thereby "define" nature. However, after citing this already existing definition, the concept is generally not developed; not elaborated on; not explored any further."We haven't been able to provide more content to those "brands" *[the term pachamama]*. We just copy paste it, we don't say what it means." (M. Ámparo). The general line of RoN argumentation in court seems to be citing art.71, mentioning the term pachamama, sometimes citing the constitution's preamble, and then simply stating the existence of RoN. Most judges avoid discussing what nature is. Hence in this frame, the stereotype of the constitutional definition is used within the storytelling, so emphasized, whereas more concrete or substantive information on the represented nature is left out. Also the intended biocentric interpretation is backgrounded. This can be explained by various factors that influence the stage of sense-making (interpreting).

Firstly, a tendency in Ecuadorian environmental legal cases is most plaintiffs wanting either restauration of damages or compensation. One of the reasons for this might be the – according to interviewees – wide belief in Ecuador that nature has been affected without the possibility to be restored. It has been both *necessary* to legally enforce restauration, and restauration was what was mostly *demanded*. I.a. because of this focus within the cases, defining nature is simply not of interest for anyone directly involved. Defining nature would be "beyond the case"[10].

Neither do judges see it as their role to define nature. According to an interviewed judge, this is a general perception among judges; the purpose of an environmental damage case is said to be protecting nature or human rights. In this, she said their task is to find a balance between an anthropocentric and biocentric way of interpreting the constitution, making sure *all* parties can improve their "good living" as defined in the constitution's preamble. This does not include defining nature.

Furthermore, a big influence seems the general personal background of judges of having a lack of knowledge on nature, which limits them in elaborating on it. This structural problem of ignorance with regards to nature and/or RoN amongst judges and non-

[8] More explanation see app.6
[9] E.g. LW = L. Wolf. X = anonymous interviewee
[10] This also applies in the Río Vilcabamba case, see app. 6

environmental lawyers was mentioned as a big obstacle by *all* interviewees. Very often, these actors are not knowledgeable on RoN neither on nature itself, i.e. anything related to biology or ecology. This was also noticed directly, speaking to a former constitutional judge:

> "But as we are now talking, nature can't be a legal person, because it has no board, it has no owner, it has no money, it has no office, it has no representative, etcetera."
>
> (Former judge of the Ecuadorian CC)

In contrast with other countries, where law is a postgraduate study, in Ecuador law students only study law. This means judges and lawyers mostly do not have an education on another subject than pure law, and they are educated to reason from a pure law-perspective, in which reasoning from a biocentric perspective is backgrounded. Firstly, this has a limiting effect on a deeper understanding of RoN cases regarding factual biological/ecological knowledge to be able to understand what the problem really is or how to solve the problem. Second, this means they usually have a perspective coming from classical roman law. Thinking within this framework, it is pretty difficult to grant personhood to nature (explaining this is beyond this thesis' scope). This ignorance results in most lawyers and judges having to rely on their personal backgrounds to interpret RoN cases. It also means that it is difficult for judges to reason from a biocentric perspective: this would require a different epistemological basis than that of roman law. Another cause of the lack of knowledge is the limited amount of RoN- and environment-related cases. For non-environmental lawyers and judges, it is simply not worth their time to specialize in these topics since they will most likely have very little cases in which the knowledge will be useful.

In the case of Río Vilcabamba, even though the plaintiff's personal perception of nature is biocentric (see app.6), her lawyer only cited art. 71. The plaintiff, an interviewee, justified this fact with "it was all new to us" - this could indicate a lack of knowledge of the lawyer on how to elaborate further on the concept of nature; a non-relevance of doing this; or they did not think it was their role to define nature.

Furthermore, it could be argued – however, this is just speculation – that the power-relation between judges and the government is an influencing factor on why judges mostly only cite art.71. According to interviewees who are part of the juridical community, judges think that the government is worried that RoN, when applied correctly, might limit their economic model based on oil and mining. Since the political will to develop the RoN into more applicable legislation seems low[11], from their personal experience with the government judges might feel pressure to not contribute to this either, in fear (expectation) of negative consequences for their careers.

4.2 Nature as only air, water and soil

This second frame of nature has only been expressed implicitly, meaning it has not been explicitly present in cases but has been pointed out by interviewees analyzing RoN cases. Departing from the viewpoint of seeing nature as the elements air, water, soil and biodiversity (explained below), judges have been limited to considering only the first three components, leaving out biodiversity. The perception of nature as air, water, soil and biodiversity is explained by R. Garzón, environmental lawyer. His reasoning is based on the glossary of terms in the COA, a supplement to the constitution. There, nature is defined:

[11] No execution of art. 6 of COA and art. 399 of the constitution (see app.1, B;C); lack of secondary RoN legislation

> ”Nature. – Environment in which all forms of life are being reproduced and occur, including its components, which depend on the uninterrupted functioning of its ecological processes and natural systems, essential for the survival of the diversity of all forms of life.”
>
> (COA, 2017, p.66, own translation)

Garzón interprets this terminology as follows. “Environment […] including its components” is air, water and soil; “all forms of life being reproduced and occur” is ecological cycles of biodiversity; “the diversity of all forms of life”. Following from this, nature is air, water, soil and biodiversity, whose functioning depends on “the uninterrupted functioning of its ecological processes and natural systems”. He says for him, the legal interpretation of nature is the elements air, water, soil and biodiversity: the elements that allow the proper functioning of biodiversity and the vital cycles, and the biodiversity itself.

The existence of this frame can partially be explained by the fact that most RoN trials have focussed on restauration – mostly of air, water and/or soil. In the storytelling phase (in court), the (hi)story of the plaintiff’s problem is used (as theorized by Van Hulst & Yanow, 2016) to emphasize the relevant elements that have to be restored, leaving out the other elements. This effect could be reinforced by art.72[12], explicitly mentioning restauration but not biodiversity. Furthermore, the high percentage of RoN cases focussing on restauration might influence judges to focus on this again, it being a previous experience hence expectation that influences their sense-making of nature in next cases.

However, this interpretation is not even in accordance with art.71, which mentions “where life is reproduced and occurs” which can not happen without living organisms. Hence, this frame can be explained by judges’ and lawyers’ background: a lack of knowledge on nature (elaboration see 4.1).

Furthermore it can be argued that this perception is influenced by the occidental cultural background of many judges and lawyers. According to various interviewees, this occidental culture is present in cities and bigger villages in Ecuador, and people within this culture generally consider nature something outside of civilization and/or as resources for humans. Being relatively disconnected from nature and seeing nature as resources, it can be an underlying factor why they split up nature into tangible the components air, water and soil. It contrasts starkly with the interpretation of nature of the indigenous Kichwa culture; more information see app. 7.

Lastly, this perception is based on an anthropocentric worldview. This epistemological concept anthropocentrism connects considerably to the mentioned occidental perception of the term nature: nature as our surrounding; something we depend on, but we are not part of. It places humans central and nature as surrounding. Also, in this mindset RoN is an extension of environmental law – anthropocentric since this only regulates human use of nature. Interviewees pointed out that whenever plaintiffs demand for human needs/interests, even when using RoN, they have an anthropocentric perspective. Nature as air, water and soil only considers certain parts of nature, this way emphasizing the parts directly relevant for humans (surrounded by- and depending on these elements), and backgrounding biodiversity (arguably less directly dependent on this). This in contrast to the biocentric worldview/mindset that considers *all* parts of nature, being a “whole”, including humans *and* biodiversity[13].

4.3 Nature as something irrelevant

Another implicit frame is nature as degraded to “something irrelevant”. This has been a perception of the government and of judges, and of the accused party in the case where a

[12] See app.1,A

[13] It is related to “wild law”, which basically says nature has to be respected according to the rhythms of nature (see Cullinan, C. (2011). Wild law: A manifesto for earth justice).

shrimp farm owner was sued[14]. While nature itself and its intrinsic rights are backgrounded in this frame, various possible other things are emphasized. E.g. in the case of the shrimp farm, the right to work and private property was emphasized, resulting in framing nature as something irrelevant and inferior to the person´s own direct economic interests. (The judges at lower levels agreed to this, so got the same perspective on what nature is.) Next to this, what has been emphasized is the presence of an environmental license, then mistakenly concluded that the RoN in that area would not be infringed and the nature could be exploited without a problem[15], making nature and its rights unnecessary to consider. This means also that there is an assumption that RoN only applies in pieces of nature that are protected by another juridical tool than RoN, e.g. a restriction from an environmental licensing process or when it is proclaimed a protected nature area. This very interpretation of nature as "area that has to be protected, however only in the case there is a juridical protection *next to* the protection that RoN provides" was also mentioned explicitly by interviewees. Especially judges were said to interpret nature falling under RoN protection as "nature within a protected area" or "nature protected by an environmental license or EIA". They background any nature that is not under this protection as irrelevant, only emphasizing areas protected by other means than RoN.

These two, closely related, interpretations of nature (the latter above and nature as something irrelevant) can clearly be connected to judges'/lawyers' background of having a lack of knowledge on RoN. It could also be connected to the identity of judges having difficulties justifying RoN, leading to favouring economic activities over protecting nature, possibly related to their classic Roman law education. Besides, it is based on their occidental cultural background and related anthropocentric view, more distanced from nature; to contrast, the biocentric definition of the Kichwa culture would never consider nature irrelevant it being an essential part of their life and identity (interviewees; Altmann, 2014; Walsh, 2011). Judges'/lawyers' occidental/anthropocentric background might mean that nature's interests, compared to human's interests, are relatively unimportant for them. Additionally, their law education is based on anthropocentric theory (classic Roman law), which is likely to lead to an anthropocentric view on nature as well.

Furthermore the government's economic interests (or the *role* of the government to defend economic interests) combined with the discussed unequal power relations can be seen as a reason why judges "downgrade" nature to something irrelevant: often either natural resources can be used (economic interests safeguarded) *or* nature is protected. When economic interests are favoured, nature often ends up being disregarded. Interviewees mentioned that the government feels "tied" to big extractive sector companies, which arguably leads them to disregard nature. Even though "the government" is a very broad term and a dispersed actor, an overarching governmental interest is exploiting oil and minerals for economic reasons. This overall goal is reflected in policies of all ministries, including the ministry of environment whose task it is to *regulate* the exploitation of oil- and mining resources: economic interests still prevail[16]. Also expressed by interviewees in the juridical sector is the assumption that the government does not *deny* environmental consequences of extraction, but considers them as irrelevant. This awareness that judges have of the state's perception of environmental damage, combined with the unequal power relations, might be an influencing factor. Intervieweed academics even mentioned that the government has a sense of unease about RoN stopping a mining- or oil extraction project, being aware of the potential secondary consequences of this hypothetical case's jurisprudence. If RoN manages to block *one* mining project, power relations would be challenged and all mining projects come at risk. This said, these academics mentioned that the state sees judges firstly as a risk for their economic model; however that secondly, judges can be also considered "tools" to *safeguard* the state's economic interests. By setting

[14] See app.6
[15] E.g. Condor Mirador case
[16] Also visible in their first official objective: "[...] to prioritize productive activities with less impact [...] ". (Min. del Ambiente, nd, own translation, full quote see app. 5)

examples of taking legal steps against judges who ruled in favour of RoN, they made sure that judges will "think twice" before ruling against a company's practices. The fear of the government starting a legal process against them is still present and might influence the way they favour (emphasize) economic/corporate interests and disregard others (nature).

In the shrimp farm case as well[17], although this time personal, economic interests were emphasized as most important. Here again the (hi)story of the plaintiff's problem was used, to emphasize other aspects than nature.

4.4 Nature as resources to be exploited

Fourth, nature is interpreted as resources to be exploited, mostly by the government and judges. This perception is very closely related to the definitions and underlying factors in both 4.2 and 4.3. This frame emphasizes only parts of nature that are possibly of direct human use, while it backgrounds all other parts of nature (e.g. biodiversity; some natural cycles) and leaves out the intrinsic value and rights it has.

Firstly, this interpretation of nature is very clearly is rooted in the occidental cultural background of judges and governmental actors, in which nature is perceived as resources to be owned, used and exploited. Also the anthropocentric mindset that's often part of these actors' background is an influencing factor, where people can use nature and nature is divided into tangible components, like discussed above. It is also influenced by the government's connection to extractive sector companies, and their role of defending economic interests, which implies exploiting natural resources (see also footnote 16). Possibly, the government has a public self-image of being responsible for economic prosperity, for this almost *having* to see nature as resources. This relates to Gray's (2003) identity frame, where the social identity can reveal what underpins the frame; in this case an economic responsibility *so* big that it becomes intertwined with their perception of nature (Van Hulst & Yanow, 2016); like it is almost impossible for them to disconnect nature from exploiting its natural resources. Next, judges bring this interpretation of nature into rulings because of the governmental pressure. One former constitutional judge even[18] admitted the CC not being independent:

> LW: But then how can it happen that there's still oil being extracted?
>
> X: Because…. Very good question. It happens when the constitutional court is not independent from the political power. Here in Ecuador we have the very important challenge to try to give the independence that the judge needs."
>
> (Former constitutional judge)

This quote, particularly explicitly about oil extraction, shows how judges are still influenced by the governmental frame of nature as resources to be exploited.

These four frames were based on the definitions of nature and their underlying factors. In the following chapter, I elaborate on the recommended subsequent courses of action given by interviewees.

[17] See app.6

[18] Also *because of* this pressure, obviously judges are not likely to elaborate much on the relationship between the juridical community, the government and companies during interviews.

5 Recommended subsequent courses of action

Many interviewees expressed their view on what should be done to improve RoN implementation qualitatively. Two recommendations prevailed: defining technical standards for RoN violation, and educating judges and lawyers. In this section, these will be discussed: what is recommended and where do these recommendations come from? It is shown how some underlying problems, legislative articles, identities and roles and other factors, perceived by interviewees based on their experiences, emotions, expectations and personal backgrounds, lead to these two recommended subsequent courses of action.

A constructive red thread, throughout both legislation and interviewees´ impressions and experiences, is a tendency to consider balance in ecosystems as something important or even fundamental to respect RoN. In court, this perception has been represented by plaintiffs but has very limited ended up in rulings, however, one particular case shows it *can* happen (the Shrimp Farm case, see app.6). From the redenation of Garzón on nature as the elements air, water, soil and biodiversity follows that "ecological processes and natural systems" are interrupted by disturbing the natural, balanced cycles of the four elements. Defining when this is the case can be a point of departure to define nature more scientifically and concretely. An explicit statement on this was done by N. Greene: "in the definition of nature is the definition of when you're disrupting nature". But *when* are you disrupting nature?

5.1 Defining nature's standards

When nature is disrupted is a question a lawyer or judge likely will not be able to answer because of their discussed background combined with nature's complexity (complex ecosystems involving many interrelated components). Distrust and low expectations towards the capability of the judicial community to define when nature is disrupted was also expressed by various interviewees, leading them to point out the need of biologists, ecologists, and other academic experts to define nature's thresholds with a multidisciplinary team. Concluded from the interviews, doing this is a shared interest between three actors: lawyers, who sometimes deem RoN described too broadly hence hard to work with; academics, who see it as their task to work towards a more complete interpretation of nature in court; and ENGOs, who see it as their task to define nature in cases. The recommendation most explicitly made by academics and lawyers, their academic background can also explain why they pointed out the important role of science in defining nature's thresholds more technically. In conclusion, this recommendation is both grounded in the perception of others' identities and roles *and* ones' own roles.

To be workable, these thresholds are deemed to be defined in terms of technical standards: threshold values of e.g. existence, regeneration, restauration, structural functions of nature and evolutionary processes. I.e.: when is damage to nature to be considered significantly disturbing the natural cycles of its elements (water, air, soil and (especially)

biodiversity)? In fact, some interviewees – working in the juridical community hence knowledgeable on legislation – refered to complying with art. 6 of the COA (2017). This article *and* another official ministerial document (Ministerio del Ambiente, 2012; mentioned in Garzón, 2017)[19], state that the environmental authority must develop technical standards to ensure restauration "of balance, cycles and natural functions" (Ministra del Ambiente, 2012, p.4). However, so far this has not happened; more political will is deemed needed to start its execution[20]. Hence, defining nature's standards is not merely an opinion, but rooted in law too.

Interestingly, in 2012 two biologists started this work writing a proposal of indicators and processes (De la Torre & Yepez, 2012), with a basic overview of natural processes and cycles, including indicators per commonly affected aspect of nature *and* a list of possible environmental impacts per common exploitative activity. This was done commissioned by an ENGO aiming to distribute it amongst lawyers and judges, but it is unclear if this distribution has happened.

5.2 Educating the juridical community

The necessity to educate lawyers and judges was mentioned by almost all interviewees. It was mostly concretized by suggesting training programs for existing lawyers and judges, and universities were attributed a big role in educating law students on RoN. There seems to be a shared value in improving RoN implementation through developing the judicial community's knowledge base.

This call for action originates in the impression interviewees – judges and lawyers themselves as well as other interviewees – have of the identity of regular judges and lawyers. Based on their experiences and personal background, they are negative about the competence of judges regarding RoN. It was widely stated that many judges and regular lawyers have insufficient knowledge on nature and RoN; are too focussed on only restauration; are corporate oriented and not nature oriented; are unexperienced, unknowledgeable, unprepared and stuck in an anthropocentric way of thinking about law – failing to interpret RoN biocentrically –; and that these are serious obstacles to qualitative and quantitative RoN implementation. The need for active education is deemed even more urgent seeing the mentioned lack of incentive for self-education (which they noticed through personal experiences), and to resist against governmental power. Since the government is generally perceived as hindering RoN implementation, influencing judges and not developing RoN enforceability, many interviewees expect RoN development a possible tool to disrupt unequal power relations.

Both the academics *and* the ENGO representatives interviewed consider it their role to take care of this education. However, an obstacle academics perceive is the ongoing governmental pressure felt by judges that might keep them from using their new knowledge.

[19] See app. 1,C;D

[20] These are *normas programáticas*, meaning they are a non-obligatory provisions; their execution depends on political will

6 Discussion

The aim of this thesis was to generate an overview and deeper understanding of the involved actors´ main interpretations of nature in RoN cases; what are underlying factors causing them to have these interpretations; and viewpoints on necessary action underpinned by these factors. Resulting are four frames, based on definitions of nature, various underlying factors influencing actors' framing processes and two concrete suggestions for subsequent action. The frames explored are based on nature as:

- art. 71;
- only air, water and soil;
- something irrelevant;
- resources to be exploited.

The findings suggest that the government has, indirectly, considerable influence on how nature is defined. These four interpretations with their underlying factors can all, in some way, be traced back to the occidental anthropocentric mindset and/or the economic interests defended by the government. Many of the underlying factors can also be traced back to the discussed unequal power relations. This is an important observation since it reaffirms the continuing existence of these relations between government and juridical community, in which economic interests resonate. However, it is important to realize this is the *current* situation in Ecuador and moreover sometimes sense-making of judges is even influenced by *previous* situations (like the era under Correa). Yet, present developments of i.a. diminishing governmental influence in the juridical community suggest positive change, towards a *future* situation in which governmental influence on the definition of nature might decrease and RoN can be developed more constructively[21]. Furthermore, as said, the discussed frames are only interpretations of government, judges and lawyers, but in a situation with more equal power relations also other actors' frames could appear in cases, like the perception of nature of indigenous people or ENGOs. The use of framing analysis next to frame analysis revealed this issue, exploring the dynamic part of framing. This said, many interesting alternative frames have been left undiscussed in this thesis – their definitions of nature as well as their recommended courses of action. Seeing the mentioned development, exploring these alternative frames is recommended for future research.

The results are based on the experiences and impressions of actors *close to* RoN cases. An important limitation in this study, finding its origins in the chosen methodology, is the subjectiveness and limited knowledge of interviewees. They have not always been personally involved in processes they spoke about; moreover their interpretations are influenced by their own frame. Therefore, reliability of their utterances is varying. However, the reoccurence of topics throughout the interviews enhances reliability – e.g. not only one interviewee mentioned the lack of knowledge among judges.

[21] Short elaboration in app.8

Furthermore, interviewing different people might have revealed different results. Interviewing also *non*-environmental lawyers would have improved the reliability since eventually this group appeared to represent current nature frames in court to a considerable extent, but was not directly interviewed. Moreover, analysing rulings myself would have yielded more reliable definitions of nature, however it would have been harder to uncover underlying factors, just as recommended action.

With only 14 interviews, it is likely that the discussed frames are not fully complete. E.g., possibly, not all factors influencing the sense-making stages have come forward during the interviews. It is also possible that entire addittional frames of nature, present in cases, did not come forward. This has to do with the thesis' scope: with more interviews and writing space, frames would have been more complete qualitatively and quantitatively.

Next to this, assuming judges have an occidental background is an assumption based only on interviewees statements and is not further supported. Moreover, academics deem both judges and lawyers highly dispersed, considering their varying backgrounds. This means generalizing statements on the important actor 'judges' have to be interpreted with care.

Considering recommended actions, the results are constructive but only partially discussed. E.g., defining nature's thresholds has lots of possible implications. Nature is incredibly diverse, hence an enormous amount of information would have to be developed and understood. Furthermore, since every ecosystem is unique, how can there be standardized? How to deal with uncertainty? Who will fund this project? For educating judges/lawyers, one can e.g. wonder what would be their interest in developing their knowledge on RoN. These questions are suggestions for further research.

Despite the limitations, the findings are solid material to answer the research question, which will be done in the following conclusion.

7 Conclusion

The research question of this thesis was: "Which interpretations of "nature" can be distinguished in the context of legal cases with Rights of Nature in Ecuador, what are they based on and which recommended subsequent courses of action are part of these frames?"

With the help of frame and framing analysis, four frames are distinguished, based in the way nature has been defined in RoN legal cases and explained or supported by underlying factors that likely influenced the sense-making stage within the framing process of the respective actors. The frames ultimately considered in RoN trials (hence in this thesis) are all from judges, lawyers and the government. This can be explained by the unequal power relations between the government and the juridical community. The government, defending economic interests for the sake of Ecuador's prosperity, makes judges feel pressured to rule accordingly, hence favour corporate interests over nature's rights. Judges feeling this pressure originates both from the era under Correa in which this pressure was very high, and continuing possibilities for the government to take legal steps against judges who rule differently than they would prefer. This pressure very often results in judges taking over the government's frame of nature.

The four general frames distinguised are:

1. *Nature as article 71*

   Judges often only cite constitutional art. 71 to "define" nature and do not elaborate any further on the concept. This way, art. 71 is a stereotype used in the storytelling stage (in court) which is emphasized, whereas more concrete or substantive information on the represented nature is left out. The underlying factors connected to this definition are the following. Firstly, focus on restauration or compensation in cases, generally believed necessary hence often demanded, makes defining nature something unnecessary. Second, judges do generally not perceive it their role to define nature. Third, the general personal background of judges often includes a lack of knowledge on RoN and nature, limiting them in elaborating on it. This background originates in their limited education and little incentive to specialize themselves. Lastly, possibly, governmental pressure perceived by judges could limit them to elaborate further, the government not seeming to want to develop RoN.

2. *Nature as only air, water and soil*

   This implicitly used definition is emphasizing air, water and soil, leaving out other parts of nature like biodiversity. This frame likely is influenced by the following factors. Firstly, the focus on restauration in trials has mostly emphasized the elements air, water or soil; this being judges' experience with RoN cases, influencing their perception of nature. Second, an occidental cultural background of many judges, lawyers and politicians makes them perceive nature as resources hence the tangible components. Third, the background of having an anthropocentric worldview, i.a. because of their

education, can make them emphasize the parts of nature separated from- but directly relevant for humans.

3. *Nature as something irrelevant*

   This implicitly used definition backgrounds nature itself and its intrinsic rights, emphasizing other things like other (human) rights or the presence of an environmental license. The latter is based on the incorrect assumption that RoN only applies in nature areas protected by *other* legal tools than RoN, hence a lack of knowledge in actors' personal backgrounds. Also some judges have difficulties justifying RoN, making them background nature and emphasize e.g. economic interests. Both these factors find their origins in Ecuador's limited and anthropocentric-based law education and the occidental cultural background and related anthropocentric view of the juridical community and the government. Furthermore, the government's role to defend economic interests (tied to extractive sector companies) combined with the mentioned unequal power relations can lead to emphasizing economic interests and backgrounding nature in court. Lastly, the government likely fears RoN stopping extractive projects, since it can limit their economic model in the future through possible jurisprudence; therefore backgrounding RoN and nature.

4. *Nature as resources to be exploited*

   This frame emphasizes only the parts of nature that are of direct human use, while it backgrounds all other parts of nature (e.g. biodiversity; some natural cycles) and leaves out the intrinsic value and rights it has. Factors likely influencing the sense-making stage here are the following. Firstly, the occidental background of judges and governmental actors, in which natural resources are to be owned and exploited. Similarly, their background/identity of having a mostly anthropocentric mindset in which nature, divided into tangible components, is for people's use. Third, the government's identity frame of being responsible for economic prosperity likely makes them consider nature like this. This combined with lacking independence of the juridical community makes also judges prone to having this perception.

Furthermore, two recommended subsequent courses of action came forward. Balance in ecosystems was often perceived important, leading to the question when this balances is disrupted. Aiming to solve this, but simultaneously feeling distrust and low expectations towards the capability of the judicial community to do this, it is deemed necessary to define nature's standards concretely with a multidisciplinary team of experts. This need expressed by academics, environmental lawyers and ENGO representatives, all with their own specific reasons, shows this is a shared interest between those actors. Furthermore, it is rooted in law: art. 6 of the COA of 2017.

The second recommendation is educating judges and lawyers, coming from the widely shared value of improving RoN implementation. Furthermore this recommendation is grounded in the wide belief, based on experiences, personal background and expectations, of poor knowledgeability on RoN and nature in the Ecuadorian judicial community. This actor is generally perceived unknowledgeable, unprepared, corporate-oriented and only focused on restauration. Education is also deemed necessary seeing the low incentive to self-education and to challenge unequal power-relations with the government.

Concluding, the frames themselves *and* which frames prevail are highly influenced by the unequal power relations between the juridical community and the government. Economic interests of the government indirectly cause judges to favor interests of extractive sector companies over the RoN. Overcoming problems related to this issue seems an important step in improving RoN implementation.

8 Conclusiones (Español)

La pregunta de investigación de la tesis fue: "Cuáles interpretaciones de "naturaleza" se pueden distinguir en el contexto de casos legales con los derechos de la naturaleza en Ecuador, en qué están basadas, y cuáles cursos de acción posteriores recomendados son parte de estos encuadres?". Usando el análisis de encuadres y el efecto encuadre (*frame- and framing analysis*), se han distinguido cuatro encuadres, basados en la manera en la que la naturaleza ha sido definida dentro de casos legales con DDN, y explicados o respaldados por factores subyacentes los cuales probablemente influenciaron el proceso de percepción dentro del efecto encuadre de los actores respectivos. Los encuadres finalmente considerados en juicios con DDN (por tanto en esta tesis) son todos de jueces, abogados y el gobierno. Esto puede explicarse por las relaciones de poder desiguales entre el gobierno y la comunidad judicial. El gobierno, defendiendo los intereses económicos por el bien de la prosperidad de Ecuador, hace que los jueces se sientan presionados a fallar de manera consecuente, por lo tanto favoreciendo los intereses empresariales por encima de los DDN. Que los jueces sientan esta presión tiene su origen tanto en la época bajo la presidencia de Correa en la que esta presión era muy alta, como en las continuas posibilidades para el gobierno de tomar medidas jurídicas contra los jueces que fallan diferente a lo que ellos mismos preferirían. Esta presión resulta muy frecuentemente en que los jueces usen el encuadre de la naturaleza del gobierno. Los cuatro encuadres distinguidos son:

1. *La naturaleza como artículo 71*
   A menudo, los jueces solamente citan el artículo constitucional 71 para "definir" la naturaleza, sin dar más detalles o profundizar en el concepto. Así, el artículo 71 es un estereotipo usado en la narración (en la corte) el cual está enfatizado, mientras que la información más concreta o sustancial sobre la naturaleza representada está excluida. Los factores subyacentes conectados a esta definición son los siguientes. Primero, un enfoque en la restauración o indemnización en casos, generalmente creído necesario de ahí que sea frecuentemente exigido, resulta en que sea considerado innecesario definir la naturaleza. Segundo, los jueces generalmente no perciben que su papel sea definir la naturaleza. Tercero, los antecedentes personales generales de los jueces frecuentemente incluyen una falta de conocimiento de los DDN y de la naturaleza, limitándolos a elaborarla. Estos antecedentes personales se originan en una educación limitada y pocos incentivos para especializarse. Por último, posiblemente, la presión gubernamental percibida por los jueces puede limitarlos a elaborar más en el tema, ya que el gobierno no parece querer desarrollar más los DDN.

2. *La naturaleza como solamente aire, agua y suelo*
   Esta definición, usada implícitamente, está enfatizando el aire, agua y/o suelo, excluyendo otras partes de la naturaleza como la biodiversidad. Este encuadre probablemente está influido por los siguientes factores. Primero, el enfoque en

la restauración en casos ha enfatizado principalmente los elementos aire, agua o suelo; volviéndose esta la experiencia de los jueces con casos con DDN, así influyendo en su percepción del concepto de la naturaleza. Segundo, los antecedentes culturales occidentales de muchos jueces, abogados y políticos los hacen percibir la naturaleza como recursos, de ahí los componentes tangibles. Tercero, el antecedente personal de tener una visión del mundo antropocéntrica, entre otros por su educación, puede hacerlos enfatizar las partes de la naturaleza separadas de- pero directamente relevante para los seres humanos.

3. *La naturaleza como algo irrelevante*
   Esta definición, usada implícitamente, trivializa la naturaleza misma y sus derechos intrínsecos, y enfatiza otras cosas como otros derechos (humanos) o la presencia de una licencia ambiental. Esta última se basa en el supuesto incorrecto de que los DDN solamente son aplicables en zonas naturales ya protegidas por otras herramientas legales diferentes de los DDN, de ahí una falta de conocimiento en los antecedentes personales de los actores. Además, algunos jueces tienen dificultades para justificar los DDN, haciéndolos trivializar la naturaleza y enfatizar, por ejemplo, intereses económicos. Estos dos factores tienen su origen tanto en la formación jurídica limitada y basada en el antropocentrismo en Ecuador, como en el antecedente cultural occidental y la visión antropocéntrica relacionada de la comunidad jurídica ecuatoriana y el gobierno. Además, el papel del gobierno de defender los intereses económicos (ligado a empresas del sector extractivo) combinado con las relaciones de poder desiguales ya mencionadas, puede llevar a que los intereses económicos se enfaticen y la naturaleza se trivialice en la corte. Por último, el gobierno probablemente teme que los DDN puedan bloquear proyectos extractivos, ya que podría limitar su modelo económico en el futuro a través de una posible jurisprudencia; trivializando los DDN y la naturaleza.

4. *La naturaleza como recursos a explotar*
   Este encuadre enfatiza solamente las partes de la naturaleza que son directamente de uso humano, mientras que trivializa el resto de las partes de la naturaleza (por ejemplo la biodiversidad; algunos ciclos naturales) y excluye el valor intrínseco y los derechos que tiene. Los factores que probablemente influyen el proceso de percepción son los siguientes. Primero, el antecedente occidental de los jueces y actores gubernamentales, en el que los recursos naturales deben ser poseídos y explotados. Asimismo, sus antecedentes/identidades de tener una forma de pensar mayormente antropocéntrica en la que la naturaleza, dividida en componentes tangibles, es para el uso de los seres humanos. Tercero, el "encuadre de identidad" (*identity frame*) del gobierno de ser responsable por la prosperidad económica de Ecuador probablemente les hace considerar la naturaleza de esta manera. Esto, combinado con una falta de independencia de la comunidad judicial también les hace propensos a los jueces de tener esta percepción.

Además, dos cursos de acción posteriores recomendados han sido distinguidos. Un equilibrio en los ecosistemas ha sido considerado importante durante las entrevistas a menudo, llevando a la pregunta de cuándo este equilibrio es interrumpido. Tratando de resolver esto, pero simultáneamente sintiendo desconfianza hacia- y teniendo bajas expectativas de la aptitud de la comunidad judicial para hacer esto, se considera necesario definir concretamente los estándares de la naturaleza con un equipo multidisciplinario de expertos. Esta necesidad, expresada por académicos, abogados ambientalistas y

representantes de ONGs medioambientales, todos con sus propias razones, muestra que es un interés compartido entre estos actores. Además está arraigada en la ley: el artículo 6 del Código Orgánico de Ambiente, 2017.

La segunda recomendación es educar a jueces y abogados, viniendo del valor ampliamente compartido de aumentar la implementación de los DDN. También esta recomendación está basada en la creencia general, la cual está basada en experiencias, antecedentes personales y expectativas, de la existencia de una falta de conocimiento de los DDN y la naturaleza en la comunidad judicial ecuatoriana. Este actor es percibido generalmente como sin conocimientos o preparación, orientado a las empresas y sus intereses, y solamente enfocado en la restauración. La educación también se percibe como necesaria por los pocos incentivos para el autoaprendizaje y para desafiar las relaciones de poder desiguales con el gobierno.

Por último, los encuadres mismos *y* cuáles encuadres prevalecen están muy influenciados por las relaciones de poder desiguales entre la comunidad judicial y el gobierno. Los intereses económicos del gobierno causan indirectamente que los jueces favorezcan los intereses de las empresas del sector extractivo sobre los DDN. Superar los problemas relacionados con este tema parece un paso importante para mejorar la implementación de los DDN en Ecuador.

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List of interviews

Alberto Acosta, November 20th 2018, Quito, Ecuador
Economist; Former Minister of Energy and Mining under the Correa government; Former President of the Constitutional Assembly; Author of various books and articles on Rights of Nature, Buen Vivir, human rights, and more.

Farith Ricardo Simón Campaña, November 27th 2018, Quito, Ecuador
Dean of the Faculty of Jurisprudence at the Universidad San Fransisco de Quito, Doctor of law; Doctor in Jurisprudence; Lawyer; Consultant in human rights.

Former judge of the Constitutional Court, **November 20th 2018, Quito, Ecuador**
Former Judge of the Constitutional Court of Ecuador; Lawyer

Manuel Pallares, November 16th 2018, Quito, Ecuador
Biologist, worked for lawyers in Chevron Texaco case

María Ámparo Albán, November 20th 2018, Quito, Ecuador
Environmental Lawyer; Former President of Ecuadorian Center for Environmental Law

Mario Melo, November 22th 2018, Quito, Ecuador
Lawyer; Doctor in Jurisprudence, Universidad Católica del Ecuador, Quito; Master in Environmental Law

Natalia Greene, November 13th 2018, Quito, Ecuador
President of CEDENMA (Comité Ecuatoriano para la Defensa de la Naturaleza y el Medio Ambiente) ; member of the executive committee of the Global Alliance for the Rights of Nature

Norie Huddle, November 28th 2018, Vilcabamba, Ecuador
The plaintiff of the first Rights of Nature case won in the history of Ecuador: The case of Río Vilcabamba

Ramiro Ávila Santamaría, **November 12th 2018, Quito, Ecuador**
Lawyer; Professor in Environmental law at the Universidad Andina Simón Bolívar, Quito; Prosecutor on behalf of the Earth; Candidate for Constitutional Court 2018

Ricardo Crespo Plaza, November 16th 2018, Quito, Ecuador
Professor in Environmental Law; Environmental Consultant; Master in Environmental Change Management.

René Bedón Garzón, November 15th 2018, Quito, Ecuador
Environmental Lawyer; Doctor in Jurisprudence; Master in Environmental Law; member and former president of Ecuadorian Center for Environemental Law.

Representative I of ENGO, November 23th 2018, Quito, Ecuador

Representative II of ENGO, November 27th 2018, Quito, Ecuador

Wendy Molina Andrade, November 19th 2018, Quito, Ecuador
Constitutional lawyer; former judge of the Constitutional Court of Ecuador

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Appendix 1

Constitutional articles and secondary legislation on- or related to RoN in Ecuador.

A. "CHAPTER SEVEN

Rights of nature

Article 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. To enforce and interpret these rights, the principles set forth in the Constitution shall be observed, as appropriate.

The State shall give incentives to natural persons and legal entities and to communities to protect nature and to promote respect for all the elements comprising an ecosystem.

Article 72. Nature has the right to be restored. This restoration shall be apart from the obligation of the State and natural persons or legal entities to compensate individuals and communities that depend on affected natural systems.

In those cases of severe or permanent environmental impact, including those caused by the exploitation of nonrenewable natural resources, the State shall establish the most effective mechanisms to achieve the restoration and shall adopt adequate measures to eliminate or mitigate harmful environmental consequences.

Article 73. The State shall apply preventive and restrictive measures on activities that might lead to the extinction of species, the destruction of ecosystems and the permanent alteration of natural cycles.

The introduction of organisms and organic and inorganic material that might definitively alter the nation's genetic assets is forbidden.

Article 74. Persons, communities, peoples, and nations shall have the right to benefit from the environment and the natural wealth enabling them to enjoy the good way of living.

Environmental services shall not be subject to appropriation; their production, delivery, use and development shall be regulated by the State."

(Political Database of the Americas, 2008)

B. **"Article 399**. The full exercise of state guardianship over the environment and joint responsibility of the citizenry for its conservation shall be articulated by means of a decentralized national environmental management system, which shall be in charge of defending the environment and nature."

(Political Database of the Americas, 2008)

C. **"Art. 6**.- Derechos de la naturaleza. Son derechos de la naturaleza los reconocidos en la Constitución, los cuales abarcan el respeto integral de su existencia y el mantenimiento y regeneración de sus ciclos vitales, estructura, funciones y procesos evolutivos, así como la restauración.

Para la garantía del ejercicio de sus derechos, en la planificación y el ordenamiento territorial se incorporarán criterios ambientales territoriales en virtud de los ecosistemas. *La Autoridad Ambiental Nacional* definirá los criterios ambientales territoriales y *desarrollará los lineamientos técnicos sobre los ciclos vitales, estructura, funciones y procesos evolutivos de la naturaleza."*

- "**Art.6.** – Rights of nature. The rights of nature are recognized in the constitution, which encompass the integral respect of its existence and maintenance and regeneration of its life cycles, structure, functions and evolutionary processes, and restauration.

To guarantee the exercise of its rights, in spatial planning and orders, spatial environmental criteria based on the ecosystems will be incorporated. *The National Environmental Authority* will define the environmental spatial criteria and *will develop the technical guidelines about the life cycles, structure, functions and evolutionary processes of nature."*

(Codigo Orgánico de Ambiente, 2017, p.12, own translation, italic added.)

D. "Restauración (integral)

Es un derecho de la naturaleza por medio del cual, cuando ésta se ha visto afectada por un impacto ambiental negativo o un daño, debe ser retornada *a las condiciones determinadas por la autoridad ambiental que aseguren el restablecimiento de equilibrios, ciclos y funciones naturales.* Igualmente implica el retorno a condiciones y calidad de vida dignas, de una persona o grupo de personas, comunidad o pueblo, afectados por un impacto ambiental negativo o un daño."

- *"Restauration (integral)*

It is a right of the nature by which, when it has been affected by a negative environmental impact or damage, it must be returned to the conditions determined by the environmental authority to ensure the restoration of balance, cycles and natural functions. *Equally it implies the return to decent conditions and quality of life, of a person or group of people, community or town, affected by a negative environmental impact or damage.*"

(Ministra del Ambiente, 2012, p.4, translation found in Garzón, 2017, p.20., italic added.)

Appendix 2

Explanation on functioning of the jurisprudence process in Ecuador

A court ruling is not automatically jurisprudence. All judges' rulings, i.e. on all judicial levels (regional, national, or constitutional), have to be sent in to the constitutional court. A special committee at the constitutional court can decide to, on a moment this is deemed necessary, request all previous cases that have to do with a certain topic, to analyse them and turn the material into jurisprudence. This special process usually happens with controversial issues, e.g. the definition of sexual harassment, to define the issue considered more clearly and this way be able to determine if a right is violated.

Explained by Former constitutional judge of the Ecuadorian CC, November 20th 2018, Quito, Ecuador.

Appendix 3

Consent Form (English, Spanish)

Consent Form

My name is Laura Wolf and I am a student at the Swedish University of Agricultural Sciences, Uppsala, Sweden, in the program Environmental Communication and Management. I am conducting a research study considering the rights of nature in Ecuador as my master thesis project. The aim of this research is to reveal different frames and framing processes considering the definition/interpretation of 'nature' and 'buen vivir' within legal Rights of Nature cases in Ecuador. This, to gain a deeper understanding of the development of the Rights of Nature during the past 10 years in Ecuador.
You will be asked for your knowledge and impressions on these topics in an interview of approximately 1,5 hour. Participation is voluntary and you do not have to answer any question you do not want to answer. If you want, the end product of the study can be sent to you.

The undersigned agrees to the following:

- Access to this material is restricted to only serve the purpose of RoN research
- The interview will be audio-recorded to make sure all information is remembered accurately;
- I can withdraw from participation at any moment;
- I will remain anonymous;
- Considering quoting, I prefer that…
    - ◯ My title will be used in the report; I prefer to be referred to as '……..'
    - ◯ Neither my name nor my title will be used in the thesis report
- Considering a word of thank you, I would like that…
    - ◯ My name is mentioned (**not** connected to any specific opinion/utterance)
    - ◯ My name is not mentioned

Place, date	Name and signature
……	……

Documento de Consentimiento

Mi nombre es Laura Wolf y soy estudiante cursando la Maestría en Comunicación y Dirección del Medioambiente en la Universidad de Ciencias Agrícolas de Suecia (SLU) en Uppsala, Suecia. Estoy estudiando los Derechos de la Naturaleza en Ecuador para mi Tesis de Maestría. El objetivo de mi investigación es revelar varios puntos de vista y los procesos de su criterio, acerca de la definición/interpretación sobre los conceptos de 'naturaleza' y 'buen vivir', dentro de casos judiciales en Ecuador en los que los derechos de la naturaleza habían estado usados. Todo eso es para aumentar la comprensión del desarrollo de los Derechos de la Naturaleza en Ecuador durante los últimos 10 años.
Le pediré sus conocimientos e impresiones sobre este tema en una entrevista de aproximadamente 1,5 horas. La participación es voluntaria y usted no tiene que contestar a ninguna pregunta a la que no querría contestar. Si le gustaría, cuando la tesis esté terminada, podría ser enviada a usted.

El abajo firmante está de acuerdo con lo siguiente:

- Acceso a los datos es restringido solamente para contribuir a estudiar los Derechos de la Naturaleza
- La entrevista será grabada en audio para asegurar que toda la información será acordada con exactitud
- Puedo decidir no participar en cualquier momento
- Permanecería en el anonimato;
- Si se trata de citas en el tesis, prefiero que...
    - ◯ Mi título será usado, que es: .....
    - ◯ Ni mi nombre ni mi título serán usados
- Si se trata de un agradecimiento en la tesis, prefiero que...
    - ◯ Mi nombre sea mencionado (**no** conectado con ninguna opinión/palabra mía)
    - ◯ Mi nombre no sea mencionado

Lugar, fecha	Nombre, firma
……..……	……

Appendix 4

Interview Guide (English, Spanish)

Introduction

Thank you so much for making time for me, I really appreciate it! How are you?
As I told you in my email, I'm really interested in the fact that you have the RoN in your constitution here! I think it's so amazing that you have this concept in such a fundamental document as the constitution. It's something so unique in the world, and something that the rest of the world can be really inspired by, I think. I think everyone should know about this, really. [silence]

So, I'll just tell you a little bit about what I'm interested in in general, so what my thesis will be about. I'm writing my master thesis about the rights of nature and more specifically about how different actors that have to do with RoN cases, *see* 'nature'. […] Now, the master that I'm studying is called environmental communication, and we have a big focus on 'how people make sense of environmental problems, or environmental issues, or environmental topics'. So, for example, in this case of Rights of Nature, I think everyone must have their own perception of what 'nature' is. Everyone sees 'nature' through a certain 'lense' (point out lense), you know? So also, the people who wrote the constitution had their own ideas about this. But from what I've seen, is that, in the constitution *itself*, these definitions are left pretty *open*. So, they are pretty *freely interpretable* by anyone who starts a RoN case (a plaintiff) or is involved as a lawyer, or a judge, or someone who's sued/accused of violating the rights of nature, or any other way. So everyone will have their own 'lense' through which they see the case. With their own background, experiences and everything, they have a certain idea of ´what is nature´ […]
And what I've also concluded is that, *because* of these open definitions in the constitution, the jurisprudence that comes out of RoN legal cases is very important! Am I right? So that's why I'm interested in looking at, 'how is nature being defined in legal RoN cases here in Ecuador', by different actors. Now what I'm going to try to do, is to categorize these lenses, basically; so to map out which different ways there are of seeing 'nature', by different people involved in RoN cases. So to map these 'lenses', and also to see how they can be explained (so, where do they come from?) and what kind of impact they have.

Is it okay if I record this interview? This way I will be able to recall exactly what has been said, so I don't make any mistakes later.

Here I have a 'consent form', just to be sure we are on the same page, and to make sure you can feel secure about what you're telling me and everything.

Is it okay to start now?

Intro/warmup questions

What do you think about Rights of Nature? /What is your personal relation to RoN? /How are you/have you been involved with RoN?

…
So, now I'd like to ask your some questions from the perspective of being [a lawer/constitutional judge/someone who has been closely involved with RoN cases/…].
The questions that I'm going to ask are considering *DURING* RoN legal cases!

1. **<u>The definition of 'nature'</u>**

   A. **How would you say that 'nature' has been defined in RoN cases?** As I said, everyone has their own 'lense' through which they are looking at 'nature', so, **do you see differences** in how different 'groups of people' have been interpreting the concept of nature? (e.g. law text, plaintiffs, opposition, lawyers, judges…)
   Do you think there **are certain elements that are being left out or emphasized** by certain actors when they talk about nature**?**

   B. **Do you think this definition has had any influence on determining (in court) what was seen as 'the problem' in the RoN cases? Or for the causes of the problem? → What have been these influences?**

   C. **Do you think how N and BV were seen by different actors has had influence on their judgement on how severe the problem was/is? → can you elaborate on this?**

   D. **Do you see changes in this over the past 10 years of RoN implementation?**

2. **<u>Consequences of definition for (non-)action</u>**

   A. **Can you think of a case where these particular definitions of N/BV have led to that some actions were taken and others not? How?** (So, do you think that how a judge/plaintiff/someone in court/the constitutional text *sees* nature, and talks about it like that, has had any influence on what happened in the legal case? /On how the judge has ruled?)
   → **Is it common to see that for other cases too?** *(generalizing mirroring check)*

   B. **Do you see changes in this over the past 10 years of RoN implementation?**

3. **<u>Underlying beliefs</u>**

   A. **Why do you think these actors define nature like they do? What is it based on?** How do they try to justify their stance?

   B. **Do you see changes in these things over the past 10 years of RoN implementation?**

4. **<u>Actors and their perceived identities and roles</u>**

   A. **How do the actors see themselves and others in relation to RoN?** (/ what do they see as their '**identity' / role** in RoN cases?)

Is there any group being particularly blamed, or seen as a victim, or being favoured or praised?

   B. **Do you think there are actors that would like to be seen differently by others (some 'desired identity')? Can you elaborate on this?**

(Do you think actors are trying to get closer to one-another by looking for shared interests or values?)

   C. **Do you see changes in these things over the past 10 years of RoN implementation?**

5. **Power relations**

   A. **What can you tell about relationships of power?** (/how are the different actors related to each other considering power? Are there differences in power? Who has most power, according to who? What does this power consist of? How is the power expressed?)

   B. **Is this power ever being affirmed or challenged? How often does this happen? How?**

(Is it a problem? Is everyone happy with how it is? Is the power legitimate?)

   C. **Are people trying to protect their power or their identity? How?**

   D. **Do you see changes in these issues over the past 10 years of RoN implementation?**

6. **Ending**

   A. **Is there anything you would like to add?**

   B. **Do you have any questions for me?**

   C. **Now that I'm here in Quito, I would like to talk to as many people as possible about this. Do you know any other person who I could speak to?**

Thank you a lot for talking to me!
If you wish, I can send the final report of my thesis to you when it's finished.

Introducción

Muchas gracias por dedicarme tiempo, ¡realmente lo aprecio! ¿Cómo está?

Como le dije en mi correo electrónico, estoy realmente interesada en el hecho de que tienen los derechos de la naturaleza su constitución en Ecuador!
Creo que es sorprendente que se tenga este concepto en un documento tan fundamental como la Constitución. Es algo tan único en el mundo, y algo en lo que el resto del mundo puede llegar a estar realmente inspirado.
Creo que todo el mundo debería saberlo.. [silencio]

Para empezar, le contaré un poco acerca de lo que me interesa en general, y de qué tratará mi tesis. Estoy escribiendo mi tesis de maestría sobre los derechos de la naturaleza y más específicamente sobre cómo los diferentes actores que tienen que ver con los casos de derechos de la naturaleza, ver "naturaleza". […] Ahora, el máster que estoy estudiando se llama comunicación ambiental, y nos centramos mucho en "cómo las personas dan sentido a los problemas ambientales, o temas ambientales". Así, por ejemplo, en este caso de Derechos de la Naturaleza, pienso todos deben tener su propia percepción de lo que es la "naturaleza" ". Todo el mundo ve la "naturaleza" a través de cierta "lente" , sabe? Así también, las personas que escribieron la constitución tenían sus propias ideas sobre esto. Pero por lo que he visto, es que, en la propia constitución, estas definiciones quedan bastante abiertas. Por lo tanto, son fácilmente interpretables por cualquiera que inicie un caso de derechos de la naturaleza (un demandante) o está involucrado como un abogado, un juez o alguien que ha sido demandado / acusado de violar los derechos de la naturaleza, o de cualquier otra manera. Por lo tanto, cada uno tendrá su propia "lente" a través de la cual verán el caso. Con sus propios antecedentes, experiencias y todo, tienen una cierta idea de "qué es la naturaleza" […]

Y lo que también he concluido es que, debido a estas definiciones abiertas en la constitución, la jurisprudencia que sale de los casos legales de los derechos de la naturaleza es muy importante! Por esto me interesa mirar, "¿Cómo se define la naturaleza en casos legales de derechos de la naturaleza aquí en Ecuador?", Por diferentes actores. Ahora que lo que voy a tratar de hacer, es clasificar estas lentes, básicamente; por lo que para hacer un mapa de qué diferentes formas hay de ver la "naturaleza", por diferentes personas involucradas en casos de derechos de la naturaleza. Así que para mapear estos 'lentes', y también para ver cómo pueden explicarse (entonces, de dónde vienen) y qué tipo de impacto tienen.

¿Está bien si grabo esta entrevista? De esta manera podré recordar exactamente lo que se ha dicho, para no cometer errores más tarde.

Aquí tengo un ‘formulario de consentimiento’, sólo para asegurarme de que estamos en la misma página y para asegurarme de que pueda sentirse seguro sobre lo que me estás contando.

¿Está bien empezar ahora?

Introduccion/ warm up

¿Qué opina sobre los derechos de la naturaleza? / ¿Cuál es su relación personal con los derechos de la naturaleza? / Como esta / ha estado involucrado con los derechos de la naturaleza?

Ahora me gustaría hacerle algunas preguntas desde la perspectiva de [un abogado / juez constitucional / alguien que ha estado estrechamente involucrado con casos de derechos ambientales ...].
Las preguntas que voy a hacer son consideradas DURANTE los casos legales de derechos de la naturaleza!

Está bien si empezamos?

1. **<u>La definición de "naturaleza"</u>**

A. **¿Cómo diría usted que "naturaleza " se ha definido en casos de derechos de la naturaleza?** Como mencione, cada uno tiene su propia 'lente' a través de la cual están mirando 'naturaleza', entonces, ¿**ves diferencias** en cómo diferentes" grupos de personas "han estado interpretando El concepto de naturaleza? (por ejemplo, leyes, demandantes, oposición, abogados, jueces ...)
¿Crees **que hay ciertos elementos que están siendo excluidos o enfatizados** por ciertos actores cuando hablan de naturaleza?

B. ¿Cree que esta definición ha tenido alguna influencia para determinar (en la corte) lo que era visto como "el problema" en los casos de derechos de la naturaleza? ¿O por las causas del problema? ¿Cuales han sido estas influencias?

C. ¿Cree que la forma en que naturaleza fueron vistos por diferentes actores ha tenido influencia en su juicio sobre qué tan grave era el problema / es? ¿Puedes explicar esto?

D. ¿Ve cambios en esto en los últimos 10 años de implementación de derechos de la naturaleza?

2. **<u>Consecuencias de la definición de (no) acción</u>**

A. ¿Puede pensar en un caso en el que estas definiciones particulares de naturaleza hayan llevado a que se tomaron acciones y otras no? ¿Cómo? (Entonces, ¿crees que cómo un Juez / demandante / alguien en la corte / el texto constitucional ve la naturaleza, y habla así, ¿Ha tenido alguna influencia sobre lo que sucedió en el caso legal? / ¿Sobre cómo ha dictaminado el juez?)
¿Es común ver eso también en otros casos? (*generalizando la comprobación de reflejo*)

B. ¿Ves cambios en esto en los últimos 10 años de implementación de derechos de la naturaleza?

3. **<u>Creencias subyacentes</u>**

A. ¿Por qué crees que estos actores definen naturaleza como lo hacen? ¿En qué se basa? ¿Cómo intentan justificar su postura?

B. ¿Ves cambios en estas cosas en los últimos 10 años de implementación de Derechos de la naturaleza?

4. **<u>Los actores: sus identidades y roles percibidos</u>**

A. ¿Cómo se ven los actores y los demás en relación con los derechos de la naturaleza?
(/ ¿Qué ven ellos como su "**identidad" / rol** en los casos de derechos de la naturaleza?)
¿Hay algún grupo especialmente culpado, o visto como víctima, o favorecido o alabado?

B. ¿Cree que hay actores a los que les gustaría ser vistos de manera diferente por otros (algo de "identidad deseada")? ¿Puede explicarme mas sobre esto?
(¿Cree que los actores intentan acercarse entre sí buscando intereses o valores compartidos?)

C. ¿Ves cambios en estas cosas en los últimos 10 años de implementación de derechos de la naturaleza?

5. **<u>Relaciones de poder</u>**

A. ¿Qué puede decirme acerca de las relaciones de poder? (¿Cómo se relacionan los diferentes actores entre sí considerando el poder? ¿Existen diferencias en el poder? ¿Quién tiene más poder, según quién? ¿En qué consiste este poder? ¿Cómo se expresa el poder?)

B. ¿Se está afirmando o desafiando este poder alguna vez? ¿Con qué frecuencia ocurre esto? ¿Cómo?
(¿Es un problema? ¿Todos están contentos con cómo es? ¿Es legítimo el poder?)

C. ¿Las personas están tratando de proteger su poder o su identidad? ¿Cómo?

D. ¿Ve cambios en estos problemas en los últimos 10 años de implementación de los derechos de la naturaleza?

6. **Terminacion**

A. ¿Hay algo que le gustaría agregar?

B. ¿Tiene alguna pregunta para mí?

C. Ahora que estoy aquí en Quito, me gustaría hablar con la mayor cantidad posible de personas sobre esto. ¿Conoce alguna otra persona con quien pueda hablar?

¡Muchas gracias por hablar conmigo!

Si lo desea, puedo enviarle el informe final de mi tesis cuando haya finalizado.

Appendix 5

Original quotes in Spanish

- “Here the president of the republic takes the phone and says “listen you have to rule in this and this way” and it’s over. That’s how it was, during 10 years.”

Original:

“Acá el presidente de la republica coge el teléfono y dice “oye tienes que fallar de esta manera” y se acabó. Así fue, durante 10 años.”

- M. Melo

- “Nature. – Environment in which all forms of life are being reproduced and occur, including its components, which depend on the uninterrupted functioning of its ecological processes and natural systems, essential for the survival of the diversity of all forms of life.”

Original:

”Naturaleza.- Ámbito en el que se reproduce y realiza toda forma de vida incluido sus componentes, la cual depende del funcionamiento ininterrumpido de sus procesos ecológicos y sistemas naturales, esenciales para la supervivencia de la diversidad de las formas de vida. ”

(COA, 2017, p.66)

- “The elements that allow managing the biodiversity and their vital cycles. Which are these elements that allow managing; those are air, water and soil. These elements have to be clean for the biodiversity to keep functioning properly”

Original:

“Los elementos que te permitan manejar la biodiversidad y a sus ciclos vitales. Cuáles son esos elementos te permiten manejar; son el aire, el agua y el suelo. Esos elementos tienen que estar limpios para que la biodiversidad pueda seguir funcionando adecuadamente.”

- R. Garzón

- “Incorporate the costs and environmental- and social benefits in the economic indicators, so they permit to prioritize productive activities with less impact and to establish adequate incentive mechanisms”. (own translation)

Original:

“Incorporar los costos y beneficios ambientales y sociales en los indicadores económicos, que permitan priorizar actividades productivas de menos impacto y establecer mecanismos de incentivo adecuados.”

(Min. del Ambiente, nd)

Appendix 6

Next to the more general definitions in chapter 4, which according to the interviewees have been present in multiple cases, interesting definitions came forward discussing specific legal cases. Related to RoN it is difficult to arrive at a general definition of nature as a whole. One reason for this is that legal cases are always specifically about one "entity of nature" being harmed, meaning there could be made a new definition of nature within every case. Hence, one case about a river could result in defining nature as a river; another case could end up defining nature as a particular kind of forest, etcetera. Although this might hinder development of a general definition of nature, it *is* the way how nature is defined throughout cases. In the scope of this thesis, these specific cases could not be incorporated in chapter 4. However, they *do* provide more interpretations of nature in RoN cases. These are relevant mentioning firstly because they might rest on underlying factors that *are* more general. Moreover, considering the small amount of finished RoN cases, less general interpretations are also important to consider since they might occur more often in the future.

The Rio Vilcabamba Case

Being Ecuador's first successful constitutional RoN case, in the case of Río Vilcabamba plaintiffs N. Huddle and R. Wheeler started a case against the provincial government of Loja. In the process of widening a road next to the plaintiffs property, debris was thrown into the river causing harm to the river and flooding of the plaintiff's property. The case was taken to two court levels, only the latter respecting intrinsic RoN properly. Sadly this (legally valid) part of the case could not be investigated, however the first hearing provides interesting insights.

The judge and government's lawyer saw nature as the causing factor of harm to the plaintiff's property, since the flooding caused damage to their land. This reflects the anthropocentric view, since nature and people are considered separately and humans' interests are put before those of nature. Next to this, it reflects a lack of knowledge of the respective lawyer and judge on what RoN entails, since *the river* was represented thus the cause of harm to the *river* should be considered; not the cause of harm to the plaintiff's property. Hence, next to denial of people having caused the flooding, nature was not recognized as a person by the first judge. Explicitly arguing there was no legal representative shows the judge's ignorance on RoN, stressing legal concepts and backgrounding the RoN. However, this being the first RoN case it is understandable that this was still in its infancy.

Additionally, interestingly, the plaintiff's frame of nature did not at all reach the language used in court. N. Huddle, the plaintiff, sees herself as part of nature and relates to it in a deep, spiritual way. She describes nature as all living things, herself being a part of nature that is able to speak. Even though during the interview, Huddle was very elaborative and descriptive about the piece of nature she had been representing, in court not much of this rhetoric was used:

> NH: "We talked about the life in the river was being impacted, destroyed, hurt, damaged, by the activities of the provincial documents when they were throwing this trash into the river, they were basically hurting the river; they were hurting the cycles of nature in the river, hurting the fish, making it impossible for the fish to have a habitat…
>
> LW: Did you say this in court?

NH: Well, it was more when we talked about the life-cycles. But that refers generically to all of that. We didn't break it down to specific entities within the river. We didn't go down great detail about how the specific natural cycles were being interrupted. We just talked about cycles, which we drew from the constitution."

(N. Huddle)

In contrast, in court, to define nature she and her lawyer just cited art. 71 (see 4.1). There was talked about "protecting the cycles of nature in the river", however these cycles were not further defined.

The case of pine trees in the Tangabana paramo

In 2014, a group of farmers defended a nature area, the Tangabana paramo, where a big plantation of the non-native species pine trees was initiated by a big company. Even though the farmers perceived nature differently (see 4.5.3), in the final ruling the judge and company's lawyer focussed on the fact that the project was a governmental decision and said there was no harm. Moreover, the judge appeared to perceive the plantation as a forest, i.e. nature.

According to two anonymous interviewees, a general , common belief in Ecuador is that plantations (monocultures) are forests. This likely originates at the Food and Agriculture Organisation of the United Nations, who considers plantations like forests, adopted by the Ecuadorian government and transferred to the people, e.g. by communicating reforestation projects (monocultures) to the citizens as development of new nature. This belief clearly comes through in this case. Furthermore, it shows a lack of ecological/biological knowledge on the concept of nature itself.

However, the farmers representing nature had a frame of nature as an ecosystem that should be in balance. They were knowledgeable on the specific paramo ecosystem and knew the harmful effects of pine trees, seeing them at neighbouring areas. Based on this, nature was (implicitly) defined by them as the paramo's ecosystem that should be in balance without pine trees, which do not belong in that ecosystem.

The Shrimp Farm case

Between 2012 and 2015, the ministry of environment represented nature reacting to the harmful practices of a shrimp farm owner, violating RoN in the area where he was operating[22]. This is the only RoN case handled at CC, finally considering and respecting RoN after it being disregarded two times at lower juridical levels.

The CC ruled against the accused party, stating his practices disrupted the ecosystem's balance and was thereby violating RoN. From this follows that this constitutional judge considered nature as an ecosystem that should be in balance. This is the only interpretation found in this study of *judges or lawyers in court* where the anthropocentric basis is not as obvious and nature is considered more holistically and with intrinsic value. This definition is based on a more conscious interpretation of art. 71, since it actually considers life cycles, structures and natural processes, and biodiversity (life reproducing and occurring). It also shows a deeper understanding of the complexity of nature, not simplifying it into components but considering an entire ecosystem.

[22] See e.g. http://vjel.vermontlaw.edu/courts-meet-nature-real-case-rights-nature/

Appendix 7

On Ecuadorian occidental culture versus indigenous Kichwa culture

One can see a clear distinction of the perceptions of nature based on the occidental, 'mestiza' culture, as opposed to the indigenous Kichwa culture. The latter connects to the word 'pachamama' whereas the occidental mestiza culture uses the word nature. In the constitutional article this is mentioned as nature or pachamama, which could be interpreted as either complementary meanings, making the concept in essence broader, or as synonyms, which would be a questionable assumption because of the following. The occidental culture, present in cities and bigger villages and influenced by the 16th century Spanish conquest, considers nature as something outside of civilization. Living more disconnected from nature, in relatively westernized cities, they don't perceive nature as something as close to them as Kichwa do. Nature is mostly perceived as resources, that have to be owned, used, exploited and sold.

For the indigenous Kichwa, pachamama is their mother in an almost literal way. Therefore, they don't need to define it, since respecting it is something deeply embedded in their believes, lifestyle and religion. A. Acosta, one of the interviewees who published multiple articles and books related to this topic, put it like this:

> "Porque ellos, cuando hablan de la pachamama, están hablando de su madre, no como una metáfora, es una realidad. Eso es clave. Tú, en tu casa, no necesitas que haya una derecho escrito para respectar a tu mama. Para proteger a tu mama. Para cuidar a tu mama. Tú tienes una relación natural con tu mama. Por los indígenas es así. La pachamama es la mama." –
>
> "Because they, when they speak about pachamama, are talking about their mother, not like a metaphor, but it's reality. That's key. You, in your house, don't need to have a written law about respecting your mother. About protecting your mother. About taking care of your mother. You have a natural relationship with your mother. For the indigenous, it's like that. Pachamama is the mother."
>
> - A. Acosta, own translation

Next to their mother, Pachamama for the Kichwa is also their god; a deity. It is the basis of their religion; their spirit, and through this, nature is a part of their identity: for them, they are nature and nature is them. Pachamama for them is so deeply woven into the threads that bind their culture; their identity, that it is hard to define, and perceived impossible to literally translate into any other language.

Appendix 8

Additional information on positive developments regarding RoN perceived by interviewees.

Even though most interviewees were sceptical about RoN implementation, next to recommending subsequent courses of action, many also talked about constructive developments, that may simply require some patience for them to have their effect. Considering improving the knowledge base of the juridical community, the Universidad de los Hemisferios in Quito, there is an education program for existing judges and lawyers that teach about environmental law, including RoN.

Indigenous communities are said to becoming more confident in defending their rights and less dependent on ENGOs. New generations are perceived as much more environmentally conscious and activist. Also universities are educating their law students on RoN, hence the new generations judges and lawyers will have a better understanding of RoN than the current generation.

Furthermore, under the current president the unequal power relations influencing the judicial community are perceived as diminishing. Not only this could decrease the pressure on judges to rule in favour of the government's interests, it also means that advisory bodies are less influenced hence can be more critical towards the government's practices. E.g., an actor very often mentioned is the new ombudsman. She is perceived to have a great potential for better RoN implementation because of her background in human- and indigenous rights, and is very openly pro-RoN. Next to this the whole body of ombudsmen are perceived promising with regards to the diminished governmental influence, being regional actors with often a better understanding of the perception of nature of nearby indigenous communities. Another important example of renewing bodies under the new president is a new CC. Nine new constitutional judges were elected in February 2019 and interviewees expect these to be less influenced by the economic interests of the state. One of them is R. Ávila, a defender of a biocentric perspective in law. In conclusion, there seem to be various starting points for RoN development.