Aguinda v. Texaco Inc.: Expanding Indigenous “Expertise” Beyond Ecoprimitivism

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This article analyzes a series of litigations that began with the Aguinda v. Texaco Inc. case as a site of production of new legal subjectivities for indigenous communities in the region of the Ecuadorian Amazon polluted by oil extraction activities. They engage in the transnational and local legal structures, contribute to and generate legal and scientific knowledge and expertise, and articulate multiple legal subjectivities that position them not only as homogenous plaintiffs in a highly publicized lawsuit, but also as legal actors in complex relation to each other, and to the state. Through such engagements with this legal process, indigenous actors are recrafting their collective representations in ways that challenge the ‘ecoprimitive’ stereotypes of indigeneity, historically associated with the ‘paradox of primitivism.’

- ❖ Key words indigenous activism, ecoprimitivism, environmental justice, representational strategies, Ecuador

Introduction

Filmmaker Joe Berlinger’s *Crude: The Real Price of Oil* premiered at the 2009 Sundance festival. The film is the latest instance of investigative journalism profiling the legal struggle taking place in the Oriente region of Ecuador between indigenous actors¹ and Ecuadorian farmers and the ChevronTexaco Corporation around environmental pollution resulting from oil extraction activities. This battle is also the focus of investigative reporter Greg Palast’s *Rumble in the Jungle: Big Oil and Little Indians* produced for BBC Newsnight

and William Langewiesche's (2007) article, *Jungle Law*, for Vanity Fair, among many other media pieces. In legal analysis, *Aguinda v. Texaco Inc.* has been discussed as a landmark case study in multinational corporate accountability (Lyons 2004), a cautionary tale of 'boomerang suits' in transnational human rights litigation (Kenney 2009), a legal tool for human development (Black 2004), and 'a leading example of how courts have the potential to re-allocate some of the costs of globalization—in this case, environmental destruction—from the most vulnerable rainforest dwellers to the most powerful energy companies on the planet' (Donzinger 2004: 1).

From an anthropological perspective, this legal process has implications for indigenous legal subjectivity through the way it breaks from contemporary forms of indigenous recognition by the state. The more common 'green primitivism' affords a conditional legitimacy to indigenous ethnoecology through environmentalist discourses in which the limited authority and recognition granted to indigenous actors is contingent on successful claims of ecocultural 'authenticity.' Because indigenous communities who cannot present themselves as 'natural ecologists' are politically and legally vulnerable to having their land either targeted for resource exploitation or reclassified as 'protected' by the state, regardless of local subsistence and cultural needs, indigenous activists in Ecuador have made use of what Harald Prins (1997) called "the paradox of primitivism." These activists emphasize tradition and downplay coevalness as a political strategy.

In recent years, however, there has been a shift in the self-presentation tactics of indigenous actors in Ecuador in relation to *Aguinda v. Texaco Inc.*², a class-action lawsuit filed in 1993 on behalf of indigenous inhabitants of the Ecuadorian Amazon for contamination, as well as its progeny case, the *Republic of Ecuador v. ChevronTexaco Corp.*³, and separate parallel legal initiatives by indigenous claimants. This legal struggle has attracted the aforementioned media and academic attention, which, to some extent has reinforced the representation of affected communities as "ecologically noble savages" (Redford 1991), partially due to confusion about the plaintiffs and particulars of the lawsuit that characterized many of the press reports covering the case⁴. At the same time, the indigenous communities in the Oriente have been closely involved in the production and dissemination of expert knowledge related to the case. Some communities have actively collaborated with lawyers, toxicologists, engineers, and other technicians working on the lawsuit, which has amassed more scientific data than any environmental case in history, with over eighty thousand tests conducted in the region. Others have formed new grassroots alliances to ensure representation, inclusion, and transparency in the legal processes that left many indigenous communities excluded. Overall, the articulation of legal and scientific knowledge around these legal proceedings has produced a field of expertise through which indigenous actors have been recrafting their collective representations. This article endeavours to contextualize and analyze the shift from a self-presentation built around 'primitive ecology' to a more self-conscious

‘scientific’ and ‘legal’ voice by indigenous actors in the Oriente region of Ecuador. This analysis is located at an intersection of several broader discussions, including issues of environmental governance as a field of competing rights, claims, and interpretations; strategies of resistance and representation in indigenous activism; and the globalization of local struggles as they become incorporated in transnational economic, political, legal, and discursive networks.

Theoretical and Disciplinary Context

The issue of oil, and the environmental politics and structures of domination endemic to petroeconomies, belongs in a broad sense in the anthropological discussion of resource extractions, which largely consists of extensive literature on anthropology of mining, although a distinct ‘anthropology of oil’ is emerging as a subfield (Reyna and Behrends 2008, Gledhill 2008, Watts 2008). Ballard and Banks (2003) comprehensive review article, *The Anthropology of Mining* describes parallel developments that have contributed to the globalization of resource extraction projects, that are highly relevant for the political and legal struggles over the consequences of oil exploration in the Ecuadorian Amazon. They note: “the first [development] has been the growing recognition of the rights of indigenous communities...the second has been the institutionalization of impact assessment for large-scale mining operations...allowing for the incorporation of local communities as key players in many of these resource developments (2003: 288-89)”. So, the political and legal struggle over the consequences of oil exploitation in this location for these particular stakeholders has been globalized not only in their involvement as actors in transnational networks of power and resistance, but also in their formative roles in the global debates and discourses about pan-indigenous sovereignty and referendums on environmental justice.

This litigation is radical in Ecuador due to the history of indigenous activism in that particular national context, and potentially precedent-setting on the global scale because of specific legal aspects of the case. However, it is just one well-illuminated fraction of the global trend of integrating legal methods with environmental advocacy of disenfranchised communities. In the global sense, “in conjunction with the recognition of the scope for legal challenges to mining there has been a convergence on human rights instruments as the most comprehensive and convenient frameworks for monitoring respect for many of the basic rights of local communities...and a move to hold corporations... accountable for abuses” (Ballard and Banks *ibid.*: 305). In terms of the global context, another important indigenous lawsuit against oil corporations, *Al Lameman and the Beaver lake Cree Nation v. Alberta and Canada*, is taking place currently (2010) in Canada, where there is an established history of First Nations actors pursuing environmental sovereignty and land claims through legal channels (Braun and Wainwright 2001, Huff 1999, Newman 2005, Slowey 2008). From 1990s onward Nigeria has

been a site of a number of litigations between oil companies and indigenous communities in the Niger Delta region around issues such as oil spills and compensations for land acquisition (Frynas 2000, Ebeku 2003). Other grassroots environmental lawsuits pertaining to resource extraction are taking place in Ecuador itself, most notably *Ramirez v. Copper Mesa*, a lawsuit by members of a community from the Intag region of the Imbabura province against the Canadian copper mining company formerly known as Ascendant Copper. Although the plaintiffs in that case are non-indigenous Ecuadorians, their community is mixed, with indigenous families affected by the mining activities and the outcome of the lawsuit. So it is not the intention of this article to reify *Aguinda v. Texaco* and *Republic of Ecuador v. ChevronTexaco Corp.* as a *unique* legal event. However, because of its legal implications for transnational corporate accountability, it is a *highly significant* legal event, which has been extensively analyzed from both legal and anthropological perspectives. Along with its potential implications in the legal sphere, and because of the history of political performance in Ecuadorian indigenous activism, it is also discursively transformative for indigenous stakeholders and their representational strategies. I examine in this article precisely this latter aspect of the lawsuit which remains undertheorized.

Historical Context

After limited petroleum exploration initiatives by Shell Oil several decades earlier, in the 1960s Texaco ‘discovered’ oil in the Oriente. Prospecting began in 1964 and Texaco became the first company to encounter crude reserves in commercial quantities. The ‘true oil boom’ in Ecuador began in 1967, when CEPE (Petroecuador, formerly Ecuadorian State Petroleum Corporation) was created as a joint venture with Texaco as the operating partner.

In 1972, the 312-mile Trans-Ecuadorian Pipe Line (SOTE) became operational. It rose 13,000 feet from Nueva Loja, crossed the Andes, then descended to the Esmeraldas, where oil was collected in Balao, a port city on the Pacific Ocean. By the year 2000 the pipeline carried 360,000 barrels per day. In 2001, 46 per cent of the government's total revenues was constituted of the oil export. Until the mid-1980s, the oil boom seemed to be in full effect. Ecuador's leaders saw oil as an opportunity for modernization: a means of accelerating development and escaping poverty, of garnering public support by keeping taxes low, of investing in state-owned development industries, of stimulating consumption and encouraging economic growth. In the mid-1980s world oil prices dropped, and these prices continued to drop well into the 1990s. This trend had a negative impact on the Ecuadorian national economic growth and development.

Due to Ecuador's dependency on foreign direct investment, and the fact that in 1970s and 1980s environmental protection or impact assessments were nonexistent in Ecuador, virtually no environmental controls were exerted over the oil operations. Although significant damage was being done to the

environment, until the 1990s no legal attempts were made to hold foreign companies accountable for ecosystem damage. Further, by the end of the 1980s, Ecuador's policy promoting unrestrained oil extraction were hardly strategic actions of an oil-rich state prioritizing economic well-being of its citizens over environmental sustainability. Over the years, oil revenues had shifted from subsidizing national well-being to funding Ecuador's debt to the international lending institutions. As oil prices declined during the 1980s, the government incurred debts to stimulate the economy. Febres-Cordero's government bowed to the US demands for relaxed investment rules, lowered the tariffs protecting the domestic industries, and nationalized the privately held debt (Corkill and Cubitt 1990), 'bailout'-style. In 1992 the newly-elected right-wing politician Sixto Durán-Ballén fully embraced radical economic liberalization, and IMF-prescribed structural adjustment program, attached to the procured extensive loans (Lind, 2000, Zamosc 2004). These changes affected the oil sector in a predictable fashion. Harvey (2000: 65) observed that when a nation-state undergoes neoliberal reform, "it] has to penetrate even more deeply into certain segments of political-economic life and become in some ways even more interventionist than before." This was certainly the case with the management of the oil industry in Ecuador, as the state played an active role in auctioning crude reserves off to foreign companies, quite literally penetrating deeply into the land itself. Although the reserves were located on indigenous land, this was not a deterrent, as the rights to exploit subsoil resources belong to the state, even within the legally recognized indigenous territories⁵. Community resistance, although common, was routinely neutralized by the oil companies through illegal negotiations with customary landowners, rather than their legitimate representative bodies—an indirect negotiation strategy used to 'divide and conquer' through offers of gifts and financial incentives (Gorman 2002).

Environmental Impact of Oil Activity

Our health has been damaged seriously by the contamination caused by Texaco. Many people in our community now have red stains on their skin and others have been vomiting and fainting. Some little children have died because their parents did not know they should not drink the river water.

– Excerpt: Affidavit of the Secoya Tribe given by Elias Piaguaie, *Aguinda v. Texaco Inc.* Case # 93-CV-7527

A large oil spill occurred in 1987 in what is largely Kichwa territory. It was not the only one. By 1989 the pipeline had ruptured twenty-seven times, spilling seventeen million gallons of crude oil in the local water. Additionally, between 1972 and 1992, in order to cut costs Texaco dumped over nineteen billion gallons of toxic wastewater into unlined open pits, swamps, rivers and streams in the region, instead of following the protocol of reinjecting the 'produced

water' into the ground at the subterranean level from which the oil was extracted in the first place. The dumping resulted in a 'toxic soup' (Kimmerling 1991) of brine, crude, and, carcinogens such as polycyclic aromatic hydrocarbons (PAH) and volatile organic compounds. Texaco's operations contaminated both the soil and the groundwater of the indigenous communities in the Amazon region (ibid.), and dramatically impacted the health of the local communities, allegedly resulting in high cancer rates (San Sebastian 2000), childhood leukemia, and spontaneous abortions (Hurtig and San Sebastian 2002 and 2004).

Texaco left Ecuador in 1992, relinquishing its interests in the Texaco-PetroEcuador Consortium to Petroecuador. In 1993 a class action lawsuit, *Aguinda v. Texaco, Inc.* was filed in a New York State court on behalf of indigenous residents and *colonos*⁶ farmers who alleged harm by environmental pollution from Texaco's extraction activities. The suit, a toxic tort action, named 74 plaintiffs but estimated that the putative class contained at least 30,000 persons (Kimmerling 2007: 464). Texaco, which had been bought by Chevron in 1991, denied any wrongdoing, and lobbied to have the case heard in Ecuador, rather than in the United States. In 1994-1995 Texaco and Ecuador signed a 'Remediation Contract' which stipulated the (limited) environmental remediation work that was required of Texaco in exchange for Ecuador releasing Texaco and Texaco Petroleum⁷ from further legal liability; the 'clean-up' undertaken by the company would prove to be largely ineffectual and cosmetic (Kimmerling 2007, Lyons 2004)—an assessment with which the current Ecuadorian government agrees (Forero 2009). In the meantime, Judge Rakoff presiding over *Aguinda v. Texaco* in the United States dismissed the case on the ground of *forum non coneniens* (literally 'inappropriate forum' in Latin, this is a legal doctrine, whereby a court may refuse to enact jurisdiction on the grounds that the case ought to be heard in a more 'appropriate' forum—in this case an Ecuadorian court) and international comity⁸, effectively consigning any future legal claims to Ecuadorian courts after Texaco consented to Ecuador's jurisdiction in the case (Kenney 2009: 858). In 2003 the *Aguinda* plaintiffs filed a new suit in Lago Agrio.⁹ The plaintiffs encountered difficulties stemming from the aforementioned Remediation Contract, as ChevronTexaco responded to the litigation by beginning proceedings of their own before the American Arbitration Association. They argued that the settlement obligated the Republic of Ecuador to indemnify ChevronTexaco for the cost of any cleanup activities ordered by the Ecuadorian courts – even though the Remediation Contract did not release ChevronTexaco from liability to third parties. (Kenney 2009: 859). In turn, Ecuador filed a suit against ChevronTexaco, Texaco Petroleum, and the American Arbitration Association in New York Supreme Court. Thus, the *Aguinda* progeny case, *Republic of Ecuador v. ChevronTexaco Corp.* was brought to trial in May 2007 in a fashion declaimed as problematic in various legal comments (Kenney 2009 Lyons 2004, Kimmerling 2001) and with consequences that generated tensions concerning

legitimacy and inclusion between the various indigenous factions, non-indigenous plaintiffs, and their allies. Overall, the legal and political consequences of the legal procedures that led up to, and attempted to augment *ROE* transformed indigenous activism in Ecuador by producing a new field of representational practice and a new regime of legal subjectivity—both of which mark a departure from the ecoprimitive discursive strategies adopted by actors in indigenous politics.

The Context of Ecoprimitivism

Ecoprimitivism is the ahistorical, reductionist reification of pre-industrial modes of subsistence and the social forms associated with them. It is a significant concept for theorizing the political positioning of indigenous actors involved in struggles over environmental management. In the Western mythohistorical imaginary, indigenous populations tend to be constructed as intuitive stewards of their natural habitat, “wise bearers of ancient cultures” (Slater 2000), and “natural conservationists” (Conklin and Graham 1995) organically enmeshed with their ecosystems (Barnard 1999, Berkhofer 1979). This image of the primitive ‘other’ has functioned as an environmentalist critique of the industrialized West (Miller 1996) and even allows space for indigenous ethnoecology. As Vivanco (2006:24) writes, “environmental discourse has permitted the authority of indigenous knowledge and practices through green primitivism.” This is legitimized partially because of the Western ecotopic belief that “life nearer to nature is more virtuous and ‘real’ than in the superficial urban environment that man creates for himself” (Street 1975 as cited in Ellen 1986: 8) As Gaćeša (2008: 549) notes, it “must be that they know something that we don't, or that we have lost.” As a result, a certain kind of legitimacy is afforded to this reified ‘ecological wisdom,’ a concept problematized by various authors across the disciplines (Argyrou 2005, Ellen 1986, Driessen 2005, Sillitoe 1993).

But even under the best of circumstances, indigenous knowledge is constructed as essentially different from that of rational ‘scientific’ knowledge (Agrawal 1995) and ‘undergoes’ transformation and homogenization through its incorporation into environmentalist discourse (Brosius 1997). Furthermore, in societies like Ecuador, indigeneity is historically associated with low cultural capital, lack of education, and a diminished capacity for rational self-governance. This incapacity for self-governance is further ‘proven’ when indigenous communities resist top-down ecoconservation initiatives—usually due to their marginalization or disenfranchisement by the process, with a common scenario involving uncompensated loss of agricultural opportunities on a land that is designated as protected¹⁰. This resistance ‘legitimizes’ the need for state or nongovernmental management of indigenous territories. Such vulnerabilities in Ecuador¹¹ inscribe indigenous actors within ‘the paradox of primitivism’ (Prins 1997) where they find that they stand a better chance of achieving their political agenda if their performance of indigenous

identity is harmonious with the ecoprimitivist paradigm.

Indigenous Activism

The emergence of contemporary indigenous activism in Ecuador is connected to the struggle against the oil regime, and advocacy for environmental justice. Indian organizations in the Amazon, launched with the help of progressive Catholic organizations, gained momentum in the 1960s, mobilizing against the arrival of oil companies, colonists, and state agencies (Zamosc 1994). After achieving some success in the struggles over land, they continued community organization around the platforms of cultural survival, economic and educational reform, access to healthcare, and other forms of social and economic justice. As a result of these undertakings, umbrella Indian federations were created in the highlands and in the Amazonian lowlands.

In 1980, the Confederación de Nacionalidades Indígenas de la Amazonía Ecuatoriana (CONFENIAE)¹² was formed in the Amazon basin. In 1986, CONFENIAE joined ECUARUNARI to form the Confederación de Nacionalidades Indígenas del Ecuador¹³ (CONAIE), a pan-indigenous organization. CONAIE excelled at coalition-building with other indigenous organizations¹⁴ and alliances with nongovernmental organizations, and has been described as unprecedented in its efficacy, reach and power: “There are few Latin American countries that have unified Indian confederations, and no other Indian organization has demonstrated the power to paralyze a country again and again, as is the case with CONAIE” (Zamosc 2004: 134).

CONAIE organized itself by attempting to unify various indigenous groups in Ecuador under the common banner of the disenfranchised demanding a voice. According to their mission statement: “we work primarily to strengthen indigenous organizations while we support specific community demands such as territory or water rights, and challenges government policies that threaten indigenous peoples...” (<http://conaie.nativeweb.org/>). In more practical terms, as CONAIE explains on their website above, “The base organizations make decisions and the leadership of CONAIE serves as an intermediary between those decisions and the actions taken.” Examples of such actions in the past have included a number of uprisings protesting neoliberal economic reforms which threatened indigenous communities¹⁵ with land disenfranchisement, water privatization, and environmental damage. CONAIE effectively mobilized indigenous protesters for the 1990 Indian Uprising, the Indigenous March for Life organized by the Canelos Kichwa indigenous communities in 1992, and subsequent annual Marches for Life organized to demand bans on logging and the cancellation of concessions to mining companies made by the government and the Ministry of Energy and Mines (Frattini 2007), and the 2000 *levanamiento* (uprising), in which 30,000 indigenous people across the nation mobilized against Mahaud’s economic reform (‘dollarization’), effectively bringing down his government (Gerlach 2003).

CONAIE has frequently collaborated with ECUARUNARI, an organization of the Ecuadorian Kichwa communities, internationally partnered with OXFAM, and CONFENIAE, the Confederation of Indigenous Nationalities of the Ecuadorian Amazon, formed in 1980 specifically in response to the exploitation of indigenous land and natural resources by the mining, timber and oil companies. Together with CONAIE, CONFENIAE organized a number of demonstrations in the 1980s and 1990s to protest the ever-increasing encroachment and poaching of indigenous land by multinational oil interests. While they could do little to impede the tidal wave of oil development promoted by an increasingly neoliberalized state, they frequently effected tactical goals—for example, their activist work opposing Maxus Ecuador's¹⁶ oil exploitation of Block 16, a contested 200,000 hectare area bordering the Yasuni National Park and the Huarani Ethnic Reserve¹⁷ resulted in an effective international media campaign garnering support from various activist networks.

Beyond Ecoprimitivism

Ecuadorian indigenous activism, successful and effective as it is in the context of environmental justice, has been linked with ecopromitivist discourses of representation, due to a combination of outside representation and strategic self-presentation. Moi Enomenga, Vice-President of OHNAE, the Huaorani leadership body that led the campaign against Maxus Ecuador, and later the campaign against Petrobras, is a long-time anti-oil activist, gained fame because of his depiction in Joe Kane's (1996) book, *Savages*, which employs ecoprimitive rhetoric to portray the Huaorani's plight. In a more general sense, a number of pan-indigenous organizations in Ecuador have endorsed ecotourism, as alliance with conservation NGOs and conservation initiatives is politically effective in a nation where development options are usually presented as a dichotomy between resource extraction and ecolodges. As a result, ecotourism in indigenous communities has become an ongoing process of semiotic production, especially visible in the 'pedagogic' parts of ecotours, during which the tour guides emphasize the opposition between oil and tourism, promote the notion of sustainability as a self-evidently positive cross-cultural universal, and represent the indigenous communities as, in a sense, "an endangered species" (Tsing 2003) teetering on the crossroads between resource extraction and ecotourism. The ecotour guides' scripts are rhetorically rich with ecotopic tropes about 'our people' living in harmony with nature, catering to the visitors' fantasies of salvaging 'traditional' cultures and 'vanishing' nature through eco-conscious patronage. But the representational activity around *Aguinda v. Texaco* and its progeny case *ROE* marks a departure from the strategically ecoprimitive paradigm of indigenous advocacy.

This departure manifested itself in two ways. On one hand, the overall articulation of legal and scientific knowledge in this area of Ecuador has

created a new field of expertise through which indigenous activists have been reshaping their collective representations. Indigenous actors have become involved with the knowledge industry pertaining to the case localized around Lago Agrio. They have participated in and assisted experts with studies. For instance, they have assisted with the Center for Economic and Social Rights exposure and health study (1994) which measured levels of oil-related contaminants PAH and VOCs in drinking, bathing and fishing water, with expert reports such as Dr. Luis Villacreses Carvajal *Judicial Inspection of the Shushifindi-18 Well Site*, and Richard Cabrero's comprehensive report *Informe sumario del examen pericial*. They have participated in the production of legal documents and articulated their newly acquired scientific and legal expertise through court testimonies and press statements. Indigenous activists like Manuel Salinas and Donald Moncayo (working with *Frente de Defensa de la Amazonia*¹⁸) organize and lead so-called 'Toxic Tours' showing visitors crude oil waste pits scattered throughout the rainforest, leaking pipes, dead flora and fauna, and other 'attractions.' In many 'standard' ecotours the emphasis on indigenous 'wildness' as an idealized cultural trait promotes cultural essentialism which denies indigenous populations coevalness and the ability to participate in 'modern' social and economic forms. By contrast, 'Toxic Tours' reposition indigenous communities as legal and political actors fighting for ecological justice in an environmental disaster zone, radically different from bucolic visions of an 'ethnographic present.'

In considering these issues it is important to avoid the pitfall of imagining a homogenous transformation of an entire indigenous class, unified around a common interest and assimilating a new, legal subjectivity in a uniform way. While the Amazonian litigation has been represented as a 'David and Goliath' story in the media, and Ecuador has been cast as an arena for a transnational fight between 'the rainforest Indians' and 'corporate evildoers,' the shift from the original lawsuit to the progeny lawsuit produced tensions in the region between different indigenous factions who felt exploited, misrepresented or excluded by the proceedings of the *ROE* litigation (Kimmerling 2007). But while the consequences of the litigation did not, of course, produce an uncontested legal solidarity between the communities affected by Texaco's activities scrutinized during the trial, in a sense, the local tensions around transparency and representation of indigenous plaintiffs in the case produced multiple, heterogeneous legal subjectivities in the form of 'unprecedented' grassroots alliances. An example is the Kichwa-Huaorani organization *Makarik Nihua*, committed to enacting its goals through legal initiatives and parallel litigations. Such a co-presence of plural legal subjectivities contested among the indigenous communities itself counters the ecoprimitive proclivity to essentialize indigenous populations as a single homogenous group self-evidently united around common (noble) goals.

Moi Vicente Enomenga Mantohue v. Chervon Corporation and Texaco Petroleum Company, a 2003 parallel lawsuit, filed in the Superior Court of Justice of Tena by ninety plaintiffs from thirty-one Kichwa and Huaorani

communities excluded from the *ROE* case, according to Kimmerling (2007: 478) “reflects the growing consciousness in the oil patch that indigenous peoples have legal rights.” The significance of such growing, and increasingly owned legal subjectivity in the region is important in its encouraging of indigenous actors to engage the structures that arbitrate and enforce corporate responsibility and accountability. But these emergent multiple legal subjectivities are also significant as a counteraction of the global (and regional, as evidenced by the media representations of the case) tendency to collapse indigenous peoples into a single undifferentiated political and cultural entity to which shared interests and values are then attributed. Although pan-indigeneity has been a powerful unifying force in Ecuadorian indigenous activism, as a representational discourse it is linked to the paradox of primitivism in the sense that it is commonly (if erroneously) taken to support Western anti-ethnographic perception of the undifferentiated ‘natives.’ While the fault for such essentialism certainly lies with the global structures of power and inequality that enforce limited homogenous definitions of indigenous legitimacy and sovereignty, it is important to take notice of representational practices and political and legal alliances that go beyond and even run counter to the pan-indigeneity paradigm precisely because of the latter's vulnerability to being used in support of ecoprimitive essentialism.

Multiple actors and plaintiffs

The oil companies and the indigenous communities are not the only actors involved in the production of meaning around *AvT* and *ROE*, and the subsequent legal activity. The role of the state must be mentioned above and beyond the fact that the Ecuadorian state itself has become a plaintiff against Texaco in the progeny lawsuit. For years Ecuadorian indigenous actors and indigenous-*campesino* alliances in Ecuador have protested against environmental negligence endemic in an oil state interpolated into the IMF/World bank economic framework. Rafael Correa, the president of Ecuador since 2007, has publicly expelled the World Bank representative from Ecuador over the issue of a fair and just management of oil revenues dating back to Correa's tenure as Ecuador's economy minister. Since becoming president, he has been internationally perceived as ‘pro-environment’ and ‘tough’ on oil companies¹⁹, but has elicited domestic opposition for supporting strong pro-mining laws. The current governmental sympathy²⁰ for the plaintiffs in the litigation under discussion fits with his government's use of ‘the oil issue’ to reposition itself as increasingly independent from the World Bank, and as a part of the emergent ‘new left’ in South America. But even though with the ratification of the 2008 constitution Ecuador has become the first country in the world where nature itself is given inalienable and ‘legally enforceable’ rights²¹ to ‘exist, flourish and evolve’ (Charman 2008), Correa's regime is spending the political capital gained through such ‘progressive’ stances on an expansion of the mining sector, in what effectively appears to be

a shift from a neoliberal petrostate to a 'newly progressive' state with a strong pro-mining agenda. So even as involvement in the lawsuit affords a new set of legal subjectivities and representational strategies for indigenous actors, the litigation itself has plural political lives, and any implied alliances around it must often be compensated for and renegotiated in other arenas. While indigenous activists have praised Correa's actions pertaining to oil extraction, there is mounting acrimony and indigenous resistance in Ecuador around the 'unconstitutional'²² expansion of mining, the mobilization around which has employed 'ecoprimitive' rhetoric (although, in an interesting turn of events, the reification and anthropomorphization of 'nature' that characterizes the ecoprimitive repertoire is now incorporated in the national constitution).

Conclusion

Of significance is that the shift in indigenous representational strategies vis-à-vis the lawsuit is inscribed in a discursively unstable national field, where the legal process represents many different things to various factions. Yet at the same time, the representational strategies that have emerged around the ChevronTexaco litigations do constitute an intervention into ecoprimitivism as a historically established discursive form of advocacy by Ecuadorian indigenous communities in the Amazonian lowlands.

This article examined a series of litigations that began with the *Aguinda v. Texaco Inc.* case as a site of production of new legal subjectivities for the communities represented by, excluded from, and otherwise affected by these legal proceedings. Through their engagement in the transnational and local legal structures, through their contribution to and generation of legal and scientific knowledge and expertise, and through articulating multiple legal subjectivities that position them not only as homogenous plaintiffs in a highly publicized lawsuit, but also as legal actors in complex relation to each other, indigenous actors engaged with this legal process are recrafting their collective representations in ways that challenge the ecoprimitive stereotypes of indigeneity.

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Biographical Note

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Notes

¹ The sectors of Ecuador affected by the damage that is the subject of the litigations discussed in this article are inhabited by indigenous Kichwa, Huaorani, Cofan, Secoya, and Siona.

² Subsequently *AvT*

³ Subsequently *ROE*

⁴ As Judith Kimmerling (2007: 464) writes: “The complaint did not identify all of the affected indigenous peoples or distinguish their claims and injuries from those of the colonists, who are also adversely affected by the pollution and included among the named plaintiffs and putative class. Similarly, it did not include claims based on the special rights of indigenous peoples. In press releases and other public relations and advocacy activities related to the case, however, the plaintiffs’ lawyers and nongovernmental organizations that support the lawsuit often give the impression that all of the plaintiffs are indigenous Amazonian peoples. As a result, confusion about the plaintiffs and origins of the litigation have characterized many of the extensive press reports about the case, and it has commonly been described as a lawsuit brought by ‘Indians’ or indigenous people from the rainforest.” Indeed, a representative sample of headlines pertaining to the litigation includes examples such as: *Rain Forest Residents, Texaco Face Off in Ecuador* (Forero: 2009), *War Paint and Lawyers: Rainforest Indians vs. Big Oil* (Palast 2007), *Rainforest Indians Suits Against Texaco Reinstated* (Appleson: 1998).

⁵ Ecuador ratified the International Labor Organization Convention concerning Indigenous and Tribal Peoples (ILO Convention 169) in 1998, the same year it adopted a new constitution, which for the first time recognizes the collective rights of Indigenous peoples. Both the ILO C169 and the Constitution specify that the indigenous peoples have a right to be consulted on any exploration or extraction plans of non-renewable resources found in their lands and that which could affect their environment or their culture; that they have the right to participate in the benefits of these projects when possible; and to be indemnified for any socio-environmental damage.

⁶ This term is generally used to describe economic migrants, encouraged by the state to settle in or close to traditionally indigenous territories, usually with the goal of practicing agriculture or cattle ranching.

⁷ Texaco’s subsidiary company that carried out oil extraction operations in a consortium with Petroecuador.

⁸ *Aguinda v. Texaco Inc.* United States Court of Appeals for the Second Circuit 2002.

⁹ *Maria Aguinda Salazar v. ChevronTexaco Corp.*, filed May 7 2003.

¹⁰ Farmers usually do not qualify as ‘natural conservationists’ (Conklin and Graham 1995), partially because agricultural pursuits frequently conflict with conservation agenda, and partially because farmers are generally perceived as *colonos* (migrants) to the areas in need of ecoconservation, rather than the indigenous residents (Vivanco 2003, Dove et al 2003: 23), although, in reality, the demographics are much more mixed, with plenty of indigenous locals engaging in agricultural pursuits.

¹¹ This phenomenon is not limited to Ecuador. One of the most famous instances of ‘the paradox of primitivism’ is the successful deployment of the ‘primitive’ visual semiotics by the Kayapo Indians of Brazil in their struggle over environmental management, described by Terrence Turner (1993).

¹² Confederation of Indigenous Nationalities of the Ecuadorian Amazon, uniting Kichwa, Shuar, Achuar, Siona, Secoya, Cofan, and Huaorani peoples.

¹³ Confederation of Indigenous Nationalities of Ecuador.

¹⁴ Such as *Federación Nacional de Organizaciones Campesinas Indígenas y Negras* (FENOCIN, National Federation of Indigenous, Peasant, and Black Organizations) and *Federación Ecuatoriana de Indígenas Evangélicos* (FEINE, Ecuadorian Federation of Evangelical Indians).

¹⁵ The term ‘community’ as it is used in this article is not a historically continuous, immutable term. While specific indigenous populations lay political claim to territories that historically constitute their ancestral land, the actual contours of communities as both demographic and political units have been fluid, both due to internal fissions and fusions, and due to state interventions in the course of agrarian reforms of the 1960s (Stocks 2005) and contested land titling in 1992 (Sawyer 2004). Yet with these caveats, ‘community’ is an appropriate term in this context, especially since the other term commonly used in the media for groups of indigenous actors in Ecuador, ‘tribes,’ has a complex and problematic legacy. As Sawyer (2004: 106) explains, in the context of analyzing the 1994 occupation of the Ministry of Energy and Mines that took place as a part of the protests against Texaco: “On the evening of the Ministry occupation, newspaper headlines read: ‘Lanzas vs. Petroleo’ (Spears vs. Petroleum) and ‘Tribas Contra Oro Negro’ (Tribes Against Black Gold). By depicting Indians metonymically as ‘spears’ and calling them ‘tribes’—one of the more pejorative terms for identifying Amazonian Indians—the newspaper leaned on commonly held racist beliefs. Dehistoricized as anachronistic ‘tribes.’ Indigenous Amazonians were forest-dwelling savages and obstacles to modernization” [emphasis mine].

¹⁶ A subsidiary of U.S. Petroleum company Conoco.

¹⁷ The borders of Yasuni National Park were changed by the government to allow for oil exploitation.

¹⁸ This is the Amazon Defense Front, whose actions have been questioned and critiqued by a number of Kichwa and Huaroani actors as being undemocratic and non-inclusive (Kimmerling 2007). The tensions around the case are discussed further in this text.

¹⁹ The highly contested extraction activities of Petrobras, a Brazilian oil producer in Yasuni National Park, a UNESCO protected biosphere reserve, were indefinitely suspended under the Correa government, which contributed to Correa’s ‘green’ reputation. But Correa’s most radical ‘green’ proposal was a 2007 progressive conservation plan under which the Ecuadorian state would refrain from oil extraction in the Yasuni in exchange for three hundred fifty million received from the international community. The progressive proposal garnered much international praise, but few firm financial commitments

²⁰ Correa has openly sympathized with the *Aguinda v. Texaco* plaintiffs, and has publicly called Chevron’s actions in Ecuador ‘a crime against humanity’ (Romero and Kraus 2009). His public stance on the issue has led Chevron to lobby the US government to adopt trade sanctions against Ecuador unless the lawsuit is dropped (Kendall 2008)

²¹ “Nature or Pachamama, where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution. Every person, people, community or nationality, will be able to demand the recognition of rights for nature before the public bodies” (Article 1 of the new ‘Rights for Nature’ chapter of the Ecuador constitution, as translated and quoted in Charman (2008: 132)

²² ‘Unconstitutional’ is in quotes because technically this has become a contested issue because of the new ‘rights of nature’ codified in the 2008 constitution; the criticisms of unconstitutionality are an appeal to that; at the same time, the 2008 constitution maintained the status quo on the issue of subsoil rights to natural resources. In Ecuador, these rights belong to the State, rather than to the communities which hold the titles to the lands

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