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Juan José Guzmán Torán

When the Forest Screams

The Rights of Nature and Indigenous
Rights as a Mutually Reinforcing
Resistance Platform for the
Indigenous Peoples of the Ecuadorian
Amazon

EMA, The European Master's Programme
in Human Rights and Democratisation

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MUTUALLY REINFORCING RESISTANCE PLATFORM FOR THE
INDIGENOUS PEOPLES OF THE ECUADORIAN AMAZON

FOREWORD

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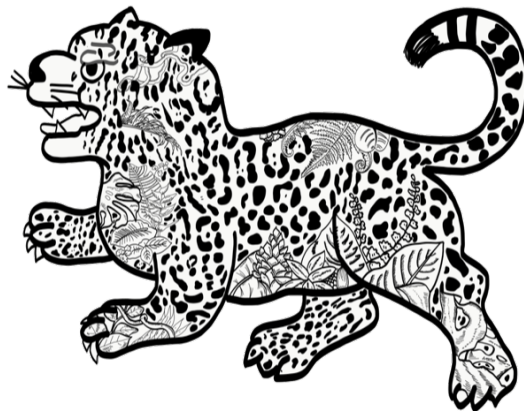
This publication includes the thesis *When the Forest Screams. The Rights of Nature and Indigenous Rights as a Mutually Reinforcing Resistance Platform for the Indigenous Peoples of the Ecuadorian Amazon* written by Juan José Guzmán Torán and supervised by Felipe Gómez Isa, University of Deusto, Bilbao.

BIOGRAPHY

Juan José Guzmán holds a bachelor's degree in Social Anthropology from the University of Chile and graduated from the European Master's Programme in Human Rights and Democratisation. His research interests are human rights law, legal anthropology, indigenous rights, rights of nature and postcolonial studies.

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ABSTRACT

Indigenous peoples from the Ecuadorian Amazon have historically been dispossessed from their cultural heritage and ancestral territories. In the past, these actions have been justified by the need for natural resources derived from indigenous lands. However, this has led to the destruction of natural and culturally significant environments, in addition to other human rights violations. This research will focus on contemporary efforts by Ecuador to protect its nature through the auspices of constitutional and legislative regimes. In 2008, the government of Rafael Correa incorporated the 'rights of nature' into the Ecuadorian constitution, which in essence gave nature legal personality. That is, nature became a subject of rights, to be protected despite human needs. In this context, the rights of nature protect it from its commodification, thus contributing toward the fulfilment of indigenous peoples' rights in contexts of extractivism. This research explores the impact of this constitutional recognition, analysing how indigenous Amazonian communities legally and politically use the rights of nature. Concerning the legal uses, lawsuits filed by indigenous groups, in circumstances where the rights of nature were invoked, tended to fail. Despite the legal obstacles, the rights of nature have been progressively incorporated into resistance-orientated discourses/actions of Amazonian indigenous communities, becoming a robust political tool against the destruction of traditional territories. The findings of this research support the conclusion that the incorporation of the rights of nature – into the Ecuadorian legal system and in human rights discourse/practices of Amazonian indigenous communities – empowers Amazonian indigenous groups. Indigenous empowerment in this region has been found to comprise the ability to communicate in legal, political, epistemological and ontological spheres through resistance-based platforms. This form of engagement has been used as a vehicle to voice opposition to neocolonial practices as regards the exploitation of culturally significant natural environments and the destruction of indigenous ancestral lands.

TABLE OF ABBREVIATIONS

ACHR	American Convention on Human Rights
CGC	Compañía General de Combustibles
CONAIE	Confederation of Indigenous Nationalities of Ecuador
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
IEL	International environmental law
ILO	International Labour Organization
OAS	Organization of American States
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNGA	United Nations General Assembly

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INTRODUCTION

The modern history of Latin America was built from the ashes of colonialism. The reproduction of colonial dynamics and the subjugation of indigenous peoples did not stop with the emergence of newly independent states. Indigenous peoples are systematically silenced, made invisible and dispossessed from their territories and cultures under the excuse of integrating them into the societal projects of progress and development. With the continuation of neocolonial practices, Latin America continues to witness a historical encounter between ethnocidal violence and growing indigenous resistance.

One of the many faces of these neocolonial dynamics is the imposition of Western values and worldviews, which are present in the historically unquestioned nature of international law and the global system it rules. In this regard, the historical struggles and knowledges of indigenous peoples have not been deeply addressed in human rights instruments, institutions, discourses and practices. Nevertheless, in recent decades, the scope of human rights has been progressively enriched by the inclusion of non-Western and indigenous narratives. In Latin America, the Inter-American Court of Human Rights (IACtHR) and several states have given voice to historically oppressed conceptions, leading to a gradually pluralistic understanding of human rights. In this context, the increasing recognition of collective rights at the global, regional and domestic levels has given indigenous peoples legal backup for sustaining their historical demands. Moreover, human rights have not only provided a legal framework of protection, but they have also served as an empowering channel for developing political and legal anti-colonial responses.

In Latin America, as the wave of dictatorships declined around the 1990s, various governments started to erase their assimilationist

policies moving towards the acceptance of the multi-ethnic diversity of their societies. However, despite this growing recognition, indigenous peoples have continuously suffered from extractive activities that destroy their ancestral lands and threaten their very survival. The invasion of indigenous territories – and the human rights violations associated with extractive practices – are a consequence of a development discourse that relies on the exploitation of so-called ‘natural resources’. In other words, neocolonial extractive practices are sustained by a particular conception of nature: a bunch of passive and agentless objects that are meant to satisfy human needs.

However, several indigenous groups, especially in the Amazonian and Andean regions, perceive nature as a living entity that is not separate from humans, both instead are two equally relevant dimensions of the same life cycle. Thus, extractive activities have led to systematic human rights violations as well as to the imposition of a dominant nature conception. In this context, several indigenous communities have reacted by challenging the dominant nature/culture opposition, highlighting the need for reconceptualising the destructive human-nature relationship that the official development model legitimises. Thus, new discourses and practices against the neoliberalisation of nature have arisen, proposing new development models that do not rely on the destruction of ecosystems and the cultural lifeways within them.

One such proposal is the rights of nature, which consist of making nature a subject of rights. This requires a non-anthropocentric approach to law since it shifts the orthodox legal paradigm where only humans are entitled to be subjects of rights. In short, the rights of nature and the Amazonian and Andean ontologies defend that nature has to be considered as a living subject that must be protected – and respected – regardless of human needs.

The constitutional recognition of nature as a subject of rights first arose in Ecuador under the government of Rafael Correa, which carried out a constituent assembly creating a new constitution in 2008. The drafting process counted on the participation of several indigenous groups that firmly proposed a change in the way the development aspirations of the country were conceiving and treating nature. In the end, the constitutional assembly heard the voices of the indigenous peoples, and it included several legal novelties in the final draft. The final constitutional draft included the Kichwa notion of *Sumak Kawsay*, specific mentions to indigenous collective rights, the recognition of

Ecuador as a plurinational state, and it gave birth to constitutional rights of nature for the first time in history. Ecuador introduced an intercultural legal tool into its constitution that revendicates a non-Western understanding of nature and helps to prevent the destruction of the ancestral territories, cultures and values of indigenous peoples.

However, the implementation of the rights of nature in Ecuador after 2008 has been subjected to controversy since it has not been as effective as it was expected to be. In Ecuador, the oil industry is the main economic engine of the country. Thus, Ecuadorian national development plans are linked almost exclusively to oil policies. Most of the oil that Ecuador currently extracts/exports comes from the Amazon Basin, which covers around half of the Ecuadorian territory, including the ancestral lands of several indigenous communities. In this regard, oil activities have led to severe health impacts, the overlooking of free, prior and informed consent, massive displacements, the extinction of small tribes and other violent events. In this context, even if the rights of nature have opened up a whole range of possibilities for improving the human rights conditions of indigenous peoples in Ecuador, the affected regions – and especially the Amazonian areas – continue to witness constant human rights and nature rights violations. This leads to questioning the practical effects of the incorporation of the rights of nature as a complement for indigenous peoples' rights in the Ecuadorian Amazon. In this regard, the research question that arises is: how have legal and political views on the rights of nature impacted the realisation of human rights for indigenous peoples in the Ecuadorian Amazon?

In order to address this question, this work is divided into three chapters. The first chapter provides the theoretical foundations of this research, discussing the colonial aspects that international law and the human rights paradigm contain. By adopting a post-colonial approach and the concept of coloniality of power, it is argued that the inclusion of non-Western narratives, values and worldviews into the human rights discourses and practices lead to their progressive decolonisation. In this regard, the rights of nature serve as a concrete materialisation of this decolonising process, serving as a potential emancipation tool for indigenous peoples in the Ecuadorian Amazon. Besides, the rights of nature offer a new legal tool for reducing the effects of environmental degradation, climate change and human rights violations related to the destruction of indigenous territories and cultures.

The implementation of the rights of nature in conjunction with the rights of indigenous peoples will be analysed in the second chapter. This section intends to identify the main obstacles that the rights of nature face in their application and provide the reader a clear picture of how the rights of nature – as an emancipation tool – are being used by indigenous peoples in the fight for their human rights. In this regard, the chapter begins by characterising the role that extractive industries play in Ecuador's development plans, specifying how oil activities in the Amazon have affected indigenous peoples by systematically violating their rights and destroying nature. Later, three rights of nature cases filed by indigenous peoples are explained and analysed: the Mining Law case (2009), the Condor-Mirador case (2012) and the Tangabana Paramo case (2014-ongoing). Finally, one of the most controversial cases concerning oil activities is discussed: the Yasuni National Park case and the failed initiative of leaving a sizeable crude oil reserve underground.

The third chapter is about the political appropriation of the rights of nature in the human rights resistance strategies of three different indigenous communities of the Ecuadorian Amazon: the Llanichama community of Yasuni, the Waorani groups of the province of Pastaza and the Sarayaku people. Thus, this chapter provides an identification, characterisation and analysis of different political responses that these communities have articulated for defending their rights.

RESEARCH METHODOLOGY

Concerning the research methods, the first chapter of this thesis elaborates a theoretical framework based on literature research. The sources used are historiographic sources, anthropological academic production – including ethnographies – and academic material from human rights related fields. This section contains the analysis of the colonial dimensions of international law and human rights, addressing the rights of nature as part of the decolonisation process of the human rights paradigm. In order to do so, it will briefly describe the colonial origins and evolution of international law and human rights, highlighting that indigenous knowledge has been traditionally left aside in their construction. Furthermore, it examines to what extent the rights of nature – as an emerging theory – intend to overcome the anthropocentric foundations of environmental human rights instruments, challenging the socially constructed hierarchy between humans and non-humans. Furthermore, this section examines Amazonian indigenous nature ontologies, establishing a connection between the rights of nature and historically oppressed indigenous nature conceptions. Thus, this chapter analyses the dialogue between human rights, the rights of nature and Amazonian indigenous nature ontologies from a post-colonial and ecocentric approach to human rights.

The second chapter, besides literature research, offers an analysis of the processes and outcomes of three rights of nature legal cases filed by indigenous peoples, including an interview with one of the current members of the Ecuadorian Constitutional Court. The main goal of this chapter is to see the relationship between human rights and the rights of nature in the legal scene of Ecuador. In this regard, this chapter examines the political and economic roles that oil industries play in the national development plans of the country, highlighting the human

rights costs of oil-related activities. In this line, the analysis of the three legal cases is directed to identify the political and legal obstacles that the rights of nature – in conjunction with indigenous rights – face in their implementation. Nonetheless, it is essential to highlight that this section contains several limitations since the rights of nature is a new legal phenomenon that has been barely invoked in indigenous human rights-related cases. Besides, the academic sources concerning this topic are almost non-existent, and it was not possible to gather vast first-hand data.

The third chapter examines the political appropriation of the rights of nature in indigenous human rights demands. In this part, a qualitative analysis of indigenous political responses to the violation of their collective rights will be used. As well, in this part, different political proposals of Amazonian indigenous communities will be presented and analysed. Several indigenous groups have presented political and legal proposals to the Ecuadorian state, merging the rights of nature and human rights into one holistic project. The material was gathered through court resolutions, semi-structured interviews with an academic expert and a Waorani indigenous leader, and indigenous online political platforms – such as official Twitter accounts of indigenous organisations, online campaigns, and others. However, this section has limitations. On the one hand, there is no robust body of academic production concerning the political appropriation of the rights of nature in indigenous human rights resistance strategies. On the other hand, it was not possible to gather vast first-hand information or to conduct more interviews since these communities live in very isolated areas of the rainforest – which are not likely to reach without long-term fieldwork.

Finally, this thesis combines scholarly fields of law, anthropology, sociology, history and political science. Therefore, the interdisciplinary approach to the relation between the rights of nature and indigenous rights, will give new insights and dimensions to the existing studies that have focused on ethnocultural diversity and human rights.

1.

THEORETICAL FRAMEWORK: DECOLONISING LAW
AND EXPANDING HUMAN RIGHTS: INDIGENOUS
CONCEPTIONS MATERIALISED IN THE RIGHTS OF NATURE

It may be in the cultural particularities of people — in their oddities — that some of the most instructive revelations of what it is to be generically human are to be found.¹

The following chapter offers the theoretical framework of this work, critically addressing the crucial aspects for understanding the rights of nature as an epistemological, legal and political resistance platform for indigenous peoples in Ecuador. By basing the arguments in a post-colonial approach to human rights and the concept of coloniality of power, it will be argued that the lack of inclusion of indigenous knowledge in human rights is a manifestation of neocolonialism. Thus, the introduction of non-Western narratives into the human rights discourse/practice is an attempt to decolonise what has traditionally been a colonialist discourse. Later, the concept of rights of nature will be developed. It is argued that they are a practical example of the inclusion of indigenous narratives in human rights.

The international efforts for creating a human right to a healthy and clean environment have not been sufficient for protecting people and nature. In the end, the biggest problem is that the dominant Western thought does not challenge the human-nature relationships that are responsible for nature's destruction. In this regard, ethnographic material, post-colonial anthropological theory and symbolic ecology is utilised to argue that Amazonian indigenous nature ontologies – which understand the nature/culture relationship in a very different way – are contained in the rights of nature that the Ecuadorian constitution enshrines.

¹ Clifford Geertz, *The Interpretation of Cultures* (2000 edn, Basic Books 1973) 43.

1.1 COLONIALISM, HUMAN RIGHTS AND INTERNATIONAL LAW

When Iberian colonisers named and colonised America, they found a land full of sophisticated and diverse cultures. However, all that cultural diversity was unified and reduced to a single category: every inhabitant of America became an Indian.² The oversimplification of America's diversity took away the singular historical identities of the different cultural groups, and they were seen as separate beings from what the colonial powers conceived as humanity. For Europeans, they were inferior races that were only capable of producing inferior cultures. In other words, the power-domination patterns of the colonisation processes institutionalised a cognitive dimension, in which the non-European world was the inferior and always primitive past.³

1.1.1 *Post-colonial approach to international law and coloniality of power*

For many years, the Western world ignored the fact that the so-called 'discovery of America' was not a unidirectional discovery. It instead was the beginning of a clash between many worlds that possessed different knowledge systems. However, European colonisers did not perceive indigenous peoples as valuable knowledge holders. Thus, the 'colonial "civilizing" mission was based on the idea of absorbing the "native" into the society of the colonizing state'.⁴ Colonisation was not only the conquest of territories and people, but it also aimed to penetrate society through the imposition of foreign institutions, values and worldviews.⁵

In this regard, colonial law and policy aimed at the destruction of indigenous cultures,⁶ including their pre-existing social and legal systems. For instance, *El Requerimiento* (1513) was the first legal text used by Spanish colonisers to justify war against indigenous peoples. It consisted of calling for their subjugation to the Catholic church and the Spanish crown before starting a conquest enterprise.⁷

² Aníbal Quijano, *Cuestiones y Horizontes: de la Dependencia Histórico-Estructural a la Colonialidad/Descolonialidad del Poder* (CLACSO 2000) 801.

³ *ibid.*

⁴ Irene Watson, *Aboriginal Peoples, Colonialism and International Law: Raw Law* (1st edn, Routledge 2014) 1.

⁵ Nicholas Dirks, *Colonialism and Culture* (1st edn, University of Michigan Press 1992) 3.

⁶ Chris Cunneen, 'Colonialism and Historical Injustice: Reparations for Indigenous Peoples' (2005) 15 *Social Semiotics* 59, 59.

⁷ Marcelo Zorrilla, 'El Acta de Requerimiento y la Guerra Justa' (2006) 885 *Revista del Notariado* 247, 247.

The dynamics of colonisation were not only present within the law applied during the conquests, but also in the European-led later developments of international law. For example, during the Peace of Westphalia – which some authors consider the beginning of the modern international legal system – it was proclaimed that states were the unique subjects of international law. Accordingly, other ethnocultural entities were not considered as legal subjects. In the words of Paul Keal, ‘As the expansion of Europe proceeded international law became simultaneously more universal and more exclusionary. It aspired to universal application but excluded primitive societies from its community’.⁸

Several scholars have pointed out that the origins of international law are mainly Eurocentric,⁹ serving ‘as a legitimizing tool of colonialism and cultural imperialism in all its forms’.¹⁰ In other words, it became a robust ‘ideological tool to justify oppression, dispossession, and marginalization of those that did not conform to the standards established by European states’.¹¹ Concerning the European standards of those times, the ‘uncivilised’ population of the world had no room in the very idea of civilisation. Therefore, ‘the civilizing mission to save non-European peoples from ignorance and backwardness was one of the core aspirational principles of international law’.¹²

International law relies on assumptions, worldviews and values which have historically remained unquestioned. However, a critical post-colonial approach emerged, questioning the power relations and colonial aspects of international law. In words of Robert Young, ‘Since the early 1980s, postcolonialism has developed a body of writing that attempts to shift the dominant ways in which the relations between Western and non-Western people and their worlds are viewed’.¹³

This perspective argues that people are still suffering from colonial forms of oppression. Although the colonial rule is over, former colonial powers and other emerging superpowers (eg the United States) still

⁸ Paul Keal, *European Conquest and the Rights of Indigenous Peoples: The Moral Backwardness of International Society* (1st edn, CUP 2003) 108.

⁹ Elvira Pulitano, *Indigenous Rights and International Law: An Introduction* (1st edn, CUP 2012) 4.

¹⁰ Felipe Gómez Isa, ‘International Law, Ethno-Cultural Diversity and Indigenous Peoples’ Rights: A Postcolonial Approach’ (2010) 122 *International Studies in Human Rights* 168, 168.

¹¹ *ibid* 173.

¹² *ibid*.

¹³ Robert Young, *Post-Colonialism A Very Short Introduction* (1st edn, OUP 2003) 2.

have a strong influence on the former colonies.¹⁴ Therefore, ‘the ideological effects of colonial laws continue to have contemporary relevance as they continue to be used as an instrument of control in this post-colonial world’.¹⁵ In this context, the Peruvian sociologist Anibal Quijano elaborated the concept of coloniality of power. He describes an advanced form of cultural imperialism where colonial power relations influence the production and reproduction of knowledge by imposing the Western cultural imaginary over non-Western societies.¹⁶ Therefore, ‘Coloniality of power, in other words, is not just a question of the Americas for people living in the Americas, but it is the darker side of modernity and the global reach of imperial capitalism’.¹⁷

All in all, international law has traditionally been a tool for colonisation, and colonial power relations are still occurring despite the formal end of colonial rule. An illustrative example is the imposition of Western values and worldviews, which are present in the traditionally unquestioned nature of international law and the global system it rules. Thus, to further develop an international system that is free from neocolonial dynamics, widening the scope of international law to historically forsaken narratives of law and justice is required.

1.1.2 Inclusion of other voices in human rights: Striking the balance between universalism and cultural relativism

There are different historiographical positions when it comes to an understanding of the origins of the modern concept of human rights. It is almost a consensus that human rights, as a legal and moral framework, are a result of the interaction of many historical forces and events. However, which historical forces have given birth to this narrative? In words of Boaventura de Sousa Santos:

The concept of human rights lies on a well-known set of presuppositions, all of which are distinctly Western, namely: there is a universal human nature that can be known by rational means; human nature is essentially

¹⁴ Alpana Roy, ‘Postcolonial Theory and Law: A Critical Introduction’ (2008) 29 *Adelaide Law Review* 315, 335.

¹⁵ *ibid* 319.

¹⁶ Pedro Garzón, *Ciudadanía Indígena: Del Multiculturalismo a la Colonialidad del Poder* (1st edn, Centro de Estudios Políticos y Constitucionales 2016) 279.

¹⁷ Walter Mignolo, ‘Introduction: Coloniality of Power and De-Colonial Thinking’ (2007) 21 *Cultural Studies* 155, 159.

different from and higher than the rest of reality; the individual has an absolute and irreducible dignity that must be defended against society or the state; the autonomy of the individual requires that society be organized in a non-hierarchical way, as a sum of free individuals.¹⁸

Human rights have been elaborated by the Western river of thought. For instance, the Declaration of the Rights of Man and Citizen (1789), the philosophers of the Enlightenment and the horrific events of the Second World War are commonly seen as the primary catalysts of the Universal Declaration of Human Rights¹⁹ (UDHR) and other later developments. However, this does not necessarily mean that the evolution of human rights has only taken place in European lands. Many Latin American countries contributed to the creation of the human rights discourse. An illustrative example is the San Francisco Conference in 1945, where many countries came together to review the Dumbarton Oaks Agreements – among other international concerns. During the conference, ‘the inclusion of human rights in the United Nations Charter was firmly proposed by different delegations of Latin-America and the Caribbean (...) which included the right to education, work, public health, and social security’.²⁰ However, the superpower countries rejected the proposal. At that time, the United States had racist policies, and France and the United Kingdom were still getting benefits from their colonial empires. Nevertheless, the inputs of the Latin American delegations served as antecedents for the future creation of the UDHR in 1948. Another example is the American Declaration of the Rights and Duties of Man²¹ of 1948, formulated by the Organization of American States (OAS) months before the UDHR, being the first international human rights instrument ever created. There are many more examples of former American colonies contributing to the human rights regime. However, it remains a primary Western creation. Indigenous peoples never participated in those human rights advances since they were not considered by their states.

¹⁸ Boaventura de Sousa Santos, ‘Toward a Multicultural Conception of Human Rights’ (1997) 18 *Zeitschrift für Rechtssoziologie* 1, 6.

¹⁹ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).

²⁰ Mary Ann Glendon, ‘El Crisol Olvidado: La Influencia Latinoamericana en la Idea de los Derechos Humanos Universales’ (2004) 51 *Persona y Derecho* 103, 106-107.

²¹ American Declaration of the Rights and Duties of Man, OAS Res XXX adopted by the Ninth International Conference of American States (1948) reprinted in *Basic Documents Pertaining to Human Rights in the InterAmerican System OEA/Ser L V/II.82 Doc 6 Rev 1* at 17 (1992).

As Gómez Isa says:

in practice, decolonization and emergence of newly independent states did not make any meaningful difference for indigenous peoples; on the contrary, they continued experiencing oppressive and exclusionary colonial relations, particularly as regards to their lands and territories.²²

Consequently, several questions arise from the underrepresentation of indigenous peoples in human rights: are human rights truly universal? Are human rights legitimate for all societies? Do human rights entail colonial relations? Several scholars have elaborated theoretical models around the binary opposition of universalism/cultural relativism, intending to solve the underrepresentation problem of non-Western values in the human rights discourse and practice. Thus, many scholars have touched upon the idea of expanding the universalism of human rights. As Lieselotte Viaene highlights, it is almost a consensus that cultural diversity is not a threat to human rights but is instead an opportunity for enriching their content and practice.²³ Simultaneously, the inclusion of non-Western experiences in human rights entails a decolonising process since it integrates locally grounded views that are rooted in systematically marginalised forms of knowledge.²⁴

In this line, Eva Brems developed the concept of inclusive universality. She argues that the human rights narrative must internalise non-Western sociohistorical particularities to become truly universal. She highlights that there should be a double acceptance: non-Western societies must accept the human rights texts and Western nations must accept the diverse cultural origins of human rights standards and the existence of their cross-cultural foundations.²⁵ Another theoretical effort is the concept of relative universality created by Jack Donnelly. He says that it is unsustainable to think that universal rights will lead to universal practices. Human rights documents are very vague, and each society will interpret them differently. He concludes that 'the relative universality of human rights is a powerful

²² Felipe Gómez Isa, 'The UNDRIP: An Increasingly Robust Legal Parameter' [2019] *The International Journal of Human Rights* 1, 3.

²³ Postdoc thesis proposal from Lieselotte Viaene to the European Research Council Starting Grant, 'RIVERS: Water/Human Rights Beyond the Human? Indigenous Water Ontologies, Plurilegal Encounters and Interlegal Translation' (2018) 1.

²⁴ *ibid.*

²⁵ Eva Brems, *Human Rights: Universality and Diversity* (1st edn, Martinus Nijhoff Publishers 2001).

resource that can be used to build more just and humane national and international societies'.²⁶ Therefore, he sustains that universal human rights are possible to achieve without extreme power imbalances between societies.

Following these ideas, human rights should work harder in addressing the cultural particularities of indigenous peoples. The international recognition of indigenous peoples' rights, the local appropriation of the human rights discourse and the inclusion of non-Western views, values and legalities must occur to create universal human rights free from colonialism. Non-Western cultures and oppressed Western societies should appropriate human rights and adjust them to their own historical necessities, rather than adapting their necessities to a dominant oppressive canon.

Fortunately, the inclusion of indigenous peoples is occurring in Latin-America. In the last decades, the scope of human rights has been progressively widened and enriched by the incorporation of indigenous narratives.

1.2 PROGRESSIVE INCLUSION OF INDIGENOUS PEOPLES IN INTERNATIONAL LAW AND HUMAN RIGHTS

Indigenous peoples have progressively gained visibility in the international level; therefore, international law and human rights have been slowly transformed from a colonisation apparatus to revindication tools. In 1957, the International Labour Organization (ILO) adopted the first international treaty dealing specially with indigenous peoples: The Indigenous and Tribal Populations Convention 107, which had an assimilationist and paternalistic approach. At that time, states conceived indigenous peoples as objects of protection, unveiling that they were still conducting a civilising enterprise. As article 2 of the convention states 'Governments shall have the primary responsibility for developing coordinated and systematic action for the protection of the populations concerned and their progressive integration into the life of their respective countries'.²⁷

²⁶ Jack Donnelly, 'The Relative Universality of Human Rights' (2007) 29 Human Rights Quarterly 281, 306.

²⁷ Indigenous and Tribal Populations Convention (adopted 26 June 1957) International Labour Organization Convention No 107.

The paternalistic and assimilationist approach was evident in Latin America. The historian José Bengoa points out that from the 1930s to the beginning of the 1990s were the years of indigenism.²⁸ Indigenism is the realisation of public policies for indigenous peoples without their participation, which leads to a lack of legitimacy and accuracy towards indigenous struggles. In other words, the Latin American states were creating paternalistic policies that did not address the ethnic diversity within their national borders. However, the situation changed during the 1990s since Latin America witnessed what Bengoa calls the indigenous emergence: the rise of highly politicised and articulated indigenous social movements that claimed recognition and historical justice.²⁹ During those years, indigenous peoples recreated their history, acknowledging the systematic abuses they suffered since the beginning of colonisation. It was the emergence of new indigenous identities that started to gain relevance in the political scene of their countries, impacting international law and increasing their presence in the international fora.

1.2.1 The International Labour Organization Convention 169

After the Second World War, international law recognised two core principles: the principle of non-discrimination and the principle of self-determination. These two principles ‘articulated a theoretical framework for indigenous peoples to elaborate claims during the 1970s and 1980s’.³⁰ Thus, indigenous peoples became transformative actors in the international sphere. An illustrative example was the creation of the Indigenous and Tribal Peoples Convention 169 by the ILO in 1989. The international community adopted this convention intending to replace the previous ILO Convention 107 along with its assimilationist approach. As stated in the second article of Convention 169: ‘Governments shall have the responsibility for developing, with the participation of the peoples concerned, coordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity’.³¹

²⁸ José Bengoa, *La Emergencia Indígena en América Latina* (1st edn, Fondo de Cultura Económica 2000) 20.

²⁹ *ibid* 21.

³⁰ Gómez Isa (n 10) 179.

³¹ Indigenous and Tribal Peoples Convention (adopted 17 June 1989) International Labour Organization Convention No 169.

The convention marked a turning point since it recognised indigenous peoples as subjects of rights. Nonetheless, there was poor ratification and it lacked the participation of indigenous peoples during the drafting process. There was much progress to be made in order to recognise indigenous peoples as capable agents in international law-making. However, the United Nations (UN) started to be more receptive towards indigenous demands and, therefore, a more promising future was about to come.

1.2.2 United Nations Declaration on the Rights of Indigenous Peoples

In 2007, the UN created the United Nations Declaration on the Rights of Indigenous Peoples³² (UNDRIP), and indigenous peoples were a significant driving force in its creation. Thus, it shifted the traditional law-making procedures of the UN – where states are predominantly the creators of international legal instruments.

There are many innovations that the UNDRIP brought into the picture. For instance, the declaration recognised collective rights as complementary to the traditional individual rights. Additionally, the United Nations General Assembly (UNGA) recognised and reaffirmed that ‘indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples’.³³ Therefore, it officialised an inextricable link between their rights as peoples and their cultural identities. The acknowledgment of indigenous collective rights includes recognition of their languages and historical particularities, as well as the collective rights to the territories, lands and natural resources they have traditionally owned and utilised. Besides, the UNDRIP recognised the right to self-determination, which is one of the critical demands of the global indigenous movement. As mentioned in articles 3 and 4 of the declaration:

Article 3. Indigenous peoples have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4. In exercising their right to self-determination, indigenous peoples have the right to autonomy or self-government for their internal and local affairs, and to have the means to finance their autonomous functions.³⁴

³² United Nations Declaration on the Rights of Indigenous Peoples (adopted 2 October 2007) UNGA A/RES/61/295 (UNDRIP).

³³ *ibid* annex.

³⁴ *ibid* arts 3 and 4.

The right to self-determination is the right to self-governance and autonomy as long as it respects the state's integrity. In this context, self-determination reaffirms ethnic diversity since it is the right to exercise the cultural differences. Additionally, article 19 of the UNDRIP recognises the need for free, prior and informed consent of indigenous peoples 'before adopting or implementing legislative or administrative measures that may affect them'.³⁵ Another novel aspect was the incorporation of the concept of historical injustices, which refers to the past abuses that indigenous peoples have historically faced as an impediment for thoroughly enjoying their rights. In the words of S James Anaya, former Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, and Siegfried Wiessner:

[T]he Declaration reflects the existing international consensus regarding the individual and collective rights of indigenous peoples in a way that is coherent with, and expands upon, international developments, including the interpretation of other human rights instruments by international bodies and mechanisms.³⁶

All in all, the creation of the UNDRIP shows that the UN and the human rights paradigm are being progressively decolonised since it is considering the historical struggles and cultural contexts of indigenous peoples – as victims of colonisation. In other words, the UNDRIP 'represents a clear signal of the growing acceptance of indigenous peoples' rights as an integral part of the contemporary human rights regime'.³⁷ However, there is a significant implementation gap of indigenous rights and reluctance from states to recognise and comply with them. The UNDRIP is a remarkable example of intercultural dialogue achieving a culturally legitimate legal instrument. Nevertheless, it is vital to consider locally grounded knowledge and a plurality of human rights' understandings in the application of this parameter.

³⁵ United Nations Declaration on the Rights of Indigenous Peoples (n 32) art 19.

³⁶ S James Anaya and Siegfried Wiessner, 'The UN Declaration on the Rights of Indigenous Peoples: Towards Re-empowerment' (*Jurist*, 3 October 2007) <www.jurist.org/commentary/2007/10/un-declaration-on-rights-of-indigenous-2/> accessed 15 May 2019.

³⁷ Gómez Isa (n 22) 7.

1.3 INDIGENOUS NARRATIVES ENRICHING HUMAN RIGHTS: THE RIGHTS OF NATURE

In Latin America, indigenous social movements have become stronger in recent decades. As the wave of dictatorships declined around the 1990s, many governments started to erase their assimilationist policies moving towards the acceptance of the multi-ethnic diversity of their societies. However, despite this growing recognition, indigenous peoples have continuously suffered from human rights violations.

In this context, extractive industries have shown to be a constant threat to indigenous peoples' rights since they often conduct their activities in indigenous territories.³⁸ The importance that is given to the exploitation of natural resources commonly undermines the fulfilment of indigenous rights. As Mackay points out:

Threats to indigenous peoples' rights and well-being are particularly acute in relation to resource exploitation projects, regardless of whether the projects are state- or corporate-directed. Many of these projects and operations have had and continue to have a devastating impact on indigenous peoples, undermining their ability to sustain themselves physically, spiritually, and culturally.³⁹

Several indigenous communities have reacted to these particular struggles, challenging the dominant nature/culture conceptions that predominate in the development models of their countries. In this regard, environmental and indigenous groups have highlighted the need for reconceptualising the destructive human-nature relationship⁴⁰ that the dominant development model legitimises. Thus, new discourses and practices against the neoliberalisation of nature have arisen, proposing new development models that do not rely on the destruction of the environment and the cultural lifeways within it.

³⁸ David Schlosberg and David Carruthers, 'Indigenous Struggles, Environmental Justice, and Community Capabilities' (2010) 10 *Global Environmental Politics* 12.

³⁹ Fergus Mackay and David Carruthers, 'Indigenous Peoples' Rights to Free, Prior and Informed Consent and the World Bank's Extractive Industries Reviews Struggles, Environmental Justice, and Community Capabilities' (2004) 4 *Sustainable Development, Law & Policy* 43, 49.

⁴⁰ Lieselotte Viaene, 'Ríos: seres vivos y personalidad jurídica Nuevos argumentos legales de los territorios de los pueblos indígenas' (*Plaza Pública Web Blog*, 2 May 2017) <www.plazapublica.com.gt/content/rios-seres-vivientes-y-personalidad-juridica-nuevos-argumentos-legales-en-la-defensa-de-los> accessed 2 May 2019.

In Ecuador, the government of Rafael Correa carried out a constituent assembly in order to draft a new constitutional text in 2008. The drafting process counted on the participation of several indigenous groups, who proposed a change in the way the development aspirations of the country were conceiving and treating nature. In the end, the constitutional assembly heard the voices of indigenous peoples, and it included several legal novelties in the final draft. In this context, the rights of nature emerged, for the first time in history at a constitutional level.⁴¹

The rights of nature consist of making nature a subject of rights.⁴² This requires a non-anthropocentric approach to law since it shifts the orthodox legal paradigm where only humans are entitled to be subjects of rights. Traditionally, 'rights are typically given to actors who can claim them – humans – but they have expanded especially in recent years to non-human entities such as corporations, animals and the natural environment'.⁴³ In Ecuador, before the constitution of 2008, an environmental lawsuit could only be filed if there was direct human injury related to an environmental issue. Currently, any person can file a lawsuit on behalf of nature with no need of direct human damage.

The rights of nature are a tremendous conceptual advance in the protection of indigenous peoples' cultures. They are based on a holistic approach to life where, instead of being conceptualised as separated entities, humans and non-humans belong to the same life cycle. Andean and Amazonian indigenous philosophies have defended these perceptions as part of their historical emancipation project against the colonisation of their territories. Thus, the rights of nature have served as a resistance platform for indigenous groups in Ecuador. In short, it is an intercultural legal tool that redeems a non-Western understanding of nature, while having the potential to prevent the destruction of the ancestral territories, cultures and values of indigenous peoples.

In short, the rights of nature represent a robust tool for facing local and global human rights issues linked to the destruction of life and the

⁴¹ Pascal Lupien, 'The Incorporation of Indigenous Concepts of Plurinationality into the New Constitutions of Ecuador and Bolivia' (2011) 18 *Democratization* 774, 774.

⁴² The idea of giving rights to natural objects was firstly elaborated by Christopher Stone in 1972. However, Ecuador was the first country to incorporate this long-time debated concept into its constitution thanks to the pressure of indigenous and environmentalist groups.

⁴³ Kiana Herold, 'The Rights of Nature: Indigenous Philosophies Reframing Law' (*Deep Green Resistance News Service Blog*, 8 January 2017) <<https://dgrnewsservice.org/resistance/strategy/rights-nature-indigenous-philosophies-reframing-law/>> accessed 25 April 2019.

environment. Several authors have understood these rights as the next step in the protection of human rights, referring to them as the future shape of the human right to a clean and healthy environment.

1.3.1 International environmental law and the human right to a clean and healthy environment

There are several international legal instruments to protect the environment, which additionally recognise that human rights and environmental conditions are strictly related. For instance, regarding the Latin American context, in 2015 the IACtHR, in the Advisory Opinion 23/17, recognised the ‘undeniable relation between the protection of the environment and the realization of human rights. Environmental degradation and the effects of climate change affect the effective enjoyment of human rights’.⁴⁴ Nonetheless, the formal recognition of a universal right to an adequate environment has faced several obstacles, including state sovereignty and reluctance, the lack of legally binding documents and proper enforceability.⁴⁵

The founding human rights instruments did not recognise the right to a healthy and clean environment as such. The UDHR, the International Covenant on Civil and Political Rights⁴⁶ and the International Covenant on Economic, Social and Cultural Rights⁴⁷ did not make explicit mention of a right to a healthy environment.⁴⁸ It was in 1972 when the first formal and universal recognition of a right to the environment occurred, in the UN Declaration on the Human Environment, also known as the Stockholm Declaration:

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of

⁴⁴ Medio Ambiente y Derechos Humanos (obligaciones estatales en relación con el medio ambiente en el marco de la protección y garantía de los derechos a la vida y a la integridad personal - interpretación y alcance de los artículos 4.1 y 5.1, en relación con los artículos 1.1 y 2 de la Convención Americana sobre Derechos Humanos), advisory opinion OC-23/17, Inter-American Court of Human Rights Series A No 23 (15 November 2017).

⁴⁵ Susana Borrás, ‘New Transitions from Human Rights to the Environment to the Rights of Nature’ (2016) 5 *Transnational Environmental Law* 113, 115.

⁴⁶ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

⁴⁷ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

⁴⁸ Borrás (n 45) 116.

dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.⁴⁹

The Stockholm Declaration called for the safeguarding and preservation of natural resources. It was a significant step forward regarding 'the need to merge the policies and goals of environmental protection, economic development, and human rights'.⁵⁰ Since the declaration, many countries started conducting actions for protecting the environment.

In 1983, the UNGA formed the World Commission on Environment and Development through the Resolution 38/161. The commission was created to investigate and provide solutions to global environmental problems. In 1987, the commission started the negotiations with the UNGA in order to create a universal declaration and a binding international document on sustainable development and environmental protection.⁵¹ The negotiation processes culminated in the UN Conference on Environment and Development held in Rio de Janeiro in 1992. The outcome of the Rio Conference was the Rio Declaration⁵², which contains 27 principles and goals that intend to reach a balance between environmental protection and development. It points out that humans are the primary concern of sustainable development, aiming to achieve harmony between a productive life and respect for nature. Thus, the Rio Declaration provided the guidelines for the future evolution of international environmental law (IEL) and sustainable development. However, even though the Rio Conference had been one of the most significant diplomatic gatherings in history, it 'did not summon up the collective political resolve necessary to deal with the global environmental challenge. Progress was, simply, insufficient, due to a general failure of political will'.⁵³

⁴⁹ Declaration of the United Nations Conference on the Human Environment (adopted 16 June 1972) United Nations Conference on the Human Environment UN Doc A/Conf.48/14/Rev.1; 11 ILM 1416 (Stockholm Declaration) principle 1.

⁵⁰ Maura Mullen de Bolívar, 'A Comparison of Protecting the Environment Interests of Latin-American Indigenous Communities from Transnational Corporations under International Human Rights and Environmental Law' (1998) 8 Journal of Transnational Law and Policy 105, 127.

⁵¹ Borrás (n 45) 119.

⁵² Declaration of the United Nations Conference on Environment and Development (adopted in June 1992). A/Conf.151/26 (*Rio Declaration*).

⁵³ Geoffrey Palmer, 'Earth Summit: What Went Wrong at Rio' (1992) 70 Washington University Law Quarterly 1005, 1028.

It was not until 1994 when the UN Special Rapporteur Fatma Ksentini presented her final report on the relationship between human rights and the environment, proving that human rights and environmental issues are strictly interconnected:

The realization of the global character of environmental problems is attested to by the progress made in understanding the phenomena that create hazards for the planet, threatening the living conditions of human beings and impair their fundamental rights. These phenomena concern not only the natural environment and natural resources but also populations and human settlements and the rights of human beings.⁵⁴

Rapporteur Ksentini recommended that the human rights bodies must incorporate the human rights elements present in environmental issues. Besides, she said that the Declaration of Principles of Human Rights and the Environment⁵⁵ – created by the UN Meeting of Experts on Human Rights and the Environment in the same year – must serve as a starting point for the official consolidation of a human right to the environment.⁵⁶ Nevertheless, the UNGA, the UN Human Rights Commission and the UN Economic and Social Council never showed any actual intention to finalise the project Rapporteur Ksentini pushed forward.

In 2007, with the creation of the UNDRIP, it was stated that ‘indigenous peoples have the right to the conservation and protection of the environment’,⁵⁷ showing the importance that the environment also has for the cultural lifeways of the societies. In other words, the increasing environmental problems did not just mean a direct threat to biodiversity and human rights, but also to the very survival of indigenous groups and millenary cultures.

In the end, there is no explicit right to a clean environment in any of the key international human rights treaties.⁵⁸ When nature is damaged, there are violations of already recognised human rights. Depending on the type of environmental harm, the possible affected rights include the right to health, to food and water, to housing, to privacy and family life, and in

⁵⁴ United Nations Commission on Human Rights (Sub-Commission on Prevention of Discrimination and Protection of Minorities), ‘Report by Special Rapporteur Fatma Z Ksentini 1994/9’ (1994) UN Doc E/CN.4/Sub.2/1994/9.

⁵⁵ Draft Principles on Human Rights and The Environment (1994) E/CN.4/Sub.2/1994/9.

⁵⁶ Borras (n 45) 119.

⁵⁷ United Nations Declaration on the Rights of Indigenous Peoples (n 32) art 29.

⁵⁸ Palmer (n 53) 1028.

extreme cases, the right to life. Indigenous communities that depend on environmental resources are also in serious risk, and there is a worrying record of persecution of environmental activists in many countries.

1.3.2 Hierarchy between humans and non-humans in international environmental law and the human right to a clean and healthy environment

The development of IEL has commonly ignored the environmental problems of indigenous peoples, and the international actions carried out to protect the environment rarely have benefited them. International agreements usually address the environmental challenges of states. However, most countries have been blind towards the environmental concerns of their indigenous populations, ignoring that – for many of them – nature has a spiritual value that goes beyond the purely economic utilities.⁵⁹

Part of the many environmental concerns of indigenous peoples is related to the dominant Western conception of nature, where nature is an object that is exclusively protected to safeguard human well-being. In this regard, Susana Borrás points out that the right to a healthy and clean environment implies that nature is protected to satisfy human needs.⁶⁰ In other words, there is an implied relationship of superiority between humans and non-humans that portrays nature as an object, reproducing what several indigenous groups have historically criticised.

An illustrative example of this implied hierarchy is the protection of the environment through property rights, as it was the ruling of the IACtHR in the *Awas Tingni v Nicaragua* case. A common denominator of all indigenous communities in America is the occupation of their ancestral lands. However, the American Convention on Human Rights⁶¹ (ACHR) does not provide a definition of property that explicitly refers to the ancestral territories of indigenous communities.⁶² In 2001, the IACtHR expanded the interpretation of the right to property contained

⁵⁹ Mullen de Bolívar (n 50) 126.

⁶⁰ Borrás (n 45) 127.

⁶¹ American Convention on Human Rights (entered into force 18 July 1978) O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123.

⁶² The 'right to property' is contained in art 21 of the ACHR. It states: '1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society. 2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law. 3. Usury and any other form of exploitation of man by man shall be prohibited by law'.

in the ACHR, recognising the right of the Awas Tingni community to the possession of their ancestral lands and natural resources.⁶³ The court widened the scope of the right to property, considering the disputed territories – and the nature within them – as the ancestral property of the Awas Tingni community. However, the security of indigenous territories was protected because of its role in satisfying the cultural needs of indigenous peoples, not because of its intrinsic value. In other words, even in the most progressive cases concerning indigenous protection, the defence of nature is based on human interests.

Finally, there is an increasing institutionalisation of anthropocentrism in law that feeds a hierarchy between humans and non-humans, reproducing the attitudes and values that are causing nature's destruction. In this context, this is a significant concern for many indigenous groups in Latin America since many of them do not have dualist conceptions of the relationship between humans and nature. As other nature ontologies constitute a significant part of the ways of living and cultures of indigenous peoples, the destruction of nature is also the destruction of culture. Therefore, concerning these indigenous non-dualist conceptions, 'everything is not only interrelated and interdependent but is alive, meaning that nature should be equally protected as human life'.⁶⁴

The international efforts for elaborating a human right to a clean and healthy environment do not tackle anthropocentrism in law, which is one of the core reasons for environmental degradation. It instead legitimises the dominant nature/culture distinction, reproducing the hierarchy between humans and non-humans. In this regard, the non-dualistic conceptions of nature that several Latin American indigenous groups defend, offer an opportunity to rethink how we humans relate to the environment. Moreover, it could lead to improve the mechanisms for reducing environmental harm and protect more effectively the people affected by ecological damage.

Many emerging theories challenge the human-centred conception of nature in law. One of them is the rights of nature, which were incorporated in the constitution of Ecuador in 2008.⁶⁵ The institutionalisation of the rights of nature was a result of intercultural dialogue since indigenous

⁶³ *Case of the Mayagna (Sumo) Awas Tingni Community v Nicaragua* Inter-American Court of Human Rights Series C No 79 (2001).

⁶⁴ Viaene (n 40).

⁶⁵ Viaene (n 40).

organisations indirectly participated in the drafting process of the constitution. Therefore, indigenous peoples in Ecuador and their nature ontologies had a significant influence on this emerging theory. All in all, the rights of nature are a new legal concept that holds historically oppressed and colonised forms of knowledge, challenging and enriching orthodox legal theory and human rights.

It is fundamental, however, to elaborate on the nature/culture distinctions present in the Ecuadorian Amazon in order to further sustain this argument. In this regard, anthropology of nature and the symbolic ecology theory provide more in-depth insights on how these societies perceive the human-nature relationship.

1.3.3 Anthropology and Amazonian nature ontologies: Different ways of understanding nature

It is challenging to understand nature differently from the dominant Western perspective. The dominant culture teaches us that rivers, mountains or even animals are not more than mere objects. What is wrong then with exploring and exploiting natural resources without any limitations? If objects do not feel, why not using them for our satisfaction? Apparently, there is nothing wrong with creating economies and political systems that rely on the idea of nature as an object.

Paraphrasing the anthropologist Harry Walker, the Western approach has been, in general, to assume that humans are capable of establishing relations because of their rational capacity. The Western approach assumes that persons pre-exist the social relations in which they get involved. There is a relative assumption about humans beginning their lives as asocial and cultureless natural organisms. Therefore, there is an implicit dualism which opposes the body from the mind as if they were completely different substances. Besides, this opposition sustains that 'objects' are external entities whose existence is wholly separated from the observer, implying a rigid opposition between subjects and objects. Finally, these assumptions relate to the dominant nature/culture dualism: the body is a biological organism gifted with naturally given necessities that are satisfied, controlled and moderated by culture, an artificial construction of human activity.⁶⁶

⁶⁶ Harry Walker, *Under a Watchful Eye: Self, Power, and Intimacy in Amazonia* (1st edn, University of California Press 2012) 9.

However, there are other conceptions where nature is a living entity that is not separated from humans, both instead are perceived as two equal dimensions of the same life cycle. Thus, treating and using nature as an object is violent for the ones who have a different conception of nature, especially when it leads to its destruction. In this regard, there is a clash between different nature understandings that are crossed by power relations since the dominant vision has historically repressed other views. For Western cultures, nature is a passive and agentless object; for others, nature is an active subject.

As previously stated, colonialism entails the imposition of experiences, symbolic universes and worldviews. Thus, the dominant societies reproduce colonial relations by imposing a nature narrative. The process of decolonising knowledge requires the intellectual effort of considering non-Western experiences and nature ontologies. In this regard, post-colonial anthropology and the symbolic ecology schools of thought have elaborated several theoretical insights and academic content that intends to decolonise nature.

Boaventura de Sousa Santos elaborated a theoretical approach that intends to democratise knowledge by rescuing invisibilised narratives and promoting an intercultural dialogue between them: the ecology of knowledge. His theory starts from the principle of the incompleteness of all knowledge systems, which means that every knowledge system can always learn from others. In other words, no epistemology is intrinsically right or wrong. However, some epistemologies have historically silenced others, leading to an 'absence' of valuable forms of knowledge in culturally constructed debates, institutions and narratives.

This theory uses the term ecology in order to sustain that there is a constant and 'dynamic interconnection between these pieces of knowledge without compromising their autonomy'.⁶⁷ Therefore, this mutual learning process does not necessarily mean forgetting; it instead 'consists of learning new and less familiar knowledge without necessarily having to forget the old ones and one's own'.⁶⁸

In his book *Epistemologies of the South*⁶⁹, Santos explicitly recognises the plurality of ways of relating to nature. For him, indigenous nature

⁶⁷ Boaventura de Sousa Santos, 'Beyond Abyssal Thinking: From Global Lines to Ecologies of Knowledges' (2007) 30 Binghamton University Review 45, 63.

⁶⁸ *ibid.*

⁶⁹ Boaventura de Sousa Santos, *Epistemologies of the South: Justice against epistemicide* (Routledge 2015).

narratives have the same value that the dominant Western technical-scientific approach has. In this regard, he calls for an epistemological revolution since the Western knowledge systems have monopolised nature. Finally, he argues that the dialogue between dominant and non-dominant understandings of nature will lead to a process of knowledge democratisation and justice.

Under these theoretical lenses, several scholars have studied nature conceptions in non-Western societies. The French anthropologist Philippe Descola stresses the fact that in Western conceptions, humans are the only ones who have the privilege of inwardness, mind, communication and symbolic thinking. However, he notices that the Amazonian Achuar communities in Peru were precisely the opposite; for them, most non-humans have inwardness, subjectivity and the same characteristics of inner thought that humans have.⁷⁰ This particular relationship between humans and nature is called animism,⁷¹ which is mostly present in the Amazonian indigenous ontologies of Brazil, Peru and Ecuador.

Furthermore, in 2013 the anthropologist Eduardo Kohn published his book *How Forests Think: Toward an Anthropology Beyond the Human*, proposing a very controversial reading of how indigenous peoples in the Ecuadorian Amazon conceive nature. Kohn noticed that for the people in Avila – a Kichwa speaking village in Ecuador's Upper Amazon – jaguars and other elements of the forest have the capacity of symbolic representation. Moreover, they are considered to be people or *runas*.⁷² As can be seen in his ethnography:

Settling down to sleep under our hunting camp's thatch lean-to in the foothills of Sumaco Volcano, Juanicu warned me, 'Sleep faceup! If a jaguar comes, he'll see you can look back at him and he won't bother you. If you sleep facedown, he'll think you're aicha [prey; lit., 'meat' in Quichua] and he'll attack.' If, Juanicu was saying, a jaguar sees you as a being capable of looking back — a self like himself, a you — he'll leave you alone. But if he should come to see you as prey — an It — you may well become dead meat.⁷³

He argues that if jaguars represent people in a way that can be a matter of life and death, then anthropology cannot be limited to only exploring

⁷⁰ Phillip Descola, *The Ecology of Others* (University of Chicago Press 2013).

⁷¹ Animism is an anthropological construct that says that all things – people, plants, geographic features, animals, inanimate objects and natural phenomenon – hold a spirit that unites them to one another.

⁷² Runa is a Kichwa indigenous term that means 'person, human or being'.

⁷³ Eduardo Kohn, *How Forests Think: Toward an Anthropology Beyond the Human* (University of California Press 2013) 1.

how people represent jaguars. From his perspective, these encounters – between human and non-human beings – suggest that seeing, representing and knowing is probably not just a human condition.⁷⁴

These non-anthropocentric understandings of nature have had impacts on law and politics. For instance, the idea of nature as a living entity that possesses social ‘human’ features has been part of the revindication discourses of several indigenous groups, having a pragmatic translation into grassroots politics and demands from civil society.

In short, the Amazonian anthropology has slowly reconceptualised what is to be human since several anthropological models suggest that representation is not only a human capacity. There is an emergence of a new ‘us’ which implies a different humans-nature bond. These notions help to discard classic ideas of what means to represent since symbols – which are distinctively human representational tools – emerge and relate to non-human representational modalities. In this sense, different elements of nature could be understood as persons. Therefore, the question is: if some elements of nature are understood as social persons by many indigenous communities in the Amazon, could they be also understood as subjects of rights? Strictly speaking, it is accurate to understand nature as a subject of rights if different nature ontologies and epistemologies are considered as valid knowledge systems.

1.4 CONCLUSION: POTENTIALITIES OF THE RIGHTS OF NATURE FOR INDIGENOUS PEOPLES’ RIGHTS

From a theoretical point of view, the rights of nature might represent a significant advance for human rights discourse and practice. The previous theoretical discussion can be summarised in four major points.

Firstly, several indigenous groups in Latin America have challenged the dominant Western relationship with nature, which portrays it as an object and legitimises its commodification. In this line, the rights of nature are complementary to the non-binary nature ontologies of Amazonian indigenous communities that have been historically oppressed by the dominant culture. Therefore, introducing the rights of nature into the legal structures and human rights discourses/practices represents an attempt to decolonise that discourse and rekindles oppressed forms of knowledge.

⁷⁴ Kohn (n 73).

Secondly, from a post-colonial approach, the inclusion of other worldviews in law means that the official and traditionally colonialist legal discourse is opening to other perspectives on nature. This leads to the expansion of human rights, increasing its legitimacy and accuracy when it comes to addressing the local struggles of indigenous peoples in Latin America.

Thirdly, indigenous peoples are physically and culturally dependent on their territories, meaning that environmental degradation and climate change constitute a major threat to their very survival. The rights of nature offer a new legal tool for reducing the effects of environmental degradation and climate change, minimising the human rights issues related to nature's destruction. Besides, as it strengthens the protection of indigenous territories, it contributes to ensure the enjoyment of the right to self-determination, the rights of indigenous peoples to their ancestral lands, among other collective rights enshrined in the UNDRIP and other international human rights instruments.

Fourthly, post-colonial anthropology and the symbolic ecology schools of thought highlight that the rights of nature offer an opportunity to rethink the way nature is perceived, challenging the anthropocentric legal approach to human rights. The right to a healthy and clean environment remains a subject of debate since it legitimises a human-nature relationship that is based on a hierarchy between humans and non-humans, and which is majorly responsible for the gross environmental destruction of indigenous territories.

The inclusion of the rights of nature in the Ecuadorian constitution entails several potentialities for strengthening indigenous peoples' rights. However, there is still a significant implementation gap and the rights of nature are at times perceived as mere political rhetoric rather than an effective advance in the protection of indigenous peoples and nature. However, this theoretical framework suggests that the enrichment of the human rights discourse and practice does not only rely on 'legal effectiveness' since it also has a socio-political dimension. The socio-political and legal dimensions are essential for enriching and decolonising the human rights discourse and practice. Therefore, the following chapters focus on the legal and socio-political interplay between Amazonian indigenous nature perceptions, indigenous rights and the rights of nature in the Ecuadorian context.

2.

THE RIGHTS OF NATURE IN THE ECUADORIAN LEGAL PRACTICE

The Ecuadorian constitution contains four articles detailing the rights of nature. According to them, 'nature has the right to exist and to maintain and regenerate its vital cycles, structure, functions, and evolutionary processes'.⁷⁵ In case of environmental damage, it also has the right to be restored independently from the compensation that the state shall give to 'individuals and communities that depend on affected natural systems'.⁷⁶ Besides, the state must apply preventive measures on activities that could cause environmental destruction, the extinction of species, or the alteration of natural cycles.⁷⁷ Finally, it says that 'persons, communities, and peoples shall have the right to benefit from the environment and the natural wealth'.⁷⁸ These articles were a result of a dialogue between different nature perceptions that occurred during the drafting process of the current Ecuadorian constitution in 2008. At first, the idea of giving rights to nature was proposed by the American green movements in California during the 1970s. In the Ecuadorian context, however, the incorporation of the rights of nature was the result of joined efforts between environmental organisations, environmental lawyers and highly politicised indigenous groups.

As described in the previous chapter, the 1990s was the decade of the indigenous emergence in Latin America. It was the decade of the politicisation of indigenous identities. Thus, the indigenous peoples of Ecuador articulated an identity discourse of resistance against land occupations, environmental destruction and cultural oppression, inspiring

⁷⁵ Constitution of the Republic of Ecuador, art 71.

⁷⁶ *ibid* art 72.

⁷⁷ *ibid* art 73.

⁷⁸ *ibid* art 74.

the creation of local and regional indigenous organisations that began to resist collectively. Ecuador has three geographical and cultural areas: the Coast, the Andes and the Amazon, which are represented by different indigenous organisations: the Confederation of Indigenous Nationalities of the Ecuadorian Coast, the Confederation of Kichwa Peoples of Ecuador and the Confederation of Indigenous Nationalities of the Ecuadorian Amazon. In 1986, all these regional organisations joined forces, giving birth to the most prominent indigenous organisation of the entire country: the Confederation of Indigenous Nationalities of Ecuador (CONAIE). The CONAIE was organised by ‘fourteen indigenous nationalities from the coast, highlands, and Amazon, as well as different Kichwa “pueblos”, or peoples, spread across the spine of the Andes mountains’.⁷⁹ It intended to create a pan-indigenous social movement to achieve recognition and respect. By the 2000s, the demands of the Ecuadorian indigenous social movements reached a high level of visibility, showing their active political organisation. They could no longer be ignored by the authorities since they became relevant political actors in the Ecuadorian politics.

Rafael Correa became the president of Ecuador in 2007. During his campaign, he received the support of several indigenous groups since he had the explicit intention to reduce the political power of the elites, limit the activities of the private sector – including private extractive companies – as well as policies against the neoliberalisation of the country and its natural resources. One of his campaign promises was to rewrite the constitution with the participation of civil society in a constitutional assembly. Indigenous organisations saw in this an opportunity for strengthening the recognition of their rights. After Correa was elected, the constitutional assembly took place, and the participation of civil society was remarkable.

Indigenous organisations submitted several proposals, asking for the inclusion of the Kichwa notion of *Sumak Kawsay*,⁸⁰ the recognition of Ecuador as a plurinational state, stronger mechanisms for the protection of nature and more specific mentions to their collective rights, among others.

⁷⁹ Marc Becker, *Pachakutik: Indigenous Movements and Electoral Politics in Ecuador* (1st edn, Rowman & Littlefield Publishers 2010) 4.

⁸⁰ The notion of *Sumak Kawsay* is part of the political discourse of the continent's indigenous social movements, especially in Ecuador and Bolivia, and, as such, is part of its political and historical project. An accurate English translation of this concept would be Life in Fullness. It expresses an alternative approach to development which defends a harmonious coexistence between people and nature.

Without going into details with the whole drafting process, the final constitutional draft included the *Sumak Kawsay*, the recognition of Ecuador as a plurinational state and it gave birth to constitutional rights of nature for the first time in history. Thus, the collective efforts of the indigenous organisations, environmental groups and environmental lawyers that participated in the constitutional negotiations were fruitful; it was a significant victory for indigenous peoples and the environmental activists. It is essential to keep in mind that it was thanks to the pressure of these groups that these concepts were incorporated, which implies that part of the indigenous identity narratives, worldviews and past fights were translated into legal concepts penetrating a traditionally colonist Western-driven state.

However, the application of these rights has been subjected to controversy because they have not been as effective as they were expected to be. Therefore, it becomes crucial to analyse the current legal practice of these rights and evaluate if they have served as a useful legal resistance platform for indigenous peoples. After all, the inclusion of indigenous narratives into the national law is only a victory if it is helpful for the fulfilment of their demands.

In this chapter, the legal implementation of the rights of nature, along with the rights of indigenous peoples in Ecuador, is analysed. In this regard, it is vital to begin by characterising the role that extractive industries play in Ecuador's economy, and how extractive activities have affected indigenous peoples by systematically violating their rights and destroying nature. Since it is impossible to address the situation of the whole country, the following chapter focuses on the oil industry in the Ecuadorian Amazon Basin; this can give an idea of the human rights violation trends that indigenous peoples in the Amazon – and also in other regions of Ecuador – experience in a daily basis. In the second stage, three rights of nature cases that have been filed by indigenous peoples against extractive industries and the state are explained and analysed: the Mining Law case (2009), the Condor-Mirador case (2012) and the Tangabana Paramo case (2014-ongoing). Finally, one of the most famous cases concerning oil activities and the rights of nature will be briefly discussed: the Yasuni National Park case and the failed initiative of leaving a crude oil reserve underground. The following section intends to identify the main obstacles that the rights of nature face in their application and provide the reader with a clear picture of how the rights of nature – as an emancipation tool – are being used by indigenous peoples in the fight for their human rights.

2.1 FROM GREEN TO BLACK: BRIEF CHARACTERISATION OF INDIGENOUS PEOPLES AND OIL ACTIVITIES IN THE AMAZON BASIN

The Western Amazon – which includes part of Colombia, Peru, Brazil, Bolivia and Ecuador – is one of the most biodiverse areas of the world. The Western Amazon is also home for many indigenous communities, including some of the few groups left who live in voluntary isolation.⁸¹ In other words, it is a landscape of high biological and cultural diversity. However, vast reserves of oil and gas lie underneath these vibrant landscapes. The oil prices and its growing global demand have continuously stimulated new oil explorations, extractions and exports. In this regard, the countries which have jurisdiction over these territories have delimited and designated specific areas of the Western Amazon for these purposes.

2.1.1 *Ecuador and the oil politics*

In Ecuador, the oil industry has become the main economic engine of the country. Before the 1970s, Ecuador was one of the poorest countries in Latin America.⁸² This situation dramatically changed when Ecuador started exploring new resources in the Amazon region, finding large amounts of crude oil. In 1967 a Texaco-Gulf consortium discovered a massive oil reserve underneath the rainforest. In 1972, the oil extraction and exportation activities began, increasing the state coffers to a level that the country never experienced before. Since then, oil production has been the primary source for Ecuador's economic growth. Oil currently accounts 'close to 45% of the total national export revenue'.⁸³ Thus, it has served to finance a significant part of national infrastructure, transportation systems, it has created new jobs, among others.⁸⁴ In short, 'Amazonian oil was, and is today, perceived as the national ticket out of underdevelopment and poverty and into modernization and progress'.⁸⁵

⁸¹ These groups have historically sought isolation by maintaining distance from the outside world or even from other communities that have regular contact with non-indigenous ethnic groups.

⁸² Allen Gerlach, *Indians, Oil, and Politics: A Recent History of Ecuador* (Rowman & Littlefield Publishers 2003) 33.

⁸³ Gabriela Valdivia, 'On Indigeneity, Change, and Representation in the Northeastern Ecuadorian Amazon' (2005) 37 *Environment and Planning A* 285, 287.

⁸⁴ *ibid.*

⁸⁵ *ibid.*

Ecuadorian national development and economic plans have been linked almost exclusively with oil policies, suggesting that the petroleum industry became the primary concern of the state. Ecuador, however, is considered to be a small producer on the international level, so it has to be steadily increasing its production to be a relevant actor in the global market. In other words, the country is highly dependent on foreign investment and global exports, and as its economy mainly relies on petroleum, any value fluctuation affects the whole economy. Moreover, the dependency level of Ecuador has reached the point where foreign companies have considerable power over the state. Since Ecuador does not have enough resources to finance the oil race, it has carried out its activities with the help of foreign investment. Consequently, international companies have 'enormous power in their relations with the government. Despite Ecuador's nominal authority as a sovereign nation, the actual power that government officials can – or believe they can – exercise over multinational oil companies is limited'.⁸⁶

2.1.2 Impacts of oil activities on indigenous peoples

Most of the oil that Ecuador currently extracts/exports comes from the Amazon Basin, also known as the Oriente. This area is constituted of six different provinces – Sucumbios, Orellana, Napo, Pastaza, Zamora Chinchipe and Morona Santiago – which together form one of the most biodiverse landscapes of the entire world. The Amazon Basin covers around half of the Ecuadorian territory, including the ancestral lands of several indigenous communities that have permanently struggled with deforestation, pollution and other side effects of the oil industry.

Many of the oil blocks overlap indigenous territories. In this regard, there have been many human rights violation patterns that have concerned the international community, regional human rights bodies and human rights non-governmental organisations (NGOs). 'Direct impacts include deforestation for access roads, drilling platforms, and pipelines, and contamination from oil spills and wastewater discharges.'⁸⁷

⁸⁶ Judith Kimerling, 'Indigenous Peoples and the Oil Frontier in Amazonia: The case of Ecuador' (2005) 38 New York University Journal of Law and Politics 413, 426.

⁸⁷ Matt Finer and others, 'Oil and gas projects in the Western Amazon: threats to wilderness, biodiversity, and indigenous peoples' (2008) 3 PLoS ONE 1, 1.

In the first years of the oil boom, Ecuador's policies of national integration aimed for two things: the incorporation of the Amazonian region into the country's economy and the assimilation of the indigenous communities of the Amazon into the dominant culture.⁸⁸ At that time, the state had little presence in the region since it was not considered as a valuable area for national economic development. However, with the new development needs that the oil boom brought, increasing the state's presence in the Amazon became a must. In the 1970s and 1980s, the state 'aggressively promoted internal colonization of the Amazon',⁸⁹ encouraging migration from the Coastal and Andean regions to the Oriente. Simultaneously, the government officials started to carry out a civilising enterprise. The authorities thought development was going to benefit the whole Ecuadorian society. Therefore, even the most isolated indigenous groups had to be part of the journey of national progress. However, many indigenous groups did not want to be 'civilised'. Paraphrasing Judith Kimerling, the assimilation and civilisation of Amazonian indigenous peoples meant new diseases that shamans could not cure, lower living standards, belonging to the lowest social and economic classes, loss of their sovereignty and rejection of their ways of living, among others.⁹⁰

The loss of their ancestral lands and the arrival of oil workers into their territories meant a direct threat to their very survival. These processes impacted very strongly on the social and natural environments of the indigenous communities. For instance, the oil operations of Chevron-Texaco – during the second half of the 20th century – led to the ethnocide of the Tetete people.⁹¹

The new oil-based Ecuadorian development aspirations and the exploitation of the Amazon led to a big wave of human rights violations. In this context, the Amazonian area suffered specific human rights violation trends that are mostly related to oil activities, such as environmental pollution. Additionally, the cultural and social impacts were considerable since the value that Amazonian communities attach to nature is very high. As they inhabit the tropical forest, they were

⁸⁸ Kimerling (n 86).

⁸⁹ *ibid* 427.

⁹⁰ *ibid*.

⁹¹ The Tetete people were an indigenous group that once inhabited the Ecuadorian Amazon. The Tetete experienced a series of diseases and territorial occupations by the oil drilling activities of Chevron-Texaco. Sadly, they did not survive these events.

used to living in a wild natural scenario that was almost untouched by anthropic actions.

There have been many other human rights violations correlated with the destruction of the environment since the arrival of the oil industry in the Amazonian territories. Health issues,⁹² overlooking of free, prior and informed consent,⁹³ massive displacements, the extinction of small tribes and other violent events have been part of the daily realities of several indigenous communities in El Oriente. However, after years of facing these struggles, they have articulated a series of collective demands where they have used the rights of nature and their collective constitutional rights as resistance tools. However, rights of nature cases often do not reach the courts since their legal use is a new process that is gradually causing noticeable impacts.

In this regard, some of the few rights of nature cases that indigenous communities have filed against extractive actors will be discussed. There are not many legal cases concerning the Amazon region. Thus, three rights of nature cases that have served as legal precedents for the entire country will be analysed: the Mining Law case (2009), the Condor-Mirador case (2012) and the Tangabana Paramo case (2014-ongoing).

These cases clearly show that the development aims of the country – which justify colonial practices by occupying indigenous territories – along with the still dominant institutional anthropocentrism, constitute the main obstacles for the simultaneous protection of the rights of nature and the rights of indigenous peoples all across Ecuador. After giving an overall idea of the implementation of the rights of nature, it will be narrowed down to the Amazonian region and the oil struggles previously described. Nevertheless, as there are not many cases that have included the rights of nature as such, one of the current most controversial cases of the entire country will be addressed: the Yasuni National Park case.

⁹² Center for Economic and Social Rights, 'Rights Violations in the Ecuadorian Amazon: The Human Consequences of Oil Development' (1994) 1 Health and Human Rights 82, 90.

⁹³ Finer and others (n 87) 6.

2.2 LEGAL IMPLEMENTATION OF THE RIGHTS OF NATURE IN ECUADOR

Different legal tools are used to apply the rights of nature in Ecuador. The cases are mostly addressed through constitutional lawsuits, criminal lawsuits and administrative actions. Constitutional lawsuits – which primarily seek the protection of the rights of nature ensured in the constitution and the Organic Law of Constitutional Guarantees – are directed to the restoration of damaged ecosystems and prevention of further nature's rights violations. On the other hand, criminal lawsuits – processed in criminal courts – seek to punish the guilty parties of the 'environmental crimes' that are outlined in Ecuador's penal code.

There have been mainly three actors pragmatically using these legal instruments: civil society, the epistemic community and the government. As the main idea of this work is to see if the rights of nature have served as a legal resistance platform for indigenous peoples in Ecuador, I will base the analysis in cases that have been filed by indigenous groups.

2.2.1 Rights of nature cases filed by indigenous peoples

The introduction of the rights of nature into the constitution was a victory for indigenous and environmentalist groups. After 2008, there was a general atmosphere of optimism across Ecuadorian civil society since giving rights to nature had the potential to reduce the negative impacts of extractive activities. However, this positive feeling did not last long. Soon after the new constitution entered into force, the government started expanding mining activities rather than changing the extractive-based development model. In other words, nature's destruction did not stop with the new constitution, and civil society – including indigenous peoples – made use of the rights of nature as a new legal strategy for challenging the continuity of the state's extractive policies.

2.2.1.1 Mining Law case (2009)

After the constitution entered into force, the state turned its attention to the creation of secondary laws and institutions for carrying out what Correa called '21st century socialism'. In words of Lindsay Shade:

Correa's 21st Century socialism is predicated on a process of state-led economic modernization that uses Ecuador's existing economic sectors, namely export of primary commodities and especially petroleum, to produce a surplus that can then be reinvested into the development of other sectors.⁹⁴

In this context, the Ecuadorian government passed a Mining Law in 2009 intending to expand mining activities for financing social development policies. The law, however, was sharply criticised by indigenous and environmental organisations. They argued that it was contradictory to base the country's social development plans on extractivism while simultaneously granting constitutional rights to nature. In this regard, the preamble of the Ecuadorian constitution states that nature cannot be reduced to mere natural resources because it is a living entity that has cultural and intrinsic value. As Shade points out:

[T]he logic behind constitutional 'rights of nature' was to liberate nature from its condition as a subject without rights or object as property, to operate in a structural and complementary relationship to human rights which recognizes the value of all living things as an ontological fact.⁹⁵

The Mining Law was rapidly approved despite the concerns that civil society raised. As a response, the CONAIE and the Community Water Councils filed a lawsuit against the government before the Ecuadorian Constitutional Court, claiming that the new mining act was unconstitutional since it violated the rights of nature and indigenous collective rights. A substantial part of the argumentation referred to the violation of article 57 of the constitution, which recognises indigenous collective rights, including the right to free, prior and informed consent. As stated in the constitutional text:

Indigenous communes, communities, peoples and nations are recognized and guaranteed (...) the right to free prior informed consultation, within a reasonable period of time, on the plans and programs for prospecting, producing and marketing nonrenewable resources located on their lands and which could have an environmental or cultural impact on them; to participate in the profits earned from these projects and to receive compensation for social, cultural and environmental damages caused to them. The consultation that must be conducted by the competent authorities shall be mandatory and in due time. If consent of the consulted community is not obtained, steps provided for by the Constitution and the law shall be taken.⁹⁶

⁹⁴ Lindsay Shade, 'Sustainable Development or Sacrifice Zone? Politics Below the Surface in Post-Neoliberal Ecuador' (2015) 2 *The Extractive Industries and Society* 775, 778.

⁹⁵ *ibid* 779.

⁹⁶ Constitution of the Republic of Ecuador, art 57.

The CONAIE also argued that the Mining Law violated international human rights norms – such as the ILO Convention 169, UNDRIP, and the ACHR, among others. Other actors supported these claims, including Alberto Acosta – the president of the constitutional assembly in 2008 – who submitted a letter to the members of the Constitutional Court explaining his environmental, economic, social and cultural concerns. He specifically mentioned that the Mining Law was never consulted with indigenous peoples, sustaining its unconstitutionality.⁹⁷

In 2010, the Constitutional Court made its final decision, developing progressive standards for the protection of indigenous peoples and their collective rights. Firstly, the court said that ‘the State must consult indigenous peoples and nationalities before adopting legislative measures that might affect the exercise of their collective rights’.⁹⁸ Secondly, the court stated that pre-legislative consultation must respect the culture, traditions, and practices of the indigenous communities, peoples and nationalities.⁹⁹ Thirdly, the court detailed the necessary steps that a consultation process needs to take in order to comply with national and international human rights standards.

Although the Constitutional Court’s jurisprudence sought to strengthen the right to be consulted, it ended up upholding the constitutionality of the Mining Law. In the court’s words, ‘The processes implemented before the issuance of the Mining Law were developed through a direct application of the Constitution. Consequently, the unconstitutionality of the Mining Law is discarded’.¹⁰⁰

This final decision entails several contradictions. Firstly, the court actively developed the constitutional right to be consulted. However, it ruled in favour of the government despite the lack of pre-legislative consultation. Secondly, it used an anthropocentric approach for interpreting the rights of nature since it supported the state’s view of nature as mere natural resources. Thus, there was a misinterpretation of the rights of nature because the constitution states that nature should be protected regardless of human needs. As Ramiro Ávila – one of the current members of the Ecuadorian Constitutional Court – points out:

⁹⁷ Alberto Acosta, ‘A los miembros del Tribunal Constitucional’ (*Fundación Regional de Asesoría en Derechos Humanos* 26 May 2009) <www.inredh.org/archivos/pdf/mineria_albertoa.pdf> accessed 15 May 2019.

⁹⁸ Judicial Sentence No 001-10-SIN-CC, Cases No 0008-09-IN and 0011-09-IN Ecuadorian Constitutional Court (18 March 2010) 105.

⁹⁹ *ibid* 113.

¹⁰⁰ *ibid* 130.

The Constitutional Court tried to be innovative, and it created impressive legal standards. However, the results were a disaster. It ended up saying that the law was in line with the Constitution in spite of the lack of prior consultation. It was a classic schizophrenic failure. There were substantial grounds for strengthening the rights of nature and indigenous rights, but it was finally functional to the dominant powers.¹⁰¹

The outcome of the Mining Law case marked a turning point in the relationship between the government and indigenous groups because Correa started criminalising and persecuting indigenous leaders. By 2011, Correa ‘had arrested nearly 200 indigenous leaders, charged with terrorism for protesting mining activities’.¹⁰² Besides, Correa tried to undermine their resistance discourses since he started referring to them as ‘childish environmentalists’. In his words, ‘The childish environmentalists believe that bringing an end to an extractive economy is to shut down the oil wells and close the mines’.¹⁰³

This case shows that the state’s priority was to continue exploiting natural resources regardless of the constitutional principles. In fact, in the following years, the government did not strengthen the rights of nature by creating new institutions and secondary laws. In the end, the implementation of the rights of nature has occurred in highly politicised contexts that are crossed by economic interests, hindering their effectiveness as a legal resistance platform for indigenous peoples.

2.2.1.2 *Condor-Mirador case (2012)*

In 2012, the Ecuadorian government signed a contract with the Chinese-owned copper mining company Ecuacorriente SA, establishing Condor-Mirador, the first open-pit mining project in the Condor mountain range in the Amazon – which has one of the most biodiverse and fragile ecosystems of the world. The future mining activities were going to be particularly problematic. Impact assessments highlighted that the mining activities were going to have strong social and environmental impacts, such as the total removal of ecosystems – including natural

¹⁰¹ Interview with Ramiro Ávila, Judge, Ecuadorian Constitutional Court (18 June 2019).

¹⁰² El Tiempo, ‘ONG: 189 indígenas están acusados de terrorismo y sabotaje’ *El Tiempo*, *Diario de Cuenca* (Ecuador, 19 July 2011) <www.eltiempo.com.ec/noticias/ecuador/4/ong-189-indigenas-estan-acusados-de-terrorismo-y-sabotaje> accessed 20 May 2019.

¹⁰³ Paul Dosh and Nicole Kligerman, ‘Correa vs. Social Movements: Showdown in Ecuador’ (*Nacla*, 1 September 2009) <<https://nacla.org/article/correa-vs-social-movements-showdown-ecuador>> accessed 27 May 2019.

habitats of species at risk of extinction – and the contamination of water and surface of surrounding ecosystems due to the imminent toxic waste spills.

In this line, article 73 of the Ecuadorian constitution states ‘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’.¹⁰⁴ Thus, regarding the information provided by the impact assessments, carrying out the Condor-Mirador project meant a clear violation of article 73 of the constitution. Another problematic aspect was that ‘besides the environmental impact to the biodiversity of the area, the project (...) occupied lands previously owned by indigenous and peasant communities’.¹⁰⁵ This became a source of conflict. Moreover, the local communities were in serious risk. The social impacts of the mining activities included imminent displacements by aggressive and violent means¹⁰⁶ and dispossession of indigenous territories, and the whole process lacked a consultation plan. In other words, Ecuacorriente and the state were simultaneously violating the rights of nature and the collective rights of indigenous peoples.

As a response to these threats, indigenous movements and environmental and human rights NGOs filed a constitutional lawsuit against the company and the Ministry of Environment before a civil court in the province of Pichincha. Part of the argument was based on the violations of the rights of nature. Impact assessments and scientific material suggested that the environmental impacts of these activities were in direct contradiction with the constitutional guarantees. The applicants asked the court to suspend Condor-Mirador. In the end, indigenous peoples and environmental activists saw, in this case, a clear opportunity for winning against the state – which was essential to elaborate rights of nature jurisprudence.

However, the court did not rule in their favour. It declared that the Condor-Mirador project did not violate the constitution for two reasons which show a debatable interpretation of the rights of nature. Firstly, the

¹⁰⁴ Constitution of the Republic of Ecuador, art 73.

¹⁰⁵ Duygu Avcı and Consuelo Fernández-Salvador, ‘Territorial Dynamics and Local Resistance: Two Mining Conflicts in Ecuador Compared’ (2016) 3 *The Extractive Industries and Society* 912, 919.

¹⁰⁶ Acción Ecológica and others, *Vulneración de Derechos Humanos y de la Naturaleza en la Cordillera del Cóndor Ecuador* (Federación Internacional de derechos Humanos Natalia Yaya 2017) 33.

court said that the mining project would not affect an officially protected area; therefore, there would not be a violation of the rights of nature. Secondly, the judge said that the intentions of civil society represented a private interest, whereas the company acted in favour of the public benefits because of its contributions to the development of the country.¹⁰⁷ Nonetheless, the constitution does not say that the rights of nature are only applicable in protected areas; it instead suggests that, in all cases, nature shall be protected despite human interests and possible public benefits. Besides, every person or group is entitled to file a lawsuit, even if they are not the rightful owners of the affected territories.¹⁰⁸ Therefore, public or private interests should not be relevant in the moment of ruling in favour of nature's protection.

As a consequence, the claimants denounced the lack of judicial independence and decided to not present new rights of nature cases in order to avoid the establishment of negative jurisprudence.¹⁰⁹ Instead, the Ecuadorian civil society decided to focus on animating support by disseminating the content of the rights of nature in the Ecuadorian society.

Subsequently, the establishment of the project occurred without the free, prior and informed consent of the local inhabitants, and a wave of human rights violations came along with its activities. The NGO Acción Ecológica denounced that Ecuacorriente SA has been continuously invading the territories of indigenous communities unlawfully, with the support of the state's security forces.¹¹⁰ This led to a general atmosphere of fear because the people began to be forcibly displaced and even killed. For instance, Jose Tendetza – an indigenous leader of a Shuar community – was brutally murdered in 2016. The main suspects are two employees of Ecuacorriente. Before the incidents, Tendetza received various threats from the mining company, and as the report of his murder points out:

¹⁰⁷ Craig Kauffman and Pamela Martin, 'Testing Ecuador's Rights of Nature: Why Some Lawsuits Succeed and Others Fail' [2016] International Studies Association Annual Convention 1, 11.

¹⁰⁸ The second paragraph of art 71 of the Ecuadorian constitution states: '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'. Thus, everyone is entitled to file a lawsuit, without the need of having ownership of the affected territories. There is no need to prove human harm since these rights are for protecting nature regardless of human interests.

¹⁰⁹ Kauffman and Martin (n 107) 11.

¹¹⁰ Acción Ecológica and others (n 106).

The local communities of Cordillera del Condor have had a generalized feeling of fear after the assassination of José Tendetza. Thus, they have been sharing all their information with the company, for it to think that they are aligned with its interests.¹¹¹

2.2.1.3 *Tangabana Paramo case (2014-ongoing)*

In 2014, several environmental organisations and indigenous communities filed a lawsuit before the 'local Court of Chimborazo in response to a large pine tree plantation that was authorized in the fragile paramo ecosystem of Tangabana'.¹¹² The claimants intended to remove the almost 200-hectare pine tree plantations established by the private company ERVIC – since the company extended the plantations to collectively owned indigenous territories. The company's actions put the indigenous communities in serious risk. The area contained their primary water sources and pine trees dry the ground extremely fast. In other words, the pine trees were going to consume the drinkable water of the communities. As a reaction, the affected indigenous groups asked for the help of environmental NGOs, which were hesitant to provide their assistance after losing the Condor-Mirador case. However, they finally decided to support them.

The claimants argued that, besides the evident adverse effects that this project was going to provoke over the cultural life of the local communities, the results of pine plantations were going to affect the natural course of water flows along with the acidity levels of the soil. In other words, the pine plantations were going to damage the natural restoration processes of the various ecosystems that laid in that area. In this regard, the claimants sustained that there was a violation of article 71 of the constitution, where it is stated that nature has the right to maintain and regenerate its life cycles, structures, functions and evolutionary processes. They also claimed their case was admissible since the second paragraph of the same article says that every person, community or nationality can demand from a public authority the fulfilment of the rights of nature.

¹¹¹ Defensores del Sur del Ecuador, 'Informe Asesinato José Tendetza' (*Defensores del Sur del Ecuador*, 12 April 2016) <<https://luisana-aguilar.squarespace.com/tundayme-1/tag/informe>> accessed 29 May 2019.

¹¹² David Boyd, *The Rights of Nature: A Legal Revolution that Could Save the World* (ECW Press 2017) 81.

In the end, the court did not rule in favour of the claimants, denying the protective actions and declaring inadmissibility. The court based its arguments on the fact that the claimants were not rightful owners of the territories and that they could not prove direct harm caused by ERVIC. The decision of the judges shows an evident misunderstanding of the essence of the rights of nature. Firstly, nature has to be protected regardless if there is a direct human injury.¹¹³ Therefore, the court should not have dismissed the case because the indigenous communities were not able to prove direct harm. Secondly, the second paragraph of article 71 explicitly states that there is no need to be the rightful owner of an affected natural area in order to file a lawsuit on behalf of nature.

Following the court's decision, the claimants appealed before the Provincial Court, arguing that land ownership was irrelevant since no one is entitled to violate the rights of nature in any case. However, the Provincial Court upheld the decision of the local court. In 2015 a new appeal was presented, and the case continues to be under review.

2.2.2 Oil activities in Yasuni National Park

The Yasuni National Park was established in 1979, and it is located in the heart of the Ecuadorian Amazon Basin. It covers around 10,200 square kilometres of the provinces of Pastaza and Orellana, between the Napo and Curaray rivers. Recent studies have shown that Yasuni National Park is one of the most biodiverse areas of the entire globe, holding several endemic species.¹¹⁴ Additionally, in 1989, the United Nations Educational, Scientific and Cultural Organization declared the park as a Man and the Biosphere Reserve.¹¹⁵

Yasuni is also home to several indigenous communities, including Waorani groups in voluntary isolation. In 1983, the government created the Huaorani ethnic reserve within Yasuni National Park, granting the communities legal title to a portion of their ancestral territories. However, there is a large reserve of crude oil underneath Yasuni so, when

¹¹³ Kauffman and Martin (n 107) 11.

¹¹⁴ Lavinia Warnars, 'The Yasuni-ITT Initiative: A New Model to Implement Human Rights and Biological Diversity Conventions and Frameworks?' (2010) 17 Policy Matters 55, 55.

¹¹⁵ Ecuadorian Ministry of Environment, 'Sistema Nacional de Áreas Protegidas del Ecuador: Parque Nacional Yasuni' (*Ecuadorian Ministry of Environment*, 2015) <<http://areasprotegidas.ambiente.gob.ec/es/areas-protegidas/parque-nacional-yasun%C3%AD>> accessed 1 June 2019.

the government granted the titles, it explicitly stated that the Waorani could not reject oil activities in those lands,¹¹⁶ showing the intentions that the state had concerning the future exploration and exploitation of oil. It is essential to keep in mind that oil activities have been historically linked to deforestation and nature's pollution, limitation of indigenous peoples' traditional practices, land occupations and waves of human rights violations.

2.2.2.1 *Yasuni-ITT initiative*

The new approach to development, along with the novel concepts enshrined in the constitution, needed to be materialised in practical actions to protect the biological and cultural diversity of Yasuni. In this regard, the government of Rafael Correa proposed an option for reducing the oil activities in the area, known as the Yasuni-ITT initiative. The idea was to keep 846 million oil barrels underground in order to prevent the emissions of 450 million tons of CO₂ into the atmosphere, preserve the Amazon and protect the indigenous communities who inhabited the area.¹¹⁷

The initiative, which was later supported by the approval of the new constitution, was officially launched in 2007. Subsequently, the Ecuadorian government announced it in the LXII General Assembly of the United Nations, seeking for the world's recognition and support.¹¹⁸ In February 2008, the Coordination Unit of the Yasuni-ITT Initiative and the Yasuni Administrative Council were created in order to organise the financial aspects of the country's 'energetic transition' to a post-petrol state. Ecuador was going to lose around 7,000 million dollars for not extracting the crude from Yasuni.¹¹⁹ Hence, part of the economic strategy was to gather donations from the international community. Correa asked for financial compensation of at least half of the losses. Therefore, the protection of the area depended on collecting 3,600

¹¹⁶ Matt Finer and others, 'Ecuador's Yasuni Biosphere Reserve: a brief modern history and conservation challenges' (2009) 4 *Environmental Research Letters* 1, 8.

¹¹⁷ Mercedes Córdor and Mario Aguilera, 'La Iniciativa Yasuni ITT como Materialización de los Derechos de la Naturaleza' in Carlos Espinosa Gallegos-Anda and Camilo Pérez Fernández (eds), *Los Derechos de la Naturaleza y la Naturaleza de sus Derechos* (Ministerio de Justicia, Derechos Humanos y Cultos 2011) 214.

¹¹⁸ *ibid* 213.

¹¹⁹ Eduardo Gudynas, 'Los Derechos de la Naturaleza Después de la Caída de la Moratoria Petrolera en la Amazonia' (*América Latina en Movimiento*, 18 August 2013) <www.alainet.org/es/active/66547> accessed 5 June 2019.

million dollars in donations. Different mechanisms were carried out in order to gather an international fund and governments, companies and people were invited to donate money for the plan.

As it was a living example of a post-oil transition, this initiative rapidly called the attention of the international community and awoke the illusions of various environmental and indigenous groups. For instance, the German parliament supported the initiative and encouraged other European countries to do so. In the words of the German parliament, 'European countries should follow the principle of environmental justice that calls them to assume co-responsibility for the environmental damages provoked in the developing countries'.¹²⁰ In 2009, the European Union, the OAS and other international organisations also expressed their support for the initiative.¹²¹ Subsequently, the World People's Conference on Climate Change and the Rights of Mother Earth – held in Bolivia in 2010 – recognised the action as an emblematic initiative since it encouraged the respect for nature and the fulfilment of indigenous people's rights.¹²² Thus, the Yasuni-ITT initiative was perceived as a materialisation of the rights of nature¹²³ and a victory for human rights.

2.2.2.2 *Failure of the Yasuni-ITT initiative*

The Ecuadorian government insisted that the oil was going to be extracted if the money was not gathered. In 2013, Correa decided to cancel the initiative since the donations were not sufficient. He blamed the international community for the lack of monetary support. In his words, 'the main reason for the failure is that the world is global hypocrisy'.¹²⁴ Another argument Correa used for cancelling the initiative was that – thanks to technological advances – it was possible to conduct oil activities without high environmental, social and cultural costs. A third argument was the urgent need to overcome poverty. He argued that the country needed the money for strengthening public services and social programmes.

¹²⁰ Córdor and Aguilera (n 117) 213.

¹²¹ Carlos Larrea and others, 'Yasuni-ITT Initiative: A big idea from a small country' (Eldis, 2009) <www.eldis.org/document/A61550> accessed 20 May 2019.

¹²² Warnars (n 114) 55.

¹²³ Córdor and Aguilera (n 117) 12.

¹²⁴ El Universo, 'Rafael Correa Pone Fin a la Iniciativa Yasuni ITT' *El Universo Noticias* (Ecuador, 15 August 2013) <www.eluniverso.com/noticias/2013/08/15/nota/1294861/rafael-correa-pone-fin-iniciativa-yasuni-itt> accessed 5 June 2019.

The suspension of the Yasuni-ITT initiative rapidly dissolved the hopes it created, putting the indigenous communities of Yasuni in immediate risk. Sadly, as Cajamarca and others point out, the oil companies that later entered the Yasuni National Park failed to fulfil the rights of nature and the rights of indigenous peoples.¹²⁵ However, one of the most remarkable impacts was on the validity of the rights of nature framework. Correa returned to the old-fashioned opposition between development and environmental conservation. In his words:

[T]he most significant human rights breach is misery, and the biggest mistake is to subordinate human rights to the so-called rights of nature: it does not matter that there is hunger, lack of social services (...) the most important thing is the fanatic conservationism!¹²⁶

Correa misunderstood the essence of the rights of nature and the fight for their correct implementation. Indigenous peoples and environmental groups do not support misery or hunger by encouraging environmentally friendly initiatives such as Yasuni-ITT. His ironic tone positioned the rights of nature as opposed to human rights, which is a big mistake. They instead function in a complementary manner. His statement – which in other words was the approach of the Ecuadorian state – portrayed the rights of nature as mere principles that are only valid if they do not obstacle the development plans of the country.

2.3 ANALYSIS OF THE LEGAL IMPLEMENTATION OF THE RIGHTS OF NATURE IN ECUADOR

Mining activities in the Ecuadorian Amazon have led to the systematic violation of indigenous people's rights and nature's destruction. In this regard, indigenous peoples and environmental activists celebrated the constitution of 2008 because the recognition of the rights of nature – along with the Sumak Kawsay, plurinationality and indigenous collective rights – were seen as new instruments for pushing the state to

¹²⁵ Diego Cajamarca and others, 'La sostenibilidad del Parque Nacional Yasuní, un derecho privado del estado ecuatoriano al pueblo Waorani por la actividad petrolera' [2019] *Marzo Caribeña de Ciencias Sociales* 1, 1.

¹²⁶ Gudynas (n 119).

comply with its environmental and human rights obligations. However, indigenous groups have filed only a few lawsuits invoking the rights of nature, the majority of which have been unsuccessful. In this regard, two factors that have hindered their implementation have been identified. Firstly, the lawsuits took place in highly politicised contexts since they were against the government's development plans. Secondly, the judges do not yet fully understand how to apply and interpret the rights of nature.

2.3.1 Economic interests and highly politicised contexts

Ecuador's economy depends on mining industries. Therefore, the Mining Law of 2009 intended to expand the mining activities in order to increase the state coffers and finance social development. However, the approval of the law was the beginning of considerable political tension between the government and civil society. These tensions were, among others, manifested in the criminalisation and persecution of indigenous leaders that protested against the expansion of mining activities. Besides, the government tried to undermine the resistance discourses of indigenous peoples and environmental organisations by calling them childish environmentalists.

It is possible to see a conflict of economic and political interests between these actors that, so far, has impeded the effective implementation of the rights of nature. On the one hand, the government opted for keeping the rights of nature as weak as possible, avoiding their further institutionalisation. In other words, it shows that the state's priority was to continue exploiting natural resources – including the ones present in indigenous territories – regardless of the constitutional principles. On the other hand, civil society has utilised the rights of nature for demanding social and environmental justice, challenging the state's decisions. However, the outcome of these cases suggests that the economic interests of the state prevailed over the protection of nature and the rights of indigenous peoples – since the areas in dispute are 'rich' in resources. The Condor-Mirador case (2012) and the Tangabana Paramo case (2014-ongoing) followed this pattern.

All in all, the lawsuits filed by indigenous groups have tended to fail and the historical struggles of indigenous peoples – such as land occupations and neocolonialism – have not served as a base for the jurisprudential evolution of the rights of nature. Hence, the interests of

the dominant society continue to justify the subjugation of indigenous peoples, using ‘development’ and ‘progress’ as pretexts.

All of these elements are apparent in the Yasuni National Park case, where the exploitation of oil reserves in the park has massively harmed the environment and local communities. Although the Yasuni case has not yet reached the courts, it is a strong example of how and why the enforcement of the rights of nature is weak. Along with the new constitution, the Yasuni-ITT initiative seemed to be a concrete materialisation of the rights of nature. However, Correa’s decision to cancel the action reaffirmed the state’s position regarding the rights of nature. Moreover, Correa’s decision implied that the rights of nature are secondary or less important, and in opposition to human rights. Thus, development policies were again prioritised over environmental conservation and the protection of indigenous peoples. The constitutional incorporation of the rights of nature did not change the fact that the state continues to justify the invasion of indigenous territories and the reproduction of colonial dynamics. In this regard, the state has discarded the possibility of recognising the intrinsic value of nature, which is part of the historical project of the indigenous communities in Ecuador. In the end, ‘the decision to exploit oil in the Yasuni national park, shows that the recognition of rights of nature is not a solid guarantee. Thus, whatever rights of nature are recognized or not, the States remain sovereign on its natural resources’.¹²⁷

2.3.2 Judges’ lack of knowledge and experience concerning the rights of nature

Besides political and economic interests, the judges’ lack of knowledge and experience is also a problem for the proper implementation of the rights of nature. In this regard, the Condor-Mirador case and the Tangabana Paramo case illustrate the failure of the judges to interpret and apply the rights of nature as stated in the constitution. The intention of giving constitutionally recognised rights to nature is to protect natural entities and environments regardless of their functionality with regards to human beings. Appropriate interpretations of the rights of nature within the Ecuadorian constitution require judgments that go beyond anthropocentric utilitarianism.

¹²⁷ Julien Bétaille, ‘Rights of Nature: Why it Might not Save the Entire World?’ (2019) 16 *Journal for European Environmental & Planning Law* 35, 42.

In the judicial sentence of Condor-Mirador, the court declared that the mining project did not violate the constitution for two reasons revealing a misunderstanding of the rights of nature. Firstly, the court stated that the drilling project would not affect an officially protected area; hence, there was no violation of the rights of nature. Secondly, the judge said that the intentions of the civil society represented a private interest, whereas the company acted in favour of the public benefit because of its contributions to the economy and the development of the country. However, the constitution does not say that the rights of nature are only applicable in protected areas; it instead suggests that the state must consider these rights and ensure the protection of nature in all cases, regardless of any human or corporate interest. Furthermore, every individual or group of individuals is entitled to file a lawsuit on behalf of nature even if they are not the rightful owners of the affected territories. Therefore, public or private interests should not be relevant in the moment of ruling on the protection of nature.

These fundamental misunderstandings of the rights of nature are replicated in the Tangabana Paramo case since the court based its arguments on the fact that the claimants were not rightful owners of the territories and that they could not prove direct harm to the local communities caused by ERVIC's activities. However, nature has to be protected regardless if there is a direct human injury; hence, the court should not have dismissed the case because the indigenous communities were not able to prove immediate harm. Additionally, the second paragraph of article 71 explicitly states that there is no need to be the rightful owner of an affected natural area to file a lawsuit on behalf of nature. In other words, the court understood the rights of nature through the lens of the right to property. As Ramiro Ávila points out:

There has not been a meaningful jurisprudential development in Ecuador. For me, the explanation is that the Ecuadorian judicial culture is not sensitive enough (...) The judges do not have the knowledge and the intention to listen to different cultural worldviews and 'natures'. There is a conservative tendency. However, there are not many arguments against the rights of nature themselves; there instead is a lack of knowledge of their content and of how to apply them. Therefore, they have not been widely developed.¹²⁸

¹²⁸ Interview with Ramiro Ávila (n 101).

In both cases, the judges ruled in favour of mining activities using individual rights, overriding the essence of the rights of nature. In other words, the rights of humans were prioritised, revealing that anthropocentrism remains to be the dominant approach the judges use for taking their decisions. Consequently, when indigenous peoples have invoked the rights of nature in legal cases, the results have been anthropocentric interpretations of non-anthropocentric constitutional principles.

The Ecuadorian courts have not widely developed the rights of nature. Legal anthropocentrism and the nature/culture opposition that the country's development plans support have hindered a more profound institutionalisation of the rights of nature in the Ecuadorian legal system.

Law can help to legitimise social demands and the legal support of the rights of nature enables legal pathways to limit the state's actions. However, the rights of nature enable other pathways for resistance and protection of nature and indigenous rights beyond the law, opening spaces for extra-legal and political dispute. In this regard, indigenous and environmental groups have pushed the further institutionalisation of the rights of nature through other means, using them as a social and political resistance platform that operates from 'below'.

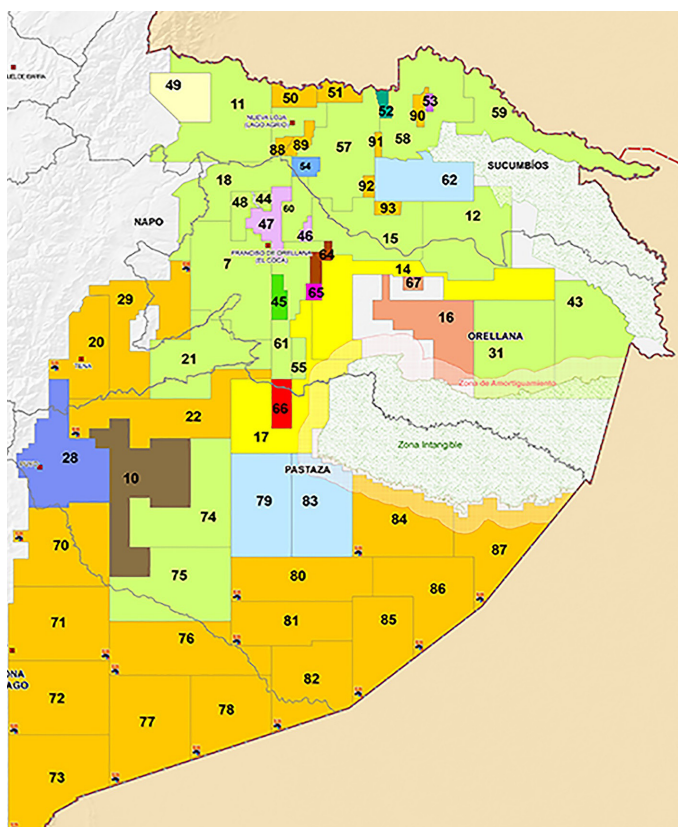
3.

POLITICAL APPROPRIATION OF THE RIGHTS OF NATURE
BY INDIGENOUS PEOPLES IN THE ECUADORIAN AMAZON

The notion of nature as a living entity has become a central pillar in the discourse and practices of indigenous peoples in the Ecuadorian Amazon. However, the gradual incorporation of the rights of nature in human rights narratives is a recent phenomenon. In this chapter, the political responses of three Amazonian indigenous groups will be analysed: the Llachama community of Yasuni, the Waorani groups of the province of Pastaza and the Sarayaku people.

The Ministry of Energy and Non-Renewable Resources has divided around 68% of the Ecuadorian Amazon into oil concessions, also called oil-blocks. Although oil activities have not started in all of them, indigenous communities have perceived such division of their territories as a threat since it manifests the state's intentions for starting oil-related projects.

Figure 1: Map of oil blocks in the Ecuadorian Amazon (2018).¹²⁹ The image shows the Amazonian territory divided into oil blocks, which have a number assigned. The colours represent different oil companies that are currently operating in the area. The dark yellow spaces are controlled by the hydrocarbons secretary, which means that they are in the process of being assigned to an oil company.



¹²⁹ Ministerio de Energía y Recursos no Renovables, 'Mapa De Bloques Petroleros Del Ecuador' <www.recursosyenergia.gob.ec/mapa-de-bloques-e-infraestructura-petrolera-del-ecuador/> accessed 20 June 2019.

The state rarely conducts proper consultation processes. Thus, the communities live with a generalised fear of being extorted, deceived, persecuted and even killed. In other words, there is a neocolonial apparatus that intends to keep the communities silenced, and that wants them to witness the destruction of their homelands and cultural practices passively. Indigenous communities, however, have articulated several political responses that are slowly contributing to greater institutionalisation of respect for their rights and their territories, including the nature within them.

In the following chapter, different political strategies that the Llanchara, Waorani and Sarayaku peoples have articulated for defending their rights will be identified, characterised and analysed. It becomes relevant to acknowledge that there is no significant academic production on this topic as these communities live in very isolated areas of the Amazon making it difficult to gather first-hand information. Therefore, the majority of the information was gathered through official social media campaigns and public statements of Amazonian indigenous leaders and organisations.

3.1 THE LLANCHAMA COMMUNITY OF YASUNI

After the government cancelled the Yasuni-ITT initiative, some of the local communities entered in a resistance process and the Llanchara community serves as a good example. The Llanchara area corresponds to 27,000 hectares of indigenous ancestral territories, between oil blocks 31 and 43. It is located right on top of the oil that the government promised to leave underground. In 2013, the Ecuadorian authorities assigned the exploration of those territories to the state-owned oil company Petroamazonas. In this context, the Kichwa Llanchara community complained to the government since they were not considered in the decision, arguing lack of free, prior and informed consent.

3.1.1 *Failed consultation process and political responses*

Although Petroamazonas led a consultation process, it failed to meet the necessary standards of transparency. The meeting was majorly informative, and the most broadly discussed topic was the compensations that the community was going to receive in exchange for oil activities. Thus, it did not go into detail with the exploration and exploitation process itself.¹³⁰ Besides, not all the indigenous representatives were present, which makes the process even more questionable. Another factor, and perhaps the most worrying one, is that the oil company had secret meetings with some indigenous leaders – before the official gathering took place – offering them private compensation such as scholarships for their children, cars, among others.¹³¹ Their idea was to ‘persuade the leaders so they could convince the rest of the community in informal contexts. In other words, Petroamazonas manipulated the presidents of the communities’.¹³²

In the end, many people voted against the oil project. However, ‘the president ended up signing on behalf of the entire commune (...) without reaching a consensus as it had been their traditional way of taking collective decisions’.¹³³ In other words, it was a corrupted consultation process, and the communities understood it:

The arrival of extractive industries in our territories was never socialized or consulted with the members of the community. We did not even received news concerning the possible environmental impacts. On many occasions, our community has manifested that it does not want extractivism in its territories.¹³⁴

As a reaction, the Llanchara people organised communitarian assemblies to take collective decisions and actions. In this context, the anthropologist Sofía Cevallos – who assisted several meetings during her PhD field research – says:

¹³⁰ Interview with Sofía Cevallos, PhD researcher, expert in Waorani and Kichwa Peoples (25 May 2019).

¹³¹ *ibid.*

¹³² *ibid.*

¹³³ *ibid.*

¹³⁴ Letter from Kichwa Llanchara Community of Yasuni to the Ecuadorian Government (30 March 2014).

The communities began to introduce new elements. They were saying: our rights are not being respected! There was a whole debate around the violation of their human rights, plurinationality, and the Sumak Kawsay. The socialization of their rights was meaningful since not many people knew about their existence.¹³⁵

It was a starting point for the creation of political responses against oil activities in Yasuni. In 2014, the communitarian assemblies began to submit letters to the government, arguing that oil activities were illegal since the failed and corrupted consultation process violated the constitution. The letters also contained references to the right to self-determination, the right to property and the international obligations of the Ecuadorian state – citing the ILO Convention 169 and the UNDRIP. However, one of the most surprising components was the importance of living in harmony with nature. In their words, ‘oil activities mean a threat to us, especially to the ones who have resisted by proposing an alternative way of living. An alternative where we live in harmony with nature’.¹³⁶

The public letters did not mention the rights of nature as such. However, Cevallos insisted that the Llanachama community is in the process of what she calls the ‘subjectivation’ of their constitutional rights, including the rights of nature. This process occurs when the people appropriate legal elements, redefining them from their historical struggles. Before the failure of the Yasuni-ITT initiative, the communities did not talk about territorial rights or the relationship between their rights and nature itself. However, during the following years, she heard people saying ‘we have the right to our territory, and our rivers and animals have their rights’,¹³⁷ or ‘(...) non-humans that we have to protect because they have rights’.¹³⁸ Overall, the Llanachama community has gradually introduced the new constitutional concepts in their human rights discourses, establishing a link between the rights of humans and non-humans. In other words, ‘they have been trying to converge human rights and the rights of nature in one’.¹³⁹ However, indigenous leaders often say ‘the rights of nature are not new for us, we have been proposing them for a long time by saying that we have an especial relationship with it’.¹⁴⁰

¹³⁵ Interview with Sofia Cevallos (n 130).

¹³⁶ Letter of the Kichwa Llanachama Community of Yasuni (n 134).

¹³⁷ Interview with Sofia Cevallos (n 130).

¹³⁸ *ibid.*

¹³⁹ *ibid.*

¹⁴⁰ *ibid.*

After what started to happen in Llachama, the Waorani communities of the interior of Yasuni and other groups of the Amazon followed their steps. In this regard, a Waorani leader from Yasuni says:

[W]e are tremendously affected by oil activities. Cancer, skin rashes are only a few examples. However, we still have an untouched area, where our brothers and sisters live in voluntary isolation. They are now threatened by the government's plans to take their lands away.¹⁴¹

She explicitly insists that the government has violated the right to self-determination, the right to free, prior, and informed consent and the rights of nature present in the constitution. She added that knowing their rights helped them creating more effective responses since they have elaborated a resistance discourse where the protection of the forests and their rights are simultaneously addressed:

[W]e almost do not have jungle anymore. Our claims are for future generations because we want them to live as our grandparents used to. We want our children to be healthy and have drinkable water. Besides, the jungle is not just for indigenous peoples, but also for the world to breathe and understand how important it is. What is going to happen? Our fight is to tell the government that the forest is our market, our medicine, and our home. If they continue conducting oil activities, there is going to be death, that is why we want to stand for our rights.¹⁴²

In the past decade, this discourse – where human rights and the rights of nature are closely interrelated – started gaining force in all the Amazonian region. Different ethnicities came together in order to create collective mobilisation for the respect of nature and its rights. An illustrative example is the Waorani communities of the Pastaza province, who have managed to elaborate a robust discourse that merges human rights and the rights of nature in one.

¹⁴¹ Interview with Waorani leader of the Ñoneno community of Yasuni (22 June 2019).

¹⁴² *ibid.*

3.2 WAORANI RESISTANCE IN PASTAZA

The Waorani communities of Pastaza have widely used the rights of nature in their human rights demands. Pastaza is the largest province in Ecuador, with about 29,800 square kilometres of territory. The entire province is nestled in the Amazon Forest. Pastaza is a culturally rich province with seven indigenous nationalities inhabiting it: Achuar, Andoa, Shuar, Kichwa, Shiwiar, Waorani and Zapara. Oil negotiations are continually taking place between the government, companies and the indigenous communities who inhabit the most profound areas of the Amazon. In this context, the Waorani people live under persistent threat.

3.2.1 *Brief historical background: Corrupted consultation in oil block no 22*

Waorani political organisations in Pastaza have a long history of resistance. Their struggles have had many similarities with the rest of the Amazonian cases related to extractive industries. For instance, there have been many corrupted consultation processes in different parts of Pastaza, due to almost the same reasons that the Llançhama community experienced in Yasuni. However, one of the most triggering events was the corrupted consultation that the government conducted in block 22 in 2012, which is an area that overlaps almost entirely with the Waorani ancestral territories.¹⁴³ Oswando Nenquino, Waorani leader of Pastaza describes the moment as it follows:

The people remember everything; they did not know what they were signing. An airplane came, and everyone rushed to see what was going on. The State agents – who were in the airplane – started giving food to everyone. They made the people sign a food register. However, to the surprise of everyone, the food register was later used as a consent document. The government said they had the community's approval.¹⁴⁴

¹⁴³ Kimberley Brown, 'Ecuador's indigenous Waorani launch petition to save the Amazon' (*Al Jazeera*, 23 May 2018) <www.aljazeera.com/news/2018/05/ecuador-indigenous-waorani-launch-petition-save-amazon-180523102935421.html> accessed 27 May 2019.

¹⁴⁴ Susana Morán, 'El mapa desconocido del territorio waorani' (*Plan V*, 29 October 2018) <www.planv.com.ec/historias/sociedad/el-mapa-desconocido-del-territorio-waorani> accessed 27 May 2019.

In other words, the government tricked the communities by telling them it was a food register when it really was a consent document. Moreover, during the 'consultation' process the representative of the Ministry of Environment and Non-Renewable Resources briefly talked about the future oil project, totally skipping the negative impacts that those activities could potentially have on the environment and the communities.¹⁴⁵ Besides, the authorities spoke in Spanish and the community elders were not able to understand since they did not speak the language.¹⁴⁶

3.2.2 Waorani political responses to the failed consultation

At that time, the communities did not know what to expect from oil activities. Other indigenous groups, however, were already struggling with these issues, such as the people in Yasuni. In this regard, the Waorani communities soon learned what was going to happen to their territories since they started travelling and seeing with their own eyes the conditions of the regions that were already affected by oil activities. As a quick reaction, the Waorani communities of Pastaza began to articulate very innovative political strategies. As Ramiro Ávila points out, 'disorganized communities are "easy prey" for the companies, whereas the communities that have a sturdy attachment to their cultures and territories resist. That is the case of the Waorani communities in Pastaza'.¹⁴⁷

In this regard, the Waorani have carried out national and international awareness campaigns on social media in order to gain global visibility and have stronger powers to denounce human and nature rights violations. Additionally, they created inter-ethnic resistance movements, as well as alliances with environmental and indigenous organisations of a local, national and international character.

3.2.2.1 Joining forces for the socialisation of a living nature

An interesting example is the creation of the Ceibo Alliance, an inter-ethnic organisation founded by Waorani, Kofan, Siona and Siekopai communities. This organisation was born after several visits that

¹⁴⁵ Morán (n 144).

¹⁴⁶ Interview with Waorani leader (n 141).

¹⁴⁷ Interview with Ramiro Ávila (n 101).

indigenous leaders did to the territories of other ethnicities, realising that they could join forces: ‘we saw that we all had similar problems and experiences, and even if we are different, we noticed that there are many things that unite us’.¹⁴⁸ As the Waorani leader Nemonte Nenquimo stated, ‘When we started Ceibo Alliance, the Kofan, Siona and Siekopai nations invited us to visit their territories. We traveled from far away by canoe and jungle trail, and we learned about all the problems that come with oil’.¹⁴⁹ One of the engines of this organisation was the common understanding of their territories and nature as a living heritage. In their words:

Our grandparents left us the lands where we live today, which is very sacred for us. Our power comes from the Jaguar and the always living jungle. It has been a tough road but walking with the heart and the respect that we have for our people, we decided to build Ceibo Alliance and continue this journey together.¹⁵⁰

The Ceibo Alliance intends to empower the communities by teaching the content and implications of their rights. In this regard, part of the Waorani strategies have not only been to create a local indigenous social movement, but to give birth to an ecocentric¹⁵¹ discourse. This new ecocentric political project requires the socialisation of their nature ontologies. In this regard, the alliance has found its way to teach the world their nature perspectives through different mechanisms.

3.2.2.1.1 Dissemination of other nature perspectives

The alliance has published stories and articles concerning the consequences of oil activities in the forest. As a brief example, the member of the Kofan community Emergildo Criollo wrote an article

¹⁴⁸ Alianza Ceibo, ‘La Alianza’ (*Alianza Ceibo*) <www.alianzaceibo.org/alianza/> accessed 28 May 2019.

¹⁴⁹ Nemonte Nenquimo, ‘A Message of Indigenous Resistance and Inspiration from the Amazon: Our fight is not just a fight about oil — it’s a fight about a different way of living’ (*Common Dreams*, 29 November 2018) <www.commondreams.org/views/2018/11/29/message-indigenous-resistance-and-inspiration-amazon> accessed 28 May 2019.

¹⁵⁰ *ibid.*

¹⁵¹ Anthropocentrism positions the human being on a ‘centre stage’, whereas biocentrism claims that all living beings have inherent value and humans are not superior to others. Ecocentrism is a form of biocentrism that oversees the value of the entire ecosystems, including its living and non-living components.

titled ‘When the Earth Suffers, the Water Punishes’.¹⁵² He describes how his grandparents used to say that the rivers were alive, and that killing them inevitably leads to the destruction of human life. He argues that nature is the one who gives life; however, nature can also take life away. From his perspective, there is an interrelatedness between humans and non-humans; therefore, violating the rights of nature simultaneously violates the rights of humans. The Ceibo Alliance has published many more articles showing how oil activities threaten their collective knowledge and nature perspectives, insisting that the fulfilment of the rights of nature is the only viable option for the full respect of their rights.

3.2.2.1.2 *Social media campaigns*

An inspiring initiative is Resistencia Waorani (Waorani Resistance), an international online campaign based on socialising the struggles and victories of the Waorani peoples through Twitter, Facebook and other means. The idea is to make the lack of proper consultation as visible as possible, for the world to see how severely their rights are being violated. Although consultation and collective rights have been the cornerstone of Waorani Resistance, there are several valuable references to the protection of nature that clash against the dominant views of what those territories are. In this regard, the language that the Waorani communities use possesses noticeable differences with the one used by the state. In their words, ‘our territory is our life, we are Waorani, and we are jaguars, we live and resist. The forest is our home. The forest is our present and our future, do not touch our territory!’¹⁵³ On the one hand, the Waorani see their territories as ‘home’, ‘the jaguar’, ‘themselves’. On the other hand, the authorities see those territories as mere oil-blocks – valued in oil barrels. In other words, part of the Waorani political resistance strategy has been to defend the cultural content of their territories by rescuing its natural richness. ‘We learned that the company does not see the forest. They do not see us. They see

¹⁵² Emergildo Criollo, ‘Cuando la Tierra Sufre, el Agua Castiga’ (*Ceibo Alliance Blog*, 16 October 2018) <www.alianzaceibo.org/blog/tierra-sufre-agua-castiga/> accessed 29 May 2019.

¹⁵³ WaoResistencia, ‘Nuestro territorio es nuestra vida, somos Waorani, somos jaguares, vivimos y resistimos. Nuestro bosque es nuestro hogar. El bosque es nuestro presente y nuestro futuro, ¡no toquen nuestro territorio!’ (*Twitter*, 8 June 2019) <<https://twitter.com/WaoResistencia/status/1137368908464295936>> accessed 10 June 2019.

what they want to see. They see oil wells where we see gardens. They see money where we see life.’¹⁵⁴

3.2.2.1.3 *Mapping ancestral territories*

Within the Waorani Resistance campaign, there is a sub-campaign called *Nuestro Territorio no se Vende* (Our Land is not for Sale), which was an international petition launched in March 2018 against oil drilling activities in their territories. Part of this campaign has been mapping the rich cultural and biological diversity of the rainforest and the Waorani territories, intending to transfer their cultural understandings of nature to a ‘living map’. With the help of the NGO Amazon Frontlines, the Waorani communities mapped the area with GPS systems, drones and wildlife camera traps. Each community mapped their regions independently, highlighting the spots that are important for them, such as sacred sites, unique animal habitats and medical plants, among others. Besides, they used oral history and the knowledge of the community elders to give the map historical accuracy. The initiative was a reaction to the traditionally colonialist maps that explicitly show the area divided into oil-blocks, disregarding the cultural and natural value of the Waorani territories. In short, the creation of a living counter-map shows that the Waorani communities invoked the living capacity of nature for defending their territories. Also, the Waorani communities drew new locations for the natural reserves, intending to administer their territories and stand for their recognised right to self-determination. Thus, putting their cosmovision in practice in order to free themselves from the colonial imposition of the Western imaginary:

[T]he government has to understand that the Amazon needs the life of indigenous peoples. We do not want the government to send us to jail in exchange for oil. We do not want the government to kill us in exchange for oil. We do not want it to leave us dying without water. In exchange for oil, the government is giving us education from other worlds, like drugs, alcohol. We do not want it. We have created our education, our health, and our development vision. For those reasons we are going to scream to the national government, so it can see how we are living.¹⁵⁵

¹⁵⁴ Alianza Ceibo (n 148).

¹⁵⁵ Interview with Waorani leader (n 141).

The Waorani communities have consistently incorporated the rights of nature in their human rights discourses and actions, using them as a tool for officialising the protection of nature as a pathway for strengthening the fulfilment of their rights. On the one hand, the creation of inter-ethnic organisations led to stronger social manifestations and more effective counter-knowledge dissemination, showing that the violation of the right to free, prior and informed consent, the right to ancestral property and the right to self-determination is a systematic trend that occurs all across the Amazon. On the other hand, the use of social media campaigns helped the Waorani people to gain international support and visibility. The creation of the living map rejects the oil-block division, challenging the state's colonial way of understanding their territory, nature and cultural lifeways. These political strategies allowed the Waorani to promote the rights of nature and human rights as two interrelated aspects of their historical emancipation project, basing their arguments in non-dominant nature ontologies where humans and nature are not differentiated from one another.

3.2.2.2 Collective lawsuit against the state before the Provincial Court of Pastaza

On 27 February 2019, hundreds of Waorani peoples marched to Puyo – the capital city of Pastaza – to file a collective lawsuit for protective action against the Ecuadorian state. Their main argument was the failed consultation that took place in the oil block 22 in 2012. They included the right to self-determination and the rights of nature as core arguments. With the support of different Amazonian indigenous ethnicities, the Waorani peoples presented robust evidence to sustain nature and human rights violations. The evidence consisted of articles written by the communities, testimonies of elders, the signatures gathered in the awareness campaigns and the living map, among others. They asked for the full stop of oil concessions in the region, merging human rights and the rights of nature in one same demand. As the Waorani leader Nemonte Nenquimo stated, ‘we are looking for the fulfilment of the right to free, prior and informed consent, which guarantees the right to self-determination, the territory and the rights of nature’.¹⁵⁶ Furthermore, she added, ‘Our fight is not just

¹⁵⁶ Mónica Orozco, ‘Waoranis presentan acción de protección para frenar licitación del bloque 22 en Pastaza’ (*El Comercio*, 28 February 2019) <www.elcomercio.com/actualidad/waoranis-accion-proteccion-licitacion-petroleo.html> accessed 26 May 2019.

about oil. It is a fight concerning different ways of living. We fight for lifeways that protect nature instead of destroying it'.¹⁵⁷

On 26 April 2019, the court ruled in favour of the community ruling that the state failed to comply with its human rights' international obligations, and with the collective rights of indigenous peoples enshrined in the constitution, namely the right to self-determination and the right to free, prior and informed consent. However, the court did not rule that the state violated the rights of nature since the lawsuit took place before the starting of oil activities. Nevertheless, the court established jurisprudence that strengthened the rights of nature in relation to the collective rights of indigenous peoples.

In the first place, the court acknowledged that the cultural contexts should be considered when conducting a consultation process: 'the consultation has to be conducted through culturally adequate procedures, in conformity with the traditions and perspectives of indigenous peoples'.¹⁵⁸ However, the ruling should not only be considered a win in terms of consultation. Conducting a consultation in conformity with the cultural contexts, entails considering the different nature perceptions and the collective memory of the communities.¹⁵⁹

Secondly, the court implicitly admitted that legal anthropocentrism is a problem for fully understanding the complexity of human rights violations in indigenous contexts. The judicial sentence explains that the Waorani communities have a non-anthropocentric notion of nature. Hence, the rights of nature cannot continue being interpreted through anthropocentric lenses.¹⁶⁰ In this regard, the judge Pilar Araujo said 'we should get rid of our Western notion about the relationship between Culture and Nature. Thus, we will be able to understand other ways of knowing, other epistemologies in which the distinction Nature/Culture does not exist'.¹⁶¹

¹⁵⁷ Amazon Frontlines, 'Indigenous Waorani Peoples of Ecuador's Amazon launch lawsuit to protect their ancestral lands from oil auction' (*Amazon Frontlines*, 28 February 2019) <www.amazonfrontlines.org/chronicles/waorani-lawsuit-press-release/> accessed 26 May 2019.

¹⁵⁸ Judicial Sentence No 16171201900001 Tribunal de Garantías Penales con Sede en el Cantón Pastaza (9 May 2019) 102.

¹⁵⁹ Esperanza Martínez, 'La sentencia Waorani, en defensa de la comunidad y de la naturaleza' (*Amazon Frontlines*, 27 May 2019) <www.amazonfrontlines.org/chronicles/la-sentencia-waorani-esperanza-martinez/> accessed 15 June 2019.

¹⁶⁰ Judicial Sentence No 16171201900001 (n 158) 105.

¹⁶¹ *ibid* 27.

Finally, it pointed out that the Waorani people have a biocultural relationship with the flora and fauna of their lands: ‘the Waorani men and women have a cultural feeling of belonging, relating their culture with animals till the point that (...) they claim even to become jaguars’.¹⁶²

All in all, the Waorani ecocentric political strategies culminated in a fruitful triumph for the protection of nature. The final decision of the court shows that the inclusion of the rights of nature contributed to positive results for human rights. As a result, the court created non-anthropocentric jurisprudence, stressing the interrelatedness between human rights and the rights of nature.

3.3 SARAYAKU PEOPLE AND THE KAWSAK SACHA PROPOSAL

The Sarayaku people are one of the oldest Kichwa indigenous settlements in Pastaza. As in other indigenous territories of Ecuador, diverse colonial interventions have taken place in the ancestral Sarayaku lands, such as religious missions and extractive activities among others. However, the situation of the Sarayaku changed radically when – after an intense period of social mobilisation in 1992 – the Ecuadorian state gave them legal titling of their ancestral territories.¹⁶³ Despite the official recognition of the Sarayaku as the rightful owners of their ancestral lands, in 1996 Ecuador signed a contract for conducting oil explorations in their territories with Petroecuador, the Argentinian oil company Compañía General de Combustibles (CGC) and Petrolera Ecuador San Jorge SA.

3.3.1 *Sarayaku people v Ecuador case*

In the early 2000s, the Ecuadorian armed forces helped the CGC to enter Sarayaku lands for conducting seismic explorations. These actions also led to various violent encounters between the government’s armed forces and the Sarayaku people, culminating, among others, in intimidations against community leaders.¹⁶⁴ Besides, the company placed

¹⁶² Judicial Sentence No 16171201900001 (n 158) 27.

¹⁶³ Mateo Martínez, ‘Kawsak Sacha: Producción de la Común, Contra-Producción Social de la Naturaleza y des Condensación Capitalista’ (2016) 5 *Intersticios de la Política y la Cultura, Intervenciones Latinoamericanas* 37, 42.

¹⁶⁴ *ibid.*

explosives in the forest, causing severe human and natural harm. ‘The actions of the Company led to the destruction of underground water streams that the community used as primary water sources. Moreover, it destroyed areas of tremendous spiritual, cultural, and natural value.’¹⁶⁵

In 2003, the Kichwa Sarayaku Association, the Economic and Social Rights Center and the Center for Justice and International Law denounced this situation by filing a petition to the Inter-American Commission of Human Rights (IACHR), which granted precautionary measures in favour of the community. However, the situation did not get any better, and the IACHR decided to submit an application to the IACtHR against the Republic of Ecuador, asking the court to declare the international responsibility of the state for the violation of several articles of the ACHR: the right to private property – article 21; the right to life, judicial guarantees and judicial protection – articles 4, 8 and 25; the right to freedom of movement and residence – article 22; the right to personal integrity – article 5; and the obligation to adopt domestic legal measures – article 2.

In 2012, the IACtHR ruled in favour of the Sarayaku community declaring that Ecuador violated the right to free, prior and informed consent, community property rights and the right to cultural identity.¹⁶⁶ The court also stated that Ecuador put in serious risk the right to life and personal integrity of the Sarayaku people.¹⁶⁷

Throughout the process, the court held public hearings where indigenous representatives were able to express their versions of the events. In this context, Sabino Gualinga – political and spiritual leader of the Sarayaku community – exposed what his people call *Kawsak Sacha*, or ‘living jungle’, before the court.

¹⁶⁵ Adriana Martínez and Adriana Porcelli, ‘Relevancia de los Derechos de la Naturaleza en las comunidades indígenas a la luz de la Corte Interamericana de Derechos Humanos’ (*Pólemos: Portal Jurídico Interdisciplinario*, 17 March 2019) <www.polemos.pe/5148-2/> accessed 10 June 2019.

¹⁶⁶ *Case of the Kichwa Indigenous People of Sarayaku v Ecuador* Inter-American Court of Human Rights Series C No 245 (27 June 2012).

¹⁶⁷ *ibid.*

He explained:

[M]ountains, trees, swamps, and rivers are '*llaktas*', which means '*peoples*' or '*cities*'. Together they create a cosmologic architecture that hosts human and non-human beings. Every kind of being is interconnected and interrelated. *Kawsak Sacha* is the territory of the '*Amasanga*' and the '*Sacha Runa*', the refuge of jaguars and pumas. It is the water, food, and medicine of the local communities, the material base from which the Sarayaku peoples sustain their daily lives, their culture, and their history.¹⁶⁸

In this context, Patricia Gualinga – Sarayaku community member – added:

It is a close relationship, a relationship of harmonious coexistence. For us, the Kawsak Sacha is the living forest, with everything this implies, with all its beings, with all its worldview, with all its culture with which we are intermingled (...). These beings are extremely important. They provide us with vital energy; they maintain balance and abundance; they maintain the entire cosmos and are interconnected. These beings are essential not just for the Sarayaku, but for the equilibrium of the Amazon, they are all interconnected and, therefore, the Sarayaku defends its living space so ardently.¹⁶⁹

The court explicitly highlighted the profound cultural, immaterial and spiritual bond that exists between the Sarayaku people and their territories. In the end, the court ruled that the state should conduct a proper consultation process before any extractive action, that it should pay compensations to the affected people and ensure that it will never happen again. However, in 2018 the president of the Sarayaku community stated that they are still under threat since the government did not comply with the court's ruling, intending to continue expanding its extractive activities in the Amazon.¹⁷⁰

In this regard, the Sarayaku peoples have created different political strategies to continue resisting against the extractive desires of the state. They included the rights of nature, their nature conceptions and national and international human rights provisions into a firm political proposal: the Kawsak Sacha proposal.

¹⁶⁸ Martínez and Porcelli (n 165).

¹⁶⁹ *Case of the Kichwa Indigenous People of Sarayaku v Ecuador* (n 166) 38.

¹⁷⁰ Edgar Romero, 'Sarayaku, el pueblo indígena ecuatoriano que se resiste a la extracción petrolera en su territorio' (*RT Online News*, 3 October 2018) <<https://actualidad.rt.com/actualidad/290781-kawsak-sacha-proyecto-comunidades-vivir-extraccion>> accessed 30 May 2019.

3.3.2 *Kawsak Sacha proposal*

A dimension of the resistance strategies of the Sarayaku people has consisted of the (re)formulation of the philosophical principles that shape their cosmovision, their relationship with the natural space and their collective life project. This reflexive process is based on the notion of Sumak Kawsay.

Regarding the community's definition, some of the core principles of the Sumak Kawsay are: (1) to have a healthy environment free from pollution and a productive land that ensures food sovereignty; (2) to have a free and sustainable organisational system that is in line with the development concepts of indigenous peoples and nationalities; (3) to defend their identity by keeping alive the ancestral knowledge and traditional practices.¹⁷¹ 'The practice of these principles is taken as inherently political and inherently antithetical to the capitalist ethos rooted in extractivism.'¹⁷² From this perspective, the Sarayaku created the Kawsak Sacha or Living Jungle:

Whereas the western world treats nature as an undemanding source of raw materials destined exclusively for human use, Kawsak Sacha recognizes that the forest is made up entirely of living selves and the communicative relations they have with each other. These selves, from the smallest plants to the supreme beings who protect the forest, are persons (runa) who inhabit the waterfalls, lagoons, swamps, mountains, and rivers, and who, in turn, compose the Living Forest as a whole. These persons live together in community (llakta) and carry out their lives in a manner that is similar to human beings.¹⁷³

Out of this holistic understanding of nature, the Kawsak Sacha was translated into a concrete political proposal for the state and the world. In 2015, Kichwa leaders from Sarayaku submitted a proposal to the Paris United Nations Conference on Climate Change which urged the international community to achieve a social, economic and political metamorphosis:

¹⁷¹ Martínez (n 163).

¹⁷² Joe Quick and James Spartz, 'On the Pursuit of Good Living in Highland Ecuador: Critical Indigenous Discourses of Sumak Kawsay' (2018) 53 *Latin American Research Review* 757, 765.

¹⁷³ Pueblo Originario Kichwa de Sarayaku, 'Kawsak Sacha – The Living Forest: An Indigenous Proposal for Confronting Climate Change' (*Amazon Watch*, 11 December 2015) <<https://amazonwatch.org/assets/files/2016-kawsak-sacha-proposal-english.pdf>> accessed 20 June 2019.

We need to shift from a modernizing model of development – a model that treats nature as material resource – to the alternative of *Kawsak Sacha*, which recognizes that forming community with many kinds of selves with whom we share our world is a better way to orient our economic and political activities.¹⁷⁴

In this regard, the proposal aims at the creation of ‘a new legal category of protected area that would be considered Sacred Territory and Biological and Cultural Patrimony of the Kichwa People in Ecuador’.¹⁷⁵ Along with the creation of these new protected areas, the Kawsak Sacha proposal challenges the dominant economic model since it rescues the wealth of the forest which goes beyond its purely economic value.

The Kawsak Sacha addresses the rights of nature enshrined in the Ecuadorian constitution while recognising the importance of keeping the ecosystems healthy as a foundation of the Sumak Kawsay. The proposal emphasises that the different entities of nature have to be recognised as such in order to extend the effective implementation of the rights of nature. As persons, the beings of the forest relate between themselves, including the indigenous communities that share the lands. ‘So, based on our continuous life together with the beings of the forest, Kawsak Sacha emerges as an authentic way of guaranteeing the Rights of Nature in those spaces that have not yet been decimated.’¹⁷⁶

As the Kawsak Sacha recognises the link between humans and nature, it also contains several parts that refer to the collective rights of indigenous peoples. For instance, it suggests that by recognising these views, they will be able to continue practicing their religion and exercise their right to self-determination and their territorial rights. In other words, the rights of nature and human rights were brought together in one proposal that contains them both, being portrayed as two complementary dimensions of the same project:

Kawsak Sacha proposes an indissoluble link between human beings and the visible and invisible beings of the forest. It is for this reason that the Rights of Nature are so closely related to our Human Rights as Indigenous Peoples, guardians of the Living Forest.¹⁷⁷

¹⁷⁴ Quick and Spartz (n 172) 763.

¹⁷⁵ Pueblo Originario Kichwa de Sarayaku (n 173).

¹⁷⁶ *ibid.*

¹⁷⁷ *ibid.*

Moreover, the Kawsak Sacha has received broad national and international support from other indigenous communities all across the globe.¹⁷⁸ The Sarayaku people have openly stated that ‘the living jungle proposal asks for the legal recognition of territorial rights and the rights of nature for all the indigenous communities of the world’.¹⁷⁹

Despite the efforts of the Sarayaku communities for strengthening the rights of nature and their human rights, the state ignored the proposal. However, it has become a tool for revindicating the historical injustices that these communities have experienced. The proposal is very recent; therefore, its impacts cannot be yet fully seen.

3.4 ANALYSIS OF THE INDIGENOUS COUNTER-RESPONSES

The state’s scientific-modernist discourse concerning oil activities in the Amazon is attached to the idea of progress and development. The authorities have used these notions to portray oil activities as necessary actions for reaching ‘modernity’, justifying its biological and cultural costs with the promise of creating a better society. In this regard, the state has institutionalised oil activities as a practice that legitimises the well-being of humans at the cost of destroying nature. Besides, the state has highlighted the economic value of the Amazon while disregarding the social relations and the cultural value of Amazonian indigenous ancestral territories. In other words, the development discourse feeds a colonial imaginary that sustains the reification¹⁸⁰ of the Amazon, oppressing the symbolic systems of the indigenous communities who inhabit it. A concrete example is the imposition of the oil block map and the desocialisation of the territory it is supposed to represent.¹⁸¹

¹⁷⁸ Letter from ICCA Consortium to the Sarayaku People, ‘Respaldo Unánime del Consorcio TICCCA a la Declaración de Pueblo Kichwa Sarayaku: Kawsak Sacha - Selva Viviente’ (25 July 2018) <<http://sarayaku.org/kawsak-sacha-selva-viviente-recibe-respaldo-internacional/>> accessed 20 June 2019.

¹⁷⁹ Kawsak Sacha, ‘Kawsak Sacha para Todos’ (*Kawsak Sacha*) <<https://kawsaksacha.org/es/>> accessed 21 June 2019.

¹⁸⁰ Reification occurs when an abstraction, abstract belief or hypothetical construct is treated as if it were a concrete real event or physical entity. In other words, it is the error of treating something which is not concrete, such as an idea, as a concrete thing. A common act of reification is the confusion of a model with reality. In this regard, it is a mistake to assume that the map is the territory.

¹⁸¹ John Harley, ‘Maps, Knowledge, and Power’ in George Henderson and Marvin Waterstone (ed), *Geographic thought: a praxis perspective* (Routledge 2009) 142.

In order to strengthen this ‘progress’ belief-system, the state has carried out extractive actions through legal control, creating laws and institutions that reproduce colonial power dynamics. Physical violence and coercion, among other means, has become a regular way of restricting the conduct of the Amazonian indigenous communities. The creation of the Mining Law in 2009 and the weak implementation of the rights of nature – due to legal anthropocentrism, lack of knowledge and little institutionalisation of the rights of nature – serves as an example of how the legal bodies of Ecuador are functional to the extractive desires of the country.

The previously described political strategies of the Llachama, Waorani, and Sarayaku communities were a reaction to failed consultation processes, the destruction of their lands and the violation of their fundamental rights. During the ‘consultations’, the government and the companies tried to persuade the communities by offering private compensations and by promising that oil activities will improve their living conditions. In this regard, the state’s territorial governance strategies intended to influence the subjectivities of the people. In the words of Valladares and Boelens, ‘These compensation infrastructures are fantasies of modernity that fulfill important political-discursive functions before and during their construction to make people accept or even embrace extractivist projects in their territories’.¹⁸²

The state’s actions have intended to recreate identities, redistribute power and redefine territories for pushing forward its development agenda. ‘The State promotes territorial reconfigurations, subjecting spaces/inhabitants economically and materially, legally and administratively, culturally and politically.’¹⁸³ However, all these actions have faced resistance from the affected communities, who have elaborated political strategies that challenge the state’s intention to institutionalise a progress discourse that justifies indigenous rights violations and the commodification of natural ecosystems.

The Amazonian indigenous communities criticise how the state, corporations and the ruling elites have imposed their progress subjectivities through modernist oil politics. In this regard, the Llachama, Waorani, and Sarayaku peoples have engaged in counter-

¹⁸² Carolina Valladares and Rutgerd Boelens, ‘Mining for Mother Earth. Governmentalities, sacred waters and nature’s rights in Ecuador’ (2019) 100 *Geoforum* 68, 74.

¹⁸³ *ibid.*

conducts that criticise the dominant extractivist model, articulating collective resistance strategies. In the three cases discussed, there is a process of appropriation and subjectivation of human rights and the rights of nature, which has led to questioning the country's ontological approach to nature. The symbolic systems of these communities are based on the conception of nature as a living entity that is equally valuable to human life. In this regard, the Llanachama public letters submitted to the government; the Waorani inter-ethnic organisations, awareness campaigns and living map; the Sarayaku statements before the IACtHR and the Kawsay Sacha proposal all challenge the Ecuadorian and global ontological regime that relies on the dominant and 'unquestionable' technical-scientific dogma.

Thus, the rights of nature – as a complementary dimension of the human rights defence – opened up new possibilities of rethinking the relationship between humans and non-humans. Hence, the living condition of the forest has become a substantial part of the political efforts that the communities have deployed for defending their rights. In other words, these counter-responses have brought together Amazonian indigenous worldviews with political actions, validating indigenous peoples as agents of change and as human rights practitioners. The Kawsak Sacha proposal and the international Waorani campaigns have had resonance in the international and national political spheres, strengthening their fight by combining political and cultural knowledge in non-dominant epistemological frameworks.

Through these political responses, the communities have also questioned the mechanisms of the state's sovereign power. For instance, the lawsuit that the Waorani communities filed in the Pastaza Provincial Court in 2019 and the Kawsak Sacha Declaration show that the legal structures are also a place of political dispute. In other words, the communities intended to influence, exercise and modify the state's legal system. In this line, the rights of nature and human rights have been appropriated and performed as non-tradable and inalienable legal categories; therefore, they have become a fundamental dimension of the emancipation project of indigenous peoples in the Ecuadorian Amazon.

CONCLUSIONS

The rights of nature have been shown to be complementary to the historically oppressed nature ontologies of Amazonian indigenous peoples. The idea of giving rights to nature recognises nature as a subject, giving to our understanding of it beyond its purely economic utility. Indigenous communities in the Amazon have integrated these newly developing perspectives in their historical emancipation project against the abuses of neocolonialism, highlighted, in this work, in the commodifying activities that oil companies and the Ecuadorian state carry out in indigenous territories.

Since the 1960s, the Ecuadorian Amazon has witnessed its progressive destruction. The large amounts of crude oil that were found underneath the rainforest became the main economic engine of Ecuador, leading to its gradual dependency on oil extraction/exportation. Thus, the country has sought to increase oil activities in order to sustain its development plans. In this context, there is a sharp contradiction between the way the state is conducting its development agenda and the human rights costs that have come along with these activities.

On the one hand, the state argues that the money that comes from oil is needed for providing better social services. On the other hand, oil activities have served as justification for invading indigenous territories and destroying their natural and cultural environments. Human rights and development should not be contradictory; they should instead be pursued in a complementary manner. It is unsustainable to continue perpetuating these forms of colonial domination with the excuse of integrating indigenous peoples into 'progress' and 'modernity'.

Since the 1950s the international community started considering indigenous peoples in human rights instruments. However, it was not until the creation of the ILO Convention 169 and the UNDRIP,

when indigenous peoples gradually began to be recognised as agents in international law-making. The UNDRIP was not only a symbolic recognition of indigenous peoples worldwide, but it was also a chance for them to codify their socio-historical struggles into an international document. In other words, it is not by chance that the declaration contains indigenous collective rights, explicit recognition of the right to self-determination and several articles that highlight the tremendous importance of their territories and natural environments. The UNDRIP is not only a culmination of the increasing openness of international law, but also the culmination of years of suffering and struggle of indigenous peoples who managed through these efforts to make their historical demands heard and codified into specific rights. In this line, the indigenous oil-related struggles in the Ecuadorian Amazon serve as an example of why self-determination – which can be understood as the right to exercise their cultural differences – and the struggle for their territories are the cornerstones of the global indigenous resistance against Western neocolonial dynamics.

In this context, the inclusion of collective rights, plurinationality, the *Sumak Kawsay* and the rights of nature in the Ecuadorian constitution was a powerful statement. It provided anti-colonial constitutional guarantees. These inclusions were the historical demands of indigenous peoples materialised in the constitutional text of a country that has historically marginalised them. As it has continuously been mentioned throughout this research, many indigenous ontologies sustain that the destruction of nature is the destruction of culture since they are not separated entities. Therefore, the introduction of indigenous collective rights and the rights of nature were, from the beginning, complementary emancipation tools.

After the constitution of 2008, different indigenous groups of Ecuador started using the rights of nature along with their recognised collective rights in order to challenge the government's economic development strategy. However, concerning the legal uses, the rights of nature cases filed by indigenous peoples have tended to fail. As it was explained, the Mining Law of 2009 intended to expand the mining activities, showing the state's intention to continue perpetuating a system that seeks the satisfaction of human needs at the cost of destroying nature and indigenous territories. This situation is evident in the weak institutionalisation of the rights of nature in secondary laws and the failure of the Yasuni-ITT initiative.

In this line, two factors that hinder the proper application of the rights of nature were identified. On the one hand, mining activities are the economic engine of the country, which means that the lawsuits took place in highly politicised contexts. On the other hand, the judges lacked the understanding of how to apply the rights of nature properly. These two identified obstacles evidence that the Ecuadorian legal system operates under an anthropocentric approach that does not acknowledge the spiritual and symbolic value of indigenous territories. Hence, despite the potential that the rights of nature have for strengthening the fulfilment of indigenous peoples' rights, their jurisprudential evolution has not been majorly developed.

However, the analysis provided in the third chapter shows that this situation has changed due to the role that civil society is playing in disseminating the content of the rights of nature. Thus, they have used the rights of nature for mobilising the society, setting these constitutional principles on the political agenda. The political strategies of the Llanachama community, Waorani groups of Pastaza and the Sarayaku people are illustrative.

Different Amazonian communities are appropriating the constitutional principles, interpreting them from their non-dualistic cosmovision. Thus, collective rights and the rights of nature are intrinsically linked in Amazonian nature ontologies since their conjunction represents a life cycle where human and non-human entities are not separated. In other words, the political uses of the rights of nature have also served for revendicating indigenous – and historically oppressed – forms of knowledge.

All in all, the uses of the rights of nature have served as a sociopolitical, legal, epistemological and ontological resistance platform for indigenous peoples in the Ecuadorian Amazon.

Within the academic debate, the future implications of the recognition of the rights of nature in Ecuador have too often been overlooked. Scholarly attention has primarily focused on the conceptual construction of the rights of nature and the processes in which they got recognised. Therefore, this research addresses this gap, focusing on the aftermath of their recognition. Moreover, this research has attempted to shed light on how these rights have interacted with indigenous realities, considering their collective rights, historical struggles and nature ontologies.

In this context, in light of proposing ideas for future research, it should be noted that the results of this thesis suggest that the constitutional recognition of the rights of nature was a significant advance in indigenous protection. However, Amazonian communities continue to suffer from extractive practices. Therefore, addressing the interplay between indigenous Amazonian groups and the epistemic community – namely the judges who have the responsibility of elaborating rights of nature jurisprudence – becomes essential for further understanding the obstacles that the implementation of the rights of nature face in those territories.

Additionally, in recent years, many countries – such as New Zealand, Colombia and the United States, among others – have given rights to non-human entities. After Ecuador's constitution, the rights of nature have continuously expanded to the global discussions concerning environmental degradation, climate change and indigenous protection. In this line, it is necessary to promote further research on how indigenous communities – and other vulnerable groups who suffer from the systematic destruction of their natural and cultural environments – are socially, legally, epistemologically and ontologically relating with this emerging theory in other countries.

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