

Decolonizing Law and expanding Human Rights: Indigenous Conceptions and the Rights of Nature in Ecuador*

Decolonizando la ley y expandiendo los derechos humanos:
concepciones indígenas y los derechos de la naturaleza
en Ecuador

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Abstract: This article critically addresses the crucial aspects for understanding the rights of nature as a resistance platform for indigenous peoples in Ecuador. By basing my arguments in a post-colonial approach to human rights and the concept of coloniality of power, I argue that the lack of inclusion of indigenous knowledge in human rights is a manifestation of neocolonialism. Thus, the introduction of non-Western narratives into

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the human rights discourse/practice is an attempt to decolonize what has traditionally been a colonialist discourse. Later on, I develop the concept of 'rights of nature' arguing that they are a practical example of the inclusion of indigenous narratives in human rights. 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 degradation. In this regard, I use ethnographic material, post-colonial anthropological theory, and symbolic ecology 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. Therefore, becoming a legal tool with a significant potential for indigenous people's historical justice.

Keywords: Human rights, neocolonialism, indigenous peoples, Amazonian nature ontologies, rights of nature.

Resumen: Este artículo aborda críticamente los aspectos cruciales para comprender los derechos de la naturaleza como una plataforma de resistencia para los pueblos indígenas en Ecuador. A través de un enfoque poscolonial y del concepto de colonialidad del poder, se sostiene que la falta de inclusión de conocimientos indígenas en el paradigma de los derechos humanos es una manifestación de neocolonialismo. Por lo tanto, la introducción de narrativas no occidentales en los derechos humanos es un intento de descolonizar lo que tradicionalmente ha sido una narrativa colonialista. Más adelante, se desarrolla el concepto de *derechos de la naturaleza*, argumentando que son un ejemplo práctico de inclusión de narrativas indígenas en los derechos humanos. En este sentido, se argumenta que el pensamiento occidental dominante no desafía las relaciones humano-naturaleza, que son responsables de la creciente degradación medioambiental. Asimismo, se utiliza material etnográfico, teorías de antropología poscolonial y ecología simbólica para argumentar que las ontologías de la naturaleza de los pueblos indígenas amazónicos están contenidas en los derechos de la naturaleza que la Constitución ecuatoriana consagra. En definitiva, se han convertido en una herramienta legal con un potencial significativo para la justicia histórica de los pueblos indígenas.

Palabras clave: Derechos humanos, neocolonialismo, pueblos indígenas, ontologías amazónicas de la naturaleza, derechos de la naturaleza.

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 (Gómez Isa 2019). Indigenous peoples are systematically silenced, made invisible, and dispossessed from their territories and cultures under the garb 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 (Dirks 1992), which are present in the historically unquestioned nature of international law and the global system it rules (Young 2003). 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 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 (Mackay 2004, 49). 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 extractivist practices are sustained by a particular conception of nature: a bunch of passive and agentless objects that are meant to satisfy human needs (Borras 2016, 137).

However, several indigenous groups —such as the ones who inhabit the Amazon 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 reconceptualizing the destructive human-nature relationship that the official development model legitimizes (Viaene 2017). 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 consists 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 some indigenous nature ontologies—such as the ones present in some Amazonian regions—defend that nature has to be considered as a living subject that must be protected regardless of human needs (Borras 2016).

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. All in all, Ecuador introduced an intercultural legal tool into its Constitution that revindicates a non-Western understanding of nature and helps to prevent the destruction of the ancestral territories, cultures, and values of indigenous peoples.

The main goal of this article is to critically address the crucial aspects for understanding the influence of indigenous knowledge on the foundations of the rights of nature, attempting to show that the inclusion of non-dominant nature perspectives reflects a process of decolonization of international law. Hence, the rights of nature have a significant potential for being an epistemological, legal, and political resistance platform for indigenous peoples. Indigenous

peoples, however, is a complex and diverse category that is difficult to address all at once. Therefore, the following article bases its argumentation on Amazonian indigenous nature ontologies in the Ecuadorian context, considering that Ecuador (1) was the first country that gave constitutional rights to nature in history, and (2) is the only country that gives legal rights to nature as such. In order to provide a fruitful reflection, the first part of the article follows a post-colonial approach to human rights, where it is argued that the lack of inclusion of indigenous knowledge in human rights is a manifestation of neocolonialism. Later on, the concept of rights of nature will be developed, arguing that they are a practical example of the inclusion of indigenous narratives in the human rights paradigm. In this regard, some elements of Amazonian indigenous nature ontologies are addressed explaining the non-Western dimensions that the very idea of making nature a subject of rights entails. Finally, the conclusions offer a critical review of the potentialities that the rights of nature have for strengthening the fulfillment of indigenous rights and for challenging the colonial paradigm that continuously affects the life of indigenous communities.

All in all, 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. Concerning the research methods, the article is based on literature research. The sources used are historiographic sources, anthropological academic production, and academic material from human rights-related fields.

1. Colonialism, human rights and international law

When Iberian colonizers named and colonized 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 (Quijano 2000, 801). 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 colonization processes institutionalized a cognitive dimension, in which the non-European world was the inferior and always primitive past (Quijano 2000, 801).

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 colonizers 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” (Watson 2014, 1). Colonization 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 (Dirks 1992).

In this regard, colonial law and policy aimed at the destruction of Indigenous cultures (Cunneen 2005, 60), including their pre-existing social and legal systems. For instance, *El Requerimiento* (1513) was the first legal text used by Spanish colonizers 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 (Zorrilla 2006, 247).

The dynamics of colonization 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” (Keal 2003, 108).

Several scholars have pointed out that the origins of international law are mainly Eurocentric (Pulitano 2012, 4), serving “as a legitimizing tool of colonialism and cultural imperialism in all its forms” (Gómez Isa 2010, 168). 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” (Gómez Isa 2010, 173). Concerning the European standards of those times, the ‘uncivilized’ population of the world had no room in the very idea of civilization. Therefore, “the civilizing mission to save non-European peoples from ignorance and backwardness was one of the core aspirational principles of international law” (Gómez Isa 2010, 173).

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. (Young 2003, 2)

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 (e.g., the United States) still have a strong influence on the former colonies (Roy 2008, 335). 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" (Roy 2008, 319). 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 (Quijano in Garzón 2016, 279). 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" (Mignolo 2007, 159).

All in all, international law has traditionally been a tool for colonization, and this idea of colonial power relations has laid the foundations for neo-colonization despite its formal end. 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.

1.2. *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 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. (De Sousa Santos 1997, 6)

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 Rights (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” (Glendon 2004, 106-107). 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 Man 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 discourse. However, it remains to be a primary Western creation. Indigenous peoples never participated in

those human rights advances since they were not considered by their states. As Gomez 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" (Gómez Isa 2019, 3). 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? In this regard, 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 Viaene (2018) 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. Simultaneously, the inclusion of non-Western experiences in human rights entails a decolonizing process since it integrates locally grounded views that are rooted in systematically marginalized forms of knowledge.

In this line, Eva Brems (2001) developed the concept of "inclusive universality". She argues that the human rights narrative must internalize 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. 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: "the relative universality of human rights is a powerful resource that can be used to build more just and humane national and international societies" (Donnelly 2007, 306). 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. In this regard, the international recognition of indigenous people's 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.

2. Progressive inclusion of indigenous peoples in international law

Indigenous peoples have progressively gained visibility in the international level; therefore, international law and human rights have been slowly transformed from a colonization apparatus to a revindication scenario. 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 civilizing 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.¹

The paternalistic and assimilationist approach was pretty 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* (Bengoa 2000, 20). Indigenism is the realization 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,

¹ Indigenous and Tribal Populations Convention, 1957 (No. 107). Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in independent Countries (Entry into force: 02 June 1959). Adoption: Geneva, 40th ILC Sessions (26th June 1957). Status: Outdated instrument (Technical Convention). Available online at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C107

the situation changed during the 1990s since Latin America witnessed what Bengoa calls the '*indigenous emergence*': the rise of highly politicized and articulated indigenous social movements that claimed recognition and historical justice (Bengoa 2000, 21). During those years, indigenous peoples recreated their history, acknowledging the systematic abuses they suffered since the beginning of colonization. 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.

2.1. *The International Labour Organization Convention 169*

After the Second World War, international law recognized 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" (Gómez Isa 2010, 179). 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 1989². 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 the Convention:

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.

The Convention marked a turning point since it recognized indigenous peoples as subjects of rights. Nonetheless, there was poor ratification of the Convention, and it lacked the participation of indigenous peoples during the drafting process. All in all, there was much progress to be made in order to recognize indigenous peoples

² Convention concerning Indigenous and Tribal Peoples in Independent Countries (Entry into force: 05 September 1991). Adoption: Geneva, 76th ILC Session (27 June 1989) Status: UpToDate instrument (Technical Convention). Available online at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169

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.

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 Peoples (UNDRIP)³, 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 recognized collective rights as complementary to the traditional individual rights. Additionally, the United Nations General Assembly (UNGA) recognized and reaffirmed that “indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples” (Annex). Therefore, it officialized an inextricable link between their rights as peoples and their cultural identities. The acknowledgment of indigenous collective rights includes recognition of their languages, historical particularities, as well as the collective rights to the territories, lands, and natural resources they have traditionally owned and utilized. Besides, the UNDRIP recognized the right to self-determination, which is one of the critical demands of the global indigenous movement. As mentioned in article three and four 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.

The right to self-determination is the right to self-governance and autonomy as long as it respects the state’s integrity. In this

³ UNDRIP A/ RES/61/295. Adopted at the 61st session of the General Assembly on Thursday 13 September 2007. Available online at http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

context, self-determination reaffirms ethnic diversity since it is the right to exercise the cultural differences. Additionally, article 19 of the UNDRIP recognizes the need for free, prior, and informed consent of indigenous peoples “before adopting or implementing legislative or administrative measures that may affect them.” Another 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 words of James Anaya, former Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples: “the 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” (Anaya 2008, 43). All in all, the creation of the UNDRIP shows that the UN and the human rights paradigm are being progressively decolonized since it is considering the historical struggles and cultural contexts of indigenous peoples –as victims of colonization. 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” (Gómez Isa 2019, 7). However, there is a significant implementation gap of indigenous rights and reluctance from states to recognize 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.

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 (Schlosberg and Carruthers 2010). The importance that is given to the exploitation of natural resources commonly undermines the fulfillment 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. (Mackay 2004, 49)

Several indigenous communities have reacted to these particular struggles, challenging the dominant nature/culture conceptions that predominates in the development models of their countries. In this regard, environmental and indigenous groups have highlighted the need for reconceptualizing the destructive human-nature relationship (Viaene 2017) that the dominant development model legitimizes. 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.

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 (Lupien 2011, 774).

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" (article 71). 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" (article 72). Besides, the State must apply preventive measures on activities that could cause environmental destruction, the extinction of species, or the alteration of natural cycles (article 73). Finally, it says that 'persons, communities, and peoples shall have the right to benefit from the environment and the natural wealth'

(article 74). 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 organizations, environmental lawyers, and highly politicized indigenous groups. As previously described, the 1990s was the decade of the indigenous emergence in Latin America. It was the decade of the politicization of indigenous identities. Thus, the indigenous peoples of Ecuador articulated an identity discourse of resistance against land occupations, environmental destruction, and cultural oppression, inspiring the creation of local and regional indigenous organizations that began to resist collectively. In this context, the Confederation of Indigenous Nationalities of Ecuador (CONAIE) —which is the biggest panindigenous organization of the country— among other indigenous organizations sent several proposals to be considered in the constitutional assembly, asking for the inclusion of the Kichwa notion of *Sumak Kawsay*⁴, the recognition of Ecuador as a plurinational State, stronger mechanisms for the protection of nature, more specific mentions to their collective rights, among others. Without going into details with the whole drafting process, it is essential to keep in mind that thanks to the pressure of these groups these legal novelties were incorporated in the constitution, which implies that part of the indigenous identity narratives, worldviews, and historical projects were codified into legal concepts penetrating a traditionally Western-driven state.

The rights of nature consist of making nature a subject of rights⁵. Therefore, 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

⁴ 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.

⁵ 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.

and the natural environment” (Herold 2017). 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 Ecuadorian constitution is the only Latin American constitutional text that gives legal personality to nature as such, in its totality. This legal novelty, however, has established a landmark, inspiring other countries to transform some natural elements —of high environmental and symbolic value— from objects of protection to subjects of rights.

For instance, years after the Ecuadorian milestone, New Zealand marked a historical precedent when it gave legal personality to the Whanganui river in 2014 (Viaene 2017). This river is located in the ancestral lands of the Maori Iwi people, having a tremendous symbolic value for them (Warne 2018). Another interesting example can be found in India, where the Ganges river, considered sacred by more than a billion Indians, became the first non-human entity in India to be granted the same legal rights as people. The decision, “which was welcomed by environmentalists, means that polluting or damaging the rivers will be legally equivalent to harming a person” (The Guardian, 2017). The rights of nature have also influenced other Latin American countries, as is the case of Colombia. In 2016, the Colombian Constitutional Court gave legal personality to the Atrato river in its judicial sentence T-622/16, ordering the Colombian State to carry out a protection plan against the progressive destruction of the Atrato river and its surrounding areas —damage that has been provoked by illegal mining activities (Colombian Constitutional Court 2016). All in all, the rights of nature are a tremendous conceptual advance that has the potential for ensuring the protection of environmentally and culturally significant natural elements, spaces and landscapes.

Additionally, the rights of nature are also a great advance in indigenous peoples protection since they recognize and validate non-Western nature ontologies. The rights of nature are based on a holistic approach to life where, instead of being conceptualized as separated entities, humans and non-humans belong to the same life cycle. Several indigenous philosophies —as in some Amazonian regions— have defended these perceptions as part of their historical emancipation project against the colonization of their territories.

All in all, the rights of nature represent a robust tool for facing local and global human rights issues linked to the destruction of life and the environment while officializing historically oppressed forms of knowledge. Hence, several authors have understood these rights as the

next step in the protection of indigenous rights, while also referring to them as the future shape of the human right to a clean and healthy environment.

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 recognize that human rights and environmental conditions that are strictly related. For instance, regarding the Latin American context, in 2015 the IACtHR, in the Advisory Opinion 23/17, recognized 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” (Inter-American Court of Human Rights 2017, 22). 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 (Borras 2016, 115).

The founding human rights instruments did not recognize the right to a healthy and clean environment as such. The UDHR, the International Covenant on Civil and Political Rights (ICCPRs) and the International Covenant on Economic, Social and Cultural Rights (ICESCRs) did not make explicit mention of a right to a healthy environment (Borras 2016, 116). 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 Environment⁶, 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 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.

⁶ A/RES/2994. Adopted by the General Assembly on the 15 December 1972. Available online at <https://www.refworld.org/docid/3b00f1c840.html>

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” (Mullen de Bolivar 1998, 127). 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 (Borras 2016, 119). 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 Declaration, which contains 27 principles and goals that intend to reach a balance between environmental protection and development. They point 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 Declarations provided the guidelines for the future evolution of international environmental law (IEL) and sustainable development. However, even though the Rio Conference has 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” (Palmer 1992, 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.⁷

⁷ Final Report on Human Rights and the Environment by the United Nations Economic and Social Council E/CN.4/Sub.2/1994/9, 6 July 1994. Available online at <https://undocs.org/en/E/CN.4/Sub.2/1994/9>

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 Environment —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 (Borras 2016). Nevertheless, the UNGA, the Human Rights Commission, and Economic and Social Council (ECOSOC) never showed an actual intention to finalize 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” (Article 29), 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.

All in all, there is no explicit right to a clean environment in any of the key international human rights treaties (Palmer 1992, 1028). When nature is damaged, there are violations of already recognized 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 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.

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 the 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 (Mullen de Bolivar 1998, 126).

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 (Borrás 2016, 127). 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 criticized.

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 Rights (ACHR) does not provide a definition of property that explicitly refers to the ancestral territories of indigenous communities⁸. In 2001, the IACtHR expanded the interpretation of the right to property contained in the ACHR, recognizing the right of the Awas Tingni community to the possession of their ancestral lands and natural resources (Inter-American Court of Human Right 2001). 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 defense of nature is based on human interests.⁹

All in all, there is an increasing institutionalization 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

⁸ The “right to property” is contained in article 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.”

⁹ For more examples see the rulings of: *Moiwana v Surinam*, *Saramaka v Surinam*, *Sawhoyamaya v Paraguay*, *Xakmok Kasek v Paraguay*, *Sarayaku v Ecuador*.

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” (Viaene 2017).

The international efforts for elaborating a human right to a clean and healthy environment does not tackle anthropocentrism in law, which is one of the core reasons for environmental degradation. It instead legitimizes 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.

As previously stated, many emerging theories challenge the human-centered conception of nature in law and one of them is the rights of nature, which were incorporated in the Constitution of Ecuador in 2008. The institutionalization of the rights of nature was a result of intercultural dialogue since indigenous organizations 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 colonized forms of knowledge, challenging and enriching orthodox legal theory and human rights.

It is fundamental to elaborate on the nature/culture distinctions present in the Ecuadorian Amazon. 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.

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 (Walker 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 nature conception, 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.

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 decolonizing 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 decolonize 'nature'.

Boaventura de Sousa Santos elaborated a theoretical approach that intends to democratize knowledge by rescuing invisibilized 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” (De Sousa Santos 2007, 27). 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” (De Sousa Santos 2007, 27).

De Sousa Santos (2015) explicitly recognizes the plurality of ways of relating to nature. For him, indigenous nature 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 monopolized nature. Finally, he argues that the dialogue between dominant and non-dominant understandings of nature will lead to a process of knowledge democratization and justice.

Under these theoretical lenses, several scholars have studied nature conceptions in non-Western societies. The French anthropologist Philippe Descola (2013) 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. This particular relationship between humans and nature is called “animism”,¹⁰ which is mostly present in the Amazonian indigenous ontologies of Brazil, Peru, and Ecuador.

Furthermore, the anthropologist Eduardo Kohn (2013), proposed a very controversial reading of how indigenous peoples in the Ecuadorian Amazon conceived nature. Kohn noticed that for the people in Ávila—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*¹¹. 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

¹⁰ 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.

¹¹ Runa is a Kichwa indigenous term that means “person, human or being”.

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. (Kohn 2013, 1)

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 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 (Kohn 2013).

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 reconceptualized 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.

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 summarized 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 legitimizes 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 decolonize that discourse and rekindles oppressed forms of knowledge.

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, minimizing 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 legitimizes 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 people and nature. Therefore, the rights of nature are a promising emerging theory that has to continue evolving and institutionalizing since it has the potentiality to provide historical justice to historically oppressed indigenous groups.

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