



## The Implementation of the Ecocentric Paradigm in Amazonian Jurisdictions: The Constitutionalization of Traditional Culture and the Rights of Nature in Bolivia and Ecuador

### La Implementación del Paradigma Ecocéntrico en Jurisdicciones Amazónicas: La Constitucionalización de la Cultura Tradicional y los Derechos de la Naturaleza en Bolivia y Ecuador

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#### Abstract

Humanity is currently facing a severe ecological crisis, marked by the indiscriminate exploitation of natural resources, such as the deforestation of the Amazon, whose protection largely depends on Indigenous populations. Their cosmocentric worldview challenges the anthropocentric perspective typical of Western legal culture, promoting ecocentric or biocentric approaches. Building on this context, this study adopts a comparative approach to examine how the Indigenous cosmovision and the ecocentric paradigm are implemented in Ecuador and Bolivia, drawing on Rodolfo Sacco's theory of legal formants. By analysing the political, normative, and judicial formants, this work aims to verify the effective implementation and implications of the Indigenous cosmovision of *buen vivir* in Ecuador and Bolivia, also in light of the contradictions arising from the regulation of natural resource exploitation.

**Keywords:** Amazonian Jurisdiction; Indigenous Rights; Nature Rights; Chthonic Legal Tradition; Latin American New Constitutionalism

#### Resumen

La humanidad se enfrenta actualmente a una grave crisis ecológica, marcada por la explotación indiscriminada de los recursos naturales, como la deforestación de la Amazonía, cuya protección depende en gran medida de las poblaciones indígenas. Su cosmovisión cosmocéntrica desafía la perspectiva antropocéntrica típica de la cultura jurídica occidental, promoviendo enfoques ecocéntricos o biocéntricos. Sobre esta base, este estudio adopta un enfoque comparado para examinar cómo la cosmovisión indígena y el paradigma ecocéntrico se implementan en Ecuador y Bolivia, tomando como referencia la teoría de los formantes jurídicos de Rodolfo

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Sacco. Mediante el análisis de los formantes político, normativo y judicial, este trabajo pretende verificar la implementación efectiva y las implicaciones de la cosmovisión indígena del buen vivir en Ecuador y Bolivia, también a la luz de las contradicciones derivadas de la regulación de la explotación de los recursos naturales.

**Palabras claves:** Jurisdicción Amazónica; Derechos Indígenas; Derechos de la Naturaleza; Tradición Jurídica Ctonia; Nuevo Constitucionalismo Latinoamericano

## INTRODUCTION

Humanity is currently facing an unprecedented ecological crisis, where the, often indiscriminate, exploitation of natural resources is jeopardizing the delicate balance of the global ecosystem. Among the most pressing issues is, undoubtedly, the deforestation of the Amazon—a region of critical importance not only for its vast biodiversity, but also for the vital role it plays in regulating the global climate. The protection of this area is inextricably linked to the indigenous populations who inhabit it, respected as guardians of the Earth's biodiversity. A role that is grounded in profound ecological knowledge and a deep spiritual connection to their ancestral lands and the natural environment. Studies have shown that in indigenous territories, the legal recognition of collective property rights not only significantly reduces deforestation<sup>1</sup> but also fosters forest regeneration, showing deforestation rates three times lower compared to unprotected lands.<sup>2</sup>

At the same time, the protection of environmental biodiversity plays an essential role in relation to the identity, ecological knowledge, ideology, and political use of this concept by native peoples and environmental groups. This underscores the connection between the protection of the rights of nature and that of indigenous peoples, a connection that has been recognized, at least formally, in certain constitutional systems.<sup>3</sup>

Some Latin American constitutional systems, such as those of Ecuador and Bolivia, have implemented some of the elements of the indigenous cosmovision, granting indigenous populations the right to apply their own legal systems and a certain degree of autonomy in managing ancestral lands. In this context, Nature ceases to be merely an instrumental good for human well-being and instead assumes the status of a subject of rights, recognized as a vital element with equal dignity to humans. The ecocentric perspective has been embedded in the legal framework through the constitutional recognition of principles, values, and rights that enable the integration of worldviews distinct from the Western perspective into environmental protection discourse. However, this approach is not universally accepted across Latin America. Even in countries such as Bolivia and Ecuador, where the indigenous cosmovision has been granted constitutional recognition, significant internal tensions and contradictions remain. These are particularly evident in relation to the suite of natural resource exploitation policies commonly referred to as neo-extractivism. Indeed, despite their crucial contribution to environmental protection, indigenous communities are often victims of territorial rights violations.

A landmark example is the 2012 case of *Comunidad Kichwa de Sarayaku v. Ecuador*, in which the Inter-American Court of Human Rights affirmed the right of the Kichwa de Sarayaku people to prior

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<sup>1</sup> BARAGWANATH et al. (2023), p. 2.

<sup>2</sup> REDVERS et al. (2023), p. 2.

<sup>3</sup> HAMES (2007), p.179.

consultation regarding the exploration and exploitation of natural resources on their ancestral lands. The Court found that these rights had been violated by the Ecuadorian State when it granted an oil concession within their territory without obtaining their free, prior, and informed consent. The case is one of the most iconic and vindicatory of the Inter-American Human Rights System in relation to the recognition of the violation of collective rights, specifically the right to prior, free, and informed consultation with indigenous peoples and communities on activities that put their lives or territories at risk.<sup>4</sup>

In this context, the cosmovision of indigenous peoples prompt profound reflections that challenge the anthropocentric perspective of the human-nature relationship inherent in Western legal culture, advocating instead for an ecocentric or biocentric approach. Building on this context, this work aims to investigate, the development of the implementation of the indigenous cosmovision and the ecocentric paradigm in the Amazonian jurisdictions of Ecuador and Bolivia. To this end, the theory of legal formants by Rodolfo SACCO is taken as a reference point, focusing on the analysis of: a) the political formant through a comparative examination of indigenous territorial autonomies; b) the normative formant through a comparative examination of the constitutional and legislative recognition of the rights of nature; c) the judicial formant through a comparative examination of the concrete implementation of the rights of nature by the judiciary.

From a methodological perspective, this study adopts a comparative legal approach that combines conceptual analysis with the systematic examination of primary sources. Ecuador and Bolivia were selected because they represent the most advanced constitutional laboratories in Latin America where *buen vivir* and the rights of Nature have been formally enshrined. Their proximity in terms of constitutional timing, as well as their shared regional context, allows for meaningful comparability, while their institutional and political differences offer a useful contrast for analysis. The research relies primarily on constitutional texts, ordinary legislation, and judicial decisions from the two countries, complemented by relevant case law from the Inter-American Court of Human Rights and secondary literature in comparative constitutional law. These sources are examined through the lens of SACCO's theory of formants, which makes it possible to capture not only the formal rules, but also the political, cultural, and jurisprudential dimensions that shape the implementation of law. Within this framework, particular attention is paid to the degree of constitutional entrenchment of *buen vivir*, the scope of indigenous territorial autonomy, the recognition and enforcement of the rights of Nature, and the tensions produced by extractivist economic policies. This approach allows for the identification of both convergences and divergences in the way Ecuador and Bolivia have sought to constitutionalize an ecocentric paradigm. Nevertheless, the study does not attempt an ethnographic reconstruction of indigenous worldviews in their full complexity, but rather focuses on their constitutional and judicial institutionalization. The aim is to examine the effective implementation and implications of the indigenous cosmovision of *buen vivir* in Ecuador and Bolivia, particularly in light of the contradictions emerging from the regulation of natural resource exploitation.

### **I. Custodians of Biodiversity: Buen Vivir in Andean Tradition.**

The rights of indigenous peoples have undergone significant reworking in Latin American doctrine and legislation, moving away first from a protectionist approach and later from an integrationist one, with the aim of achieving a substantial recognition. In recent decades, Latin American constitutions

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<sup>4</sup> VEINTIMILLA QUEZADA and CHACÓN CORONADO (2023), pp. 25-42.

have increasingly incorporated Indigenous rights and legal safeguards, including the recognition of the right to prior consultation.<sup>5</sup>

This perspective is no longer confined solely to indigenous community but has also influenced the decisions of Latin American governments to rethink the management of common goods and the relationship between humans and nature. As a result of this evolution, alongside the anthropocentric foundation of environmental constitutional law, an alternative ecocentric approach has emerged, placing Nature at the center of the constitutional discourse. This epistemic shift requires drawing on the ancestral knowledge of indigenous peoples and promoting the responsible use of resources based on indigenous cultures, through a renewed appreciation of traditional practices and systems rooted in an animistic conception of nature.<sup>6</sup> The reference specifically concerns the indigenous cosmovision, translated in the law as the broader concept of *buen vivir* or *vivir bien*. Through its constitutional enshrinement, Buen Vivir represents a plural and alternative paradigm that introduces new epistemological frameworks.<sup>7</sup> The concept of *buen vivir* is open-ended and not easily defined, except by paraphrasing it as a way of life in harmony with both the community and Nature. In this worldview, the private and communal spheres, as well as the material and spiritual dimensions, are seen as interdependent.<sup>8</sup> The approach to *buen vivir* must inherently be plural, as there are diverse interpretations of it among different indigenous peoples.<sup>9</sup> It should be noted that the concept of *sumak kawsay* and its variants lack historical precedent within indigenous communities. This lack of historical grounding risks turning the notion into either a slogan or a simple policy instrument.<sup>10</sup> At the same time, it highlights a tension: the desire to root the constitutional framework in the spiritual foundations of Andean culture contrasts with the difficulty of integrating these principles coherently within the legal system.<sup>11</sup>

The Spanish expression *buen vivir* aim to express the concepts of *sumak kawsay* in *Kichwa*, *suma qamaña* in *Aymara*, and *küme mogen* in *Mapudungun*, all of which view harmony between the individual, the community, and nature as the foundation of social coexistence.<sup>12-13</sup> According to this view, Nature and society interact in an inseparable manner. Ecosystems and natural communities cannot be regarded as objects that individuals may freely exploit; rather, they are autonomous entities with the right to exist and thrive, while also being essential for ensuring human survival.<sup>14</sup> It is therefore possible to affirm that the starting point of *buen vivir* lies in its biocentric conception of reality. Building on this premise, beyond its identification with any specific cultural system, the key elements of *buen vivir* can be outlined as follows: a) It represents an alternative to traditional notions of development, rejecting the Western capitalist economic model. Instead, it calls for a continuous commitment to fulfilling both the material and spiritual conditions required to live well within a

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<sup>5</sup> MARTÍNEZ (2025), pp. 2-4.

<sup>6</sup> BAGNI (2013), pp. 223-224.

<sup>7</sup> GALINDO (2025), pp. 44-45.

<sup>8</sup> ALBÓ (2009), pp. 30-31.

<sup>9</sup> This internal pluralism is explicitly recognized in the Bolivian Constitution, while the Ecuadorian Constitution specifically references only the Quechua concept of *sumak kawsay*.

<sup>10</sup> PACARI (2014), pp. 128-130.

<sup>11</sup> WU (2024), pp. 62-63.

<sup>12</sup> PRIETO MÉNDEZ (2013), p. 62.

<sup>13</sup> Some scholars observe that the concept of *buen vivir* may be considered an "invented tradition," crafted as a response to times of crisis, where references to the past serve to legitimize specific political choices. The appeals to Andean cosmovision, therefore, could be seen as a strategy by indigenous elites to rally electoral support around a political manifesto. For further exploration of this perspective, see MARINI (2011) and DE SOUSA SANTOS (2002).

<sup>14</sup> HIDALGO FLOR (2011), pp. 89-90.

harmonious community that encompasses humans and Nature alike; b) it rejects the notion of Nature as a resource to exploit, export, or commercialize; c) it proposes a model of land use that is capable of preserving biodiversity through the balanced use of natural resources; d) it incorporates indigenous decolonial claims within the framework of the *nuevo constitucionalismo latinoamericano*, challenging Western legal categories.<sup>15</sup>

All these dimensions, though interconnected, have often led to significant internal tensions and contradictions. The most pronounced disagreements have emerged particularly with regard to the relationship between indigenous and ecological perspectives and economic interests, often culminating in open political conflicts. This has been especially evident in cases where indigenous rights to ancestral lands have been violated due to extractivist economic policies.<sup>16</sup>

In practical terms, the *buen vivir* is embodied in a set of integrated and sustainable actions across economic, political, socio-cultural, and environmental domains. These actions require the State to implement a new or different form of constitutionalism, characterized by values that differ partially from those of the traditional democratic State of Western origin, and are tied to collective knowledge rooted in a counter-hegemonic legal tradition.<sup>17</sup> Law employed in a counter-hegemonic manner necessarily involves a certain degree of legal pluralism, which presupposes the coexistence of multiple centers of legal production, tied to specific territories or various ethnic, cultural, or religious groups.<sup>18</sup> The goal is to reduce power disparities, including through the expansion of participatory democracy, the recognition of collective rights for historically oppressed groups, and the elevation of their normative sources and related justice systems.<sup>19</sup>

The constitutionalization of the Andean paradigm of *buen vivir* thus entails the promotion of a specific system of values and new forms of coexistence that influence the political, social, legal, and economic structure of the State. The constitutional frameworks of Ecuador and Bolivia serve as emblematic examples of this shift.

## II. The Indigenous Question and *Nuevo Constitucionalismo*: The Incorporation of *Buen Vivir* in the Plurinational Constitutions of Ecuador and Bolivia.

In Latin America, the indigenous issue—specifically, the issue of autonomy as an expression of the self-determination of indigenous peoples—gained significant importance, even appearing on the agenda of indigenous social movements only in the early 1990s. In fact, from the period of independence onward, constitutionalism in the continent primarily incorporated foreign models, mainly from European traditions with elements of the North American constitutional model. These models lacked the ability to account for the Latin American pluralism.<sup>20</sup> In contrast, the decolonial interpretation of Latin America emphasizes identity claims and the revival of indigenous legal-cultural traditions, as articulated by the *Nuevo Constitucionalismo Latinoamericano* that emerged in the region's legal systems at the turn of the 20th and 21st centuries. This decolonial perspective has fueled a critical debate aimed at reshaping constitutionalism to reflect the uniqueness of Latin

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<sup>15</sup> HIDALGO FLOR and MARQUEZ FERNANDEZ (2012), p. 102.

<sup>16</sup> POLO BLANCO and PIÑEIRO AGUIAR (2020), pp. 7-9.

<sup>17</sup> GLENN (2010).

<sup>18</sup> GRIFFITHS (1986), pp. 4-6.

<sup>19</sup> MENSKI (2017), p. 134-136.

<sup>20</sup> PEGORARO (2021), p. 6.

America. While acknowledging the positive contributions of Western legal traditions, this approach seeks to integrate indigenous values by fostering a dialogue between state law and indigenous law.<sup>21</sup>

By the end of the 20th century, the constitutionalization of indigenous rights began to receive initial recognition, starting with Nicaragua, followed by the 1985 Guatemalan Constitution and the 1988 Brazilian Constitution. However, it was only with the 1989 ILO Convention 169 on Indigenous Peoples' Rights and its influence on the new Latin American constitutionalism, that Latin American constitutions inaugurated a new era, recognizing for the first time a comprehensive catalog of collective rights for indigenous peoples and indigenous law itself.

This constitutional cycle is characterized by a rediscovery of elements that distinctly set it apart from Western legal culture, embracing multiculturalism as the foundation for the protection of fundamental rights, and enriching the traditional constitutional framework with rights derived from indigenous culture and tradition.<sup>22</sup> Indigenous peoples, by actively participating in the constituent processes and claiming an equal role with other groups, have enabled the chthonic legal and cultural tradition to permeate constitutional systems through the integration of principles such as plurinationality, interculturality and legal pluralism.<sup>23</sup> The direct consequence is the recognition of the collective rights of indigenous peoples through an ecocentric vision of law and the rediscovery of community life.<sup>24</sup>

In Ecuador and Bolivia, more than in other Latin American countries, ancestral values have become the pillars of a new constitutional architecture. The constitutions of these countries contain numerous references to *buen vivir* starting from the preambles. The preamble of the Ecuadorian Constitution expresses the intention to build a new form of coexistence that promotes diversity and harmony with Nature, with the aim of pursuing *buen vivir*, or *sumak kawsay*, or *suma qamaña*. Similarly, the preamble of the Bolivian Constitution identifies respect and equality for all, the fair distribution and redistribution of social wealth, and the pursuit of *bien vivir* as fundamental principles of the State. In the Bolivian Constitution, *vivir bien* or *suma qamaña* is included among the principles, values, and goals of the State (Art. 8 Constitution), thus serving as an extralegal element that guides public conduct.<sup>25</sup> In contrast, the Ecuadorian Constitution implements *buen vivir* both as a guiding principle and as part of the rights guaranteed by the State.<sup>26-27</sup>

The Ecuadorian Constitution recognizes as part of *buen vivir* many social and third-generation rights, enriched by the acknowledgment of rights specific to certain social groups, as well as to communities, peoples, and nations in their own right. *Buen vivir* also serves as the key principle of the social and solidarity-based economic model, aimed at reproducing the material and immaterial conditions that, through forms of production and exchange typical of indigenous traditions (Art. 391), enable the implementation of the indigenous cosmovision (Art. 283). The Constitutional Court has affirmed

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<sup>21</sup> VICIANO PASTOR (2012), pp. 9-11.

<sup>22</sup> PEGORARO (2018), pp. 178-180.

<sup>23</sup> BALDIN (2019), p. 87.

<sup>24</sup> BAGNI (2021), p. 52.

<sup>25</sup> BAGNI et al. (2023), pp. 67-68.

<sup>26</sup> MARTÍNEZ DALMAU (2013).

<sup>27</sup> These include, for example, the right to water (Art. 12), the right to healthy and sufficient food (Art. 12), the right to a healthy environment (Art. 14), the right to cultural identity (Art. 21), and the right to sustainable use of urban spaces (Art. 31), understood both as the right to participate in its governance and as the right to property with a social and environmental function (Art. 32).

that *sumak kawsay* is an integral part of the State's project, which is based on maintaining the balance between human beings, natural resources, and development.<sup>28</sup>

In the Bolivian Constitution, *vivir bien* is placed before the catalogue of rights and is found in Title I, Chapter II, which is dedicated to the principles, values, and goals of the State. The realization of values rooted in native culture is, thus, one of the main tasks of the legal system. Article 8 of the Constitution states that the State adopts and promotes as ethical and moral principles of Bolivian plural society *ama qhilla* (do not be lazy), *ama llulla* (do not lie), *ama suwa* (do not steal), as well as *suma qamaña* (the good life), *ñandereko* (living in harmony), *teko kavi* (living a good life), *ivi maraei* (preserving the land without evil), and *qhapaj ñan* (walking a path of dignified and noble life). These are all principles commonly shared among indigenous communities in the Andean region.<sup>29</sup> Article 8 of the Constitution outlines the foundational values of the State aimed at achieving *vivir bien*. These values are mirrored in the obligations placed on the State, which include ensuring that authorities and judicial bodies within indigenous communities apply indigenous principles and values (Art. 100 Constitution). The Bolivian Constitutional Court has repeatedly given concrete effect to these indigenous values, which place positive obligations on the State<sup>30</sup> and influence the interpretation of rights.<sup>31</sup> The aim is to overcome the colonialist framework and ensure justice and equality.<sup>32</sup>

In both countries, the incorporation of *buen vivir* or *vivir bien* into the constitutional framework is reflected in the plurinational nature of the State and the pluralist principle. This aims to include historically marginalized groups and establish equality among all the peoples coexisting within the territory.<sup>33</sup> The plurinational State represents a model of political organization designed to advance the decolonization of indigenous nations and peoples. This is achieved through the reaffirmation of their territorial autonomies and the acknowledgment of the pluralistic nature of the legal system. In these legal systems, cosmopolitan legality, which underpins the inclusion of all social components in the public sphere, is based on the pluralist principle. This principle allows for the recognition of specific legal positions granted to certain ethnic groups.<sup>34</sup> These concepts are manifested through the recognition of indigenous peoples' ancestral dominion over their territories and their right to self-determination within the framework of state unity, as well as various levels of pluralism: a) Economic pluralism refers to the recognition of different types of property and production systems based on ancestral principles, which the State is obligated to adequately support; b) Political pluralism concerns the representative organizations of citizenship, expressed through community-based democracy and forms of territorial autonomy and self-government; c) Legal pluralism entails the recognition of the coexistence of multiple legal systems within the plurinational State, closely tied to the self-determination of indigenous peoples.

Despite the constitutional implementation, strong tensions and internal contradictions persist within these legal systems, particularly regarding natural resource exploitation policies, known as neo-extractivism. This inevitably affects the practical implementation of *buen vivir*:

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<sup>28</sup> Ecuador Constitutional Court (2010) nr. 0006-10-SEE-CC.

<sup>29</sup> VARGAS LIMA (2016).

<sup>30</sup> Bolivia Constitutional Court, (2012) nr. 0257/2012, 29; (2012) nr. 0176/2012; (2013) nr.0661/2013; (2013) nr. 0683/2013.

<sup>31</sup> Bolivia Constitutional Court, (2013) nr.1067/2013.

<sup>32</sup> Bolivia Constitutional Court, (2013), nr. 0736/2013.

<sup>33</sup> The previous constitutions of Ecuador (1998) and Bolivia (1994) recognized the existence of multiethnic and multicultural societies and the collective rights of indigenous communities in accordance with ILO Convention No. 169 of 1989. However, these values did not see real and concrete implementation at the legislative level.

<sup>34</sup> BALDIN (2019), pp. 67-82.

### III. The Implementation of the Indigenous Cosmivision and the Ecocentric Paradigm in the Amazonian Jurisdictions of Ecuador and Bolivia: The Political, Normative, and Jurisprudential Formants

The constitutional frameworks of Ecuador and Bolivia, by incorporating the indigenous cosmivision, challenge the relationship between culture and law, dismantling the anthropocentric paradigm governing the relationship between humans and Nature, typical of the Western Legal Culture. These legal systems represent an exemplary case of a pluralistic approach to law,<sup>35</sup> which is shaped by the emergence of cthonic cryptotypes.<sup>36</sup> This phenomenon reinforces the idea of the need for an epistemic revolution in legal science, one that provides sufficient space for counter-hegemonic legal cultures.<sup>37</sup> Comparative law offers the most suitable tools for this purpose, as it rejects the notion that law is solely state-produced. Through the theory of formants, it acknowledges the competition of other sources of normative production.<sup>38</sup>

In particular, the theory of formants, developed by Rodolfo SACCO, addresses the need to move beyond monolithic categories in the understanding of law. It explores the various sets of rules that, within a legal system, contribute to shape the legal order of a group in a specific place and time.<sup>39</sup> In contemporary legal systems, the main formants are legislation, legal doctrine, and case law. However, the comparatist also examines the subject of study through other elements beyond the surface of the legal phenomenon, employing categories and analytical tools from other disciplines.<sup>40</sup> These are meta-formants—cultural, political, and social elements that influence the interpretation and application of law at an operational level, even though they are not explicitly codified in legal norms.<sup>41</sup> In contexts of legal pluralism, such elements become essential for understanding the interactions between different normative orders coexisting within the same legal system, a phenomenon particularly relevant in post-colonial contexts.

To explore the implications of incorporating cthonic traditions into constitutional frameworks through the lens of the theory of formants, this study will assess the practical implementation of the concept of *buen vivir* within the Bolivian and Ecuadorian legal systems, with a particular focus on the relationship between humans and Nature. The analysis will focus on: a) the political formant, through a comparison of indigenous territorial autonomies; b) the normative formant, by conducting a comparative examination of the constitutional and legislative recognition of the rights of Nature; c) the judicial formant, through a comparative analysis of the concrete application of these rights by the judiciary.

#### 3.1. The Role of the Cthonic Tradition of *Buen Vivir* in the Political Formant: The Case of Indigenous Territorial Autonomies.

From a constitutional law perspective, Latin American countries tend to transcend the classic taxonomies of federal and unitary states, presenting entirely unique characteristics (Pavani 2021, p. 74). In particular, the constitutions of Ecuador and Bolivia, while defining the state as unitary, diverge

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<sup>35</sup> MARTÍNEZ DALMAU et al. (2021), pp. 63-81.

<sup>36</sup> SACCO (1991).

<sup>37</sup> BAGNI (2013), pp. 266-267.

<sup>38</sup> PEGORARO and RINELLA (2024), pp. 11-14

<sup>39</sup> SACCO (1991).

<sup>40</sup> PEGORARO and RINELLA (2024), pp. 18-23.

<sup>41</sup> GRAZIADEI (2024), p. 1474.

from the classical model of this state form by attempting to balance the European centralist tradition with indigenous territorial claims.<sup>42</sup>

This approach aligns with the implementation of *buen vivir* and the corresponding significance that land holds for indigenous peoples. For indigenous communities, the relationship with the land is not merely a matter of ownership and production but a material and spiritual element that they must fully enjoy to preserve their identity and cultural traditions and pass them on to future generations.<sup>43</sup> The ancestral territory represents the physical space where cultural expressions manifest, including the communal management of land, with an inevitable impact on the exploitation of natural resources and the relationship between humans and Nature. There is no doubt that the restitution of ancestral lands, their autonomous administration, and the exploitation of their natural resources constitute a significant test for assessing the actual implementation of *buen vivir*. To this end, the constitutional frameworks of Ecuador and Bolivia have introduced specific models of territorial autonomy.

### 3.1.1 Indigenous Territorial Autonomy in Ecuador

The new Constitution of Ecuador, in Article 57, recognizes a series of collective rights granted to indigenous communities, specifically concerning their relationship with ancestral lands. The provision acknowledges the right to preserve communal lands, which are deemed inalienable, non-seizable, indivisible, and exempt from taxes. Indigenous communities have the right to retain possession of these lands and to receive them free of charge. They are also granted the right to participate in the use, usufruct, administration, and conservation of natural resources, and to promote biodiversity and ecosystem management. Furthermore, the provision guarantees the ancestral, irreducible, and intangible possession of territories of the so-called “peoples in voluntary isolation”, where extractive activities are strictly prohibited.

The guarantee of these rights is facilitated through the creation of indigenous territorial autonomies (Art. 60 Constitution): forms of administrative organization established by the free determination of the inhabitants through popular consultation (Art. 257 Constitution). Within these districts, the principles of interculturality and plurinationality are applied, ancestral customs and traditions are upheld, and collective land rights are exercised (Art. 93, Organic Code of Territorial Organization, Autonomy, and Decentralization, 2010).<sup>44</sup> However, certain aspects of the regulation of territorial autonomies seem to conflict with indigenous traditions, posing obstacles to their concrete implementation. More specifically, Article 93 of the *Código Orgánico* requires the drafting of an autonomy statute, which may be perceived as a sign of the subordination of the traditionally oral ethnic legal culture to the Western legal system, typically based on written law.<sup>45</sup> Additionally, there is resistance often encountered from state bodies during the procedural phase of recognizing these territorial districts.<sup>46</sup>

The regulation of ancestral territories enshrined in the *Ley Orgánica de Tierras y Territorios Ancestrales* of 2016, amended in 2018, has been a source of significant tension between the

<sup>42</sup> PAVANI and ESTUPIÑÁN ACHURY (2016), p. 25.

<sup>43</sup> CIDH *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, 31 agosto 2001, par.149; *Pueblo Indígena Kichwa de Sarayaku v. Ecuador*, 27 giugno 2012, par. 159.

<sup>44</sup> It has been noted that the provision for indigenous territorial districts is entirely unnecessary in areas where indigenous people constitute the majority of the population, as they already exercise self-governance and autonomy beyond the scope permitted through formal administrative entities. In such cases, these districts may instead be seen as an imposition (MARTINEZ DE BRINGAS, 2018).

<sup>45</sup> BALDIN (2019), p. 100.

<sup>46</sup> APARICIO WILHELMI (2011), pp. 10-12.

government and indigenous communities, who continue to express dissatisfaction with the government's inadequate response to their demands for recognition of their territorial rights.

A tensions that highlight a gap between the recognition of collective rights based on the principles of *buen vivir* and their practical implementation. This is further evidenced by the fact that indigenous groups are often compelled to turn to the courts in order to have these rights recognized. One of the most recent milestones in this context occurred on November 24, 2023, when the Provincial Court of Sucumbíos delivered a historic ruling in favor of the Siekopai Nation.<sup>47</sup> The Court recognized their property rights over Pë'këya, an ancestral territory located along the Ecuadorian Amazon-Peru border, within the Cuyabeno Wildlife Reserve. This decision represents a significant advancement in the recognition of Indigenous land rights, particularly within protected areas, setting a precedent for similar cases in the future.<sup>48</sup> This case exemplifies the ongoing difficulties faced by indigenous populations in securing the practical enforcement of their constitutional rights due to the impact of extractivist policies.

In 2023, following the approval of the Constitutional Court for a referendum proposal, Ecuadorian citizens were called to vote on halting the extraction of energy and mineral resources from the Ishpingo-Tambococha-Tiputini block, located within the Yasuní National Park in the Ecuadorian Amazon. This area is home to the most important biodiversity reserve on the planet, as well as the land of the two indigenous communities in voluntary isolation present in Ecuador. The successful outcome of the referendum mandated the cessation of oil extraction in the area to protect its ecosystem and the indigenous populations. Despite the referendum's outcome, challenges persist as government is dealing economic pressures and complexities of implementing decision. The situation highlights the ongoing struggle between conservation efforts and economic interests in one of the world's most biodiverse regions.<sup>49</sup>

### *3.1.2 Indigenous Territorial Autonomy in Bolivia*

The Bolivian Constitution recognizes the right of indigenous groups to self-determination and territoriality (Arts. 2 and 30), affirming the collective titling of lands and territories. This approach is particularly innovative, even within the Latin American context.<sup>50</sup> Articles 394 and 395 of Constitution affirm collective ownership through the recognition of ancestral land rights, allowing for mixed titling of lands. The Constitution also grants indigenous peoples the exclusive right to use natural resources, without prejudicing the legitimate rights acquired by third parties (Arts. 30 and 403). This is a deeply divisive issue, as the economic interests driving extractivist policies are fundamentally at odds with the protection of indigenous rights.<sup>51</sup>

The Bolivian Constitution references the concept of territoriality rooted in ethnic culture, formalizing it through the right to autonomy and self-governance for indigenous communities. In this context, a particularly significant element is the recognition of indigenous campesino native territories (Territorios Indígena Originario Campesinos, TIOC) (Art. 269 Constitution). This institutional framework includes the recognition of pre-existing communal lands of origin and introduces a

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<sup>47</sup> Corte Provincial de Justicia de Sucumbíos, Sala Multicompetente, Sentencia (2023) No. 21332202200699, Nación Siekopai v. Ministerio del Ambiente, Agua y Transición Ecológica y Procuraduría General del Estado.

<sup>48</sup> <https://english.elpais.com/international/2023-11-30/historic-ruling-in-ecuador-returns-ownership-of-ancestral-land-to-the-siekopai-people.html>

<sup>49</sup> <https://news.mongabay.com/2024/08/one-year-after-oil-referendum-whats-next-for-ecuadors-vasuni-national-park/>

<sup>50</sup> MÍGUEZ NÚÑEZ (2013), p. 297.

<sup>51</sup> BALDIN (2019), p. 105.

multifaceted system of governance levels designed to benefit indigenous groups.<sup>52</sup> According to the *Ley Marco de Autonomía y Descentralización* of 2010, indigenous autonomy is a definition shared by various territorial entities<sup>53</sup> that share the same indigenous cultural and ancestral characteristics (Arts. 44, 46), as well as the requirement of historical territorial continuity (Art. 56). The establishment of Indigenous Campesino Native Autonomy (*Autonomía Indígena Originaria Campesina*, AIOC) on indigenous territories occurs at the request of the population itself, which is consulted in accordance with the norms of the indigenous legal tradition, as well as the Constitution and the Autonomy Law of 2010, (Arts. 293, 294, 295).<sup>54</sup> Following local decision-making processes, autonomy proposals are subjected to a constitutional review by the Plurinational Constitutional Court. This procedural element has drawn considerable criticism regarding the true decolonial scope of indigenous autonomy.<sup>55-56</sup>

The management of natural resources is a crucial aspect for the *Autonomías Indígena Originaria Campesina* (AIOC). In this regard, the National Institute of Agrarian Reform (INRA) plays a pivotal role by overseeing land titling, ensuring the sustainable use of indigenous territories, supervising the redistribution of expropriated lands, and legally recognizing indigenous lands. It is also tasked with safeguarding the territorial rights of indigenous communities and managing the mapping and certification of these lands, which are crucial for the establishment and security of the AIOC.

An example of collaboration between the AIOC and INRA can be seen in the agroforestry practices adopted in the Bolivian Amazon. These practices, which integrate tree cultivation with agriculture, effectively improve soil fertility and maintain biodiversity. They also provide sustainable livelihoods for indigenous communities, supporting the environmental preservation.<sup>57</sup> This model illustrates how traditional indigenous methods can harmonize with modern agricultural techniques to enhance ecological resilience and promote economic development.

Nevertheless, the practical implementation of the rights guaranteed to AIOCs is frequently obstructed by conflicts with influential economic actors, such as mining and agricultural companies, which perceive indigenous lands primarily as exploitable resources. These conflicts highlight the tension between the state's extractivist policies and the constitutional framework protecting indigenous communities' interests. A compelling example is the Qhara Qhara Nation, situated between Potosí and Chuquisaca, which has been engaged in a protracted struggle for the titling of their ancestral lands since 2002. Tensions reached a peak in 2019 when INRA authorized police entry into their territories for land measurement, contravening previous Constitutional Court rulings that upheld community rights to the titling of Tierras Comunitarias de Origen (TCO). This action violated the community's rights and highlighted the persistent conflict between state-supported economic interests and indigenous territorial claims.<sup>58</sup> In March 2020, the Inter-American Commission on Human Rights (IACHR) accepted the Qhara Qhara Nation's petition for a hearing

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<sup>52</sup> TOMASELLI (2015).

<sup>53</sup> Indigenous Campesino Native Territory (*Territorio Indígena Originario Campesino*), Municipality, and Indigenous Campesino Native Region (*Región Indígena Originaria Campesina*).

<sup>54</sup> The Autonomy Law further elaborates the legislative framework of an AIOC at art. 44.

<sup>55</sup> RIVERA CUSICANQUI (2018), p. 69.

<sup>56</sup> As of 2024, the process of converting municipalities and indigenous territories into *Autonomía Indígena Originaria Campesina* (AIOC) continues in Bolivia, with several regions actively moving toward full autonomy. The municipalities that have completed the conversion include Charagua Iyambae, Raqaypampa, Uru Chipaya, Salinas de Garcí Mendoza, and Jatun Ayllu Yura. <https://www.oep.org.bo/aioc/via-municipio-region/informes/>

<sup>57</sup> BERKES (2018).

<sup>58</sup> COPA PABÓN (2019), pp. 2-3.

on violations of their territorial rights. While the Commission recommended that the Bolivian government address the issue, indigenous leaders have since reported continued delays in the restitution of their lands.<sup>59</sup>

In recent years, the government has implemented laws and policies promoting mining, agricultural expansion, large-scale hydroelectric projects, and oil and gas extraction in protected, biodiversity-rich areas such as the Amazon Basin, the Chaco, and the Chiquitanía, which are home to indigenous populations. These activities contradict legal provisions protecting indigenous autonomy and the recognition of Nature's rights. The process has therefore come to be seen as increasingly contradictory, and growing concern has emerged about the implications for autonomous Indigenous movements when – or if – they are transformed into political actors within state institutions and the ruling party.<sup>60</sup>

While the AIOC model presents a promising path for sustainable development in Bolivia, its success depends on strong political will and the State's efforts to overcome economic resistance and implement these rights effectively.

### 3.2. The Role of the Cthonic Tradition of *Buen Vivir* in the Normative and Jurisprudential Formants: Recognition and Implementation of the Rights of Nature

As previously highlighted, one of the fundamental elements of *buen vivir* is its biocentric perspective on the relationship between humans and Nature. This is reflected in the normative framework through the legal recognition of rights attributed to Nature and its components. This approach departs from the perception of Nature as merely a resource for human exploitation, instead recognizing its intrinsic value and extending legal protections comparable to those traditionally granted to individuals and communities. This marks a significant transformation in both legal philosophy and environmental governance.<sup>61</sup> The recognition of Nature as a subject of rights requires evaluating violations of its legal sphere independently of any impact on human well-being. This enables judicial action to protect Nature, even by individuals or legal entities that have not experienced direct harm as a result of the violation. Despite the formal recognition of these rights, also in this case, the key issue remains the transition from theoretical legal frameworks to practical implementation.

#### 3.2.1 *The Rights of Nature in the Constitutions of Ecuador and Bolivia*

The constitutions of the new Latin American constitutionalism have revived ancient indigenous knowledge and principles, on which a legal perspective has been established where Nature is not seen as separate from humans, but as part of a whole. In this view, society, based on a communal regime, holds a deep respect for Nature. It is within this context that the new 2008 Constitution of Ecuador was introduced, representing one of the most significant examples of an advanced environmental constitution. Undoubtedly, the most innovative aspect of this Constitution is the recognition of Nature as an autonomous legal entity, and thus, a holder of rights and claims equal to those of human beings. The biocentric ideal is implemented through Articles 71 and 72, which state that *Pacha Mama*, or Mother Nature—defined as the place where life is reproduced and occurs—has

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<sup>59</sup> <https://www.oas.org/en/iachr/sessions/hearings.asp?Year=2020&Country=BOI&Topic=0>

<sup>60</sup> Ranta (2023), pp. 846-847.

<sup>61</sup> Bagni (2013), p. 239; Gudynas (2009), p. 37.

the right to be protected in all her forms and evolutionary processes. *Pacha Mama* thus enjoys a fully subjective legal status and has the right to have its existence and the regeneration of her life cycles fully respected. Consequently, any individual can take legal action to protect Nature. In line with the indigenous conception of Nature, any harm that disrupts the natural harmony is regarded both as a personal injury requiring legal redress and as a disruption of the harmonious balance between humans and the ecosystem.<sup>62</sup> The Rights of Nature (RoN), as recognised in the Ecuadorian Constitution, have developed through an intercultural dialogue with Indigenous Peoples and represent a significant legal and political instrument of protection. However, their juridical formulation does not always align with the ontological and normative visions of Indigenous communities, risking the confinement of more fluid and relational conceptions of territoriality and legal subjectivity within rigid legal categories.<sup>63</sup>

The Constitution introduced several provisions on land ownership. Article 57 grants Indigenous communes, communities, peoples, and nations collective rights, recognising their community lands as inalienable, immune from seizure, and indivisible. Article 60 allows ancestral, Indigenous, Afro-Ecuadorian, and coastal rural peoples to establish territorial districts to preserve their culture, while also affirming the social and environmental function of property. Article 321 further recognises property rights in all their forms: private, public, and communal. Together, these provisions challenge traditional private property law and underscore the intrinsic link between the protection of traditional lands and the broader framework of the Rights of Nature (Berros, 2024, 412-413)

Despite its biocentric orientation, the Ecuadorian Constitution does not provide a specific mechanism for the *ex ante* protection of Nature, nor does it establish entities capable of acting on Nature's behalf to safeguard its rights *ex ante* or *ex post*.

In the Bolivian Constitution, unlike the Ecuadorian one, the legal status of Nature is not directly outlined, leaving this task to ordinary legislation (Art. 80). The legal framework for Nature is defined in the *Ley de Derechos de la Madre Tierra* 071/2010. This law implements Article 33 of the Constitution, which recognizes the right to a healthy environment not only for humans but also for "other living beings," paving the way for a biocentric perspective. The rights of Nature, though regulated in a detailed and immediately enforceable manner, are more fragile than those established in Ecuador's legal system, as they are subject to the discretion of the legislator. This leaves them more vulnerable to changes in ordinary legislation, which can impact the degree of protection afforded to Nature. The fundamental principles outlined in the law are clearly directed toward the concept of *vivir bien* (Art. 2).<sup>64</sup> Article 6 of the law establishes what has been termed a "solidarity of species clause" (Carducci, 2017, 486), where the balancing of rights does not depend on the content of the rights but on the functionality of life systems. As a result, Nature's claims, articulated in detail in Article 7, do not automatically yield to those of human beings.

These constitutional frameworks codify the principles expressed in the indigenous tradition of *buen vivir* or *vivir bien*, which envision a relationship between Nature and humans based on harmony and respect. From this perspective, Nature is not seen as a mere resource to exploit but as an integral

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<sup>62</sup> Nocera and Mosquera Arias (2023), pp. 922-924.

<sup>63</sup> García Ruales (2024), p. 1679.

<sup>64</sup> These principles specifically include: a) the principle of harmony, where human activities must aim for balance with Nature's cycles and processes; b) the principle of the collective good, where the interests of society prevail over any activity or acquired right within the context of Earth's rights; c) the principle guaranteeing the regeneration of Mother Earth and respect for her rights; d) the principle of non-commodification of natural systems; e) the principle of interculturality.

whole with all living beings, and in the constitutional texts, it is recognized as a subject of rights alongside humans ( Since all living beings are part of *Pachamama*, anyone can claim Nature's rights, regardless of any direct harm suffered. Similarly, any individual or collective entity that causes harm to the components of Nature is obligated to fully and effectively restore the functionality of those elements.

The Bolivian system establishes the *Defensoría de la Madre Tierra*, an institution empowered to initiate administrative and judicial procedures to uphold the rights of the Nature. The law, however, deferred the establishment of the *Defensoría de la Madre Tierra* to further special regulations, which have not yet been adopted. Even the subsequent Framework Law 300/2012, which details environmental protection, has not addressed the creation of this institution.

In relation to land rights, Law 300 of 2012 reinforces the constitutional recognition of diverse forms of property by incorporating the principle of the regeneration of Mother Earth (Article 4). It also establishes a comprehensive system for the conservation of ecological components, zones, and life systems (Article 16), as well as mechanisms for risk prevention and mitigation (Article 17). Furthermore, Article 19 addresses structural inequalities by mandating measures to eliminate land concentration and restrict foreign ownership.

The recognition of the Rights of Mother Earth in Bolivia marks a significant step forward, as it not only challenges extractivist models and their severe impacts on the environment and climate but also enables the development of strategies for her protection. In practice, however, this commitment contrasts with policies that promote extractive activities, including relaxed environmental regulations, the expansion of gold mining, oil and gas exploitation in biodiverse and Indigenous territories such as the Amazon, and the growth of agricultural and livestock frontiers. These practices undermine the rights of Mother Earth and violate those of Indigenous peoples.<sup>65</sup>

From the analysis of these two legal systems, it is evident that the attempt to reconcile the biocentric vision with Western legal traditions results in the adoption of particularly bold stances. At the same time, there are clear challenges in constitutionalizing indigenous principles: the Andean biocentric worldview and Western individualistic, capitalist views are difficult to harmonize. The issue lies less with the constitutional framework itself and more with the implementation of government policies. This is particularly apparent in the context of economic policies focused on natural resource exploitation, as outlined in the preceding sections.

### 3.2.2 *The Implementation of the Rights of Nature in the Jurisprudence of Ecuador and Bolivia*

The incorporation of indigenous traditions into the constitutional framework establishes *buen vivir* or *vivir bien* as a constitutional standard with prescriptive force, which the State must uphold. This has been affirmed by both the Constitutional Court of Ecuador<sup>66</sup> and Bolivia's Plurinational Constitutional Tribunal,<sup>67</sup> reinforcing the State's duty to protect these biocentric principles in line with indigenous worldviews. However, extractivist economic policies in both countries continue to undermine the practical implementation of this perspective, reflecting similar challenges in protecting indigenous ancestral territories.

The constitutional recognition of the Rights of Nature in Ecuador and Bolivia is increasingly regarded as a potential blueprint for extending legal rights to ecosystems—and rivers in particular—elsewhere.

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<sup>65</sup> VILLAVICENCIO-CALZADILLA (2025), pp. 15-19.

<sup>66</sup> Ecuador Constitutional Court, (2010) 0006-10-SEE-CC.

<sup>67</sup> Bolivia Plurinational Constitutional Tribunal, (2012), 129/2012.

However, both experiences have proven controversial. Critics highlight a persistent gap between constitutional provisions and their judicial and executive implementation, as well as the limited capacity of the rights of nature to challenge entrenched power dynamics governing the use and exploitation of natural resources.<sup>68</sup>

It is particularly in relation to Bolivia's legal system that greater doubts arise regarding the enforceability of the Rights of Nature. The Bolivian Constitution adopts a protective model, providing various judicial actions for environmental protection.<sup>69</sup> However, the jurisprudence of the Constitutional Court favors the *acción popular* (Art. 135) as the most suitable tool for environmental protection, while maintaining a traditionally anthropocentric perspective. This approach evaluates Nature based on the benefits it provides to humans, rather than recognizing its intrinsic rights as an independent legal entity.<sup>70</sup> Progress in the concrete implementation of Nature's rights remains limited, largely due to the failure to establish the *Defensoría de la Madre Tierra*. In the absence of adequate mechanisms, the rights of Nature have been considered only rarely, such as in a case decided by the Agro-Environmental Tribunal in 2021.<sup>71</sup> The case involved the suspension of a vehicular corridor construction project in Cochabamba, which would have felled 44 trees and endangered local biodiversity. The court ordered the project's suspension as a precaution, citing a violation of the rights of Mother Earth under Article 4 of the *Ley Marco de Madre Tierra*, recognizing Nature as a legal subject. Although the court did not fully explore the substantive content of these rights, the ruling marks a significant step toward judicial enforcement of Mother Earth's rights and may inspire future actions.<sup>72</sup>

In Ecuador, despite the constitutional recognition of Nature's rights, no specific law has been enacted by the ordinary legislature. Following the 2008 constitutional reform, Ecuadorian courts often applied inconsistent and sometimes contradictory interpretations of the Rights of Nature. While many cases produced favorable outcomes for the rights of nature, the reasoning was frequently unclear, leaving uncertainty over the relationship between the Rights of Nature and the human rights guaranteed by the Constitution. This began to change with the intervention of the Constitutional Court, which, by selecting and adjudicating cases of national importance, has developed a more coherent and structured body of jurisprudence on the scope of the Rights of Nature and their interplay with human rights.<sup>73</sup>

The Constitutional court has enforced the constitutionally guaranteed rights of Nature in several ways: setting parameters for the application of the *buen vivir* paradigm, analyzing the coexistence between humans and Nature, and recognizing natural elements and ecosystems as subjects of rights.<sup>74</sup>

The cosmo- and eco-centric perspective was adopted for the first time by the Constitutional Court in the Cayapas Matayes case (also known as Marmeza case).<sup>75</sup> The case involved the granting of a license

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<sup>68</sup> TANASESCU, MACPHERSON, JEFFERSON and TORRES VENTURA (2024), pp. 3-4.

<sup>69</sup> These include the *acción de libertad* (Art. 125), the *recurso de amparo* (Art. 128), the action of constitutionality (Art. 132), the action for compliance with constitutional provisions (Art. 134), and the *acción popular* (Art. 135).

<sup>70</sup> Bolivia Plurinational Constitutional Tribunal 1018/2011-R, 22 giugno 2011; 1973/2011-R, 7 dicembre 2011; 2028/2013, 13 novembre 2013; 0681/2018-S2, 17 ottobre 2018.

<sup>71</sup> The Agro-Environmental Tribunal functions as a specialized court. Its responsibilities include addressing issues related to agriculture, livestock, forestry, the environment, water, and biodiversity, as long as these matters do not fall under the jurisdiction of administrative authorities.

<sup>72</sup> Tribunal Agroambiental plurinacional, (2021) 4171/202.

<sup>73</sup> TANASESCU, MACPHERSON, JEFFERSON and TORRES VENTURA (2024), pp. 3-4.

<sup>74</sup> MELO (2022), pp. 30-35.

<sup>75</sup> Constitutional Court Ecuador, (2015)166-15-SEP-CC.

for aquaculture and shrimp farming to the owners of Camaronera Marmeza by the Ministry of the Environment within the Ecological Reserve Cayapas Mataye, a biodiversity-rich wilderness. The local indigenous community challenged the concession, claiming it violated Nature's rights recognized by the Constitution (Articles 71, 72, 397, 395). The Constitutional Court upheld the community's claims, annulled the license, and emphasized that Nature's protection, rooted in indigenous cosmivision, outweighs economic interests. The ruling clarified that individual's economic interests cannot take precedence over the rights of Nature. Articles 71 and 73 of the Constitution mark a shift in Ecuador's legal framework by recognizing Nature as a subject of rights. They establish that these rights, particularly those of *Pacha Mama*, apply across the entire legal system, reinforcing environmental protection as a central legal principle.

In its subsequent jurisprudence, the Constitutional Court reaffirmed the significance of indigenous culture in the Ecuadorian constitutional system and expanded the concept of Nature. In the ruling on the Bosque Protector Los Cedros case<sup>76</sup> the Court clarified that the rights of Nature are not mere ideal principles. They have normative value, fully implementing the distinctive elements of indigenous culture and cosmivision, which include the complementarity between human beings and natural elements.<sup>77</sup> Following the principles inherent in indigenous culture, the Court defines Nature as an interrelated, interdependent, and indivisible network of ecosystems. As consequences, the Nature should be considered a community of life in which the elements that comprise it, including the human species, are connected and each serves a specific function. The mere existence of doubt about potential harm to the natural ecosystem, even without scientific certainty, constitutes a violation of the constitutional rights of Nature and a breach of the indigenous parameter of *buen vivir*.

The Constitutional Court has consistently upheld these principles in its jurisprudence.<sup>78</sup> The jurisprudence of the Constitutional Court demonstrates not only the significance of the Rights of Nature within the constitutional system, but also their dynamic interaction with human rights. In the Los Cedros case, for instance, the Court recognises the human right to water as part of the rights to *buen vivir*. This right serves as a bridge between human rights and the Rights of Nature, given its essential role in sustaining all forms of life on Earth and ensuring the integrity of ecosystems. Despite the evident connection, the Court does not appear to give sufficient weight to Indigenous conceptions of nature. In its jurisprudence, these perspectives are often left vague, mentioned only in the general terms employed by the Constitution, without further elaboration or engagement with their deeper ontological meaning.<sup>79</sup>

Although Ecuador's Constitutional Court continues to champion a biocentric approach to environmental protection, its rulings can lose their practical force beyond national borders. A key

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<sup>76</sup> Constitutional Court Ecuador, 1149-19-JP/21, November 10, 2021. The case involved several mining and water concessions granted in the Bosque Protector Los Cedros, a rainforest near the Río Magdalena and Río Guayllabamba in Imbabura province. This area, close to the Cotacachi-Cayapas Ecological Reserve, is ecologically unique, declared a nature reserve in 1989 and a protected area in 1994. In 2020, the local community filed an *\*acción extraordinaria de protección\** before the Constitutional Court to challenge the concessions, arguing they would significantly damage the area's ecological balance.

<sup>77</sup> NOCERA & MOSQUERA ARIAS (2023), pp. 930-932.

<sup>78</sup> Constitutional Court Ecuador, (2021) 22-18-IN/21, (2022) 2167-21-EP/22, Río Monjas, (2022) 273-19-JP/22, Sinangoe case; (2022)N. 22-18-IN/2, Manglares case; (2022)Río Monjas case, (2022)N. 2167-21-EP/22; Río Aquepi case, (2021)N. 1185-20-JP/21; (2022) N. 253-20-JH/22, on the Mona Estrellita case. The Observatorio Jurídico de Derechos de la Naturaleza in Ecuador reports that there are more than 30 cases currently pending before the Constitutional Court, with over 64 cases being processed at the national level.: <https://www.derechosdelanaturaleza.org.ec>

<sup>79</sup> Constitutional Court of Ecuador (2021)1185-20-JP/21; Río Aquepi case.

example is the 2018 Chevron case.<sup>80</sup> In a ruling following a legal process that began in 1992, Ecuador's Constitutional Court ruled in favor of 30,000 people and five Amazonian tribes against Chevron for dumping toxic waste between 1964 and 1992. The court upheld a \$9.5 billion judgment for pollution over 4,400 square kilometers. However, the case faced a setback when the Permanent Court of Arbitration in The Hague annulled the decision, citing Ecuador's violation of the 1993 Bilateral Investment Treaty with the U.S.

By shaping and empowering the rights of Nature, Ecuadorian jurisprudence is contributing to the promotion of an integrated and holistic sustainable development that does not sacrifice ecosystem functionality and can be effectively implemented.<sup>81</sup>

Through its jurisprudence on the subject, the Constitutional Court has also contributed to the concrete implementation of Nature's rights. This respond to the concerns of those who were worried that they would remain just a symbolic declaration, overridden by the recognition of other antithetical rights of an economic nature.<sup>82</sup> However, Indigenous peoples are not recognised by the judiciary as having any particular entitlement to the Rights of Nature beyond that of other Ecuadorian citizens. Moreover, specific Indigenous legal traditions do not play a decisive role in the Court's reasoning. Indigenous participation appears to be characterised less by philosophical or legal contribution, and more by their role as rights claimants within civil society, particularly in relation to violations of the right to free, prior, and informed consultation.<sup>83</sup>

#### **IV. The Implementation of the Ecocentric Paradigm in Amazonian Jurisdictions: Concluding Remarks**

At the outset of this article, the aim was to verify the effective implementation of the indigenous cosmovision of *buen vivir* in the Amazonian jurisdictions of Ecuador and Bolivia, particularly in light of the contradictions posed by the regulation of natural resource exploitation. Rodolfo SACCO's theory of formants was employed to assess the degree, effectiveness, and implications of this implementation through the analysis of the political, normative, and jurisprudential formants. The focus was on the relationship between humans and Nature, a concept that challenges the parameters of Western legal traditions.

The analysis of Ecuador and Bolivia's legal systems reveals two key elements. First, the practical interconnection between the protection of indigenous communities and Nature's rights, aligned with cthonic legal traditions. The protection of indigenous identity, through safeguarding ancestral lands, inherently depends on Nature's rights, and vice versa. Nevertheless, indigenous legal traditions have not been adequately considered in judicial reasoning, despite the fact that the Rights of Nature, as enshrined in the Constitutions, are grounded in the concept of *buen vivir*, itself inspired by Indigenous worldviews, and that most cases have involved territories inhabited by Indigenous peoples.

The second key observation is not so much the diversity of legal and political instruments used to incorporate the indigenous dimension into the legal system, but rather the fact that both Ecuador and Bolivia's constitutional systems, despite being among the most advanced in this field, still face significant challenges in bridging the gap between constitutional text and its concrete implementation.

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<sup>80</sup> Constitutional Court Ecuador (2018) 230-18-SEP-CC, 27 giugno 2018.

<sup>81</sup> KAUFFMAN and MARTIN (2023), p. 379.

<sup>82</sup> WHITTENMORE (2011); KOTZÉ and VILLAVICENCIO CALZADILLA (2017).

<sup>83</sup> CANDO SAEZ and VILLALVA FONSECA (2024), p. 11.

Despite comprehensive constitutional, legislative, and jurisprudential frameworks, these countries—and others in the Amazon region as Brazil and Colombia—continue to experience a disconnect between the formal level and its practical application.

From the jurisprudence, it becomes evident that one explanation—if not the main one—behind this phenomenon can be traced to a common factor in Ecuador, Bolivia, and many other Latin American countries: the adoption of an economic model based on neo-extractivism.<sup>84-85</sup> Even the most progressive governments, while emphasizing the value of indigenous communities, have not fully challenged this extractivist model in practice, often contradicting their constitutional commitments. The Yasuní-ITT Project is a clear example of this (Williford, 2018, pp.109-110). It appears that the economic formant remains the primary obstacle to the real implementation of *buen vivir*. In this context, the effective implementation of the relationship between humans and Nature, according to the biocentric perspective of *buen vivir*, is increasingly being entrusted to the courts with different, and not always predictable, outcomes.

Another factor to consider in understanding the challenges of implementing the biocentric *buen vivir* paradigm is what has been called an epistemic, methodological, and theoretical short circuit.<sup>86</sup> This short circuit, legally speaking, arises because the indigenous cosmovision is absorbed into a normative instrument—the Constitution and law—derived from the Western legal culture that, despite its openness to pluralism, remains rooted in its own view of the human-Nature relationship. Comparative law can help explain this phenomenon through the theory of formants. The normative incorporation of the rights of Nature paradigm in state legal systems, particularly those with animist indigenous communities, is traditionally explained through the cultural formant. Comparative law scholars define the cultural formant as specific cosmovisions and ontologies reflecting a unique concept of law, shaped by the society that created it, and underpinning legal pluralism. The ethnic tradition is viewed as a cultural fact that finds its place primarily within the spiritual dimension. However, the incorporation of indigenous traditions, whether through collective land rights or Nature's rights, within state legal systems cannot be explained solely by the cultural formant. To describe the normative interdependence between humans and Nature, stemming from the indigenous paradigm, some comparative law scholars suggest turning to a different formant: the ecological formant.<sup>87</sup> This ecological formant better reflects the integration of indigenous principles of interconnectedness within legal systems, highlighting the shift towards recognizing the environment's intrinsic legal status.

From this perspective, considering ecology as a formant means drawing fundamental rules for human community organization from ethnic tradition. Using the cultural formant alone would imply an ethnocentric bias that does not reflect reality. When dealing with ancestral land rights, indigenous autonomy, and Nature's rights, different formants apply depending on the legal system, but it is not the cultural one. In Ecuador and Bolivia, the dominant formants are normative, constitutional, and legislative, reinforced by political and jurisprudential formants.

The alternative political and legal narrative advanced by Ecuador and Bolivia in their constituent processes of 2007 and 2009 built bridges between the tools of modern law and Andean cosmogonies,

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<sup>84</sup> SVAMPA (2019), p. 52.

<sup>85</sup> This resource appropriation model follows a colonial accumulation pattern, with the State participating in an anthropocentric approach. The State often aims to reduce poverty by redistributing resources, securing social legitimacy. However, this strategy leads to significant social and environmental negative consequences.

<sup>86</sup> BAGNI (2013), pp. 265-266.

<sup>87</sup> CARDUCCI (2023), p. 229.

marking an important step in the emancipation of Latin American thought and, consequently, in overcoming the colonial domination of Andean knowledge.<sup>88</sup> However, the recognition of the Rights of Nature must go beyond their normative codification: it calls for an ontological shift that acknowledges relationality and for a political, legal, epistemological, and economic transformation of anthropocentrism, fundamentally challenging how we conceive of nature and how we continue to define our relationship with it.

As previously noted, the analysis of these formants makes it clear that the main challenge in implementing the ecological formant lies in its competition with the economic formant, particularly in adapting the latter to the former. Until this shift in perspective occurs, the antinomy will persist, and its resolution will rely on the jurisprudential formant, with varying degrees of success. The tension between economic interests and ecological principles continues to be a key obstacle in realizing the ecocentric paradigm envisioned by the legal systems of Ecuador and Bolivia.

However, as demonstrated by the recent Yasuní ITT referendum, much will depend on which formant—ecological or economic—can exert greater influence on people's behaviors, with corresponding effects on governmental actions.

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<sup>88</sup> CUMBE FIGUEROA and VARGAS CHAVES (2023), pp. 5-10.

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