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**Natura, diritti e religioni:
analisi comparate**

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Indigenous Cosmovision and Rights of Nature in Ecuador and Colombia

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ABSTRACT

In the Global South billions of people are experiencing the effects of the ecological crisis. As the prime victims of globalization's failures, the indigenous people of Latin American have often endured the most unfair consequences of extractivist exploitation. The recognition

of the rights of Nature has become a fundamental aspect of the Latin American constitutionalism, drawing valuable insights from indigenous cosmovisions regarding the relationship between human beings, social communities, and Nature. Despite the advancements of Environmental Constitutionalism, the practical implementation of these constitutional provisions has often fallen short. Analysing the case law of Ecuador and Colombia through the lens of comparative legal methodologies, this chapter aims to highlight how indigenous epistemologies and their ancestral practices can contribute to the development of new models of environmental sustainability and to assess the potential of new paradigms for the ecological crisis, emerging from the encounter of indigenous cosmovisions and environmental law.

SUMMARY

1. Introduction – 2. Indigenous Rights and Rights of Nature in Abya Yala – 2.1. Ecuador: The Constitutional Rights of Nature and the Ecological Constitutional Jurisprudence – 2.2. Colombia: Biocultural Rights and the Elements of Nature in Jurisprudence – 3. Indigenous Rights and Rights of Nature in Ecuador and Colombia: concluding remarks.



1. Introduction

The crisis caused by climate change has a severe impact in terms of biodiversity loss and environmental pollution, with critical consequences for indigenous populations. Starting from this awareness, many countries in Latin America have recognized the need to acknowledge the rights of Nature, drawing on indigenous traditional knowledge. This type of regulatory measures represents an important step towards transitioning from the current anthropocentric legal order to an eco-centric one, in which nature should have rights on its own for its own sake and is considered as a proactive subject in societies and legal orders. Indeed, it becomes clear that adapting to climate change requires a radical overhaul of both political action tools and legal instruments.

The main issue is not the quantity or quality of the legislation, but rather the cultural framework and the paradigms that underpin it. To make legislative and policy practices more effective, it is therefore necessary to rethink environmental legislation based on a paradigm shift, adopting a holistic approach and an ecological worldview¹.

In this context, it is crucial to connect the law with the cultural environment. To this end, it is necessary to consider extralegal factors that allow for an authentic analysis of the relationship between humans and nature within various chthonic traditions², and provide new models based on indigenous cosmovision.

The concept of cosmovision refers to the indigenous perspective on the narrative through which the beings of the world make manifest the profound meanings of the world that intertwine with the existences of human beings. It is not about the expression of a stable and definitive truth to which individuals and communities must harmonize, but rather a continuous journey that unfolds in the story of a constantly evolving world³.

Cosmovision is expressed in indigenous oral forms that describe the world

¹ F. CAPRA, U. MATTEI, *The Ecology of Law: Toward a Legal System in Tunc with Nature and Community*, Berret-Koehler, Oakland, 2015.

² H.P. GLENN, *Legal Tradition of the World: Sustainable Diversity in Law*, Oxford University Press, Oxford, 2014.

³ J. GRIM, *Indigenous Cosmovision. Introduction*, in M. JENKINS, M.E. TUCKER, J.GRIM (Eds.), *Routledge Handbook of Religion and Ecology*, Routledge, London, 2016, pp. 107-109.



and establish rules for living in harmony with it and nature from an ecological perspective⁴. Indigenous knowledge expresses the rules that govern relationships among people, their ecosystems, and other living beings and spirits that share the earth, aimed at understanding and reconciling the world. All aspects of this knowledge are interconnected and cannot be separated from traditional territories⁵.

In the cultures of indigenous peoples, a harmonious relationship between humans and Nature is an essential aspect. Indeed, in the legal tradition of chthonic populations, law is intertwined with religion, which views the natural world as sacred. Chthonic law itself is based on the harmony between humans and Nature⁶. This represents a multidimensional and spiritual conception of nature. Despite colonial attempts at assimilation and integration, such cultures have inspired new ways of protecting Nature at the constitutional level.

Many countries, particularly in the Global South, have drawn inspiration from the cultural values of indigenous peoples and ethnic communities within their territories to renew, or introduce, environmental protection methods that include recognizing the rights of Nature and its elements. In these cases, indigenous culture is not merely a source of inspiration but an essential component of such legal innovations⁷. Indeed, the legitimization of Nature as a subject of rights has a profound genesis that presupposes the incorporation into the constitutional framework of an ancestral standard, necessarily rooted in the traditions of indigenous communities⁸.

Despite the advancements of *Environmental Constitutionalism*⁹, the practi-

⁴ E. GOLDSMITH, *The Way: An Ecological World View*, University of Georgia Press, Athens (Georgia), 2008.

⁵ M. BATTISTE, J. HENDERSON, *Protecting Indigenous Knowledge and Heritage*, Purich Publishing, Saskatoon, 2000.

⁶ H.P. GLENN, cit.

⁷ L.A. NOCERA, C.J. MOSQUERA ARIAS, *I diritti della giurisprudenza e il ruolo della dimensione culturale nella giurisprudenza di Colombia ed Ecuador*, in *Diritto Pubblico Comparato ed Europeo*, 3, 2023, pp. 917-927.

⁸ I.A. CRUZ PIZA, ET AL., *Derechos de la Naturaleza en Ecuador. In Transferencia de conocimiento científico*, Universidad Empresa de América Latina, 2022, p. 52.

⁹ L. KOTZÉ, *Global Environmental Constitutionalism in the Anthropocene*, Hart Publishing, Oxford, 2016; J.R. MAY, E. DALY, *Global Environmental Constitutionalism*, Cambridge University Press, Cambridge, 2014.



cal implementation of these constitutional provisions has often fallen short. This is especially evident in the Global South, where a significant discrepancy exists between the constitutional discourse and the harsh realities faced by indigenous communities.

The ineffectiveness of such norms can be attributed to the fact that these rules are often contradicted by societies that operate on principles of appropriation and development, and by legal systems that defend such practices and facilitate the transformation, if not the destruction, of nature.

However, there is also a parallel, albeit minority, path that stems from a cosmocentric view and advocates for the recognition of the rights of Nature to ensure the effective safeguarding of ecosystems¹⁰. Unlike anthropocentrism, which views humanity as an ontological *prius*, cosmocentric perspectives assert that nature has value independent of its utility to human beings. In a context of severe ecological crisis, the indigenous cosmocentric vision prompts the need for a different approach to issues arising from climate change in order to ensure global sustainability. This perspective entails the responsible use of resources by indigenous cultures, through the revaluation of traditional practices and thought systems based on an animistic conception of nature.

The implementation of indigenous cosmology into the constitutional framework is a particularly complex process for a legal system that conceives the human being as the sole existential center endowed with legal life. This approach consequently clashes with the holistic dimension of the values and ancestral beliefs of chthonic law, which is inherently environmentalist¹¹.

Given this, the role of the Courts becomes fundamental, serving as modern arenas for intercultural debate, and concretely contributing to the shaping of new sustainability models that reflect indigenous traditions and worldviews.

In this context emerges an holistic legal framework, rooted in indigenous *cosmovisions* and ancestral human-nature relationships, aimed towards climate justice¹².

¹⁰ S. BALDIN, *Il Buen vivir nel costituzionalismo andino. Profili comparativi*, Giappichelli, Torino, 2019.

¹¹ H.P. GLENN, *cit.*

¹² W. MENSKI, *Final Rallying Call on the Brutal Realities of the Anthropocene and the Necessity of Cosmoprudence to Minimise Human Suffering*, in D. AMIRANTE, S. BAGNI (Eds.), *Environmental Constitutionalism in the Anthropocene. Values, Principles and Action*, Routledge, London, 2022, pp. 259-278.



This concept expresses a particular type of legal consciousness, whereby the undeniable fact of human connection at all levels of existence demands a comprehensive approach that cannot exclude any specific, uncomfortable, or unwanted components. To this end, an interdisciplinary and holistic approach is required. An approach capable to shape strategies and solutions based on the specific needs of the victims of the Anthropocene and climate change, foremost among them indigenous populations who have a heightened public interest in the connection between humans and nature. This leads to the necessity for a critical re-examination of the foundations of environmental theorizing and jurisprudence, paying particular attention to the various languages and cultures of the world and reflecting the complex interplay between tradition and modernity¹³.

In this scenario, intercultural communication among different environmental constitutional cultures represents the only viable path to seeking the most comprehensive forms of justice possible.

Given these premises, this analysis seeks to highlight how indigenous epistemologies and their ancestral practices can contribute to the development of new models of environmental sustainability and climate justice. Additionally, it assesses the potential of new paradigms for the ecological crisis, emerging from the convergence of indigenous cosmovisions and environmental law.

2. Indigenous Rights and Rights of Nature in Abya Yala

Abya Yala, Latin America in the ancient *Kuna* language, serves as a laboratory for original legal proposals that conceptually diverge from typical Western approaches. Countries such as Ecuador and Bolivia are at the forefront of championing values distinct from those prevalent in the dominant Western Legal Culture. These values are encapsulated in the concept of *sumak kawsay*, or *buen vivir*, a holistic eco-ethical framework that embodies indigenous cosmovision. This framework fosters a full and dignified life, a harmonious existence that encompasses all interdependent dimensions of life, and a balanced coexistence with community and Nature¹⁴. *Buen vivir* is not conceived

¹³ W. MENSKI, cit.

¹⁴ P. BENALCÁZAR ALARCÓN, *Il Buen Vivir-sumak kawsay- la costruzione di un paradigma per una diversa umanità* (Ecuador), in R. MARTUFI, L. VASAPOLLO (Eds.), *Futuro Indigeno. La sfida delle Americhe*, Jaca Book, Milano, 2009, pp. 237-256.



as a means to material well-being and wealth, but rather as a way to enhance the opportunities for communities to preserve and cultivate their unique characteristics and traditions in harmony with the cycles of Nature¹⁵. In its relationship with Nature, this chthonic tradition aligns with the demands of indigenous peoples for land rights and the shared aspiration to view the land and water as unalterable common goods, according to a symbiotic conception of the nature-human relationship¹⁶.

These demands have long been ignored by the development policies of Latin America, as well as by international policies, which are characterized by an ethnocentric connotation that fails to adequately consider indigenous cosmovisions and lifestyles. The economic development has inevitably impacted the environmental sphere, fostering the rise of extractivism and high-intensity exploitation of both renewable and non-renewable natural resources. These resources are primarily destined for export, often at the expense of the interests of local indigenous communities and the ecosystems upon which they depend.

The indigenous issue only came to the forefront of the political and constitutional scene in the 20th century, with the decolonization process supported by the United Nations through Resolution 1514 of 1960, which urged imperialist states to allow for the self-determination of local populations still living under colonial domination. America, however, remained formally excluded from this process until the adoption of the ILO Convention No. 169 on Indigenous Peoples' Rights in 1989, which influenced the cycle of the new Latin American constitutionalism.

International successes, including the establishment of the United Nations Permanent Forum on Indigenous Issues in 2000 and the UN Declaration on the Rights of Indigenous Peoples in 2007, have propelled the achievements of the new constitutional era in Ecuador in 2008 and in Bolivia in 2009¹⁷.

¹⁵ X. ALBÓ, *Suma Qamaña= el buen convivir*, in *Revista Obets*, 4, 2009, pp. 25-40.

¹⁶ J.M. PRIETO MÉNDEZ, *Derechos de la naturaleza. Fundamento, contenido y exigibilidad jurisdiccional*, Corte constitucional del Ecuador, Quito, 2013; F. HIDALGO FLOR, *Buen vivir, Sumak Kawsay: Aporte contrahegemónico del proceso andino in Utopia y Praxis Latinoamericana*, 53, 2011, pp. 85-94.

¹⁷ S. BAGNI, S. BALDIN, *Latinoamérica. Viaggio nel costituzionalismo comparato dalla Patagonia al Rio Grande*, Giappichelli, Torino, 2021.



From this perspective, Latin American constitutions have accorded a fundamental role to the environment, underpinned by the consideration of indigenous cosmovision and an environmental understanding based on a biocentric view. The adoption of biocentrism in Andean legal systems is based on the belief in the need for a change in development policies towards adopting a paradigm of sustainability and ecological justice¹⁸.

In this context, the cosmovision of indigenous peoples has been embraced by those constitutional systems that recognize *Pacha Mama*, Mother Earth, as having a sphere of subjective legal rights: an innovation that we can consider as an act of the Nature's constitutive sovereignty within the State¹⁹. This results in a different type of citizenship that, by incorporating the claims of Nature, extends to ecosystems and assumes the adoption of an ancestral parameter rooted in the tradition and history of indigenous communities.

This multidimensional and intercultural conception of Nature, in contrast to the western anthropocentric view, has been embraced in various ways by the Andean constitutional systems. In some countries, indeed, the recognition of the rights of nature and traditional indigenous culture has been implemented through legislative formant, while in others, jurisprudential formant have been used for this purpose.

In light of this cultural approach, the cases of Ecuador and Colombia will be analyzed, which demonstrate a different consideration of the rights of Nature in light of indigenous cosmovision. The constitutional provisions in these countries have been updated and implemented through the jurisprudence of the Courts.

2.1. Ecuador: The Constitutional Rights of Nature and the Ecological Constitutional Jurisprudence

The new 2008 Constitution of Ecuador represents one of the most significant examples of an advanced environmental constitution. This Constitution, along with the Bolivian one, expresses an innovative trend based on the recognition of nature as a new legal subject and the identification of intercul-

¹⁸ S. BALDIN, cit.

¹⁹ M. CARDUCCI, *Diritti della Natura*. In *Digesto delle Discipline Pubblicistiche*, Utet, Torino, 2017, pp. 487-521.



turality as a foundational principle of state institutions.

This recognition entails an intersubjective dialogue between two justice systems, each carrying distinct perspectives and values²⁰. The concrete implementation of these principles has led to the recognition of indigenous justice, which is accorded the same level as ordinary jurisdiction (Article 171 of the Constitution). The acknowledgment of two jurisdictions within the same territory entails a high level of legal pluralism, subject to the oversight of the Ecuadorian Constitutional Court.

Undoubtedly, the most innovative aspect of this Constitution is the identification of Nature as an autonomous legal entity and, consequently, as a holder of rights and claims that are equally ranked with those of human beings (Articles 10-11 of the Constitution). Additionally, the Constitution provides for the protection of the *derechos del buen vivir*, already expressing in the preamble the intent of the Ecuadorian constituent assembly to refer to a life in harmony with the community and with Nature, as envisioned by indigenous cosmovision²¹.

The biocentric ideal is implemented by Articles 71 and 72 of the Constitution, according to which *Pacha Mama*, Mother Nature, has the right to be protected in all her forms and evolutionary processes. Consequently, any individual may act to protect Nature: should Nature suffer damage, it has a right to restoration that is independent of the obligation of the state or private entities to compensate individuals affected by environmental harm.

Consequently, and in line with the indigenous conception of Nature, any harm that disrupts the natural harmony of things is considered both a subjective injury, which necessitates legal action, and a breach of the harmonious balance between human beings and the ecosystem. This breach calls for a restorative and reparative response²². The Constitution also embraces a precautionary approach, mandating that the state adopts precautionary and restrictive measures against activities that could lead to the extinction of species, the destruction of ecosystems, or the alteration of natural cycles (Article 73 of the Constitution).

At the same time, the Constitution affirms the right of individuals, commu-

²⁰ S. BAGNI, cit.

²¹ E.R. ZAFFARONI, *Pachamama, Sumak Kawsay y Constituciones*, in *DPCE*, 2, 2012, pp. 422-432.

²² L.A. NOCERA, C.J. MOSQUERA ARIAS, cit.



nities, and peoples to enjoy the environment and natural resources that *enable buen vivir*, signifying a departure from the anthropocentric idea underlying the subjective right to a healthy environment. The indigenous cosmovision of *buen vivir* is also articulated in Article 277 of the Constitution, which identifies its realization as one of the general duties of the state. *Buen vivir* is also a prerogative of individuals, the community, and various organizations involved in social and environmental responsibility. Furthermore, social organizations are recognized as having the ability to formulate environmental proposals and claims, as well as initiatives that contribute to *buen vivir*.

The framework is rounded out by the provision of jurisdictional guarantees before the ordinary courts, with the *acción de protección* (Article 88 of the Constitution), or before the Constitutional Court with the *acción extraordinaria de protección* (Article 94 of the Constitution) and the *acción de cumplimiento* (Article 93 of the Constitution). To these guarantees is added the institutional type provided by the *Defensoria del Pueblo* (Articles 191-193 of the Constitution).

Despite their constitutional implementation, these essential elements of indigenous culture regarding the protection of nature have not been addressed by the ordinary legislator through a law specifically dedicated to the rights of Nature. Instead, it has been the Constitutional Court that has undertaken an evolutionary interpretation of constitutional principles, initiating ecological constitutional jurisprudence²³ rooted in indigenous cultural formations.

The cosmo - and eco-centric perspective was adopted for the first time by the Constitutional Court in the verdict N. 166-15-SEP-CC, delivered on May 20, 2015, in the *Mar Meza* case. The case concerned the granting of fishing rights to the owners of a fishing vessel, *camaronera*, *Marmar* by the Ministry of the Environment within the Remacam Ecological Reserve, a wilderness area rich in biodiversity, protected as a national forest heritage under Article 60 of the Constitution. The local indigenous community, alleging that the concession violated the *Ley Forestal y de Conservación de Áreas Naturales y Vida Silvestre*, filed a protective action as provided by the Constitution before the Corte Provincial de Esmeraldas. However, the court dismissed the appeal. The decision was then

²³ F. BUSTAMANTE, *Justicia Constitucional aplicada a la defensa y protección de los derechos ambientales y de la Naturaleza*, CEDENMA, Quito, 2018.



challenged with an *acción extraordinaria de protección* (No. 0507-12-EP) before the Constitutional Court, claiming a violation of the rights of Nature as enshrined in the Constitution under Articles 71, 72, 397 no. 2, 83 no. 6, and 395 no. 2.

The Constitutional Court upheld the indigenous community's requests and annulled the ministerial concession. In justifying its decision, the Court clarified that the protection of Nature is deeply rooted in indigenous culture and cosmovision, necessitating the preservation of its integrity as a subject of rights. Private property must be conceived within a social and environmental function that aligns with fundamental rights, including those of Nature. Consequently, the Court deemed it necessary to restore the status quo prior to the damage to the ecosystem.

With this decision, the Court also clarified the relationship between the Rights of Nature and economic rights, establishing that an individual's economic interests cannot take precedence over the rights of nature. Articles 71 and 73 of the Constitution, make it clear the change of perspective that was established by the new Ecuadorian constitutional system: it not only recognizes the Nature as a subject of rights, but also provides transversality across the entire legal system to the rights recognized to *Pacha Mama*. That is to say, all actions of the State, as well as those of individuals, must be carried out in observance of and adherence to the rights of nature.

In its subsequent jurisprudence, the Constitutional Court reaffirmed the significance of indigenous culture in the Ecuadorian constitutional system and expanded the concept of Nature. Particularly noteworthy in this regard is the ruling N. 1149-19-JP/21 of November 10, 2021, delivered on the well-known *Bosque Protector Los Cedros* case.

The case concerned several mining and water concessions granted to private entities in the territory of Bosque Protector Los Cedros, which would have substantially altered the ecological characteristics of the area. Bosque Protector Los Cedros is an extensive rainforest at the confluence of the Río Magdalena and Río Guayllabamba, in the province of Imbabura. The forest is close to the Cotacachi-Cayapas Ecological Reserve, which was declared a nature reserve in 1989 and a protected area in 1994 due to its unique chemical, biological, agronomic characteristics, and microclimate. In 2020, the community settled in the area filed an *acción extraordinaria de protección* against these concessions



before the Constitutional Court.

In its decision on this case, 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 cosmovision, which include the complementarity between human beings and natural elements²⁴. 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 Court concluded that the concessions in question constituted a breach of the indigenous parameter of *buen vivir*, as they violated the rights of the local community to water and a healthy environment (Articles 313 of the Constitution, 11-12 of the *Ley Orgánica de Recursos Hídricos, Usos y Aprovechamiento de Agua*). For this reason, the Court applied the precautionary principle or the *in dubio pro natura* principle (Articles 74-75 of the Constitution): 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.

Additionally, the Court stated that the concessions violated the indigenous peoples' right to environmental consultation. The right to prior, free, and informed consultation is a specific right of indigenous peoples that must be guaranteed to ancestral communities, in cases of activities that may impact their anthropic and natural environment. This mechanism is outlined in the Constitution of Ecuador in Articles 57, 61, and 398, which reference the United Nations Declaration on the Rights of Indigenous Peoples and is regulated by Article 82 of the *Ley Orgánica de Participación Ciudadana*, Article 184 of the *Código del Ambiente*, Article 87 of the *Ley de Minería*, and Article 28 of the *Ley de Gestión Ambiental*.

The issue was revisited in Ruling N. 273-19-JP/22 issued by the Constitutional Court in the *Sinangoe* case on January 27, 2022. The case concerned mining concessions granted by the state to private parties, in an area adja-

²⁴ L.A. NOCERA, *Ecuador's Constitutional Court recognises the rights of wild animals*, in *Osservatorio NAD*, 2022.



cent to the ancestral territory of the *A'i Cofán* people. the concessions had been granted without properly conducting the environmental consultation with the indigenous environmental communities as required by law.

The indigenous community filed an *acción extraordinaria de protección* before the Constitutional Court, seeking to annul the concession decree as it infringed upon the rights of Nature and, more specifically, the territory and ecosystem fundamental to the lives of all indigenous peoples in Ecuador.

The Constitutional Court upheld the community's appeal, emphasizing that the right to prior, free, and informed consultation for indigenous peoples is established and protected by international law and Inter-American jurisprudence. The Court also referenced the principles of interculturality and plurinationality that are integral to the constitutional system, as well as the principles of the culture and cosmovision of indigenous peoples. Any extractive process would damage both the rights of indigenous peoples and those of Nature.

These principles have been reinforced in other cases decided by the Constitutional Court: the *Manglares* case, N. 22-18-IN/2, concerning the protection of a mangrove ecosystem; the *Río Monjas* case, N. 2167-21-EP/22, related to the protection of an urban river; the *Río Aquepi* case, N. 1185-20-JP/21, involving an action for protection filed by the local community, aimed at prevent the river's use for an irrigation project, in violation of the community's right to prior consultation and the rights of Nature.

The ruling N. 253-20-JH/22 of January 27, 2022, on the *Mona Estrellita* case, represents one of the most innovative interventions by the Ecuadorian Constitutional Court, which for the first time in the world recognized the rights of a wild animal, conceived as an extension of the rights of Nature. The case involved a complaint regarding the domestic possession of wildlife and the subsequent confiscation and seizure by the Ministry of the Environment of a chorongó de Humboldt monkey, named Estrellita. The petitioner, who was in possession of the animal, filed an *acción de habeas corpus* (N. 18331-2019-00629), based on the Article 71 of the Constitution and the Article 585 of the Civil Code, before the Sala Especializada de lo Penal, Penal Militar, Penal Policial y Tránsito of the Corte Provincial de Justicia de Tungurahua, which presided over the case.

Following this action, the animal was removed from the home, deprived of



necessary care and the affection of the petitioner, and confined for an extended period pending trial. Estrellita died during her period of detention due to a cardiocirculatory arrest caused by renal and respiratory failure. The Court referred to the constitutional provisions concerning the protection of Nature and to constitutional jurisprudence, defining the faunal world as one of the levels of ecological organization that is part of the Nature. As such, every animal, as a fundamental element, should not be considered merely an object of protection, but also a holder of the same subjective rights recognized for Nature.

Indeed, the Constitution of Ecuador references to *Naturaleza* starting from the Preamble, establishing a constitutionalism based on a diverse and harmonious coexistence with Nature, that pursues the goal of *sumak kawsay* or *buen vivir*.

In the shift from a Euro-Western anthropocentric perspective to a cosmocentric view connected to the anthropological and ancestral dimensions of indigenous cultures, Nature is no longer seen merely as an object of rights to be protected, but as a subject fully entitled to a range of rights²⁵.

Consequently, given that the animal in question belonged to an endangered species, it was the duty of the national authorities to ensure its protection and the preservation of its living conditions. For this reason, the animal was granted the right to access jurisdictional guarantees, including the acción de habeas corpus for the unlawful detention it suffered. Indeed, the *habeas corpus* proceeding is a remedial judgment when initiated to secure the restoration of freedom for a person unjustly detained and, thus, it promotes the restitutio in integrum provided by the Constitution for the protection of the rights of Nature.

The jurisprudence of the Constitutional Court has helped to develop specific standards for balancing the rights of Nature with principles derived from indigenous cosmovision, giving them greater concreteness. 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 (Kaufman and Martin 2023).

²⁵ A.C. MELO, *Naturaleza como sujeto de derechos en la Corte Constitucional del Ecuador*, in *Observatorio Jurídicos de Derechos de la Naturaleza*, CEDEMNA, Quito, 2022.



Through its jurisprudence on the subject, the Constitutional Court has also contributed to the concrete implementation of Nature's rights. This responds 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 (Whittenmore 2011; Kotzé and Villavicencio Calzadilla 2017).

2.2. Colombia: Biocultural Rights and the Elements of Nature in Jurisprudence

Although not as incisively as the Constitution of Ecuador, the Constitution of Colombia also recognises the environment as a fundamental principle.

The Colombian Constitution was adopted in 1991 in a particular political context characterised by the national debate on sustainable development and the valorisation of ethnic-cultural diversity. In that same year, Colombia ratified the ILO Convention on Indigenous and Tribal Peoples of 1989, which recognises indigenous cultures, indigenous law, and the collective rights of indigenous peoples.

However, even before then, the indigenous movement had become increasingly important, so much so that the Constituent Assembly was attended by two representatives of indigenous organisations and a representative of an indigenous guerrilla group that had been demobilised²⁶. Thus, consistent with the ethnic constitutionalism that spread in Latin America and was characterised by the affirmation of cultural diversity and legal pluralism, as well as the recognition of indigenous law and the collective rights of indigenous peoples, the 1991 constitutional text incorporated environmental protection and the protection of culture²⁷.

With respect to the protection of cosmovision and indigenous culture, the Colombian Constitution has not expressly recognised the intercultural character of the State. Instead, this principle has often been considered by jurisprudence in relation to the protection of Nature²⁸. More precisely, Art. 8 of

²⁶ F. BENAVIDES, *La movilización de los pueblos indígenas y la lucha por sus derechos en questione indígena in America Latina*, Carocci, Roma, 2009.

²⁷ B. MARQUARDT, *Historia constitucional comparada de Iberoamérica. Las seis fases desde la revolución de 1810 hasta la transnacionalización del siglo XXI*, Ibáñez, Bogotá, 2016.

²⁸ S. BAGNI, A. RODRÍGUEZ CAGUANA, *Legal pluralism and intercultural justice: a comparative case study among Bolivia, Colombia and Ecuador*, in *Revista General de Derecho Público Comparado* 31, 2022, pp. 1-24.



the Constitution states that it is the duty of the state and the people to protect natural and cultural wealth. In the sense of a functional integration of economic and environmental interests, Art. 58 of the Constitution defines the ecological function of property. In addition to this, Article 79 of the Constitution, which is dedicated to collective and environmental rights, states that everyone has the right to enjoy a healthy environment and that the law will guarantee community participation in all decisions that may adversely affect it. The state must also guarantee the diversity and integrity of the environment, as well as areas of special ecological importance.

Given these provisions, the Colombian Constitution can be considered an ecological text, although it maintains a strongly anthropocentric underlying value logic²⁹. Aware of the ineffectiveness of this logic, Colombian jurisprudence has turned to the cosmovision of indigenous peoples to identify new ways of sustainable development and environmental protection.

In particular, case law has extended the parameter established by Article 7 of the Constitution, concerning the protection of ethnic and cultural diversity, to recognise the new category of biocultural rights. These rights are elaborated in such a way as to connect the cultural dimension to environmental protection. They take the form of collective rights based on the relationship between indigenous peoples and the environment. Biocultural rights are based on practices and strategies of ecological management and administration of indigenous peoples and communities living in territories characterised by vast biodiversity³⁰.

It is, therefore, a category of rights that can be tailored based on the needs of local communities. In this way, indigenous communities are given the opportunity to exercise the strategies necessary for ecosystem conservation³¹.

²⁹ L. ESTUPIÑÁN ACHURY, *Neoconstitucionalismo ambiental y derechos de la Naturaleza en el marco del nuevo constitucionalismo latinoamericano. El caso de Colombia*, in *Revista de Estudios Jurídicos y Criminológicos*, 1, Universidad de Cádiz, 2020, pp. 127-143.

³⁰ G. SAJEVA, *Tracing the anthropocene back and forward: rights for ecosystem services, local communities, and redd*, in *Diritto & Questioni Pubbliche: Rivista di Filosofia del Diritto Cultura Giuridica*, 1, 2019, pp. 273-292.

³¹ It is necessary to specify that Biocultural rights are often associated with indigenous peoples, but they are not exclusively linked to them. The concept of biocultural diversity has evolved to include non-indigenous traditional communities as well. This broader interpretation recognizes



Biocultural rights were first recognised in the Colombian legal system in 2016, through the Constitutional Court's decision rendered on case T-622/2016, better known as the *Río Atrato* case. The case concerned a protection action filed by the Centre for Studies for Social Justice *Tierra Digna*, on behalf of several community councils, to prevent the intensive use of illegal mining and logging methods in the department of Chocó, which is crossed by the Atrato River. According to the plaintiff, these activities were seriously undermining the traditional way of life of the indigenous communities living in those territories, threatening the development of agriculture and fishing.

In the first instance, the administrative court in Cundinamarca declared the appeal inadmissible on procedural grounds, insofar as the subject of the claims was the protection of collective and not fundamental rights.

At second instance, the Council of State upheld the decision of the Court of First Instance. The Constitutional Court, however, admitted the appeal, finding that it concerned the protection of collective rights and fundamental rights of ethnic communities. The Court's argument starts from an analysis of the constitution's "rule of law" formula, which is composed of the recognition of ethnic-cultural diversity as well as the protection of the environment and natural resources.

In its constant jurisprudence on the subject, the Court has stated that the features of an ecological constitution and a cultural constitution are clearly recognisable in the constitutional text³².

The recognition of the rights of the Atrato River derives from the union of these two rights statutes in the category of biocultural rights: the rights of indigenous communities to administer and protect the ecosystems with which they have developed special symbiotic relationships through their own rules and traditions.

that biocultural rights apply to various groups who maintain unique relationships with their environments and cultural practices, regardless of whether they are formally classified as indigenous. This perspective expands the scope of biocultural rights beyond the realm of indigenous issues alone (M. Cocks, *Biocultural Diversity: Moving Beyond the Realm of "Indigenous" and "Local" People*, in *Human Ecology*, 34 (2), 2006, pp. 185-200).

³² S. BAGNI, *The Rights of nature in Colombian and Indian Case Law*, in *Revista Análisis Jurídico-Político*, 4 (7), 2022, pp. 99-124.



More specifically, the protection of the elements of nature, the environment and biodiversity derive from the principle of ethnic and cultural diversity of the nation, whereby the state cannot impose a specific worldview. Protecting these territories becomes a necessary issue for the preservation of the ancestral cultural identity of indigenous peoples, with consequences for the protection of the environment and biodiversity. In this context, the rights of Nature are therefore presented as a category of rights recognised by jurisprudence through the incorporation of ancestral knowledge. Nature cannot be conceived solely as an environment around human beings, but above all as a subject with its own rights that, as such, must be protected and guaranteed.

The Court concludes by holding the state authorities responsible for omission in the face of a violation of the life, health, and environmental rights of the ethnic communities of the Atrato River Valley and their biocultural rights, resulting from overexploitation by the mining and forestry industry.

In application of the precautionary principle, it prohibits the use of toxic substances in mining; and declares that the Atrato River is subject to rights involving its protection, conservation, maintenance and, in this case, restoration. For effective compliance with the ruling, the Court ordered the Colombian state to exercise legal representation of the river's rights, together with the ethnic communities that inhabit it, and mandated the creation of a commission of river guardians, complemented by a team of technicians, including WWF Colombia and the Humboldt Institute, to take the measures stipulated in the ruling.

The Colombian Government followed up on the ruling with the Ministry of the Environment and Sustainable Development's Decree No. 1148 of 5 July 2017, by which the Ministry designated itself as the representative of the rights of the Atrato River. This was followed by Ministerial Resolution No. 0907 of 22 May 2018, by which the *Comisión de Guardianes del río Atrato* was created, articulated into the component of Community Guardians, and National Government Guardians, represented by the Ministry of the Environment and members of the Departments and local authorities concerned.

The resolution stipulates that the Commission can make use of a team of advisers made up of organisations and professionals working in the field of environmental protection, and enumerates the functions of the Commission,



corresponding to all the tasks required by the Constitutional Court³³. Beginning in 2019, the Ministry of the Environment adopted an action plan to decontaminate the river, which will last until 2040. In addition, an action plan was initiated to neutralise and eradicate illegal mining exploitation. At the end of 2021, the plan to recover traditional livelihoods, livelihoods and other community rights was approved.

The Colombian government has produced several reports on the implementation and compliance with the order in the *Atrato River* case. The most recent is the ninth monitoring report of the 2022 decision³⁴. According to the report, although a document containing a baseline of environmental indicators was presented in December 2021, many of these are not up-to-date³⁵. Protection measures therefore seem to have remained largely on paper and the measures taken by the authorities appear insufficient.

The protection stemming from the link between rights of nature and indigenous cosmovision was also the subject of the *Bruno River* Case decided by the Constitutional Court in ruling SU698/17. The case concerned a protection action filed by the Wayuu indigenous community against the diversion of the river by a carbon extraction company. The plaintiffs argued that the diversion violated their rights to water, food security, ethnic identity, prior consultation, and equality, and could have negative effects on the environment.

To protect these fundamental rights, the Court ordered the establishment of an inter-institutional working group. The working group has the task of carrying out an environmental feasibility study on infrastructure interventions in the area, identifying all applicable measures to prevent or mitigate environmental impacts, as well as climate change adaptation measures to reduce the vulnerabilities of indigenous communities. Pending the implementation of the study and related measures, work on the river was suspended.

³³ J. Auz, *The Political Ecology of Climate Remedies in Latin America and the Caribbean: Comparing Compliance Between National and Inter-American Litigation*, in *Journal of Human Rights Practice*, 2024, pp. 1-12.

³⁴ Ministerio de Ambiente y Desarrollo Sostenible (2022). *Noveno Informe de Avance. Cumplimiento de la Sentencia T-622 de 2016*.

³⁵ M.D. DE LA ROSA CALDERÓN, *Rights-based Climate Litigation in Colombia: An Assessment of Claims, Remedies and implementation*, in *Journal of Human Rights Practice*, XX, 2024, pp. 1-12.



In 2020, the Office of the *Contraloría General de la República* submitted a compliance report on the remedy granted in the *Bruno River* case, finding substantial non-compliance due to several deficiencies in the implementation of court orders³⁶. The issue remains open.

The protection of a river is also the subject of Judgment 37/2021 rendered by the *Juzgado Primero Penal* of the Neiva Circuit. The case concerned an action for protection under Article 86 of the Constitution, filed by Deputy Johann Vargas, representing communities living in the area crossed by the Fortalecillas river. The applicant complained that the reduction of water flow and environmental degradation of the river, mainly due to the absence of management programmes for its water resources, illegal fishing activities, as well as the indiscriminate use of the river's water without the necessary authorisations, were violating the fundamental rights of the members of the indigenous community settled in the area. Specifically, it complained of the violation of the right to water, the right to health, the right to a healthy environment and the right to live a dignified life. The plaintiff also pointed out that on 24 October 2019, the *Juzgado Primero Penal* of the Neiva Circuit had already issued a ruling recognising the Magdalena River and its tributaries, including the Fortalecillas River, as the subject holder of the rights to protection, conservation and restoration at the expense of the state, local authorities and the community at large. Nevertheless, these authorities had not followed up on the ruling by failing to take the necessary measures to preserve the river.

The *Juzgado Primero Penal* of the Neiva Circuit upheld the applicant's request by referring to the close link between environmental protection and fundamental rights, the principle of solidarity towards future generations, and above all the relationship between the cultural dimension and the environment. The link between the environment and fundamental rights emerged, in particular, regarding the assessment of the admissibility of an action for protection.

The right to a healthy environment is recognised by the Constitution as

³⁶ Contraloría General de la República, 2020. Informe de Auditoría de Cumplimiento. Aspectos ambientales de la sentencia SU-698/17 en relación con el proyecto de desvío del cauce del arroyo Bruno.



a collective right for which no action for protection is provided. The Court, however, held that the action brought by Deputy Vargas was admissible, qualifying the healthy environment as an indispensable condition for guaranteeing other rights that the Constitution recognises as fundamental, such as the right to life, health, water, or human dignity.

The right to a healthy environment is recognised by the Constitution as a collective right for which no action for protection is provided. The Court, however, held that the action brought by Deputy Vargas was admissible, qualifying the healthy environment as an indispensable condition for guaranteeing other rights that the Constitution recognises as fundamental, such as the right to life, health, water or human dignity.

The link between the cultural dimension and the environment emerges explicitly in several passages of the judgment. The Court, for example, referring to the fundamental right to water, made it clear that the protection of water resources is not only an indispensable issue to guarantee the life and health of humans and other species, but it is also necessary to ensure the enjoyment of cultural rights³⁷.

Regarding the recognition of Nature's rights, the Court recalled that constitutional jurisprudence has adopted an ecocentric approach by recognising certain elements of Nature as having rights of their own. The Court further argued that these rights have as their main foundation the holistic and Nature-respecting thought system of indigenous communities. In turn, the acceptance of this in Colombian jurisprudence is based on the constitutional principle of ethnic and cultural diversity of the nation³⁸.

3. Indigenous Rights and Rights of Nature in Ecuador and Colombia: concluding remarks

An examination of the jurisprudence on the protection of Nature and inherent rights in Ecuador and Colombia shows how the protection of Nature

³⁷ M.D. DE LA ROSA CALDERÓN, cit.

³⁸ Judicial cases involving the Rights of Nature in Colombian jurisdictions are numerous. For example, see Amazon Rainforest Case (2018) - STC4360-2018; Cauca River Case (2019) T-606/19; Páramo de Pisba Case (2017) T-361/17.



and combating the devastating effects of climate change necessitate the valorisation of traditional indigenous culture. The chthonian legal culture appears, in fact, capable of proposing an alternative model of sustainability to the current one. At the same time, it is evident that the legislative formulation, even at constitutional level, is still not sufficient to guarantee the implementation of the indigenous culture, which makes its way into the legal system through the jurisprudential formant.

In Ecuador, the jurisprudence of the Constitutional Court referred to a parameter already recognised by the Constitution and to rights, such as those of nature and *buen vivir*, which already found their protection within the constitutional text.

In Colombia, on the contrary, the indigenous parameter does not permeate the entire legal system but is only detectable within certain constitutional precepts that generally state that the state recognises, promotes and protects the country's ethnic and cultural diversity. The protection of *Pacha Mama* is a secondary consequence of the recognition of the guarantee of cultural and identity rights of indigenous community. The combination of this parameter with the necessity of contrast of climate change consequences has become the basis for the judicial recognition of so-called "biocultural rights" and the rights of certain elements of Nature.³⁹

Despite the fact that in Ecuador the protection of the rights of nature assumes the position of a constitutional parameter, there is no specific legislation that clearly defines key assumptions based precisely on the concept of Nature or that establishes the content and scope of its rights. The Ecuadorian Constitution, in fact, defines Nature as "Pacha Mama, donde se produce y realiza la vida" (Art. 71.I of the Constitution) according to the cosmovision proper to indigenous peoples, but without any further clarifications that might contribute to the interpretation of this concept. The problem arises, therefore, of defining which of the elements constituting Nature can benefit from the status of subject in law and, consequently, on the basis of which criteria this can be established⁴⁰.

³⁹ F. OST, *Naturaleza y Derecho. Para un debate ecológico en profundidad*, Ediciones Mensajero, Bilbao, 1996.

⁴⁰ F. BUSTAMANTE, *Justicia Constitucional aplicada a la defensa y protección de los derechos ambientales y de la Naturaleza*, CEDENMA, Quito, 2018.



Ecuadorian constitutional jurisprudence, while not directly addressing these conceptual problems, has made an extensive interpretation of Nature's rights by considering some of its constituent elements individually. And as demonstrated by the sentences examined in this work, it is proceeding in an interpretative work, aimed at the protection of Nature in its wholeness. Both constitutional law and jurisprudence explicitly take the indigenous cosmovision of *buen vivir* as a reference point.

In Colombia, in the absence of an explicit reference in the constitutional text to both the rights of Nature and indigenous cosmovision, jurisprudence has drawn directly on the ecocentric cultures of indigenous peoples. Taking Chthonic legal culture as a point of reference, Colombian judges define Nature as "all that exists" in the perceptible world, as *Pacha Mama*.

However, this is not a detailed definition that clearly states which of its constituent parts would be recognised as a subject of law, attributing this subjectivity with a case-by-case approach and avoiding more general conceptual definitions. What is particularly noteworthy is that while the Ecuadorian jurisprudence adopts an ecocentric approach to the rights of nature, the Colombian approach remains anthropocentric. This is despite recommendations from the Inter-American Court of Human Rights for an approach that places Nature and its elements at the center of legal discourse (Advisory Opinion OC-23/17).

What undoubtedly unites the experiences of the two Andean countries is the trend to incorporate the indigenous cultural formant into the legal system. In Ecuador, this incorporation is evident both in legislative and jurisprudential developments, whereas in Colombia, it is visible only in jurisprudence and is less mature compared to Ecuador.

The recognition of the counter-hegemonic legal tradition of *buen vivir* triggers a radical change in the way relationships between the state, market, society, and nature are perceived. It should be viewed as a goal of social, economic, and environmental sustainability to be achieved (Baldin 2019). The values associated with *buen vivir* allow for the integration of two logics that only seem antithetical: the humanistic focus on the individual and the biocentric approach, both united by the pursuit of an existence in harmony with the community and with Nature.

While the implementation of this idea has faced resistance, its acknowledg-



ment within Andean constitutionalism signifies the creation of an ecological formant potentially able to weave the rights of nature into Western monistic constitutional frameworks. This integration is facilitated through the incorporation of principles derived from indigenous ontologies.

This phenomenon eludes the colonial perspective that would categorize it merely as a cultural formant. Depending on the case, it becomes constitutional (Ecuador), legal (Bolivia, Australia), or jurisprudential (Colombia, India)⁴¹.

After all, it is already clear how the indigenous tradition of *buen vivir*, and its approach to environmental sustainability, are capable of being implemented by other legal systems that aim to counteract the negative effects of the climate change. Several states have embraced the judicial assertion of the rights of Nature as a holder of legal positions, rediscovering ancient traditions and promoting the adoption of approaches characteristic of counter-hegemonic cultures.

Examples of this can be found in India, where jurisprudence has recognized the inherent rights of the Ganga and Yamuna rivers in alignment with the ancestral culture of the people (Mohd. Salim v. State of Uttarakhand & others, Writ Petition (PIL) No. 126 of 2014, March 20, 2017); and in Bangladesh, where the national rivers are accorded the same legal status as human beings (High Court Writ Petition No. 13989).

In New Zealand, the rights of Nature are protected based on indigenous cultural parameters. The Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 recognized the Te Awa Tupua river as having the same status as an individual, based on the ancestral connection between the river (and thus, the natural ecosystem) and the local Maori tribe (the Whanganui), in continuity with indigenous law. Similarly, in Uganda, the National Environment Act 2019 also acknowledges the rights of Nature, viewing it as a legal entity with rights and interests capable of initiating legal action in defense of those rights⁴².

Within the context of these innovations, Abya Yala has increasingly garnered interest as a living laboratory for approaches to environmental sustainability that take chthonic culture as a reference point. These innova-

⁴¹ S. BAGNI, *Diritti della Natura nei nuovi costituzionalismi del Global South: riflessi sulla teoria dei formanti*, in *Diritto Pubblico Comparato ed Europeo*, 58, 2023, pp. 153-184.

⁴² L.A. NOCERA, *La Natura come soggetto di diritto in Uganda*, in *Nuovi Autoritarismi e Democrazie* (NAD-DIS), 2, 2021, pp. 188-201.



tions stem from the need to diverge from Western legal tradition and to seek a more effective response to the demands of indigenous peoples, made more urgent by the climate crisis. They introduce innovative and pioneering measures that align with ecological ethnicity.

These measures aim to supplant the legal frameworks of colonial legacy, to safeguard the traditional *modus vivendi* of indigenous communities, and to offer a counterbalance to the pervasive effects of neoliberal globalization. This trend has the potential to impact the entire world.