RIGHTS OF NATURE: THE "BIOCENTRIC SPIN" IN THE 2008 CONSTITUTION OF ECUADOR[1]

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ABSTRACT

The 2008 Ecuadorian Constitution built a particular system for environment protection, breaking the dominant paradigm characterized by an anthropocentric and utilitarian relation with nature. The Ecuadorian Constitution raised the nature of the condition "subject of rights". Such a conception is associated to "buen vivir" (Sumak Kawsay in Kichwa), which relates to the ways of life and world view of native peoples. Therefore, this article aims at understanding the social construction of this understanding of nature in the context of the processes experienced in Ecuador and called "New Latin American Constitutionalism". To meet the proposed objective, the methodology used was based on the survey and review of references related to the rights of nature, held in university libraries and at

1 Article written in the scope of the research project: "Sharing Experiences: rights of nature in the context of the New Constitutionalism in Latin America: Ecuador as a reference for assessment", with the support of CNPq (Call 43/2013 – Human, Social and Applied Social Sciences). The article presented herein is the result of the activities developed during the first stage of the research, which consisted in surveying and organizing bibliographic references related to the subject, carried out in Quito, Ecuador, on March, 2014.

the Supreme Court of Ecuador, as well as on interviews with indigenous leaders, which served to guide reflections. As a result, the analysis of recent legal changes experienced in Ecuador invite us to a comparative reflection on the Brazilian environmental policy.

Keywords: rights of nature; biocentric spin; "buen vivir"; new constitutionalism in Latin America.

DIREITOS DA NATUREZA: O "GIRO BIOCÊNTRICO" NA CONSTITUIÇÃO DO EQUADOR DE 2008

RESUMO

A Constituição do Equador de 2008 edificou um sistema particular de proteção ao meio ambiente, rompendo com o paradigma dominante, caracterizado por uma relação antropocêntrica e utilitária da natureza. A Constituição Equatoriana elevou a natureza à condição de "sujeito de direitos". Tal concepção está associada ao "buen vivir" (Sumak Kawsay, em kichwa), que se relaciona aos modos de vida e à cosmovisão dos povos indígenas. Portanto, esse artigo objetiva compreender a construção social desse entendimento da natureza, no contexto dos processos vivenciados no Equador denominados "Novo Constitucionalismo Latino-Americano". Para cumprir o objetivo proposto, a metodologia utilizada se baseou no levantamento e na revisão de referências bibliográficas relacionadas aos direitos da natureza, realizada em bibliotecas de universidades e da Corte Suprema do Equador, bem como em entrevistas com lideranças indígenas, que serviram para orientar as reflexões. Como resultado, a análise das transformações jurídicas recentes vividas no Equador nos convidam a uma reflexão comparativa a respeito da política ambiental brasileira.

Palavras-chave: *direitos da natureza; giro biocêntrico; "buen vivir"; novo constitutionalismo na América Latina.*

INTRODUCTION

In the last decades, nature preservation quit the position of being a matter circumscribed to certain agents to become a social problem of public interest. The term "environmentalization" (LOPES, 2004) we use helps us understand the different processes that involve more or less constitutional protection to nature in Latin American countries. According to Lopes, "environmentalization" is a neologism used to express a historical construction process used for new social phenomena or perceptions, associated to a process in which agents and institutions interiorize environmental speeches and practices[2].

Nature preservation speeches, which may contain a "weak", a "strong" or an extra strong" notion of sustainability (GUDYNAS, 2009), result from the perception of the environmental issue as a "social problem". The "higher" or the "lower" protection given to nature is subject to the level of awareness and political mobilization of the society around environmental issues, that is, environmental problems.

The 2008 Constitution of Ecuador, a result of an intense process of political mobilization[3] involving, above all, native peoples, built its own system to protect the environment based on the ways of life and the cosmovision of the different peoples that form the Ecuadorian society[4]. The 2008 Constitution of Ecuador raised nature to the condition of "subject of rights", associating it to "buen vivir" (*Sumak Kawsay* in *kichwa*).

The plurality featuring that constitutional preservation model progresses towards a rupture with the ruling protection standard, which is founded on a representation of nature, understood as a limited resource at the service of society.

The rupture and the originality of the proposal invite us to a comparative reflection regarding the Brazilian environmental policy[5],

2 "Truncated environmentalization" was the expression used by Acselrad (2008) to talk about the Brazilian environmental experience, with the power of the economic liberalization forces on the one side and a social base that is unable to oppose the policy of intensive and destructive accumulation of natural resources on the other side, resulting in the destruction of non-capitalist production forms (such as farmers, native and *quilombola* people, traditional communities of babassu breakers, rubber tappers, acai pickers...), as well as in the destabilization of the ecosystems in the country.

3 According to Gudynas, the 2008 Constitution of Ecuador has to be thought of in the context of the political milestone of the so-called "progressist" or "left-wing" governments in Latin America (GUDYNAS, 2009; 2014).

4 In addition to native people in several nations, the Constitution of Ecuador mentions and recognizes the social existence of the "African-Ecuadorian people" and the "Montubio people" (art. 56).

5 Shiraishi Neto analyzes the displacements of the speeches to protect nature from the 1988 Brazilian Constitution and its consequences regarding the rights of traditional people and communities. Accord-

especially oriented by a utilitarian and commercial vision of nature[6]. Thus, this article aims at understanding the social construction of this understanding of nature in the context of the processes experienced in Ecuador and called by the interpreters of law the "New Latin-American Constitutionalism".

Considering the objectives of this paper, the article was divided into 3 (three) topics. The first topic, called "**Neoconstitutionalism in Latin America**: the discovery of the Other", aims at contextualizing the constitutionalization of rights, which is associated to the recognition of social diversity in Ecuador.

The new Constitution of Ecuador is the result of complex processes of political struggling that became acute during the last decade. The second topic, "**The Rights of Nature in Ecuador**: disputes around nature", involves the descriptions of the speeches that assign rights to nature, going back to the disputes resulting from the consolidation and the effectiveness of rights. Despite the generous catalog of rights of nature, it is difficult to make those rights effective.

The third topic, "**The Rights of Nature and 'Buen Vivir'**: the reinvention of development", tries to articulate the reflections around the rights of nature. In Ecuador, the rights of nature are not thought of *per si*, but they are linked to a development proposal based on the "buen vivir" (*Sumak Kawsay*, in *kichwa*). In the **Final Considerations**, we try to articulate the reflections that rose in Ecuador and the Brazilian environmental policy experience.

1 NEOCONSTITUTIONALISM IN LATIN AMERICA: the "discovery of the Other"[7]

The ethnographic description of the Constituent Assembly in Bolivia carried out by the anthropologist Salvador Schavelzon contributes

ing to Shiraishi Neto, the Brazilian government has been publishing several legal protection provisions. Those provisions have a special characteristic: they condition protection to the utility and the economic value of the natural resource (SHIRAISHI NETO, 2014).

6 Example: Provisory Measure n. 2.186-16, whicht deals with the access to genetic heritage, protection and access to the traditional knowledge associated to biodiversity, is one of the most relevant examples of the nature commercialization processes that take place in Brazil (SHIRAISHI NETO; DANTAS, 2010).

7 The "discovery of the Other" is between quotation marks because it was taken from the philosopher Enrique Dussel. For Dussel, native people in America were not "discovered", but "covered" by the system that was organized and that favored the white settler. Such procedure was used to legitimate violence and pillage of natural resources and land. At the same time, it imposed a development model that was systematically used to deny the social existence of the Other (DUSSEL, 1994).

for the understanding of what has been happening in several countries in Latin America, especially in Bolivia and Ecuador, the "discovery of the Other". Schavelzon reports that on the date the Constituent Assembly was opened in Bolivia (August 6, 2006), the people in charge of the safety of the event asked a group of "cholitas", countrywomen wearing skirts, mantas and hats, to stand up from the sidewalk so that the members of the Constituent Assembly were able to go by. He reports that the women stood up. However, they did not leave the sidewalk. Instead, they took part in the procession with the members of the Constituent Assembly (SCHAVELZON, 2014).

The safety guards, used to serve other people – in general "white" and "mestizo" – so far, failed to notice the recent transformations in the Bolivian political scene, which caused the entrance of new actors: "la mayoria del pueblo, ahora en el Estado y con mayoría en la Asamblea" (SCHAVELZON, 2014, p.01) [8]. Respecting the particularities between the countries, the processes that caused the entrance of new actors in the political agenda also took place in Ecuador at the time of the Ecuadorian Constituent Assembly.

As for Ecuador, the new Constitution was one of the promises of the elected president, Rafael Correa. He won the elections with a strong speech criticizing the system and the diversified political support, including environmentalist organizations and social movements[9], with a highlight on native peoples and "afro-Ecuadorians". In the speech for the launch of the Constituent Assembly in Ecuador, its president said:

> Thereby, what is going to distinguish this Assembly from the previous ones is not exclusively the quality of its members. It is going to be the active, permanent, watchful and committed participation of all Ecuadorians. For the first time, the social, political and even technological conditions are offered to make that possible. **This Constitution is going to be prepared by specialists with the participations of the citizens**. **(**ACOSTA, 2008, p.22-23. Free translation and bolded by the authors).

The content of the constitutions that were approved both in

8 The organization of native people in Latin America and their struggle for rights started long ago in the 20th century (ALBÓ, 2009). In case of Bolivia, we also mention the research carried out by Laura Gotkowitz, who assesses the process of organization and the fight of social movements prior to the 1952 revolution in Bolivia (GOTKOWITZ, 2011).

9 It is important to say that the political block that elected President Rafael Correa was undone during the first presidential mandate. That may be one of the reasons for the difficulties faced to make the rights conquered effective.

Ecuador (2008) and in Bolivia (2009) reflect the hegemonic domain of the "new" political forces that succeeded in imposing a political agenda that insured an extensive set of rights called by interpreters the "New Constitutionalism in Latin America". Several authors talk about the international legal scenario that is favorable to indigenous peoples in face of the new international provisions agreed upon (ILO's Convention n. 169 and, more recently, UN's Declaration on the Rights of Indigenous Peoples) (GOMEZ, 1997). The new instruments abandoned the "assimilationist" paradigm that guided the policies for indigenous peoples.

The "New Constitutionalism in Latin America", which arose from the Constitutions of Guatemala (1985) and Nicaragua (1987), launches a new cycle of constitutional reforms in Latin America and has the indigenous peoples as hegemonic actors. Yrigoyen Fajardo assesses this legal transformation process in Latin America from the idea of legal cycles (YRIGOYEN FAJARDO, 2009). For her, three cycles of constitutional reforms have marked the rights of indigenous peoples in the last 25 years. The first cycle started in the 80's and it is featured by the introduction of individual and collective rights, together with the inclusion of rights for indigenous peoples. The second cycle took place in the 90's under the influence of ILO's Convention n. 169 and it is characterized by the incorporation of concepts such as "multiethnic nation", "pluricultural state". The legal pluralism is also recognized. The Constitutions of Colombia (1991), Peru (1993), Bolivia (1994), Argentina (1994), Ecuador (1996 and 1998) and Venezuela (1999) are examples of that cycle. The third cycle takes place in the 21st century. It progresses in recognition, setting forth the "Plurinational State" and a model of "legal equalitarian pluralism". The Constitutions of Ecuador (2008) and Bolivia (2009) are examples of the third cycle.

On the origin and nature of those processes, Rodrigo Uprimny informs: while several Constitutions were natural results of the fall of dictatorships, others tried to reinforce democratic regimes that had legitimacy problems (UPRIMNY, 2011). However, the Constitutions of Bolivia (2009) and Ecuador (2008) represent the emergence of new political forces such as the indigenous movement in Bolivia and the "Correism" in Ecuador. In Ecuador, that movement responds to two demands: recognition of social and economic problems that affect the lives of people, and the fights and claims of social organizations and movements (ÁVILA SANTAMARIA, 2008).

Ávila Santamaria observes that the Andean reality is quite complex and it has to be incorporated to the reflection once the Eurocentric legal models adopted proved to be unable to meet the demands and appropriately respond to the different indigenous peoples (ÁVILA SANTAMARIA, 2008)[10].

"Decolonization" presents itself as a central element for the creation of a legal theory[11]. The criticism against colonization represented ruptures and advancements as this process led to rethinking the commonly used categories[12] that maintained indigenous peoples excluded from rights. Using its universal characteristics as an excuse, such categories "covered" the subjects who did not match their explanatory schemes. The social existence and the collective dimension of indigenous people's rights were ignored by the power structures[13]. The imposition of unit through cultural homogeneity maintained the economic, political, social and cultural domination. However, that structure was shaken with the emergence of indigenous peoples who were the targets of social movements and conquered an extensive catalogue of rights that expresses the concerns experienced by those social groups.

Political emergence, which is also epistemic (WALSH, 2012)[14], in addition to questioning and rupture of the traditional domination structures, brought to stage "new" knowledge, concepts and rationalities that opposed the traditional scientific schemes linked to the oligarchies and the commercial logics.

Assessing the processes, especially the case of Bolivia and Ecuador, the sociologist Boaventura de Sousa Santos criticizes those scientific schemes once they are unable to capture and understand the social reality that transforms themselves. For that author, it is necessary to

10 About how the law committed to certain groups, excluding native people (CLAVERO, 2009).

11 It is important to highlight the criticism from the Indian lawyer Idón Moisés Chivi Vargas on the colonization of law: "Prestigious jurists in the Indian world, due to their contributions for the dialogue between laws, pay huge costs for that original sin, **preparing and developing normative projects that reproduce the colonialism of the law**, with all the consequences that it brings to native people" (CHIVI VARGAS, 2009. p. 155, bolded by the authors).

12 State, Law and Development were subject to a lot of discussion (SANTOS, 2010; SANTOS, 2013; ACOSTA; MARTINEZ 2011; ACOSTA, 2012).

13 Magdalena Gómez emphasizes the collective nature of the rights of native people. For her, recognition of native people implies in regulating collective rights different from collective rights aimed at individuals (GÓMEZ, 2003).

14 "Interculturality" is the key word for the construction of the political project carried out by native people. As a political principle, it allows criticism regarding submission, exclusion and marginalization processes. "Interculturality" was incorporated to the 2008 Constitution of Ecuador, passing through the entire constitutional text (arts.1, 2, 16, 27, 28, 32, 57, 83, 95, 156, 217, 249, 257, 275, 340, 343, 347, 358, 375, 378, 416, 423).

build a specific epistemology called "epistemology of south" (SANTOS, 2010). That implies in abandoning the traditional scientific schemes that make Eurocentric and colonizing trends public.

In that context, decolonization of nature was necessary as the existing relation would no longer correspond to project needs, formed by involving all the subjects. The binary (society and nature) and commercial division of nature imposed one only relation, discarding any other possibilities. Indeed, other relations with nature were seen as "outdated", "primitive" or even "eccentric". According to Gudynas, even European constitutionalists, who were consultants at the Constituent Assembly, were mostly against the proposal of assigning rights to nature (GUDYNAS, 2009; 2014). His arguments would add to the ones already commonly used that it was mere "eccentricity" and that is why it should not be subject to the constitutional text.

Far from that positioning, recognizing nature as a subject of rights represented a progress in the context of the changes that settle a new social, economic and cultural project for Ecuador. Although the 2008 Constitution of Ecuador expresses a "very strong" idea of sustainability, we had access to reporting that the rights of nature have recently been disrespected and violated by the government[15] against constitutional provisions.

After the 2008 Constitution, the difficulties around the effectiveness of nature rights became evident, pointing out the disputes where different political projects are opposed. In terms of analysis, the effectiveness of nature rights, as well as of other rights registered in the text of the Constitution of Ecuador, has to be understood within the legal field[16] where the disputes around "the right to say the right" are.

Summarizing, recognition that the rights would happen in the legal field means saying that more or less protection would be related to the capacity of the interpreters to produce, reproduce and spread a speech that is more favorable to nature[17], to get rid of the colonialist rancidity

15 The situation of the Waorani people, impacted by the exploration of oil in their traditional territory, is emblematic and that is why it is emphasized here. The Sarayaku case also deserves to be mentioned, especially because the Inter-American Court of Human Rights was in favor of the group whose territorial rights were violated.

16 For the sociologist Pierre Bourdieu, the legal field concerns a specific, independent social space in which authorized interpreters of law compete among themselves for the monopoly of "the right to say the right" (BOURDIEU, 1989). A short exercise on how this legal field operates regarding the issues related to the right to private property (SHIRAISHI NETO, 2008).

17 In what regards the Ecuadorian legal field, we identified a set of relevant papers that have addressed the rights of nature (MELO, 2009; AVILA SANTAMARIA, 2011; RAÚL ZAFARONI, 2012; PRIETO MÉNDEZ, 2013). Several issues observed by those authors have been used to guide the reflections. Among them, we highlight: are the rights of nature real rights? Can nature be the object of rights? And,

that dominates legal experiences. The right would be a result of disputes experienced in the legal field involving different understandings and interests not always made clear by legitimate or even authorized interpreters.

2 RIGHTS OF NATURE IN ECUADOR: disputes around nature

Ecologic awareness and political mobilization of social movements in Ecuador, especially the ones of indigenous peoples, resulted in the creation of a specific legal system for the protection of nature that is far from the model that was adopted by them. Criticizing the model adopted, Acosta says that the utilitarian understanding of nature is one of the components that articulate the development model that has the appropriation of nature as a need for economic growth (ACOSTA, 2014).

In Latin America, development oriented by economic growth contributes, according to Gudynas, to the worsening of global environmental problems once the accelerated expansion of the extractive border has intensified the exploration of the natural resources and, consequently, destroyed the biodiversity of the countries (GUDYNAS, 2014). The term *neoextrativism* (GUDYNAS, 2010) is a neologism used to talk about that process experienced whose consequences are to worsen social unfairness.

The need set forth, in view of the project being built of a plurinational and intercultural State, was to break the colonial standard of nature[18] on behalf of another one that would be able to reestablish the millennial, spiritual and existing relation between indigenous peoples and mother nature. In Abya Ayala, nature or "Pachamama" is seen as the "mother of all living creatures", it is the one that defines the order and the sense of the universe and of life.

The comparison between nature and "Pachamama" allowed for the introduction of the Indian cosmovision of nature (ACOSTA, 2012), ending the hierarchy set forth since colonial times between scientific knowledge and traditional knowledge (GUDYNAS, 2014). The Indian

finally, what is the content of law? Brazilian researchers have been thinking about the rights of nature in Ecuador and Bolivia (WOLKMER, S. WOLKMER, 2014).

18 The colonial model highlights the power of the modern individual over the nature. The individual has to explore and control it to the benefit of the entire society. The classification, the fragmentation and the listing of nature understood as a resource are the procedures adopted by this colonial model that opposes the way of living of Andean peoples. We deduce from the procedures the utilitarian and mercantile vision of nature. As a matter of fact, the position that defends the commercialization of nature as a better way to manage natural resources has been dominant, including in the Conference of Parties (COP) of the United Nations Framework Convention on Climate Changes (CQNUMC), which has taken place recently in Lima, Peru (end of 2014).

Nina teaches us:

> According to the Indian cosmovision, **all creatures in nature are vested of energy that is SAMAI and, consequently, they are creatures that have life**: a stone, a river (water), the mountain, the sun, the plants, all the creatures have life and they also have a family, happinesses and sadnesses just like human beings. That is how those creatures relate to each other like the human being... **In other words, we can say that we are all part of a whole. Although we are different, we are complementary; we need each other** (PACARI, 2009. p. 32-33, free translation and bolded by the authors).

Thus, constitutional provisions that organize the system to protect nature incorporate a new form to organize the interaction between the society and nature (ACOSTA, 2014). Article 71 says as follows (free translation of the authors):

> **Nature or Pacha Mama, where life reproduces and happens, has the right** to have its existence and the maintenance and regeneration of its vital cycles, structure, functions and evolutive processes fully respected....

When we say that nature has rights that do not depend on economic measuring, that is a "biocentric" vision. When we declare the equality of all beings, we give them the same importance. With no differences, the legal protection is extended regardless the utility or the economic value.[19] That position, called "biocentric", values the heterogeneity and the diversity of the species that form the same universe.

The expression "biocentric turn" tries to express that movement of rupture with the anthropocentric standard that separates the society from nature. As Ávila Santamaria says: "Al ser la naturaleza un elemento universal que se complementa, se corresponde, se interrelaciona y con la que se tiene relaciones reciprocas, la consequência obvia es que debe protegerse" (ÁVILA SANTAMARIA, 2011. p.218).

Acosta calls attention to the fact that our civilization changes the

19 We went to Ecuador on September 2013. We were able to follow local discussions in the local press over the fight for the protection of Yasuní National Park against the oil operations. It is interesting to see that people defend the park by associating nature to its economic value regardless the constitutional rights of nature. They say that Yasuní Park has a rich biodiversity with huge economic potential but little known. On the discussion, we refer to the article "Cinco tesoros que están sobre (y no bajo) el suelo del Yasuní". (*Revista Vistazo* n. 1.105, 5 de setiembre de 2013). The efforts to protect nature come from the same explanatory schemes (SANTOS, 1994).

relationship with nature into a fight for human survival, that is, the efforts of society are concentrated in dominating and seizing nature (ACOSTA, 2014). On the other hand, it is important to highlight that this paradigm, although dominant, does not extend to the group of societies. In different contexts, including in Brazil[20], it is possible to identify cultures marked by a biocentric posture. The case of the communities of coconut breakers is illustrative. They see the babassu palm as a "mother" once the palm supplies coconut breakers' families with several necessary products for their physical and cultural reproduction.[21] The "draws", as they were called by the rubber tappers, also express in a different way that relationship with nature. To protect the rubber plantations, the rubber tappers got mobilized to avoid deforestation of the Amazon Forest. In face of chainsaws, the rubber tappers and their families hugged the rubber trees to avoid any action that would harm the integrity of the trees, essential for reproduction[22].

The "lack of knowledge" (by "law operators") that nature is represented in different ways has taken to the burst of several litigations called "socio environmental conflicts" (ACSELRAD, 2004; LIMA, 2008). As for Brazil, environmental law plays an important role once it produces, reproduces and publishes an official environmental speech for the environment (SHIRAISHI NETO et al., 2011) that agrees with the anthropocentric and utilitarian posture of nature.

When recognizing the rights of nature by assigning to it the condition of subject[23], the plurality of peoples in Ecuador was considered. That resulted in the recognition of the different forms de representation of nature. Thus, the different forms of appropriation and the different uses of nature are conditioned to how it is represented.

20 In the context of the environmental protection system organized by the 1988 Brazilian Constitution, Benjamin says that the relationship between the society and nature was redefined and an anthropocentric posture was abandoned in favor of a biocentric one since the constitutional text protects life and its bases as a whole (BENJAMIN, 2005).

21 Babassu palm is fully used by the families of the coconut breakers. From the smaller palms, called *pindovas*, the heart of palm is removed and served as food or animal feed. From palm leaves, they make small baskets, fans, wicker fish traps, fencing, home thatching and internal partitions, organic manure. From the coconut shell, they make charcoal that is used to cook food. From the copra, they get oil that is used to cook and make soap. They use the *gongo*, a larva that lives inside the copra, to fry or change the oil into hair products.

22 It is certainly possible to identify several other cases to illustrate that biocentric posture between the different traditional peoples and communities in Brazil. However, we limit ourselves to the situations that are closer and better known.

23 Recognition of nature as subject to rights overcame the content of the Latin American Constitutions that associate environmental rights to a healthy environment for a better quality of life. The authors referred to explain that the differentiation is necessary because, although they are listed as Human Rights, they keep an anthropocentric essence (GUDYNAS, 2009; GUDYNAS, 2014; ACOSTA, 2012).

There was progress regarding the 2008 Constitution of Ecuador when it recognized the rights of nature. However, those rights are not apart from the other provisions once the constitutional text associated the rights, that are connected to the different ways of creating, making and living the peoples, to a development proposal based on "buen vivir" (*Sumak Kawsay*, in *kichwa*). The Constitution of Ecuador (free translation and bolded by the authors) reads as follows:

> Art. 74: The people, communities and nationalities have the **right to benefit from the environment and from natural wealth that allows for the "buen vivir"**. Environmental services are subject to appropriation; their production, provision and use are regulated by the State.

The "buen vivir" is contrary to the development models imposed to the country so far, generator of deep environmental impacts and, especially, of social unfairness. As base guidance of the new Constitution of Ecuador, it defines a development project free from the colonization of knowledge and from the Eurocentric concept of wellness.

3 RIGHTS OF NATURE AND "BUEN VIVIR"[24]: reinvention of development

The rights of nature defend not only nature to be seen, enjoyed and honored by the society, living the "myth of the untouched nature" again. As a subject of rights, nature has an intrinsic value, regardless its use or economic value and that is why it has to be protected.

The preservation of life (including the "ecologic cycles" and the "evolutive processes") is the content of the right. The fact that nature is subject to protection does not exclude its use. Plantation or animal breeding, for example, is conditioned to the full maintenance of the ecological systems where life is produced and reproduced.

The "buen vivir" (*Sumak Kawasay*, in *kichwa*) subordinates the economic objectives to the promotion of equity and social justice especially aimed at the protection of nature, the recognition of social diversity and food sovereignty. That vision of development is based on cosmovisions, routine practices and millenary wisdom of the peoples of *Abya Ayala* (including

24 The 2009 Bolivian Constitution uses the "vivir bien" (*Suma Qamaña* – in Aymara), as the guiding principle of the new political, social and economic project created (refer to art. 8th, 306) (HUANACUMI, 2010; HUANACUNI, 2013; FARAH H.; 2011; FARAH H; TEREJINA 2013).

descendants of the diaspora called "African-Ecuadorian"), whose essence is the full and harmonic interaction with nature. According to those lessons, endowed with deep wisdom, there would not be an underdevelopment/ poverty[25] stage or the intention to overcome it.

Thus, far from a linear definition of development, "buen vivir" is a path to be built and rebuilt collectively (ACOSTA, 2012). As an ongoing experience, it faces linear development and universal vision overcoming based on the unlimited and material progress of the society, the exploration of natural resources as a condition for development understood as growth.

Thus, the task is decolonizing (ACOSTA, 2012) once the idea of development still plays a relevant strategic role in the cultural and social domination processes imposed to Latin America (ESCOBAR, 2012; QUIJANO, 2009). In that context of transformations carried out by Indian social movements, "buen vivir" represents a rupture with that domination system. "Buen vivir" is a "marca **definidora de un proyecto de país** emergiendo para un futuro finalmente **libre de la colonialidad** del saber, del poder y de la ley..." (SANTOS, 2012, p. p. 12 , bolded by the authors).

When shaping the rights of nature and "buen vivir", the 2008 Constitution of Ecuador incorporated a set of community based principles, among which are: solidarity, reciprocity, complementarity, responsibility, integrality, diversity and harmony. There was an effort to consecrate routine practices and wisdom that were controlled and hidden by the domination structures. However, it is important to say that, although the 2008 Constitution of Ecuador is generous in what regards rights, it does not mean that there are effective guarantees once that process does not exclude the fights around the right itself.

FINAL CONSIDERATIONS:

What we have been observing in Brazil is that the extensive catalogue of environmental rights, consolidated after the 1988 Federal Constitution, is not translated into more rights for nature and the society. Environmental provisions incorporated to the legal order (through Conventions or Declarations) or even promulgated are not translated into more rights because they express one only understanding of nature that

25 According to Escobar, the development discourse, based on the shortage of material possessions, has been a powerful driving force for political and economic strategies of domination in countries seen as developed countries (ESCOBAR, 2012).

matches the interests of the economic groups.

The provisions incorporated and promulgated to the Brazilian legal order are inserted into a global context of regulation of rights. The idea of "legal homogenization" and "right globalization" (BOURDIEU, 2001; SANTOS, 1999) announces that movement to expand the right. The increasing environmental regulation on the purpose of nature and knowledge appropriation is addressed as *plunder* (SHIVA, 2001). Indeed, that idea of *plunder* (NADER; MATTEI, 2008) is also used to explain the role of law, especially the North American law, in the process of resource appropriation. According to those authors, law has been having the function of legitimating strategies and actions in order to usurp things and people.

For now, actions taken by governments towards another understanding of nature that encompasses the Brazilian social diversity cannot be detected, despite the fact that several emerging movements have been signaling it. The driving standard has been to make use of the nature/biodiversity in the country under the guise of the population's "wellness", regardless the social-environmental entropy. Updating the development speech, based on "social inclusion" and on the unlimited access to material possessions, feeds economic and political strategies.

In that context, environmental law has fulfilled the role of legitimating the action of capital, that is, take possession of natural assets (water, forest, knowledge, ore...) and feed the voracity of the market. The strategies and the system created to "protect" nature were organized to promote *pillage.* They question two fundamental principles in law: the idea of sovereignty and the fundamental right of the citizens to a "healthy quality of life". As definitions around nature moved into the economic field, emphasizing the figure of nature-object, the protection system organized from the environmental law showed its fragility, imposing a necessary legal reflection.

The comparative examination of the rights of nature in the 2008 Constitution of Ecuador helps us think about the paths covered by the Brazilian environmental policy. Although inserted into the same economic order, which has been imposing the use of "protection to nature" provisions, the 2008 Constitution of Ecuador regulated the access and the uses of nature to its form, disregarding any possibilities to commercialize it. In addition to seeing nature as a subject of rights, linking it to "buen vivir" (*Sumak Kawasay*, in *kichwa*), the constitutionalization of some rights in particular, which contrast with the understanding adopted in

Brazil, deserves attention.

The Ecuadorian constitutional text forbids the commercialization of water, which is considered a fundamental right (art. 12). As national heritage, water is essential to maintain the lives of all species. Such measure contrasts with Law n. 9.433[26], promulgated in Brazil in 1997. It commoditized water, following the instructions of the multilateral agencies that made diagnoses and recommendations to Latin American and Caribbean countries. Discussions around the regulation of the access to water have been tough and led the countries in Latin America to different and even contrary positions, according to their interests.

The new Constitution of Ecuador recognized "ancestral knowledge", linking it to the promotion of "buen vivir" (art. 387). When it decided not to rank knowledge, it overcame a monistic view of science production, thus facing the colonization of knowledge (WALSH, 2012). Traditional peoples and communities in Brazil have been fighting around a draft bill submitted by the government to regulate the access and the use of traditional knowledge associated to biodiversity, to replace Provisional Measure n. 2.186-16[27]. Those groups take part in a meaningless discussion once knowledge has never been subject to trade, but to exchange. Both provisions commoditize traditional knowledge by following the guidance issued by the Convention of Biological Biodiversity and the Nagoya Protocol.

The comparative exercise carried out with the constitutional text of Ecuador allows us to identify the role of law in the process of building a project for a society. Depending on the conditions and the contexts, it is possible to prepare provisions that encompass the movements carried out by the society concerning its fight for rights. The comparative exercise also opens other possibilities for the reality to be understood. That is not always clear in face of the net that is created by the expansion of the law. In terms of conclusion, it is possible to say: in Brazil, nature has never had so many rights, but also it has never been so exposed.

26 "It creates the National Policy for Hydric Resources, it creates the National System to Manage Water Resources, it regulates item XIX of art. 21 of the Federal Constitution, and it changes art. 1 of Law n. 8.001 dated March 13, 1990, which changed Law n.7.990, dated December 28, 1989".

27 "It regulates item II of § 1and § 4 of art. 225 of the Constitution, arts. 1, 8, letter "j", 10, letter "c", 15 and 16, items 3 and 4 of the Convention on Biological Diversity, it addresses the access to genetic heritage, the protection and the access to the associated traditional knowledge, sharing benefits and the access to technology and technology transfer for its conservation and use, and takes other measures".

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