

Ecuador's 2008 Constitution, *Sumak Kawsay*, and Indigenous Rights

**Tensions between a progressive Constitution and state actions against
Ecuador's indigenous populations**

A Research Paper presented by:

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Ecuador

in partial fulfilment of the requirements for obtaining the degree of
MASTER OF ARTS IN DEVELOPMENT STUDIES

Major:

Human Rights, Gender and Conflict Studies
SJP

Specialization:

Conflict and Peace Studies

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The Hague, The Netherlands
December 2018

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Acknowledgements

I would like to deeply thank my supervisor Dr. Rosalba Icaza for her incredible support, patience and knowledge that encouraged me to keep walking through the difficult pad of research. Also, I will like to thank to Dr. Rachel Kurian who as my second reader showed me her amazing skills and knowledge. I was very lucky to have two amazing teachers and researchers who guided me not just in the academic field but contributed in my personal growing.

I specially want to thank to my family for their incredible support, encouragement and strengthening in moments where external factors have made our lives a bit difficult. They are the reason of being proud and grateful with such amazing family. Special thanks to my amazing friends for their support, patience and amazing moments together.

I also want to thank to Dr. Ernesto Pazmiño Granizo, former General Public Attorney who besides being an excellent professional is an exceptional human being always defending the most vulnerable people and who let me interview him. As well as to Dr. Lourdes Tibán, an indisputable leader with incredible knowledge about national reality and indigenous reality as well who also let me interview her.

This paper would have never been possible without that little person who is the engine of my life and every day fills my heart with hope and strength, and the reason why today I am giving this new step, Isabela, my daughter; my beloved daughter.

Contents

<i>List of Tables</i>	<i>vi</i>
<i>List of Figures</i>	<i>vi</i>
<i>List of Maps</i>	<i>vi</i>
<i>List of Appendices</i>	<i>vi</i>
<i>List of Acronyms</i>	<i>vii</i>
<i>Abstract</i>	<i>viii</i>
Chapter 1 . Introduction	1
1.1 Indication of the problem	1
1.2 Constitutional change and a progressive legislation	1
1.3 Actors	3
1.3.1 Hoaoranis, Taromenane	3
1.4 Objectives and Research Question	5
1.5 Justification	6
1.6 Scope and limitations	7
1.7 Methodology	7
1.8 Ethical and political choices	9
Chapter 2 . Theoretical framework	10
2.1 Coloniality of power and structural discrimination	10
2.2 The state and ethnic minorities	11
2.3 State populism and progressive neo-extractivism	15
Chapter 3 . Factors leading the 2008 constitutional reform	18
3.1 Determinant aspects since the return to democracy	18
3.2 Indigenous resistance and organization	21
3.3 Constitutional rights of nature and Sumak Kawsay	22
Chapter 4 . Huaoranis and Tagaeris/Taromenane	27
5.1 Huaoranis versus Tagaeri/Taromenane	27
Chapter 5. Bosco Wisum and José Tendetza	31
5.1 Antecedents	31
5.2 Bosco Wisum	32
5.2 José Tendetza	32
5.4 Causes and Effects	33
Chapter 6. Conclusions	36
Appendices	39
References	41

List of Tables

Table 1: Real GDP growth & Inflation Rate in Ecuador (%)	19
Table 2: Ecuadorians in Spain by Nationality, 1998-2013	20
Table 3: Level of Poverty and Extreme Poverty as related to consumption	25

List of Figures

Figure 1: Presidential house surrounded by protesting Ecuadorians	21
Figure 2: A Huaorani family	27
Figure 3: Tagaeri Community	28

List of Maps

Map 1: Map of Ecuador	Error! Bookmark not defined.
Map 2: Map of Zamora Chinchipe	Error! Bookmark not defined.

List of Appendices

Appendix 1: Questions made to the General Public Attorney.	39
Appendix 2: Questions made to former Assembly member and indigenous leader.	40

List of Acronyms

CCE	Corte Constitucional del Ecuador <i>Ecuadorian Constitutional Court</i>
CEDHU	Comisión Ecuménica de los Derechos Humanos <i>Ecumenical Commission of Human Rights</i>
CONAIE	Confederación de Nacionalidades Indígenas del Ecuador <i>Confederation of Indigenous Nationalities of Ecuador</i>
FENOCIN	Federación Nacional de Organizaciones Campesinas, Indígenas y Negras <i>National Federation of Peasant, Indigenous and Black Organizations</i>
FLACSO	Facultad Latinoamericana de Ciencias Sociales <i>Latin American Faculty of Social Sciences</i>
GDP	Gross Development Product
IDB	Interamerican Development Bank <i>Banco Interamericano de Desarrollo</i>
IMF	International Monetary Found
IP	Indigenous People
NDP	National Development Plan
UASB	Universidad Andina Simón Bolívar <i>Simón Bolívar Andean University</i>
UNDP	United Nations Development Programme
UNDRIP	United Nations Declaration on the Rights of Indigenous People

Abstract

This research paper explores the contradictions between the Constitution of 2008 and the actions taken by the government between 2008 and 2017. The government of Rafael Correa defended this Constitution as a political project but once approved, as time went on, this Constitution and the daily actions taken started to feel contradictory between each other. The new inclusive Constitution of 2008 besides being multicultural and pluri-ethnic also includes integrally rights of indigenous people and nature. It also included the *Sumak Kawsay* worldview giving it even more inclusive character. But, an Eurocentric perspective of a state itself as well as the practices regarding to the economic field began to place this integrity of indigenous peoples at risk. It is so, that the findings of this study show that the application of law is not reflected in reality. Specially in the Ecuadorian amazon region, which is the scene of multiple repressive actions against communities who resist in defense of their rights and territory towards an increase of oil and mining exploration and exploitation.

By approaching three cases of murders within the Amazon region in different time, places and (estrangle) circumstances -between 2008 and 2017- this study analyzes the different perspectives from which these cases are addressed. This research paper will reaffirm the fact that the abuses, discrimination and violation of indigenous people's rights and their territories in the past government are responsibility of the state as such. But, also as a result of a political current which held power but despite its initial commitment with minorities economical interest predominated.

Relevance to Development Studies

This paper contributes to the understanding of the Ecuadorian political reality and the interaction between the state and indigenous populations in relation to their rights and the different elements that converge to evidence the contradictions between the Constitution of 2008 and the actions taken in the Government of former president Rafael Correa.

Keywords

Coloniality of power, structural discrimination, state, ethnic minorities, legal pluralism, legal monism, *Sumak Kawsay*, state populism, progressive neo-extractivism.

Chapter 1 . Introduction

Chapter 1 will explore the rising of the problem of this research paper. It will also provide information about the Constitutional change in 2008 with the arrival of a new political project. The main reasons why it became a reality regarding to the political background since the end of the dictatorship in 1978. It will briefly explain the actors of three cases I will expose deeply in chapters 4 and 5. This chapter together with the third one will help me to answer the first sub-question of this research paper: What does the Constitution of 2008 and the Sumak Kawsay National Development Plan establishes in relation to the rights of indigenous people? The explanation of certain parts of the Constitution as well as of the National Development Plan in relation to indigenous people will be addressed.

1.1 Indication of the problem

This research explores the actions taken by the Ecuadorian state in relation to indigenous populations after the approval of the 2008 Constitution. Despite the inclusion in the Constitution of the rights of nature and the worldview of good living/*Sumak Kawsay*, the state has had to make different decisions in contradiction with what this approval means. Despite the commitment made to indigenous populations, as time went through, different decisions were taken and documented in relation to the amazon region. After the Constitution was approved, two other reforms related to mining and water rights, respectively, were implemented since this approval. Indigenous populations across the entire country rose up to demonstrate against these reforms and defend their rights as ancestral populations. They protested the violation of these rights by seeking mechanisms or strategies to increase the budget of the state regarding to a growing state apparatus.

The declaration of a state of emergency by the state that enabled it to resort to the use of civil forces to oppose an unarmed population resulted in the killing of two indigenous leaders in these demonstrations. This period of unrest was marked by the involvement of Chinese industrial petroleum exploitation companies. In the same way, in a protected area where two ethnic groups reside, confrontations between these groups took place, leading to the death of around 30 members of one of the communities. This research will thus focus on finding the elements that contribute to understand the contradictions between the actions of the Ecuadorian state and a Constitution made with more inclusive elements and which should contribute to decrease the inequity for indigenous people, increasing their rights and the rights of nature. In one hand, a progressive government which at the beginning had as a main ally to indigenous populations, and in the other hand, this indigenous populations as defenders of the rights of nature and an ancestral worldview, who were affected by these actions taken by the Ecuadorian government between 2008-2017.

1.2 Constitutional change and a progressive legislation

According to Amnesty International, “370 million people in more than 70 countries identify as indigenous peoples” (Tyron, Z: 2018), and globally over 5,000 different indigenous groups speaking more than 4,000 languages can be found (Tyron, X: 2018). Despite indigenous populations having ancestral rights to over 65% of the land over the world, these rights have

been constantly violated by different political or economic actors (IC Magazine, 2016). Destructive industrial practices have a bearing on different areas such as climate change, forests, and the defence of water reserves (IC Magazine, 2018). Examples of indigenous struggles can be found in the United States, Canada, Australia, Bolivia, and many other countries. These struggles are related to access to traditional land, the recognition of indigenous rights such as the practice of culture and language, and participation in traditional economies and political systems (Indigenous Foundations, 2009).

However, in 2008, Ecuador became the first country in the world to include a different worldview as well as the rights of nature in its new Constitution, strengthening the rights of indigenous populations as well as those of nature. The new Constitution was considered much more progressive in comparison to the one from 1998 even though past governments did have the intention of including indigenous rights. At the same time, while these rights are present on it, indigenous populations continue to face many challenges, some of which will be discussed in this research paper.

The following information will help me to address what establish Constitution of 2008 and the Sumak Kawsay NDP. Both provide relevant information to answer the first research question regarding to the rights of IP and what these two legal instruments establishes. Ecuador is a country with approximately 16 million people and is declared a multicultural¹ and pluri-ethnic² nation since the Constitution of 1998. In 2008 the importance assigned to the rights of indigenous people and nature in the new Constitution ensured the recognition of indigenous ethnic groups populating the Ecuadorian territory³. Additionally, as a state policy, Ecuador adopted the principle of *Sumak Kawsay* or “Good Living”. “*Sumak*” refers to harmony with the planet, and “*Kawsay*” means a dignified and fulfilled life; *Sumak Kawsay* thus refers to the “construction of a system of knowledge and living based in the communion between humans and nature on the spatial-temporal harmonious totality of existence” (Zorrilla, C: 2014).

However, this change in mindset occurred after three decades of neo-liberalization of the country’s management following the end of the military dictatorship in 1979. This era was characterized by mismanagement in the political, economic, and social arenas (Basabe, S. 2013: 1). The country had seven presidents in less than 10 years, and this leak of political stability was perceived to have had a decisive influence on the national economy. Following a series failed presidencies, Rafael Correa became president in 2007. During his term, the renewal of the Constitution brought with it the inclusion of pluri-nationality, multi-ethnicity, and rights of nature. Especially Articles 1, 14 and 380⁴ can be considered important for the

¹ Multiculturalism refers to a type of society or nation in which all the different cultural or racial groups have equal rights and opportunities, and none is ignored. <https://www.collinsdictionary.com/dictionary/english/multiculturalism>

² A pluri-ethnic nation is understood as citizens with different characteristics of different ethnic groups; a multi-ethnic country. <https://es.oxforddictionaries.com/definicion/plurietnico>

³ According to CODENPE. Consejo de Desarrollo de las Nacionalidades y Pueblos del Ecuador. www.codenpe.gob.ec/index.php?option=com_k2&view=itemlist&layout=category&id=348&Itemid=469. 30/05/2018

⁴Article 1: Ecuador is a constitutional state of rights and justice, social, democratic, sovereign, independent, unitary, intercultural, pluri-national and secular. It is organized as a republic and governs in a decentralized manner.

Article 14: The right of the population to live in a healthy and ecologically balanced environment, which guarantees sustainability and good living, sumak kawsay is recognized. The preservation of the environment, the

Latin American context due to the relevance and priority assigned to this approach that differs from the “traditional”. The concept of *Sumak Kawsay* or “Good Living”, which is included in the document, started to be systematized and structured in the 1990s, when indigenous people started to organize politically with the creation and recognition of the Pachacutik political party, inscribed and registered in the National Electoral Council. Alberto Acosta, one of the drivers of the political project, mentioned the need in Latin America and specifically in Ecuador to start thinking about development in a different way (Bazabe, S. 2013: 4).

This *Sumak Kawsay* worldview is incorporated into the NDP 2009-2013 and in its Objective 2— “To foster social and territorial equity, cohesion, inclusion and equality in diversity”⁵ —and its Objective 7— “To guarantee the rights of Nature and promote environmental sustainability globally”⁶. These are all are elements that ensure that Ecuador serves as an example for guaranteeing the equity between all its citizens in harmony with nature (Secretaría Nacional de Planificación y Desarrollo, 2009: 161, 162). While the NDP has 12 objectives in total, the two mentioned above will be referred to in this thesis, as they most closely align to the objective of this research.

1.3 Actors

1.3.1 Hoauranis, Taromenane

The region of the Yasuni National Park is inhabited by a group of around 1,200 to 2,000 people who mainly live from hunting and gathering practices and have occupied the territory for millennia: The Hoauranis. The area in which they live is renowned as one of the most biodiverse places in the world (Baihua, P. 2009). In recent history, several instances of contact with “outsiders” have been recorded: during the rubber boom in the early 1900s, in the beginning of oil exploitation phase in the 1940s, in the 1950s with the coming of catholic missionaries, and during the oil boom in the early 1970s” (Shiripuno Research, 2016).

conservation of ecosystems, biodiversity and the integrity of the country's genetic heritage, the prevention of environmental damage and the recovery of degraded natural spaces are declared of public interest.

Article 380: State responsibilities will be: 1. to ensure, through permanent policies, the identification, protection, defense, conservation, restoration, dissemination and enhancement of tangible and intangible cultural heritage, historical, artistic, linguistic and cultural wealth, archaeological, collective memory and the set of values and manifestations that shape the plurinational, pluricultural and multiethnic identity of Ecuador.

⁵ “Recognition of equal rights for all individuals implies consolidating policies for equality to prevent exclusion and encourage social and political coexistence. The challenge is to advance toward full equality within diversity, without exclusion, to achieve a life of dignity, with access to health, education, social support, specialized care and special protection. (Good Living National Plan 2013: 54).

⁶ “With the 2008 Constitution, Ecuador took the lead worldwide in recognizing the rights of Nature, as a decisive response to Nature's current status, orienting its efforts toward integrated respect for Nature's existence, its maintenance and the regeneration of its life cycles and evolutionary processes”. (Good Living National Plan 2013: 69).

Map 1: Map of Ecuador



Source: Oil and Gas Logistics Web Page

In 1956, after three days of the arrival of U.S missionaries, the Huaoranis came to the missionary camp and appeared “friendly”, but on the fourth day around 10 members of the community approached the camp and killed five missionaries (Lanchin 2017). In 2013 people from this community killed around 30 members of another community—the Tagaeri/Taromenane; according to the state prosecutor, the crime occurred presumably in revenge of the murder of two Hoaurani elders killed in past days by the Tagaeri/Taromenane. The local prosecutor opened a legal process against the Huaoranis using the state legal system, but their communities demanded a trial according to their indigenous laws.

In the same region two deaths under suspicious circumstances occurred in Macas- Morona Santiago (Map 1) and Zamora-Zamora Chinchipe (Map 2), respectively. The first incident occurred in 2009 and happened in a context of protests against a project of law which was going to be approved regarding new Hydric Resources regulations. Bosco Wisum, the leader of the Shuar ethnic group was killed in a confused incident in which army and the population were involved (El Telégrafo, 2011).

Map2:
Map of Zamora Chinchipe



Source: www.mapasdecuador.com

On 28 November 2014 the body of José Tendetza, a leader from a Shuar community from the province of Zamora Chinchipe and a strong activist against a new mining project of law which was going to be approved at that time, disappeared under suspicious circumstances; his body was found days after his death, bound and buried on the banks of a river close to his hometown (Watts and Collins, 2014). Everything happened just before his planned trip to Lima, where a United Nations conference was going to happen about climate change and where he was going to denounce irregularities with the hiring by a Chinese industrial mining company of approximately 450.000 acres of protected land approved by the Ecuadorian state, according to The Guardian (Watts and Collins, 2014).

1.4 Objectives and Research Question

The research objectives of this study are:

1. To compare and contrast the different perspectives of justice and the rights of indigenous peoples and nature as encapsulated in the Constitution of 2008 and in the government of former president Rafael Correa;

2. To analyze the extent to which the rights included in the Constitution have been respected or violated by the state in the period 2008 to 2017.

As an attempt to accomplish these objectives, the central research question is:

In which ways have indigenous populations in Ecuador struggled to claim constitutional rights, and how has the Ecuadorian state responded to these demands in the period 2008-2017?

Based on the main research question, several sub-questions have been formulated:

- What does the Constitution of 2008 and the “*Sumak Kawsay*/Good Living” National Development Plan establish in relation to the rights of the indigenous people?
- How are justice, nature and rights understood in these frameworks?
- Which state actions in the recent past have been in tension or in open contradiction with the constitutional provision regarding the rights of indigenous peoples and nature?

1.5 Justification

The approval of a new Constitution in Ecuador is significant, as this new direction forms part of a regional political change that has been taking place in Latin America since 2006. However, it is also significant globally, as Ecuador is one of only two countries that recognizes the rights of nature and the “Good Living” worldview, two elements that defines the perspective of the state regarding Ecuador’s diversity. This Constitution has included constitutional rights to the benefit of the indigenous populations as well as nature, prioritizing the harmony between the economic and political growth of the state and the rich natural environment. The inclusion of these elements in the Constitution of 2008 was seen as a master breakthrough for indigenous populations in Ecuador as well as for different groups who were concerned about the future of the Amazon region and the whole country due to the oil extraction and mining activities that threaten nature and indigenous peoples. Protected areas and Amazonian provinces are rich in natural resources, but at the same time are vulnerable places because of their incredible natural diversity. The reformed Constitution shielded these sanctuaries from extractive activities, and the government even started a global initiative for avoiding the extraction of oil from the most megadiverse place in the world.

However, other forces and political issues influence reality and created doubts and questions about the real priorities and concerns of former president Rafael Correa and his government. Events such as the murder of indigenous leaders under strange circumstances involving oil and mining multinational companies, and the commencement of exploration and exploitation operations in or close to protected areas, are reasons enough to start questioning the actions of the state. Therefore, it is very important to be able to understand how the state was able to manipulate the law, spaces and demonstrations, and to determine how indigenous communities are challenged by the state's activities.

Moreover, there are many other similar cases of criminalization of social protests around the country in which the oppressive actions of the state contradict its initial legacy. But, in particular, three cases were selected to identify different elements of state action pertaining to the rights of indigenous peoples and nature.

1.6 Scope and limitations

This research is not focused on a legal analysis of the articles and statements of the law but is rather focused on the experiences of indigenous populations and their struggles. It assigns relevance to different worldviews, especially those of indigenous people. Fieldwork in situ was not possible because this research was based on events of the past years; moreover, isolated groups are extremely difficult to access and work with—special permission from the government would be needed to reach them. Due to the limited amount of time, this could thus not be done. Also, accessing official government documents or authorities who may or not have the will to answer questions about polemic topics such as those raised in the thesis proved difficult. In spite of this, two interviews detailed below were conducted. The use of firsthand information such as newspaper articles was necessary to understand the different perspectives and the intensity that even nowadays these sources express about the topic. Also, secondary data with relevant information such as academic articles, books, documentaries, official documents and interviews were used. Equally important, this study made use of interviews with relevant actors or authors published on the web that seek to explain and evidence the arguments of this research from different perspectives.

1.7 Methodology

This study employed a qualitative approach, including the analysis of secondary data. Three cases were analyzed as an illustration of the contentious relations between indigenous people and the Ecuadorian state: The assassination of 30 members of an ethnic group, and the murder of two indigenous leaders in different times and places.

Firsthand information was collected via interviews with two main actors. Another main information resource was national and international newspaper journals, which provided different perspectives of the relationship between the Ecuadorian State and indigenous peoples. Articles from the national and international sphere from different political tendencies -those considered left as well as those of right wing- were used in this research paper.

The newspapers referred to are The Guardian, Washington Post, San Francisco Chronicle, El País, and The Economist as international newspapers, and El Telégrafo, El Universo and El Comercio as national newspapers. Also, the Constitution and the *Sumak Kawsay* NDP framework were used to analyze how the rights of indigenous people and nature were articulated. All the previous resources were analyzed to identify abuses against indigenous populations. Also, Interviews to academics uploaded in a web platform were used.

An obstacle to be able to carry out an on-site investigation was the fact that they are events that have occurred a long time ago and it is very difficult to access to the communities regarding to accessibility and time, as well as it is a politically sensitive issue. Together with the interviews made to people who have experienced these events as main actors, they are a solid source that has allowed me to frame from their experience the concepts used in the theoretical framework from a structural, geopolitical and local perspective. Also, the use of the Constitution as the National Development Plan in its relevant parts allowed me to contrast it with the facts to corroborate and be able to answer my research question.

Primary Data

Two interviews were conducted as a research method with the aim of understanding the different events and their relations with the Ecuadorian state. First, Dr. Ernesto Pazmiño Granizo, former General Public Attorney, was interviewed on 29 August 2018. He was involved in the case of the Huaorani versus Tagaeri/Taromenane as defender attorney. He followed different cases related to the violation of rights of different minorities and people in vulnerable states. A second interview was conducted on August the 22nd 2018 with Dr. Lourdes Tibán, former national assembly member and indigenous leader, who has had a very important position at the national level. From my perspective, these interviews yielded accurate information, as they were main actors within the cases described before. It is important to mention that both interviewees were asked to maintain anonymity, and both rejected it.

The two interviews were non-structured, allowing for the absorption of as much information as possible regarding their position in the state or the academia related to the treatment given to indigenous people in the context of the three cases still under investigation. Also, I used newspaper articles from different perspectives and from different countries such as Ecuador, Colombia, Spain, and the United States, because I think that newspapers are in one way or another providing an idea of public concerns about state actions and the worries of the population about the topic analyzed in this research paper.

Secondary Data

To contextualize the factors behind the actions taken by the state that may have affected indigenous peoples and the apparent contradictions between the Constitution of 2008 and the *Sumak Kawsay* NDP, I used sources such as academic articles, documentaries, specialized books, and reports. I also made use of the official text of the Ecuadorian Constitution of 2008 and the *Sumak Kawsay* NDP, because these sources provided a deeper theoretical understanding about the different dynamics within this particular context.

1.8 Ethical and political choices

As this research is a criticism of the contradictions found between the Constitution of 2008 and the actions taken by the state regarding indigenous rights, I consider myself a mere spectator who has noticed these contradictions in a certain period of time from 2008 to 2017. Therefore, and as any citizen with the right to doubt and raise his/her voice to support the oppressed when injustices are committed, I decided to base my research on an academic perspective, contrasting the facts and the law. Having said that, I position myself as a defender of the minorities and discriminated groups, but also as a defender of “Good Living” worldview in which many people believe. At the same time, I position myself in this research as a neutral and eclectic observer.

Chapter 2 will present the theoretical framework in which I use different concepts to explain three different perspectives of the abuses, discrimination and criminalization against indigenous populations at different levels: Structural, geopolitical and local.

Chapter 2 . Theoretical framework

After a brief explanation about the background and the problem stated in this paper as well as relevant information about the 2008 Constitution and the Sumak Kawsay NDP, in the second chapter, I present the theoretical framework used for this study. It is built on three different perspectives. First, it uses the theory of the coloniality of power, discussed by amongst others Catherine Walsh in referring to the structural discrimination of indigenous populations, to analyze the three cases presented in Chapter 4 and 5. Then, the relation between the state and ethnic minorities is analyzed from a perspective of multicultural neoliberalism discussed by Charles Hale; legal monism discussed by Catherine Walsh will also be referred to. Finally, state populism and progressive neo-extractivism will be analyzed by drawing on the work of Eduardo Gudynas. This literature will be used to criticize the strategy of new leftist governments in Latin America, but specifically of the government of Ecuador. Projects of mining and oil concessions in Ecuador may differ from what the Constitution of 2008 states regarding to nature and the rights of indigenous people. Therefore, the objective of Chapter two is to explain the different perspectives that will be used to better understand and provide any evidence of possible contradictions, ultimately showing how capital operates in Latin America and how this informs the relationship between the state and IP in Ecuador.

2.1 Coloniality of power and structural discrimination

According to Catherine Walsh Coloniality of power is inherent to the state, which promotes inclusivity to maintain a neoliberal ideology and market power. It is related with modernity and its meaning of progress which hides colonial injustices (Mignolo. 2007a: 162) as well as legitimizes and naturalizes its practices while there is not room for different options and injustices are forgiven or forgotten. There are different fields within which coloniality is present: sexuality, economy, authority, gender, subjectivity and over all knowledge (Mignolo. 2007b: 156). Indigenous movements on the other hand, particularly in Ecuador and Bolivia, do not want to be included by the state—they want to transform the system: “They are not asking for recognition or inclusion in a state which reproduces a neo-liberal ideology and an intern colonialism, but for the state to recognize the colonial difference (ethical, political and epistemic)”(Walsh, C. 2007:8).

Underlying this type of structural discrimination is western “supremacy”, evidenced by the Christianization of the world followed by a secular missionary civilization, the rise of development and modernization theories (Walsh, C. 2017:15) and, since then, a third and a fourth world wars: the market and its dynamics as a bastion of democracy and liberty (Walsh, C. 2007: 15). In the same way, Anibal Quijano thinks that the coloniality of power is a constitutive element of the global pattern of capitalist power, based on an imposition of an ethnic/racial classification in societies around the world. Particularly in Latin America, it marks the starting point of the global expansion of capitalism (Quijano, A. 2000:202).

In the American context, after the conquest in century XIV, a new way of identification based on race appeared, associated with the new nature of roles and to the new global structure of work and control; since then, the racial labor division was imposed (Quijano, A. 2000:215). Then, IP were freed from slavery, and the Kingdom of Castilla to avoid their

extermination ordered the banning of it. IP were consequently able to conduct domestic work, and *mestizos* (people with a Spanish father and indigenous mother) were able to work in the same trades and with the same skills as the Iberians (Quijano, A. 2000: 204). In the same way, Catherine Walsh points out that this coloniality of power was justified by the evangelization, and, later, approximately in 1945 and 1950, the development and modernization, and finally, the total market" (Walsh, C. 2007: 14).

This approach is used in this study, because in Ecuador and specifically regarding the three cases that are later presented, and to answer the main research question it is necessary to show how the state behaves towards minorities whom may not share criteria. The state assumes a clear position that is indicative of the continuation of this colonization process through a structural discrimination against indigenous populations. As an excluded group, indigenous peoples have suffered discrimination in all its forms, as well as social prejudices in facts and law in a systematic way due to complex social practices and belief systems, which diminishes the possibility of defending their collective rights (Pelletier, P. 2014: 207). This systematic discrimination arises in a "society where some look superior over others, generating multiple forms of this discrimination what is shown like a superiority of the white over the *indio*⁷ or peasant; the first ones are called to hold the power and the second ones are recipients of that management" (Walsh, C. 2009: 118), imposing and highlighting a predominantly Eurocentric view of the world of the "civilized over the primitive" (Quijano, A. 2007: 225).

Therefore, this superiority of "race" created a new "mental" category between the white and the *mestizo* or *indio* since the European colonization in America—a "biologically structural and hierarchical difference between the dominant and the dominated" (Quijano 2000: 216) which created a pattern in which the social imaginary of indigenous populations relegates them and "denies people's dignity and provoke people's shame about inferiority" (Mignolo, W. 2005: 388).

2.2 The state and ethnic minorities

In the same way, and as a consequence of a long process of colonization, the theorization of the nation-state as a single territorial demarcation, domination, command and obedience comes from the conception of a continent to which it is taken as a condition of generality (Gandarilla and Gómez, 2017:57). Even the history of nation-states is founded on a Eurocentric perspective, with reference to their history of construction and functioning in the way in which that society was formed and with its respective national, historical and cultural features. This perception of the nation-state has been framed since the expansion of the Iberic Europe towards America and lasts until today, showing clear signs of crisis and exhaustion (Gandarilla and Gómez, 2017: 58) since "the pillars of the state were subjected to the power of the market" (Mandujano, M. 2017: 4).

Anibal Quijano points out that with the modernization of the nation-state since the sixteenth century, the workday and work control started to be prioritized and terms such as democratization and nationalization appeared. These "modern" nation-states emerged as a result of the democratic distribution of production resources and the management of control institutions (Gandarilla and Gómez, 2017:59). But conditions changed, and the racialization of work started with a labor division between black, *indios* and *mestizos*, giving them the worst

⁷ *Indio*: A derogatory way of referring to indigenous people

part of the history. Consequently, a pattern of power was created and installed to give the “white” people hegemonic power, which naturalizes and eternizes what is European and neutralizes what is not (Gandarilla and Gomez, 2017: 56). Within the Ecuadorian context, this reality has been even more evident; the most affected indigenous communities are located where oil and mining resources are found—in the Amazon region. This approach within the context of the three cases I will analyze is fundamental because helps me to understand the dynamic of the state as well as the root of its actions through time and specifically in the last government where -as I said before- the radicalization of social protest as well as the criminalization of it because of the increase of oil and mining extraction in the amazon region has been evident.

However, since the 1990s, the World Bank as well as the United Nations have increasingly focused on the plight of indigenous peoples and the importance of their culture from a development perspective, as expressed by, for example, the awarding of the Nobel Peace Prize to Rigoberta Menchú⁸ in 1992 (Bretón, V. 2007: 96). The Ecuadorian reality starts after many years of resistance to the traditional social, economic and political system. These ruptures that started shaping new epistemic and sociopolitical articulations of the state and society are the result of struggles and action strategies of ancestral movements, of their politic-epistemic insurgency that will certainly open a new road in a decolonial way (Walsh, C,2008a: 131).

Unfortunately, as a country with a *mestizo* population majority, Ecuador as well as other Latin American countries are in an era of denying the millenary relation between humans and nature; instead, people want to exploit, control and highlight the power of the modern “civilized” European individual, as well as promote the models of modern and rational society with their Euro-American-Christian roots (Walsh, C. 2008:138). Therefore, the recognition of indigenous rights by the state, and the need to initiate structural reforms that will affect the social rights of IP, are suppressed to make way for the looting of natural resources by mostly transnational capital (López, F. 2011: 325) from a position that have pretended to finish with the base of life of indigenous ancestral populations as a consequence of a perspective looking for homogeneity and unity which has encouraged the interest of this capital and market (Walsh, C. 2008b: 139).

Also, the view of the state regarding the protection of indigenous peoples seems to be ambiguous; while the state on the one hand guarantees indigenous rights, on the other hand it acts according to its own interests, regardless to the welfare of IP (Santos, B. 2007: 15). That is the case for the three events discussed in this paper: a mass killing based on the diminishing of territory and mobility because of oil exploitation, leading to a clash between

⁸ **Rigoberta Menchú**, (born January 9, 1959, Guatemala), Guatemalan Indian-rights activist, who was awarded the Nobel Prize for Peace in 1992. She spent her childhood helping with her family's agricultural work; as a young woman, she became an activist in the local women's rights movement. The activism of Menchú and her family led to persecution by Guatemala's military government. Menchú gained international prominence in 1983 with her widely translated book *I, Rigoberta Menchú*, in which she tells the story of her impoverished youth and recounts in horrifying detail the torture-murders of her brother and mother. She received the Nobel Peace Prize in 1992 for her continuing efforts to achieve social justice and mutual reconciliation in Guatemala. <https://www.britannica.com/biography/Rigoberta-Menchu>.

ethnic groups; the confrontation between the army and affected indigenous populations rooted in the same neo-extractivist causes; and the repression together with intimidation of indigenous leaders who resist these actions. Since the end of the 20th century, state ideology approached a project which had both egalitarian and repressive elements, but the egalitarian state developed a way of government based on just one group of rights that a citizen will be able to access due to being *mestizo* (Hale, C. 2004: 2); this ideology has been called progressive—while it stimulates the creation of an authentic identity, at the same time it highlights European qualities which guarantee a “modern” identity (Hale, C. 2004: 3). As liberalisms suppressed collective rights in its “classic” period, today neoliberalism does not discard other cultures but grants very limited ones, for example to IP; that is what Hale calls neoliberal multiculturalism (Hales, C. 2002: 495-496). It “has been reconfigured according to neoliberal arrangement, sensibilities; and attempts to coordinate and manage ethnocultural difference that have not been thrown away but re-calibrated to complement the marketization of politics and social relations” (Walsh, J, 2012: 3).

Another issue pertaining to the relation between the state and ethnic minorities is the perspective of law. Since colonization, a monocultural perspective of the world has dominated, relegating other views. However, a later attempt to define a diverse environment according to Walsh (2008) is through the use of the term “multiculturality”—a term founded in western thought, which calls for the recognition, tolerance and respect of diversity. In the same way, according to María Herrera Lima (1996) multiculturalism is a group of problems with confusing origins, limits and differentiation criteria, different meanings in different parts of the world, alongside other concepts such as nationalist claims, gender differences or even political pluralism. So, the first task in making possible conversations about multiculturalism is to delimit fields of action and relevance for each problem and to determine whether the problems are considered differently, or in ways that complement each other (Herrera, M. 1996: 1). But, since century XX, multiculturalism and nationalism are two concepts which has strengthened because of two factors: 1) the amount of people around the globe that has emigrated, and 2) a strong affirmation of nationality of this people result of this movements (Kimlyka, W. 1996: 265). And as a result, the states started to practice a “cultural difference policy” based in previous actions such as border drawing, language that should be spoken in schools, tribunal, bureaucracies etc; affecting the polyethnic rights as well as a right of self-government which may be a step forward to autonomy (Kimlyka, W. 1996: 266).

In this context, an important element of a multicultural society is the legal part and its perspectives. Legal pluralism is a redefinition of a regulatory model of regulation and social control based in the classic western positive legality in which the assumptions are part of past historical realities (Wolkmer, A. 2003: 2). Today, those realities are unsatisfactory and limited in a society such as the Latin American one in which the social contradictions that reflect a weakness and a crisis of legitimacy with respect to the dynamics of justice are evident (Wolkmer, A. 2003: 2). In Ecuadorian reality, the legal pluralism “was born after a long search for a law that answers coherently to social reality composed of a great diversity of cultures and communities that enrich it permanently and, therefore, should be considered and respected” (Carpio, M. n.d: 213). It pretends to solve the problems causes through time with legal monism, which relates to the identification of a single legal system that establishes a single way of being, knowing, or living (Walsh, C. 2010: 9). The first case about the killing of Tagaeris by Huaoranis hands and the juridical procedure taken is a clear example of what is explained above, where a group of people whom don’t even understand about state legal system was forced to comply a “predominant” perspective of law. Walsh (2010: 3) argues that a legal pluralist system is still under construction because this legal monism “reduces the law to state law”, “has a hierarchical and unrecognizable opposition between the positivist-state model of law and customary law systems”; and she says that it is “[assumed] that legal

pluralism is inherent to progressivism and is the maximum expression of ethnic and legal diversity" (Walsh, C. 2010: 3), but not an historical, structural, racial and colonial problem.

On the other hand, it is said that there is no law existence without the legal recognition of the state; it is also said that some changes and adjustments have been made to modern codes and laws (Vachon and Coll, 1996: 4,12), but the possibility of relativizing the foundations, the nature and the presuppositions of the civilized, anthropocentric, western and modern legal culture is totally rejected (Vachon and Coll, 1996: 4). However, with the promulgation of the new Constitution in Ecuador in 2008, the "Good Living" worldview became well known, recognizing the entire Ecuadorian population. The "Good Living" worldview can be considered the opposite of capitalist globalization—it is another conception of life which does not begin from the ideas of technical and technocratic rationalization which is focused in the modern science, modern state, and in capitalism with infinite accumulation (Ortega, D. 2013). This philosophy defends the harmony of human beings with the rest of the world, because contradictions in the modern society are not just related to capital and labor or the colonizer and the colonized, but are also to the relationship between humans, society, and nature (Ortega, D. 2013). The "Good Living" worldview stipulates that everything achieved in detriment of nature will have a negative result for society and the *Pacha Mama*⁹. "Good living" refers to a more reciprocal and harmonious relationship between humans, society and nature, which means a democratization of life in general (Ortega, D. 2013).

There is a huge diversity of forms of government that can be stimulated since the objective is not only focused on infinite growing, individual earnings and possessive individualism (Paizzani, C. 2018). Humanity is ending its agricultural stage to move towards an urban mode where humans live in the city without contact with nature (Paizzani, 2018). This way of life is centered around "modernity", and people begin to lose contact with community and nature (Paizzani, C. 2018). Humans started to oppose nature instead of viewing themselves as part of nature. Enrique Dussel also adds that from this individualistic, objective, mechanical, and quantified perspective, the environment takes a backseat and nature is something that we must dominate and exploit, while for the indigenous populations it is the mother to take care of. "Good Living" must be considered a worldview that recognizes the totality of life and the phenomena that ensure that indigenous populations stay attuned to nature, allowing for harmony with nature (Paizzani, C. 2018).

Problems emerge when ideology is mixed with philosophy—when ideology will act not over reality itself, but over the symbolic mediators such as symbolic representations (Ricœur, 2008) with which we learn to judge our relationship with the world and what is achieved through different discursive means that become unquestionable truths for the collective (Giraldo, O. 2014: 27). And for that, the metaphor is a much-used tool and it is a rhetoric resource of discourse which is capable of explaining things easily, creating a surplus of meaning (Giraldo, O. 2014: 117). The function of this resource is to awaken the imagination and to create perceptive beliefs; when it is used in a utopic discourse, it causes the opening of this imaginary (Giraldo, O. 2014: 51). The utopic discourse of "Good Living" makes us question our daily lives and our realities; it makes us recognize the need to emancipate ourselves from our own thoughts in which the idea of progress and development prevails. Moreover, it tries to make us see nature as our mother—as something alive (Giraldo, O. 2014: 118).

⁹ From the quechua *pacha* ("earth" and "mama"), *Pacha Mama* or "Mother Earth", is the most important deity for the indigenous people of the central Andes of South America.

2.3 State populism and progressive neo-extractivism

Furthermore, what is strictly related with what comes it is very important to understand in this context the state Populism. There are two different kinds of populism: traditional and neo-populism. In Latin America it was thought that it belonged to a certain period related to the economic and political development of the countries, but it seems like it is a recurrent aspect in the political life of different countries in South America. On the one hand, populism is considered a healthy moment of political rupture, since it can bring to the continent winds of political change, shaking off ossified and obsolete political structures to establish and enlarge democracy (De la Torre and Peruzzoti, 2008:12). However, unless it will be a long-term transition, it will be very difficult to hold neo-populisms or radical populisms towards a modernity period which always run away and does not finish arriving; rather, it has to be considered as a way in which the excluded can participate politically (De la Torre and Peruzzoti, 2008: 24).

Presidents Chávez, Morales and Correa are considered radical populists; radical populism is part of the new leftist current that started in Venezuela back in the 1990s and is characterized by the defense of social movements (Becker, 2013:51). Within this current and particularly in Ecuador, the main objective was to eradicate the “long neo-liberal night”- term coined by former president Correa- which refers to the different neo-liberal practices related to social, economic and political realms. Even when they had to deal with most conservative traditional oligarchy of the country, their main challenges have been facing leftist social movements. These movements have criticized the administration for not encouraging the transformation of structures that oppress and exploit marginalized communities (Becker, M. 2013:45). This approach will help me to better understand this wave in South America and specifically in Ecuador, where people are sold the idea of empowerment, but where they are not empowered.

While supporters of the former president Correa celebrated his achievements, conservative opponents and different sectors of society denounced his autocratic actions. The Washington Post (2012), the New York Times (2012) and the San Francisco Chronicle (2012) contended that the president was leading “the most comprehensive and ruthless assault of free media in the Western Hemisphere”, this newspapers stated that Correa attempted to “stifle a free press and his threats to democratic governance in the region”, and described Ecuador as “a nation ruled with a heavy hand by a lightweight dictator who seems to wish he were Hugo Chavez from Venezuela”. In the same way, indigenous leaders such as Humberto Cholango, former president of the Confederation of Indigenous Nationalities of Ecuador, accused Correa of criminalizing social protests as well as of calling social protesters terrorists and saboteurs (Becker, M. 2013: 44). Cholango also condemned the extractive policies that allow transnational oil companies to operate existing oil wells and start new extractive processes in territories considered sacred to different indigenous populations (Becker, M. 2013: 44).

A very important and recently updated term regarding to the practices of the past government is neo-extractivism, which because of the increasing of oil and mining exploration activities in the Amazon region is very closely related to the Ecuadorian reality, and consequently with the cases that will be studied later in chapters 4 and 5. Neo-extractivism differs from extractivism in that it is based on a “national-populist socio-political *dispositif* that strategically functions as a source of political legitimization”(Brand, Dietz, and Lang, 2016: 130). Extractivism on the other hand refers to the “overexploitation of natural resources as well as the expansion of capital’s frontiers towards territories previously considered nonproductive” (Brand, Dietz, and Lang, 2016: 129).

Gudynas (2011) points out that extractivism is in “good health and even governments called progressist or from the new left are closer to it and they have emphasized it, although their strategies have not been the same from the past; therefore, it is needed to talk about a ‘progressive neo-extractivism’” (Gudynas, E. 2011: 76). He also divides the “neo-extractive” period in five theses: 1) “In spite of the change of new governments in Latin America and the deep political changes, extractive interests maintain its importance and even are one of the pillars of development strategies nowadays” (Gudynas, E. 2011: 77). 2) “Under progressist governments it is generating a new style of extractivism” (Gudynas, E. 2011: 78). 3) “A more active role of the state with direct and indirect interventions over extractive sectors” (Gudynas, E. 2011: 79). “Neo-extractivism is functional to commercial and financial globalization and keeps a subordinated international insertion of Latin America” (Gudynas, E. 2011: 80) and the fifth thesis which states that under the new extractivism territorial fragmentation in de-territorialized areas persist, generating a network of connections to global markets which aggravate territorial tensions (Gudynas, E. 2011: 81).

Economic growth in Correa’s period largely shows that he has not avoided neo-extractivism; instead, he has embraced humanism and the consciousness of socialism, but at the same time has reinforced or at least has pursued the efficiency of capitalism. The reason why his government is called radical populist is due to emphasizing social programs over economic productivity (Castañeda and Morales 2012). On the other hand, some social movements argued that in an attempt to reduce inequality and deepen democracy as a result of the increasing of tax collection, it has not pursued international investments and the government keep signing new contracts with transnational companies for mining and petroleum development (Becker, M. 2013: 48). Nevertheless, despite the reference that Castañeda makes to Correa as a “bad Leftist”, it must be recognized that he was in the leftist approaches side, even when most radical social movements are opposed to some of his policies (Becker, M. 2013: 52). His populist actions are more as a result of populistic rhetoric than due to the belief that a movement towards a more egalitarian and participatory society is necessary (Becker, M. 2013: 58).

In the same way, Gudynas writes that the reason for this behavior in the new-left governments in South America is that today, what used to be considered an economy full of negative attributes is now seen as a way to escape poverty (Gudynas, E. 2010: 1). Gudynas and Acosta agree that besides internal or external environmental and social justice official discourses, these types of governments do not want to abandon the capitalist accumulation mode with which they try to satisfy many of the long-delayed social needs (Gudynas and Acosta, 2010). Writing from a critical perspective about the new wave of leftist governments in this part of the world -perspective of Gudynas, Acosta and other authors- helps providing an understanding of the actions of past government and the implications thereof for indigenous communities throughout the country.

In conclusion, coloniality of power and structural discrimination has not disappeared, instead, it is hidden at different scenarios and levels. The existence of a naturalized hierarchical positionality between the mestizo and the indigenous people shows a discriminatory attitude from a very basic level which is the daily life between the citizens. But, the presence at regulatory level which is the state and also the responsible for making public policy turns into a live of resistance against different actions taken through Ecuadorian republican life. Meanwhile, throughout Latin America a new current of thoughts was rising. With the beginning of a new political era with a much more inclusive Constitution in Ecuador a new perspective and worldview was being driven. Later, history will uncover what it is known all around the region about the different strategies but not necessarily coherent with their initial postulates. In Ecuador, one of the forms used to pump money to the economy is from the increase of

oil and mining exploration and exploitation. And, the tail that it brings mainly as consequences with indigenous people, their lives, environment, health; what Eduardo Gudynas conceptualize as “neo-extractivism”.

Third Chapter will present the different elements through time since the dictatorship which ended in 1978, that brought the country to a position of radically look for the leader who will get the country out of a political, economic and social crisis. Also, a short review of the pad indigenous populations has to go through to achieve what was achieved with 2008 Constitution and the inclusion of Sumak Kawsay worldview on it.

Chapter 3 . Factors leading the 2008 constitutional reform

As it was presented in the last chapter, the different concepts that conform a theoretical framework to help understanding possible contradictions between the Constitution and the *Sumak Kawsay* NDP with actions of the government between 2007-2017 complementarily with the third chapter, will explain the most relevant economic and political factors that led to the election of former president Correa and his political movement. Third chapter also introduces important achievements within indigenous populations in the 20th century as well as in the 21st century. Therefore, a short analysis of the Constitution of 2008 and the *Sumak Kawsay* NDP is presented, with a focus on relevant articles dealing with the defense of the rights of IP. The main objective of this chapter is to answer the research question on how is justice, nature and rights understood in the Constitution and in the National Development Plan? A comparison of the information attained in this chapter to the cases discussed in the fourth and fifth chapters enables the answering of this research question.

3.1 Determinant aspects since the return to democracy

In 1978, a military dictatorship made way for democracy, and Jaime Roldós was elected president. However, Roldós suspiciously died in an airplane accident (UASB, n.d: 7) so the vice president succeeded him. The period between 1979 and 2011 was characterized by three broad eras: the political parties regime era (1979-1995), the instability crisis era (1996-2006), and the populist regime era (2007-2011) (Verdesoto, L. 2014). The political parties' regime was characterized by the advancement of the political party system. The instability crisis was defined as populism with its many different faces—first with the “classic” version and then a “military” version with a former army officer as president. These two populist governments were fighting against oligarchies together with social movements, but at the same time they were looking for business alliances and privileged relationships with the United States, according to Verdesoto (2014).

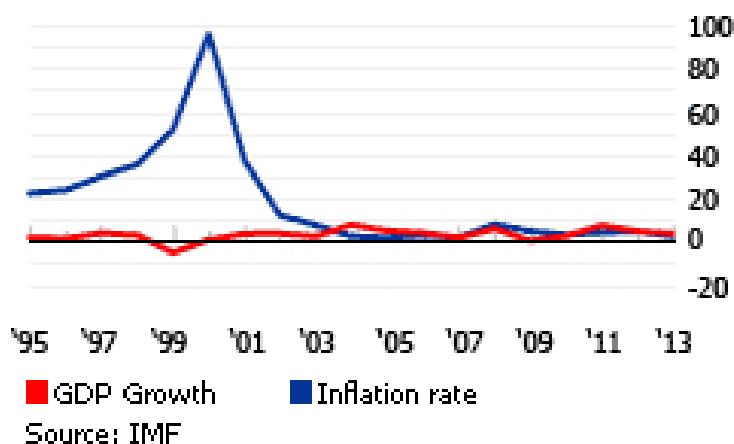
One of the most critical moments for Ecuador in the transition period between the first and second eras was a costly war on its southern border with Peru in 1995 (IMF 2000: 8). Other events also contributed to the state of affairs at the time: the lowest oil price that fell to a record low; El Niño-related floods that in 1997 crippled banana exports and threatened many peasants' livelihoods; and the overthrowal of former president Bucaram (Jockish and Pribilsky 2002: 76), “who remained in it just for 6 months between 1996 and 1997, when legislative power declared a mental disability condition to govern and different legal processes because of corruption started against him” (CNN Español, 2017). After his dismissal, Arteaga, the first female president would govern, as the vice president would have to assume the functions of president. But, a week later the president of the National Congress, assumed the functions of president (Schemo, D. 1997).

Then, “in early 1999, President Mahuad closed out 16 financial institutions at a cost of 2.6 billion of Sucres” (IMF, 2000: 23). Mahuad froze the bank accounts of almost all Ecuadorians in the face of a contracted economy, and inflation increased by 60%, (Jockish and Pribilsky 2002: 76). “Between August 1998 and January 2000 the dollar exchange rate

went from 4.000 sucres¹⁰ to 25.000 sucres per each dollar when the dollarization began" (Rojas, C. 2014).

The announcement of the decision of freezing people's money made by Mahuad by Ecuadorian TV network, was made in the middle of an economic crisis where everybody was out protesting on the streets of a chaotized city. In total 4 trillion sucres, or USD 350 million, were frozen (El Telegrafo 2017). The next chart shows the decrease of the GDP (in red) specially in year 1999 and 2000, as well as the inflation rate (in blue) in the same period, which vertiginous increase explains the escalation of the price of dollar in Ecuador and its consequences in Ecuadorian's economy.

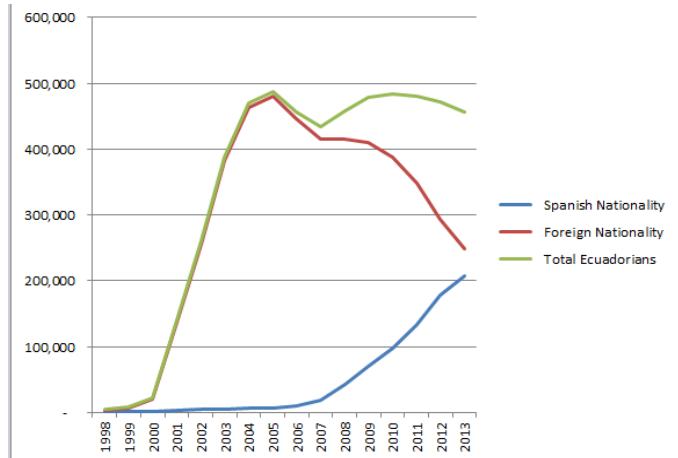
Table 1
Real GDP growth & Inflation Rate in Ecuador (%)



In this scenario, without employment or resources, around 200.000 Ecuadorians migrated to Europe, especially to Spain and Italy, but the recession in Spain in 2008 discouraged further migration (Jokisch, B. 2014) (Figure 2.1.2).

¹⁰ Sucre was the name of the Ecuadorian currency until January 2000, when the economy was dollarized.

Table 2
Ecuadorians in Spain by Nationality, 1998-2013



Source: National Institute of Statistics. Spain. (2014)

Meanwhile, two years after Gutierrez consolidated his popularity as a member of a triumvirate which would hold power for a few months after the dismissal of Mahuad, he was starting a presidential campaign. But, immediately after his inauguration as president, his image as a left progressive candidate which he created in his campaign was replaced by an image of a conservative leader with regards to economic management, making political deals with right-wing political parties and the United States which generated rejection and rupture from the social sectors (Paltán, J. 2005: 51).

Pachakutik, a Movement of Pluri-national Unity, was born in 1995 as a process of resistance and opposition to the neoliberal model with the aim to be a real alternative to neoliberalism (Movimiento Pachakutik 2016). It was created by the consolidation and contribution of different social movements (Movimiento Pachakutik 2016). Also, the constant clashes between right-wing and populist parties were the main cause of a loss of patience among Ecuadorians. However, the final straw for Ecuadorians was the alliance with the political party led by former president Bucaram, who was exiled in Panama due to corruption charges, and whom president Gutierrez tried to bring back to Ecuador. According to FLACSO, in Quito, Guayaquil and Cuenca, people mobilized to stop all these acts of corruption and clientelist politics, and despite being repressed by armed forces, the situation became untenable, and the former president had to flee the country (Paltán, J. 2005: 53).

Figure 1

Presidential house surrounded by protesting Ecuadorians



Source: El Comercio. 2005

Two more years passed while his Vice President finished his term as the new president, and Rafael Correa, won the presidential elections (El País 2013). By that time, everybody knew that the country needed a radical change, after having had 7 presidents in less than 10 years (Zibell, M. 2017).

3.2 Indigenous resistance and organization

By the end of the 1970s, after structural reforms had negatively impacted Ecuadorian society as well as poverty and inequality persisted on the continent, the neoliberal perspective of development was challenged. Even though oligarchy have taken advantage of production costs increasing their income and treating indigenous people and peasants as cheap labor instruments (Maldonado, G. 1980: 55). The indigenous movements in Ecuador and in Latin America started to make important contributions explaining what development was from their perspective (Gudynas and Acosta, 2011: 72). By the early 1990s, a perspective on development in which the inseparable relationship between humans and nature was highlighted and came to be included in *Movimiento País*¹¹ and the political campaign of former president Correa in 2006.

After ten years of demanding compliance to the Constitution of 1998, in 2008 different sectors of society, especially indigenous populations, proclaimed that the Constitution had not been adhered to, and massive protests started to take place across the country.

¹¹ Political Movement of Rafael Correa

After a strong campaign of the favorite candidate Correa in the 2007 elections, he became the new President of Ecuador. Correa promised to leave behind “the long neoliberal night”¹². Then, the process of restructuring the Constitution started, and a new Constitution was formed to support his new political project. His main allies were indigenous populations and communities from all over the country, who felt supported by Correa (Tibán, 2018).

On the other hand, during the final draft of the Constitution approval process, some perspectives were evident even within the indigenous community and different intellectuals. The CONAIE -by its acronyms in Spanish- agreed that the project promoted social and political equity, economic justice, and inter-culturality. However, other organizations such as FENOCIN, which initially supported the project later argued that pluri-nationality only recognizes diversity but does not emphasize unity in diversity—IP are still treated as national minorities, they claimed (Simbaña, 2008: 1). Boaventura do Santos who was invited to the Constituent Assembly as a speaker, at the time mentioned that there are four main reasons for this rivalry: (1) political theory was developed in the global north—a theoretical framework was invented that was considered universal and was thus applied to all societies; (2) theories of social transformation, as developed in the north and applied in the global south, remain very distant from the transformative practices that arise in the south; (3) political theory is mono-cultural; its historical framework is Eurocentric; and (4) political theory has not recognized the phenomenon of colonialism (Simbaña, F. 2008: 2).

But finally, the new Ecuadorian Constitution was officially published by the Constituent Assembly in 2008. This Constitution is a reference for Latin America because it includes a broad spectrum of rights related to the keeping of the ancestral territories; free, prior and informed consultation on extraction projects; mechanisms of participation and representation and establishment of territorial districts; and the mainstreaming of terms of indigenous inspiration such as the Sumak Kawsay and the rights of the “Pacha Mama”¹³, as well as multi-ethnicity and pluri-culturalism (Barié, C. 2014: 12). Also, with massive political mobilizations, but with an effective and more solid organization than before, the principle of *Sumak Kawsay* started to take shape. Alberto Acosta, one of the drivers of the political project, mentioned the need in Latin America and specifically in Ecuador to stop equating development to economic growth. Development was confused with the concept of progress, and indigenous groups started to resist it by prioritizing the relationship between humans and nature (Gudynas and Acosta 2011: 5).

3.3 Constitutional rights of nature and Sumak Kawsay

Consequently, since 1998 the rights of indigenous people have become increasingly emphasized, and the terms pluri-culturality and multi-ethnicity became the qualifying adjective of

¹² Phrase used by former President Rafael Correa Delgado and Movement Alianza País 35 to refer to the previous 29 years period before him.

¹³ The *Pacha Mama* is a goddess revered by the indigenous people of the Andes. She is also known as the earth/time mother. In Inca mythology, *Pacha Mama* is a fertility goddess who presides over planting and harvesting, embodies the mountains, and causes earthquakes.

the Ecuadorian state. In order to better understand how justice, rights and nature are understood in this framework, the introductory section of the Constitution titled “*Of the Fundamental Principles*” states that “Ecuador is a social state of law, sovereign, unitary, independent, democratic, pluri-cultural and multi-ethnic. Its government is a republican, presidential, elective, representative, responsible, alternative, participatory and decentralized administration” (Constitución de la República del Ecuador 1998: 1). Multi-ethnicity is presented as a mechanism which allows for the recognition of diverse indigenous nationalities within the same national territory, which leads to the existence of an intercultural society as well as the exercise of the self-determination of the peoples (Constitución de la República del Ecuador 1998: 1).

In the same section, different languages are recognized for the first time: “The State respects and stimulates the development of all the languages of Ecuadorians. The Castilian is the official language. Quichua, Shuar and other ancestral languages are of official use for indigenous peoples, in the terms established by law” (Constitución de la República del Ecuador 1998: 1). Chapter 5 (“Of the Collective Rights”) in its first section “Of the indigenous populations, blacks and afro-Ecuadorians”, Article 83 quotes: “The indigenous peoples, who self-define as nationalities of ancestral roots and black towns or Afro-Ecuadorians, are part of the Ecuadorian State, unique and indivisible” (Constitución de la República del Ecuador 1998: 26).

Moreover, Article 84 of Chapter 5 recognizes and respects indigenous peoples and guarantees their human rights; it describes 15 basic rights, of which those the most closely related to the economic, social and political reality of the indigenous population are named here: Principle 1 refers to the maintenance, development and strengthening of the identity and traditions of indigenous peoples and their right to use renewable natural resources found on their lands; Principle 5 refers to the need to consult with indigenous groups in processes of prospecting and the exploration of non-renewable resources; Principle 7 refers to the conservation and development of traditional forms of coexistence and social organization, generation, and the exercise of authority; Principle 8 refers to the non-displacement of indigenous peoples from their lands; Principle 11 refers to the provision of access to quality education; and Principle 13 refers to the formulation of priorities in plans and projects for the development and improvement of the economic and social conditions of indigenous peoples.

The encapsulation of the rights of IP in the Constitution can ensure the effective development of the notion of interculturality and respect for ancestral practices. In addition, the Constitution of 2008, in its Articles 1, 6, 14, 56, 57, 60, and 380, highlights the need for the recognition, respect and inclusion of all peoples and guarantees the rights of every citizen of the country. It recognizes the right of the population to live in a healthy and ecologically balanced environment, which guarantees sustainability and good living.¹⁴ The most important advancement regarding the rights of indigenous people involves the recognition of indigenous communes, communities, peoples and nationalities, and the guarantee of their human rights in the Constitution and through pacts, agreements, declarations and other international human rights instruments.

Furthermore, within the context of the new political environment in Ecuador, a new development plan was introduced: the *Sumak Kawsay* or “Good Living” NDP, which was grounded in a gradual construction of a pluri-national and intercultural state owing to the successful lobbying of the Movimiento País for a “citizen’s revolution”.¹⁵ This movement emerged as an “ethical response to negligence, improvisation and an irresponsible conduct

¹⁴ 2008 Constitution of the Republic of Ecuador.

¹⁵ Movimiento Alianza País: Political Movement to which former President Correa belonged.

of certain political actors whom in the exercise of power postponed the development of the country" (Movimiento Alianza País, n.d.).

Movimiento País followed a certain agenda based in what they called the "five revolutions": (1) a constitutional and democratic revolution, based on an inclusive and reflexive political community; (2) an ethic revolution to guarantee transparency, financial accountability and social control; (3) an economic, agrarian and productive revolution to overcome the inherited exclusion model; (4) a social revolution to ensure fundamental rights; and (5) a revolution for dignity, sovereignty and Latin American integration to maintain a clear, dignified and sovereign position within international relations (Plan Nacional del Buen Vivir, 2009: 9-10). Based on this campaign, Movimiento País as a political movement won many local, regional and national elections, obtaining a legislative majority in the National Assembly by 2008 (Plan Nacional del Buen Vivir, 2009: 84).

However, it is important to focus also on what was there before the *Sumak Kawsay* in order to be able to notice why the inclusion of this worldview was so important. Before Rafael Correa, former president Gutierrez referred to the development program preceding the *Sumak Kawsay* NDP as a strategy synthetized in the mid-1980s after the "Washington Consensus", which did not work, because even in its generalized application in Latin America there are no signs of growth; in fact, the Consensus has transformed Latin America into one of the most inequitable parts of the world (Plan Nacional del Buen Vivir, 2009: 86). Therefore, president Correa and his team launched the NDP in 2009, which was called the plan from the "citizen's revolution", referring themselves as "the government of clean hands and fiery hearts".

The NDP had 12 objectives, and the intention was to use this plan to guide the management of the country. The *Sumak Kawsay* or "Good Living" worldview as guiding principle of the NDP was implemented after the publication of the Constitution of 2008 in which it was included as "... a new form of citizen coexistence, in diversity and harmony with nature... to recognize the right of the population to live in a healthy and ecologically balanced environment, and which guarantees sustainability..." (Constitución de la República del Ecuador 2008: 89). Its main goal was to "build a pluri-national and intercultural State and to achieve the Good Living of Ecuadorian citizens" (Plan Nacional del Buen Vivir, 2009: 9). Two objectives of the plan are discussed here: Objective 1, "To foster equality, social and territorial cohesion and integration in diversity", and Objective 4, "To guarantee the rights of Nature and promote environmental sustainability globally".

Objective 1, "To foster social and territorial equity, cohesion, inclusion and equality in diversity": "Recognition of equal rights for all individuals implies consolidating policies for equality to prevent exclusion and encourage social and political coexistence. The challenge is to advance toward full equality within diversity, without exclusion, to achieve a life of dignity, with access to health, education, social support, specialized care and special protection."¹⁶

According to the NDP, Objective 1 responds to the exclusion processes of the last 30 years as a consequence of globalization. These processes have had historical-cultural roots that sharpened, transformed and emerged in deeper and more complex forms (Plan Nacional del Buen vivir 2009: 137). Statistics from the National Institute of Statistics and Census shows that the 10% of the population accumulates the 42% of the total revenue generated by the economy, while the poorest 10% does not receive even 2% of the total revenue. The percentage of poor people in relation to the total population reached the 52.2% in 1999 as a

¹⁶ National Plan for Good Living 2009-2013, Objective 2, page 73.

consequence of the banking crisis and the “El Niño” phenomenon, while in 2006, because of the rising of the price of oil and remittances from immigrants, it fell to 38%.

As the chart below shows, in 1999 poverty of the population reached a 52,2% as a result of the El Niño phenomena and the financial crisis; decreasing to the 38% in 2006 as a result of the increase of the international oil prices and remittances from migrations.

Table 3
Level of Poverty and Extreme Poverty as related to consumption
(% of population)

Territorial Level	1995		1998		1999		2006	
	Poverty	Extreme Poverty						
Region								
Coast	36,1	9,1	46,4	16,3	52,9	16,0	40,1	10,9
Highlands	41,7	18,5	42,2	21,8	51,4	24,7	33,8	12,2
Amazonia	60,6	23,8	50,0	22,3	no data	no data	59,7	39,6
Area								
Rural	63,0	27,4	66,8	33,9	75,1	37,7	61,5	26,9
Urban	23,0	4,1	28,7	7,8	36,4	8,0	24,9	4,8
National	39,3	13,8	44,8	18,7	52,2	20,3	38,3	12,9

Source: INEC (National Institute of Statistics and Censuses), 2009

The objective also refers to the recognition and guarantee by the state of the indivisible character of the “Good Living” system of rights. It proposes the application of integral policies which will be able to address the complexity of exclusion and promote new logics of cohesion and redistribution in a diversity recognition framework. It refers to the need of everybody to be integrated in social dynamics through equitable access to material, social and cultural goods. What is relevant for the purposes of this research are the assumptions regarding the role of the state. The objective implies that the action of the state is required to halt economic inequality especially within indigenous groups, which have been historically marginalized in an historical-cultural exclusion process. This democratization of the means of production and advancement of the construction of a “Good Living” society contrasts with past development programs or plans that have focused only on economic growth without taking into account the needs of the most vulnerable and forgotten groups such as indigenous populations (Plan Nacional del Buen Vivir 2009: 97).

Objective 4, “To guarantee the rights of Nature and promote environmental sustainability globally”: *“With the 2008 Constitution, Ecuador took the lead worldwide in recognizing the*

rights of Nature, as a decisive response to Nature's current status, orienting its efforts toward integrated respect for Nature's existence, its maintenance and the regeneration of its life cycles and evolutionary processes.”¹⁷

The dominant perspective on development has seen nature as a mere extractive resource valued only from an economic point of view— “a traditional development strategy that increased the use of natural resources rather than seeking to live in harmony with in which western concerns are just based in politics and economics” (Becker, M. 2011: 50). For the purposes of the research question this chapter is focused on, it is important to understand a core assumption of this objective, which is the commitment of the state to the “Good Living” of the population. This places the state as directly responsible for achieving good living, whereas it asserts a social co-responsibility principle for peoples, communities, nationalities and settlements in caring for and protecting nature. The prioritization of and the harmony between humankind and nature moves away from a capitalist way of looking at nature. The UNDRIP signed in 2007 proclaims indigenous peoples’ rights as a standard of achievement to be pursued in a spirit of partnership and mutual respect” (UNDRIP 2006: 1).

After almost 30 years of political instability, the discovery and consequent sale of oil provided a level of economic calm. But, the war in 1995 as well as the occurrence of natural catastrophes, contributed to the general awareness amongst citizens that change was needed. However, the most determinant factor in creating the recognition for change was the dollarization process in 1999 following the country’s bankruptcy. Parallel to this were the struggles of IP. But a strong tool was born—a Constitution recognized for its inclusion of the rights of the nature and the worldview of the second largest population in Ecuador as a core element. The “citizen revolution” had begun...

In conclusion, different factors determined the arrival to power of former president Rafael Correa. One is the period of corruption and financial mismanagement by elites who directly or indirectly governed the country, which led to an economic crisis in 1999 and the subsequent dollarization of the economy, with the loss of thousands of middle class patri monies and the migration and disintegration of thousands of families. Also, the war in 1995 with Peru and the El Niño phenomenon and the constant abuses committed against indigenous populations together with a weak institutionality destroyed the country socially, politically and economically. All these factors contributed to the popularity of Rafael Correa, who seemed a promising candidate for creating greater inclusivity and recognizing the rights of indigenous populations. He won the elections in 2007 and was the main supporter of the new Constitutional change.

In Chapter 4, I present the case of the murder of approximately 30 members of an ethnic group in hands of another. This event as a consequence of a large period of oil exploitation and its consequences in the territories belonging to ancient IP communities.

¹⁷ National Plan for Good Living 2009-2013, Objective 4, page 77.

Chapter 4 . Huaoranis and Tagaeris/Taromenane

With the factors which brought to a fast strengthening of a young political leader to hold power for 10 years with substantial changes in law and development perspective, as well as the different reasons captured chronologically since 1978; in chapters 4 and 5 I present three cases that will be explored in order to determine whether state actions involving indigenous populations contradict the 2008 Constitution's clause related to these populations or not. In Chapter 4, the first case of study, namely the murder of 30 members of one community of IP by another indigenous community, will be discussed, along with the root causes of this event, as well as the structural, geopolitical and local elements related to the case. In this chapter and in Chapter 5, the following question will be answered: what kind of actions by the state in the recent past have been in tension or in open contradiction with the Constitution of 2008?

5.1 Huaoranis versus Tagaeri/Taromenane

Huaorani culture and society are linked to their will to self-isolation, except the centuries that this nomadic groups have been constituted, fiercely resisting all contact, trade and exchange with their powerful neighbors: indigenous, white or mestizo colonizers, very little is known of its past. (Rival, L. 2004). Their first contact with "civilization" was in 1940, when oil exploration activities by the Shell Oil Company commenced; the next contact they had was in 1950, when a Christian linguistic missionary arrived in the area. They failed to make contact successfully and in 1956 five other missionaries who returned with the same purpose of making contact with the group were killed by the community (Waddington, R. 2003). In the 1960s, Texaco Oil Company approached the Ecuadorian government to obtain permission to start drilling for oil on their land and their displacement from their land started (Waddington, R. 2003).

Figure 2

A Huaorani family



Source: www.etniasdelmundo.com

On the other hand, the Tagaeri-Taromenane is a non-contacted community living in the Yasuni National Park at the Ecuadorian amazon region. They make up the two last-known indigenous groups living in voluntary isolation in Ecuador. The ethnic group is believed to be distantly related to the Huaorani people and it is estimated that there are 100–150 Taromenane who still live deep in the rainforest in almost complete isolation who maintain a nomadic life style. (Korn, P. 2018).

Figure 3

Tagaeri Community



Source: www.ecoamazonico.com

The assassination of 30 Tagaeri/Taromenane people on 30 March 2013 by the Huaorani in a certain kind of ethnic group confrontation initiated great controversy (The Economist, 2013). The case began with the entering of 17 members of the Huaorani community to the jungle and to the Taromenane community to avenge the death of two of their elderly occurred days ago. The prosecutor formally accused the 17 members of the Huaorani community of genocide and ethnocide; they were sent to jail for about 8 months while the judicial process was ongoing (El Universo, 2014). After a legal term of three months, the judge sent the accused to jail while the Constitutional Court deliberated on the type of trial. They attempted to determine whether the accused should be prosecuted under regular state law or indigenous law. After an appeal to substitution of the sentence made at the beginning of the imprisonment by the defense of the accused, the Constitutional Court ordered an expert assessment to be conducted to determine the possible reasons for the occurrence of the slaughter, but the damage was done.

Finally, the same judge in November 2014 sentenced the accused to the murder of 30 non-contacted IP, followed by an appeal made by prosecutor (CCE, 2014: 3,4,5, 6, 34). Today the case is still open. According to the Public General Attorney “state justice, ignoring the powers of indigenous justice, accused them, but the defense alleged a factual and legal impossibility of meeting the elements of genocide and then the State General Attorney Office changed the accusation to murder and ordered the revocation of preventive prison, although the process is still open” (2018)¹⁸.

In order to realize what actions have been in tension with 2008 Constitution there is a clear violation to the right of keeping ancestral territories, free, prior and informed consultation

¹⁸ Interview made by EPC to the General Public Attorney on August 29th of 2018

on extraction projects; mechanisms of participation and representation and establishment of territorial districts. Also, a violation to the Sumak Kawsay, base element of the new Constitution. Every stage since the diminishing of territories of IP years ago, until the imprisonment in 2013 constitute actions which are in open contradiction with the constitutional provision as it is explained in Chapter 3.

This tension is clearly associated with the advance of oil exploration companies and their exploitative activities, the presence of new settlements of other peoples of different nationalities and non-indigenous colonists, and the absence of clear and effective public policies in those territories (Pazmiño 2018). This practice is related to a neo-extractivist geopolitical production practice of the state which in turn is related to a “just invented modern civilization in the last 50 years which is framed in an historical and sociopolitical process called a historic capitalism” (Iconos 2003: 21). It was imposed since the 15th century in Latin America and led to the establishment of social structures that viewed IP as a subordinated to colonial powers (Iconos 2003: 21).

Different elements of a neo-extractivist practice are visible here, as was explained in Chapter Two. The increasing of deforestation in primary forests, mining and oil exploitation in protected areas in the Amazon region, results in the diminishing of the territory of indigenous communities, who have been living there for millennia. Different elements led it to a “paradox of abundance”¹⁹: the abundance in natural resources, ignorance and audacity, which together are bringing not just Ecuador but other South American countries to what the Interamerican Development Bank (IDB) calls a condition of “tropical fatalism” (Acosta, A. 2011: 1). This “tropical fatalism” refers to the instance of equatorial nations appearing to be destined to poverty despite an abundance of natural resources. Neoliberal multiculturalism also naturalizes in people’s thoughts when the economic and cultural are mixed and the idea of mestizaje even in indigenous people’s thoughts is an ideal of nation building (Hale, C. 2005: 25).

Hale notes that, neoliberalism is focused in a certain kind of policies which defends the development of an individual rational agent and the market as the driver of an economic growth based in supply and demand (Harvey, 2005: 68) and the imprisonment of an indigenous group while both groups lived inside a protected area is nothing but an example of this predominant culture practice, with the supremacy of the *mestizo* over the indigenous populations. The general public defender pointed out that within this structural discrimination, even when the Constitution recognizes an ordinary and an indigenous jurisdiction, the judicial function of organic law has developed it very weakly, and together with the juridical function it shows a weak application and knowledge of customary law. The term coloniality of power is explained by Aníbal Quijano as an element of a structural discrimination that gives rise to the unequal distribution of resources and opportunities (Zanfrini, L. 2007: 105-106)—a structural racism naturalized as a “colonial difference” based on the stigmatization of physical appearance (Aguerre, L. 2011: 18). The possession of certain phenotypical traits determines the position of the person on the social scale, denying the epistemological recognition of indigenous populations (Aguerre, L. 2011: 18), which leads to contempt from the state towards indigenous populations and therefore the violation of their rights from a structural perspective.

In the same way, Santos states that this coloniality of power has been aggravated by the state since the beginning of the 20th century, when revolution and a transition to democracy occurred by the 21st century—revolutions in Latin America are revolutions born by elections: societies are politically democratic, but socially fascist, are being emptied by social

¹⁹ Paradox of Abundance: according to the Interamerican Development Bank as higher natural resources a country has the slower it develops.

rights, the state, communal goods, a republican culture and of course, corruption (Democratizar la democracia, 2014). He also points out that we live in democratic imaginaries, but in dictatorship realities; we live in post-colonial imaginaries but in colonial societies; we imagine human rights, globalization, and emancipation, but with destroyed, racialized and sexualized bodies in our societies (Democratizar la democracia, 2014).

The general public attorney mentions about the inclusion of the inter-cultural and pluri-national state; the addition of communes and communities as subjects of collective rights; the increase in the number of collective rights from 15 to 21; the introduction of the notion of indigenous justice, peoples and indigenous nationalities to exercise jurisdictional powers in their territories; and the adoption of the indigenous worldview of *Sumak Kawsay*. It replaces the generic idea of development, dominant in all previous legislation²⁰; the state acts from a single, predominant perspective of justice re-adapting those policies to the system so that same colonial racist system prevails (as captured by Walsh in discussions of the concepts of legal pluralism and monism in chapter two).

Finally, the General Public Attorney (2018) pointed out that the Ecuadorian state was responsible for this crime because of its policy of dividing indigenous populations and not assuming clear policies of protecting them; the exploration and exploitation of oil companies in their territories has generated these clashes, and when it occurred, legal procedures left many gaps, and the media's treatment of the case led to further confusion. On the other hand, Dr. Lourdes Tibán (2018), indigenous leader and national assembly member, thinks that these clashes are the result of different worldviews of the different ethnic groups and occurred because of a dispute of power in their territory. It is crucial, however, she said, for *mestizos* to understand the worldview of these two indigenous groups, particularly their conception of territory and the power of each one over it.

In conclusion, the case of 30 members of the Tagaer/Taromenane community killed by Huaorani's hands is the result of a natural resources looting since the discovery of oil in the amazon region. Despite the existence of different agreements and treaties signed in different governments which allow IP to mobilize in their territory, state have found mechanisms to reduce it because of the need of exploitation of such a rich area of mining and oil sources. As a result, two warrior ethnic groups whom territory was irretrievable reduced through time, clashed. Furthermore, as it is explained in the chapter, the way the state managed the case violated their rights enshrined in the United Nation Declaration of Indigenous Peoples Rights (UNDRIP, 2007: 4-15). A non-contacted ethnic group whose worldview does not conceive law as hegemonic western perspective cannot be judge under other people's law. It vulnerates their rights and evidence a predominance of a monist law system which look for the inclusion of minorities, but not accepting other equal understandings as well.

In Chapter 5, I will explain two cases of two indigenous leaders involved in a suspicious murder in which the main actors are in one side the state and Chinese industrial oil companies and in the other the victims who were active leaders struggling with the approval of a new project of law that puts the Ecuadorian Amazon region and its inhabitants at risk.

²⁰ Interview made by EPC

Chapter 5. Bosco Wisum and José Tendetza

After the analysis of a first case of state responsibility in chapter 4, in Chapter 5 two different cases are presented: the case of Bosco Wisum, an indigenous leader from the Amazon region who was killed while protesting against a new project of law which was going to allow the state to explore and exploit oil in protected areas. And, the case of José Tendetza, another indigenous leader from the Amazon region as well, who was found ten days after his murder with his hands tied behind his back. It happened just before a conference in Lima where he was going to talk about climate change and the consequences of industrial mining and environmental damage in the Ecuadorian Amazon region done by these companies. This chapter, together with the previous one, will answer the question: what kind of actions by the state has in the recent past been in tension or in open contradiction with the Constitution of 2008 regarding to the rights of IP?

5.1 Antecedents

In 2009, the National Assembly approved a project to reform the law related to different topics such as mining, tax equity, and the internal tax regime. The most challenging and controversial articles to be approved were those that allowed the executive power to simply give mining concessions to state companies. The different permissions or requirements for exploitation that were asked to be presented before were being replaced with a simple sworn statement in which the company would assure that it is limiting its activities to exploitation (Juicio a la ley minera del Ecuador 2009). Opponents argued that the mining companies were ignoring the Constitution while they are exploiting natural resources inside the national security area and inside a protected forest (El Universo 2010).

The approval of the amendment of the law paved the way for industrial mining for the first time in Ecuador, and the government planned to make available 3 million hectares of well-preserved rainforest for new oil drilling activities. While oil drilling comprises 35% of the general state budget and while oil prices over the last 10 years led to an increase in the GDP of 4.3%, this decision affected seven different indigenous communities but also led to the further expansion of the extractive industry, leading not only to the discovery of new territories in which natural resources would be exploited, but also to the development of other, completely new extractive industries such as the large-scale mining industry (Auz, J. 2018). As a geopolitical strategy, China pretended to invest around 8 billion U.S. dollars in Latin America over the next 10 years, and in Ecuador, Chinese companies were recently granted several concessions “without fulfilling fundamental human rights requirements” (Auz, J. 2018) such as having properly consulted with local communities under international and constitutional standards.

5.2 Bosco Wisum

With that antecedent, on 30 September 2009, after days of demonstrations and protests all over the country against the approval of this project of law, in Macas, capital of the province of Morona Santiago, located in the southeast border with Peru, military forces arrived at the location to control actions such as the blocking of roads and the burning of tires as a result of unsuccessful dialogues between indigenous communities and government representatives (Por qué murió Bosco Wisum, 2012). To gain control of the situation, former President Correa declared a state of emergency and the army and police arrived at the location. Both the military and police forces arrived to control the demonstrations, but the use of force was completely excessive and unjustified. As a result of the demonstration, many indigenous community members were injured, and an indigenous leader who was leading the protests and who was politically active in indigenous movements was killed (Por qué murió Bosco Wisum, 2012). After the death of Bosco Wisum in 2010, when government was about to launch a new project of law regarding water resources, demonstrations against it were legally catalogued as acts of sabotage and terrorism; in this context, different people such as the Rector of University of Cotopaxi, leaders of student federations, and eleven Shuar leaders—who had participated in the protests in which Wisum would die—were imprisoned (UASB 2010).

5.2 José Tendetza

In the same way, another indigenous leader, José Tendetza, who was an active member of the Shuar community and closely involved in the demonstrations against new mining projects suddenly disappeared on 29 September 2014; he was found dead on a river bank on 2 December of the same year (CEDHU 2011). His body showed signs of torture and strangulation (Collins, D. 2015). He, together with his community, was opposed to the “El Mirador” project²¹, because as a former employee, he knew a lot about this company and he knew he was a threat for it (Collins, D. 2015). His disappearance occurred right before a demonstration against this project of 1.4 billion U.S. dollars, which would be signed soon between the Ecuadorian government and the Chinese large-scale mining company “EcuaCorriente” (Collins, D. 2015). However, the Minister of Security at that time rejected the declarations made by a representative of the province who said that the death of José Tendetza was the responsibility of the government; instead, he offered 100.000 U.S. dollars as a reward for providing accurate information about the intellectual actors in the crime (El Comercio, 2014).

²¹ Industrial mining cooper extraction in the Ecuadorian amazon region

5.4 Causes and Effects

All of these actions have their roots in the practices of the “long neoliberal night”²² actors, but also in the progressive governments which since the 1990s were in power in Latin America. Eduardo Gudynas argues that the high number of classical oil and mining extraction companies indicates that the government is intent on creating a monoculture-dominate, export-oriented market (Gudynas, E. 2010: 42). As defined in the theoretical framework, within this extractive practice, the intentions of the government of assigning importance to economic interests over those of citizens is evident, contrary to what was said initially. Anyway, the advance of oil and mining exploitation companies has had parallel consequences, leading to the opening of new roads, the arrival of foreigners and machinery whose activities are sheltered by military forces, unchaining deep territorial impacts (Gudynas, E. 2010: 44) such as the clash between ethnic groups, the leak of natural resources for their subsistence, or pollution that not only causes a leak of food, but also diseases that most of the time are incurable or catastrophic.

Importantly, as Alberto Acosta points out, populism and its relationship with neo-extractive practices (and particularly in the Ecuadorian context) are intrinsically related. Under the last government, “techno-populism” arose, which is the mixture of charisma and technocracy, and tensions were revealed between a president who says that he is leading a social revolution and the mission of re-founding the nation (Acosta, A. 2013: 12). Re-founding is actually nothing other than academic capitalism”, because it does not question capitalist accumulation; it tries to modernize the state apparatus instead of building a new one through its improvement by the injection of enthusiasm but at the same time through constant threats to officials (Acosta, A. 2013: 12).

As stated in Chapter 2, as constitutive elements of a contradictory government, despite a campaign which prioritized respect for IP as well as for nature, nowadays “progressive or leftist governments in Latin America have changed nothing regarding the commodification and financialization of nature” (Lander, E. 2014: 3). The indiscriminate exploitation of nature has increased the positioning primary goods as the most important for GDP income, highlighting the role of the continent as an exporter of natural resources, and business relations with China is considered more important even than business relations with the United States (Lander, E. 2014: 3).

Moreover, the murders of the two indigenous leaders in different years and places, but under similar circumstances and contexts, is a very shocking coincidence that leaves both positions in a kind of limbo—from one side they cannot fully verify the guilt of the suspects, and from the other they cannot completely deny it. Acosta also says that the existence of a “fragile and dependent economy, victim of recurrent economic crisis, through time consolidates in a leasing mentality that deepens weak institutions and stimulates corruption through client and patrimonial practices through political road spoiling the communitarian and organizational tissue (Acosta, A. 2016: 4).

However, neo-extractivism is the result of a growing demand and the change of production modes around the world in which raw production intensifies in industrialized countries; this is the case for “emerging economies” which demand more of these raw materials. Therefore, international prices increase, stimulating producers to increase its production (Burchardt and Dietz 2014: 470). There are detractors, however, who point out that neo-extractivism has not led to an increase of growth and competitiveness; instead, it has led to an increase of poverty feeding social inequalities, and the state, responsible of managing the economy as a central agent of development, and economic and political trends show that as

²² Phrase used by former president Correa in relation to the last 30 years after the return to democracy in 1979.

a main actor, it is looking at strengthening public institutions and infrastructure through a discourse on sovereignty, development, and the legitimacy of the state (Burchardt and Dietz 2014: 470).

According to Tibán (2018), the death of Wisuma and Tendetza (and she adds the name of another indigenous leader killed in a similar circumstances, Freddy Taish) has to be clarified by the state because it's "a bit coincidental" that these two leaders were strong indigenous leaders struggling and resisting against the mining and oil exploiting projects launched by government in their communities; she hopes that nowadays, while the investigations are still opened and a new government is trying to redirect the country, "it will be able to remove all the pus that was clogged in every single power of the state" (Tibán, 2018). And regarding that, the Ecuadorian government started some new other legal processes against Rafael Correa and his allies; some of these activities are closely related to public investments in the mining and oil industry. The activities they are accused of include, according to El Comercio, the increasing of the original amount assigned to the new Pacific refinery plant project by up to 70% from USD 855 million to USD 2.3 billion; an oil presale made to PetroChina in Correa's term as president, which was not backed by any technical support or market studies; and the case of PetroEcuador and the Australian company Worley Parson benefiting from audit contracts in the project of rehabilitation of the oil refinery plant in Esmeraldas²³ and the increasing by 16% of the original price of the contract without technical justifications (El Comercio 2018). Those and many other cases in different fields which have many people involved are being investigated.

Alberto Acosta, an academic and former president of the Constituent Assembly of 2008 who resigned because of ideological changes to the track of the political project of Alianza País Movement, and Jhon Cajas Guijarro, a renowned academic as well, pointed out that the achievements of the initial political project were focused on the economic and labor field with reduction of inequity and poverty, economic expansion, and an increase in public investment as well as social spending in the health and education sectors (Acosta and Cajas n.d: 117). In the same way, other factors that were supposed to be great achievements of the "Correismo"²⁴ are the renegotiation of contracts between oil companies and the state, which passed from contracts of "participation" to the "provision of services", and the highlighting to the world of a country which respects human rights and the new inclusions in the Constitution of 2008 such as the rights of nature, prior consultation, as well as the *Sumak Kawsay* worldview (Acosta and Cajas n.d: 119).

At the same time, in this Constitution, which was "conceived to make background transformations built through a long time of resistance and social struggles materialized in the *Sumak Kawsay*, the pluri-national state, a consolidation and expansion of individual and collective rights, defense of nature and its rights" (Acosta, A. 2013: 2), in "practice they did not want to make reality the constitutional achievements proposed, which would be the support for an emancipatory and radical utopian project, which could be the base for the construction of a post-capitalist society, instead of going to the dystopia of the 'citizen revolution'" (Acosta, A. 2013: 3), which at the beginning was supposed to stop that "monoculturality and uni-nationality of western established logics of domain and rationality" (Walsh, C. 2008: 143-144).

In conclusion, chapter 5 shows the cases of two indigenous leaders killed in estrange circumstances, both cases are closely related to indigenous leadership in regions where new oil and mining exploration and exploitation were being planned. In one hand, one of the leaders was killed during demonstrations against a project of law which was going to be

²³ Province in the Northwest of Ecuador where the main oil refinery plant is placed

²⁴ Word used to refer to the period when Rafael Correa held power.

approved. In the other hand another leader was killed before he was going to denounce through UN the irregularities within the contract of a Chinese industrial mining company and its operations in the Ecuadorian Amazon region and its consequences for the people and the environment. There are different causes which brings governments or people to act despite the commitment with different sectors. A regional current which have had the same strategies about oil and mining exploitation than in previous years in one. These practices do not go together with an initial commitment (at least in Ecuador) with the conservancy of both IP and of nature. Unlike, it is completely opposite to the aim of the reformulation of the Constitution. Also, the need to increase oil and mining production because of the directions given to the national resources in name of sovereignty demand more money. All together mixed with an endless list of corruption cases spread everywhere placed past government in a position in which it compulsorily had to increase exploitation at any cost... even life.

Chapter 6. Conclusions

The final chapter begins exposing the most important ideas presented in this research paper.

In relation to the perspectives of justice, rights of indigenous people and nature, between the Constitution of 2008 and the actions taken by government of former president Rafael Correa, the application of norms and/or regulations regarding with IP has been minimal. These norms result ineffective in the compliance of law, for example the effective application of the right to prior, free and informed consultation regarding to exploration and exploitation of mining and oil resources. Even though the period following the adoption of the Constitution (2008) is characterized by significant increases in social investment, there are few or no programs or projects specifically geared to the well-being of indigenous peoples. Unlike, the decision made by the state regarding to the need of an increase of economic resource by oil and mining exploitation has caused the opposite. For instance, these contrary effects of exploiting IP territories have caused an attitude of resistance and the consequent criminalization from the state through its armed forces and the use of “all the weight of the law”, legitimizing the use of violence to physically and psychologically control the inhabitants, and in this way to continue with mining and oil extractions. The use of primary data such as newspaper and interviews as well as the Constitution and the *Sumak Kawsay* NDP let me evidence the difference between what this elements states versus the different manifestations of repression against indigenous populations in the past government. In one hand there are people thoughts and claiming every day through newspaper journals from different political positions, but also the evidence of two perfectly done legal documents which contrasted have shown by themselves the incongruity of its application.

Also, the extent in which the rights of IP has been respected or violated by past government is explained through the different newspaper journals and interviews made to contrast the information. Different factors have intervened in this dynamic of violating rights of indigenous people such as structural but also as political causes: There are two different perspectives of justice legitimized in the Constitution of 2008: The ordinary and customary law. There is a lot done in subject of the respect and guarantees of the rights of indigenous people. But, this respect and guarantees must be measured by the establishment of legal and regulatory frameworks, creation of institutions, approval and financing of projects and programs which will be in benefit of IP, improving and solving the guarantees of protection and effective judicial actions. Instead, actions taken within the amazon region (in the first case studied) have shown an oppressor state apparatus that since the discovery of oil has progressively diminished both IP territory and intrinsically their rights. This diminishing has caused that two ethnic groups living in voluntary isolation with different culture, worldview, perception and even social structure had clashed in a horrifying event product of years of these practices submissive to capital.

In the second and third cases as well, the death of different leaders struggling for the same cause in different places and different times but coincidentally in the same context has brought different actors that currently are being investigated. In one hand the State and the Chinese industrial companies and in the other hand the victims of this dynamics. The lives, health and territories of those ancestral and millenary communities have been irreversibly

damaged. These effects, caused by a hidden liberal extractivism, which has just semantically changed and now takes the name of progressive neo-extrativism; defines the practices which have been the same since the late 1970s. Finding resources for the maintenance of the state apparatus and a growing bureaucracy as well as a different conception of development. Despite the serious consequences on IP it will continue happening as long as state do not discuss horizontally and unify criteria for the integral development of a country.

In relation with what is said above, the main contributions of this research paper have been theoretical and methodological. From the theoretical framework it has contributed to a deep understanding about the hegemony of a predominant culture and its influence in current thought about the superiority of some over others. And it has been adapted and naturalized from the mestizo over the indigenous. Also, the devaluation of a different perspective which gives much more importance to the human being and its relationship with nature than to the capital. In the same way it opens a discussion about the role of the state, its origin and overall its monocultural perspective which have affected IP even before the creation of the republic. Overall, it opens a critic perspective about the practices that have been taking place in the region, but specifically in Ecuador regarding to a government which pertains to the current of “21st Century Socialism” and which have failed because of -among other reasons- a terrifying corruption installed at every level. I emphasize in that belonging because it has been a pattern between governments of this current and their need to increase public spending, therefore the need to get more resources have made neo-extrativism a state policy, betraying principles and people who have believed in a political project, acting even over human rights.

The second contribution of this research paper have been methodological, and it includes the study of the three cases with different approach which together with the interviews and the research both in national and international newspaper articles have shown the opinion from different perspectives. Although this has not been analyzed from a legal perspective but contributed to a further understanding from an epistemological perspective, giving a more critical understanding about the role of the state as well as of IP. However, analyzing the three cases opens a debate about the different perspectives of the state and its role in the acceptance of different worldviews of live and its dynamics, as well as a critical understanding about the actions from the state and what lays behind them. Also, the coherence that states should have between principles and praxis regarding suspicious deaths and relationship with industrial mining industries.

Between the ambiguity of the state actions and IP, this research paper showed me that there are huge contradictions between what was promoted in the Constitution of 2008 and how this was translated into practice regarding to IP. Although this last Constitution arises from a very important social, political and economic period in Ecuador in which different sectors supported former president Correa and his political project, it is important to understand the converging moment and its root causes. However, there is a moment in which a paradox is revealed between what was written and what started to be evident in the application of the Constitution. This paradox reproduces a monocultural perspective of the state and justice, despite the alliance of different political movements and different social actors both exalting the *Sumak Kawsay* and the indigenous worldview. However, this application clearly shows not just a monocultural perspective, but also a decrease in the application of the rights of IP, which at the beginning were the cornerstone of the project.

Finally, the past government and its neo-extractive practices has being the main perpetrator of violence against indigenous populations in Ecuador in the period 2008-2017. The state defends indigenous populations, as Charles Hales mentions, who do not want autonomy; those who are not opposed to the state and are in favor of natural resources exploitation, but not to those who want the opposite, who struggle for what they owe for millennia. The use of indigenous populations as a political tool to later betray them was a usual practice from the state for decades but also from a political project which did not know about the scope and real involvement that it meant to commit to protect nature and to integrally protect the rights of IP (Tibán 2018). It would end up using them as well, but this time not only themselves, but the natural environment which belongs to them—and at a cost of their own lives.

“I know that examples of physical and mental torture, of everyday crimes, are more or less known. But there is another form of torture or official crime, less visible, less known, but more devastating, which aims at the same goal: the destruction of our peoples, annihilating our culture, converting them into consumers of products and concepts developed thousands of kilometers away from our countries, in that total war that fascism has declared, once again, to culture.”

*Oswaldo Guayasamin
Ecuadorian painter*

Appendices

Appendix 1: Questions made to the General Public Attorney. Dr. Ernesto Pazmiño Granizo

- Which have been the achievements of the constitution of 2008 in reference to the rights of indigenous populations in Ecuador? Why?
- in reference to the protection of the rights of indigenous people in the constitution of 2008 Do you believe that there has been progress with respect to previous Constitutions? What have been such achievements? Why?
- Has the Constitution of 2008 been respected in relation to the protection of the rights of indigenous peoples, in particular the philosophy of *Simak Kawsay*? YES / NO and Why?
- What caused the inclusion of *Sumak Kawsay* and the rights of nature in the Constitution of 2008?
- How would you define the administration of Rafael Correa in relation to indigenous people?
- There is a very critical vision in some sectors that catalog the administration of Rafael Correa as responsible for state crimes against indigenous leaders. what is your perspective?
- In 2013 there was a confrontation between Huaorani and Tagaeri / Taromenane in the Ecuadorian amazon region in which 30 members of the Tagaeri / Taromenane ethnic group died. how do you explain this event?
- As the General Public Attorney, what is your position in relation to the death of Bosco Wisum and José Tendetza, as well as the confrontation between the Huaorani and Tagaeri/Taromenane? does the state have any responsibility in connection with these events? Which are they and why?
- Are there discrepancies in its application in a multicultural and pluri-ethnic state like ours between the legal framework of the state and the customary law? Why?
- Do you think that Ecuador is a pluri-national and multi-ethnic state in practice beyond what is written in the Constitution of 2008? Why?
- What is your perspective of Correa´s administration regarding to the changes made in the Constitution in 2008 and the actions regarding to indigenous people?

**Appendix 2: Questions made to former Assembly member and indigenous leader.
Dr. Lourdes Tibán.**

- What is *Sumak Kawsay* and what are its main statements?
- Why do you think that *Sumak Kawsay* and nature rights were included in the Constitution of 2008?
- From your point of view, who participated for these inclusions to be included?
- How would you interpret the position of the government of former president Rafael Correa in relation to these inclusions in the Constitution of 2008, and why?
- Could you comment me about the determining events which marked the support of the indigenous sectors to the past administration, as well as the ones that banished them?
- According to some sectors of the Ecuadorian population the previous government violated the rights of indigenous peoples consecrated in the Constitution. what do you think about it?
- What is your opinion about the confrontation of Huaoranis and Tagaeri-Taromenane where they killed more than 30 people, the death of Bosco Wisum and the death of Jose Tendetza? who is the responsible? what are the reasons?

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