

THE CONSERVATION OF THE ENVIROMENT IN ECUADOR'S CONSTITUTION

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Abstract

The 2008 Ecuadorian Constitution is often presented as building on the local traditions of indigenous peoples in order to propose a non-anthropocentric approach to the conservation of the environment, based on the concept of *buen vivir*. After providing a short introduction on anthropocentric and non-anthropocentric approaches to the environment, with attention to indigenous worldviews, this article attempts to: analyse the concept of *buen vivir*, appearing to have unclear boundaries; understand whether or not it is a concept derived from indigenous worldviews; and explore the innovative non-anthropocentric feature of the recognition of rights to the environment. Finally, the article uses the idea of rights of the environment as a key to interpret the fuzzy concept of *buen vivir* in the most effective way to enhance the conservation of the environment.

Keywords: environmental rights, Ecuador, constitution, indigenous peoples, *buen vivir*

Parole chiave: etica dell'ambiente, Equador, Costituzione, popoli indigeni, *buen vivir*

1. Introduction

The article analyses the main features of the 2008 Ecuadorian Constitution which enhances the common recognition of the need to protect the environment by recognizing the latter as a holder of rights. The Constitution is often presented as building on the local traditions of indigenous peoples, thereby proposing a non-anthropocentric approach to environmental protection based on the all-encompassing concept of *buen vivir*. The Ecuadorian Constitution is cherished as the convergence of indigenous cosmovisions and the concept of rights of nature – a development which could promote abandoning the overexploitation of natural resources, especially by extractive industries¹. After providing a short introduction on the difference between anthropocentric and non-anthropocentric approaches to the environment, with attention to indigenous peoples' worldviews, the article attempts to: analyse the concept of *buen vivir*, which appears to have unclear boundaries; understand whether or not it is a concept derived from indigenous worldviews; and explore the innovative non-anthropocentric features of the recognition of rights to the environment. Finally, in order to enhance the conservation of the environment in the most effective way, the article uses the concept of rights of the environment as a key to interpret the fuzzy concept of *buen vivir*.

2. Environmental Value

The new environmental features of the Ecuadorian Constitution bring attention to the long-discussed problem concerning the value of the environment. Theories of environmental ethics strive to answer the question: how do we understand what ought to be recognized value and why? Western environmental ethics can be described as divided into two main streams – anthropocentric and non-anthropocentric ethics – providing different answers to the *what*, but, more importantly, to the *why*. The most intuitive means of attributing value to something is to understand whether it is useful. In general, something is considered valuable if it has a utility for human beings, either directly or indirectly. This kind of value is referred to as non-intrinsic, instrumental value. In order to understand whether something has non-intrinsic value we need to

¹ For a critical appraisal see L.J. Kotzè and P. Calzadilla Villavicencio, *Somewhere between Rhetoric and Reality: Environmental Constitutionalism and the Rights of Nature in Ecuador*, in «Transnational Environmental Law», 2017, p. 15 f.

revert to something that comes before and which justifies the value to be attributed. But we cannot revert an infinite number of times. There must be something, at the end, that is considered to have intrinsic value², which is non-instrumental, because it cannot be deduced by the utility for something/someone else: «an object has intrinsic value if it is an end in itself»³.

2.1. *Anthropocentric Ethics*

Anthropocentric approaches and arguments to the conservation of the environment, such as *it is in your interest to respect the environment* or *if you damage the environment you damage humankind/yourself*, are surely the most commonly diffused to promote respect and condemn disrespect towards the environment. In these arguments the environment does not figure as a holder of value *per se* but as the holder of value for the sake of humankind. Anthropocentric ethics are the direct successors of classic Western ethics, as they are a reinterpretation of their same ethical grounds⁴. They build on the understanding of the duty to respect other human beings and, by extending the needs of human beings to those concerning the environment they include duties to conserve it. Such duty is not towards the environment, it simply *regards* the environment. It remains a duty towards humankind and is «a matter of prudence»⁵.

² M.J. Zimmerman, *Intrinsic vs. Extrinsic Value*, in E.N. Zalta, edited by, *The Stanford Encyclopedia of Philosophy*, 2015.

³ J. O'Neill, *The Varieties of Intrinsic Value*, in «The Monist», 75-2, 1992, p. 119–37. Although this is the most common understanding of the concept of intrinsic value it is necessary to underline that it remains an ambiguous term, which can be defined in a second and third sense: 2) referring solely to the non-relational properties of an object; 3) referring to an objective value, independent of any value-attributing subject. For the purpose of the present work, intrinsic value will be considered only in the first sense, clarifying the fact that being attributed intrinsic value in the first sense does not imply attribution of intrinsic value in the second and third senses. For example, wilderness can be considered having intrinsic value in the first sense. However, it does not have intrinsic value in the second sense, because the concept of wilderness implies the idea of (a lack of) contact with human beings, which is a relational consideration (second sense of the term).

⁴ J. Passmore, *Men's Responsibility for Nature*, New York, Scribner's, 1974, p. 186 f., cited in J.R. DesJardins, *Environmental Ethics. An Introduction to Environmental Philosophy*, Belmont, California, Wadsworth Cengage Learning, 2013, p. 102.

⁵ *Ibidem*, p. 98.

Anthropocentric views are strongly criticized precisely for such focus on human interests because they can justify the use of the environment «merely as a storehouse of raw materials to be extracted and used for products serving human preferences»⁶.

Anthropocentric views can, however, push the borders of environmental protection beyond the mere conservation of natural resources instrumentally valuable to humans⁷. Aesthetic value⁸, the value of knowledge, and the recognition of rights and interests to future generations⁹ extend such borders while remaining focused on what is, or will be, thought to be of some value to humans¹⁰. They are valuable political strategies: policy makers are likely to give little attention to intrinsic value considerations, while they are more likely to be appealed by considerations concerning human-oriented reasons¹¹.

2.2. *Non-anthropocentric Ethics*

Starting from Aristotle, Aquinas and Kant until most recent ethicists, the Western tradition hardly ever recognizes moral standing – i.e. to be a source of moral claim, an entity that must be considered in moral deliberations – of entities other than human beings¹². The environmental challenges we have started facing in the last century have inspired many philosophers to answer the call for a new environmental ethic extending the recognition of intrinsic value and moral considerations and standing to non-human entities: animals, living things, species, non-living natural entities, and the Earth. The recognition of moral standing to the environment is the distinguishing characteristic of non-anthropocentric ethic, where three different streams can be distinguished.

⁶ B.G. Norton, *Environmental Ethics and Weak Anthropocentrism*, in «*Environmental Ethics*», 6, 1984, p. 135.

⁷ J. Benson, *Environmental Ethics. An Introduction with Readings*, London, New York, Routledge, 2000, p. 85.

⁸ *Ibidem*.

⁹ Norton, *Environmental Ethics and Weak Anthropocentrism*, cit.

¹⁰ Benson, *Environmental Ethics. An Introduction with Readings*, p. 86, cit.

¹¹ B.G. Norton, *The Cultural Approach to Conservation Biology*, in *Century*, D. Western and M. Pearl, edited by, Oxford, Oxford University Press, 1989, p. 241–46.

¹² DesJardins, *Environmental Ethics. An Introduction to Environmental Philosophy*, 100, cit.

The first stream welcomes authors with different views concerning which animals should be recognized holders of rights¹³. Animal rights theories tend to have an individualistic approach, as they are mostly concerned with stopping the use of animals for food, research, clothing and entertainment, rather than with the protection of endangered species and whole ecosystems¹⁴. Arguing for individual animal rights or arguing for species and ecosystems protection differs strongly in terms of environmental consequences. Managing and protecting a species or a habitat requires recognising unequal moral standing to different animals, depending on the species or variety (endangered or abundant, local or invasive), including suppressing invasive species¹⁵.

A second stream, biocentric ethics, enlarges the realm of moral consideration to all living beings, with being alive becoming the relevant characteristic¹⁶. Most biocentric ethicists maintain an individualistic approach, so species and ecosystems do not fall within their realm of consideration¹⁷. Similarly, rivers and mountains, landscapes and the air are not biological beings and hence are not intrinsically considered worthy of respect.

¹³ See for example T. Regan, *Animal Rights: What's in a Name*, in *Environmental Ethics. An Anthology*, A. Light and H. Rolston III, edited by, Malden, Oxford, Victoria, Blackwell Publishing, 2012, p. 65–71. On the protection of animals adopting a utilitarian stance see P. Singer, *Animal Liberation*, New York, HarperCollinsPublishers, 1975. Singer finds the source of moral standing in a characteristic that almost all animals have: sentience, i.e. the capacity of suffering and enjoyment. For more details on the utilitarian approach to animal rights, its advantages and problems also see S. Castignone, *nuovi diritti e nuovi soggetti. Appunti di bioetica e biodiritto*, Genova, ECIG - Edizioni Culturali Internazionali Genova, 1996, p. 123 ff.

¹⁴ T. Regan, *The Case for Animal Rights*, in *In Defense of Animals*, P. Singer, edited by, Oxford, Basil Blackwell, 1985, p. 13; Regan, *Animal Rights: What's in a Name*, cit.

¹⁵ G.E. Varner, *Can Animal Rights Activists Be Environmentalists*, in *Environmental Philosophy and Environmental Activism*, D.E. Marietta and L. Embree, edited by, Lanham, MD, Rowman & Littlefield Publishers, 1995. The need to implement these types of actions has led conservationists to be accused of environmental fascism by animal rights supporters because of their willingness to sacrifice individual animals, see Regan, *Animal Rights: What's in a Name*, cit.

¹⁶ DesJardins, *Environmental Ethics. An Introduction to Environmental Philosophy*, p. 136 ff, cit. See among the others: P.W. Taylor, *Respect for Nature: A Theory of Environmental Ethics*, Princeton, Princeton University Press, 1986, p. 40 ff.

¹⁷ *Ibidem*, p. 143 and 151.

A third stream of theories attributes moral standing to living communities, species or the Earth itself, and better accommodates conservation considerations. Ecocentric ethics are holistic, as they place ecological communities at the centre of moral concern and deeply rely on the science of ecology to frame their ethical principles¹⁸. Not all entities are considered worthy of moral standing in their individuality, but rather as elements of ecosystems. Hence, typical conservation science actions, such as the eradication of invasive species, may be accommodated because they aim at the conservation of, in Aldo Leopold's words, the «integrity, stability and beauty of the biotic community»¹⁹.

Leopold hopes that through the study and understanding of ecology there can be a change in human psychology, such as that Western societies come to love and admire the Earth²⁰. This change in human psychology requires raising awareness on the current environmental crisis, gaining contact with the natural world and reframing our relationship with it. Interestingly, it seems that many indigenous peoples and local communities, «who have become effective leaders in the environment and human rights movement»²¹, do not need to undertake such a psychological turn, as their ethical underpinnings already comprehend different forms of respect and reverence for the Earth and place humankind in a custodianship role towards nature²².

2.3. *An Indigenous Take on the Environment*

It is increasingly frequent to hear indigenous leaders, non-governmental organizations, and even states, talk about the role that indigenous peoples have for the conservation of the environment. This *mantra* made its official appearance at the international level with the Rio Declaration, the document adopted at the United Nations Conference on Environment and Development, in Rio de Janeiro in 1992. Principle 22 of the Declaration explicitly acknowledges the vital role that indigenous peoples have in

¹⁸ *Ibidem*, p. 152 and 163.

¹⁹ A. Leopold, *A Sand County Almanac and Sketches Here and There*, London, Oxford, New York, Oxford University Press, 1949.

²⁰ *Ibidem*.

²¹ D.A. Posey, edited by, *Cultural and Spiritual Values of Biodiversity. A Complementary Contribution to the Global Biodiversity Assessment*, Nairobi, Intermediate Technology Publication, 1999, p. 15.

²² See J.B. Callicott, *The Challenge of a World Environmental Ethic*, in «American Journal of Theology & Philosophy», 18-1, 1997, p. 69.

«environmental management and development because of their knowledge and traditional practices». Through the adoption, the year after, of the Convention on Biological Diversity²³, the importance of indigenous peoples in the conservation debate was crafted in international law. Following these recognitions, their role has become one of the flagships of the indigenous peoples rights movement. It was estimated that about 80 percent of plant biodiversity is found in that part of the global territory which is inhabited by indigenous peoples, which, in turn, equals 22 percent of the total global territory²⁴. Most importantly, such sustainable relationship with the environment is grounded in an inextricable link between their cultural diversity and the diversity of local ecosystems²⁵. The anthropologist Darrel Posey coined the term *biocultural diversity* to describe such mutually beneficial relationship between certain peoples and their environments²⁶. Biocultural diversity comprises traditional knowledge about the biotic and a-biotic elements of ecosystems, beliefs, social, cultural, spiritual and economic practices connected with the environment²⁷.

²³ Articles 8j and 10c.

²⁴ C. Sobrevila, *The Role of Indigenous Peoples in Biodiversity Conservation. The Natural but Often Forgotten Partners*, Washington DC, The International Bank for Reconstruction and Development, 2008.

²⁵ A. Kothari et al., edited by, *Recognising and Supporting Territories and Areas Conserved by Indigenous Peoples and Local Communities. Global Overview and National Case Studies*, CBD Technical Series, Montreal, Secretariat of the Convention on Biological Diversity, 2012, p. 9; C. Bèlair et al., edited by, *Sustainable Use of Biological Diversity in Socio-Ecological Production Landscapes. Background to the “Sotoyama Initiative for the Benefit of Biodiversity and Human Well-Being”*, CBD Technical Series, Montreal, Secretariat of the Convention on Biological Diversity, 2010; G. Calvo Valderrama and S. Arico, *Traditional Knowledge: From Environmental Management to Territorial Development*, in *Traditional Knowledge in Policy and Practice*, S. Subramanian and B. Pisupati, edited by, Hong Kong, United Nations University, 2010, p. 208–25; M. Cocks, *Biocultural Diversity: Moving Beyond the Realm of “Indigenous” and “Local” People*, in «Human Ecology», 34-2, 2006, p. 188.

²⁶ Posey, *Cultural and Spiritual Values of Biodiversity. A Complementary Contribution to the Global Biodiversity Assessment*, cit.

²⁷ J.L. Slikkerveer, *Ethnoscience, “TEK” and Its Application to Conservation*, in *Cultural and Spiritual Values of Biodiversity. A Complementary Contribution to the Global Biodiversity Assessment*, D.A. Posey, edited by, Nairobi, Intermediate Technology Publication, 1999, p. 169–258; G. Dutfield, *Rights, Resources and Responses*, in *Cultural and Spiritual Values of Biodiversity. A Complementary Contribution to the Global Biodiversity Assessment*, D.A. Posey, edited by, Intermediate Technology Publication, 1999, p. 550; L. Maffi, *Linguistic, Cultural, and Biological Diversity*,

Indigenous peoples present very diverse and complex approaches, which were developed over millennia in different lands and ecosystems²⁸. Such relationships are embedded in cultural practices «entrusting stewardship» of their ancestral lands²⁹. They know that «their lives and immediate futures – as well as the well-being of future generations» depend on their lands and natural resources³⁰. Because of their direct dependence they have maintained a clearer perception – clearer than people living on the market economy in towns and cities³¹ – of their reliance on lands, rivers, plants and animals.

As different studies show, indigenous peoples around the world have often developed similar grounds of a conservation ethic to guide such sustainable lifestyles and stewardship relationships with the environment³². Their environmental ethics can – in very general terms – be described as holistic and based on the idea of interconnection between human, animal, floral and a-biotic elements of ecosystems, where human beings are an integral part of nature, together with their culture and practices³³. The idea of reciprocity, equilibrium and duality (everything has a complementary opposite and balance must be kept) in exchanges with nature seem to contradistinguish many indigenous peoples' relationships with nature based on the idea that human beings are spiritually linked to

«Annual Review of Anthropology», 29, 2005, p. 600; Kothari et al., *Recognising and Supporting Territories and Areas Conserved by Indigenous Peoples and Local Communities. Global Overview and National Case Studies*, p. 19, cit.

²⁸ M.F. Jaksa, *Putting the “Sustainable” Back in Sustainable Development: Recognizing and Enforcing Indigenous Property Rights as a Pathway to Global Environmental Sustainability*, in «Journal of Environmental Law and Litigation», 21-1, 2006, p. 162.

²⁹ *Ibidem*.

³⁰ L. Maffi, *Biocultural Approaches to Conservation and Development*, in *Biocultural Diversity Toolkit*, L. Maffi and D. Ortixia, edited by, Terralingua, 2014, p. 4.

³¹ D. Suzuki, *Finding a New Story*, in *Cultural and Spiritual Values of Biodiversity. A Complementary Contribution to the Global Biodiversity Assessment*, D.A. Posey, edited by, Nairobi, Intermediate Technology Publication, 1999, p. 72.

³² Posey, *Cultural and Spiritual Values of Biodiversity. A Complementary Contribution to the Global Biodiversity Assessment*, cit.

³³ K. Swiderska et al., *Protecting Community Rights over Traditional Knowledge. Implications of Customary Laws and Practices. Key Findings and Recommendations 2005-2009*, IIED - International Institute for Environment and Development, 2009.

the environment³⁴. Their practices are regulated through customary laws, religious practices and taboos whose enforcement is perceived as overviewed by spiritual entities. For example a world-wide study on *sacred natural sites* – «areas of lands or water having special spiritual significance to peoples and communities»³⁵ – has indicated that the attribution of sacred meanings to nature itself, or historical or mythological events occurred on the natural site, has guaranteed the preservation of the site at the same level, and sometimes even higher, as in protected areas³⁶.

The construction of indigenous peoples as ontological conservationists needs to be treated with care to avoid falling for the *ecologically noble savage* myth³⁷. Indigenous peoples are not static, frozen pictures of the past. They are thriving and changing communities that struggle to survive in their lands, fighting more with colonial or post-colonial impositions than with the environment. Of course, both the thriving and the struggling bring changes and such changes may, as it happens in all other societies, have negative impacts on the environment. The ecologically noble savage myth, as all romanticizing, is a naive illustration of indigenous peoples as intrinsically *ecological* that may give little help to indigenous peoples and conservation movements³⁸ weakening the understanding of the nuances and dynamics of reality.

However, indigenous worldviews, if carefully listened to, can be incorporated in the law of Western countries in the attempt to create new systems and structures which better protect the environment³⁹. The Ecuadorian Constitution is an example of such

³⁴ *Ibidem*.

³⁵ B. Verschuuren et al., edited by, *Sacred Natural Sites. Conserving Nature & Culture*, London, Washington, Earthscan, 2010, p. 1.

³⁶ *Ibidem*, p. 1–19.

³⁷ K. Redford, *The Ecologically Noble Savage*, in «Cultural Survival Quarterly», 15-1, 1991, p. 46–48.

³⁸ A.C. Claus, C.M.A. Kai, and T. Satterfield, *The Roles of People in Conservation*, in *Conservation Biology for All*, N.S. Sodhi and P.R. Ehrlich, edited by, Oxford, Oxford University Press, 2010, p. 269; D.A. Posey, *Introduction: Culture and Nature - The Inextricable Link*, in *Cultural and Spiritual Values of Biodiversity. A Complementary Contribution to the Global Biodiversity Assessment*, D.A. Posey, edited by, Nairobi, Intermediate Technology Publication, 1999, p. 7.

³⁹ On the incorporating Maori cosmologies in New Zealand law, see C.J. Iorns Magallanes, *Maori Cultural Rights in Aotearoa New Zealand: Protecting the Cosmology That Protects the Environment*, in «Wideren Law Review», 21-2, 2015, p. 275.

an attempt to find convergence between new Western environmental ethics approaches and indigenous worldviews.

3. Ecuador: Constitutional Paths for Conservation

3.1. *The Environment in Constitutional Texts*

Vis à vis the rising awareness of the current environmental crisis, an increasing number of state constitutions has entailed provisions concerning the protection of the environment, or has recognized certain human rights to environmental assets. The first ever was Switzerland which in 1971 introduced the human right to a non-hazardous environment through a referendum. Today, out of 193 constitutions, 147 include environmental provisions⁴⁰. Some are rudimentary references to the protection of national beauties and artistic heritage (such as in the constitutions of Italy, Malta, Guatemala and San Marino), while others include specific obligations of the government⁴¹ to the protection of biodiversity, the promotion of sustainable development for present and future generations (Sweden), the prevention of pollution, or the creation and preservation of protected areas (Portugal). Ninety-two countries recognize human rights to natural assets, such as right to live in a healthy environment (among which almost all Latin American countries⁴²) or the right to clean waters (such as South Africa), while the constitutions of Germany, India and Switzerland recognize rights to animals.

The text of the new Ecuadorian Constitution is in line with the trends of the Latin American constitutionalism, as it provides for a constitutional, democratic, intercultural, laic state grounded in the recognition of a list of fundamental rights⁴³. It is a long⁴⁴ and rigid

⁴⁰ D.R. Boyd, *The Environmental Rights Revolution. A Global Study of Constitutions, Human Rights and the Environment*, Vancouver, University of British Columbia Press, 2012, chap. 3.

⁴¹ Eighty-three also include individual duties towards the protection of the environment and of these six (Algeria, Estonia, Laos, Papua New Guinea, Syrian Arab Republic and Vanuatu) recognize only individual responsibilities, not governmental ones, see *Ibidem*, note 58.

⁴² Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guyana, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Venezuela, see *Ibidem*, note 42.

⁴³ E. Acuna Rozo, *Il costituzionalismo in vigore nei paesi dell'america latina*, Torino, Giappichelli Editore, 2012, p. 322.

constitution composed of 444 articles, structured in nine titles, each divided in chapters. It distinguishes itself because it was the first constitution taking the struggle for the protection of nature further by transforming the latter into a holder of rights: «Nature shall be the subject of those rights that the Constitution recognizes for it» (art. 10). The recognition of rights to nature is embedded in a wider innovation in the Constitution: the introduction of the concept of *buen vivir* (*sumak kawsay* in the indigenous Quechua language). *Buen vivir* is not explicitly defined in the text but it is presented as the «vertebral axis» of the new Constitution in the *Plan Nacional para el Buen Vivir del Ecuador 2009-2013* (then updated in the 2013-2017 version)⁴⁵. In the *Plan Nacional*, *buen vivir* is the key term to promote the realization of a new all-encompassing development discourse to protect the historically marginalized sections of society, and to turn towards sustainable and intercultural forms of production through a new form of development, not based on capitalistic assumptions but rather on indigenous principles of inclusivity and interdependence⁴⁶.

The Constitutional Preamble announces the creation of: «a new form of public coexistence, in diversity and in harmony with nature, to achieve *buen vivir*, *sumak kawsay*». In fact, *buen vivir* is proposed as the indigenous alternative to economic *development*⁴⁷,

⁴⁴ Just like the Brazilian and Bolivian constitutions, the new Ecuadorian Constitution enumerates a long list of political, economic, social and cultural rights recognizing them to different subjects. Compared with the European and United States' constitutions, these types of texts have been strongly criticized as stating utopian aspirations rather than actually protected and enforced rights, see R. Gargarella and C. Courtis, *El Nuevo Constitucionalismo Latinoamericano: Promesas e Interrogantes*, Washington DC, United Nations, 2009, p. 31. While recognizing the problem linked to today's inflation of rights, Gargarella and Courtis underline that the recognition of rights in constitutions does not guarantee their promotion and respect in reality but that their absence in texts is somehow correlated to their continued violation in reality, see *Ibidem*, p. 32.

⁴⁵ Senplades, *Plan Nacional de Desarrollo/ Plan Nacional Para El Buen Vivir 2013-2017*, Quito, 2013, p. 23 (my translation). The Plan Nacional de Desarrollo is, according to art. 280 of the Constitution, the instrument devoted to lead public policies, programs and projects, the distribution of public resources and the coordination between the state and the local governments.

⁴⁶ F. Houtart, *El concepto de sumak kawsay (buen vivir) y su correspondencia con el bien común de la humanidad*, in «Ecuador Debate», 84, 2011, p. 73 f.

⁴⁷ S. Baldin, *I diritti della natura nelle costituzioni di Ecuador e Bolivia*, in «Visioni LatinoAmericane», 10, 2014, p. 29.

which, instead of focusing solely on the human condition, underlines the interdependency between humans and *Pacha Mama*, i.e. nature and the surrounding environment⁴⁸.

Buen vivir is elected as the interpreting principle of Chapter II, *Rights of Buen Vivir*, of Title II. The Chapter lists human rights to water and food, a healthy environment, communication and information, science and culture, education, habitat, health, work, and social security. They represent an enlargement of the usual catalogue of basic human rights⁴⁹, which most often does not include rights to a healthy environment and habitat. All other rights, including rights of groups, women, disabled people, and nature's rights, are listed in the following chapters.

After stating that nature is a subject of rights in article 10, the Constitution lists the rights of nature in Title II, Chapter VII, and stipulates that they are, alike all other Constitutional rights, fully actionable even in the absence of a legal regulatory framework (art. 11). Nature is recognized the right to existence and conservation and to the regeneration of its life cycles, structure, function, and evolutionary processes (art. 71) and the state is called to promote the protection and respect of natural assets. If such rights are failed and nature is damaged, nature itself is recognized a right to restoration. Usually such right is recognized only to those individuals or groups negatively affected by a natural damage, while in this article the restoration of the environment is explicitly independent from the restoration of people's assets (art. 72)⁵⁰. Environment's rights can be claimed by any person, community or people (art. 71), and the state has the duty to implement the instruments necessary to limit the activities that may negatively effect the environment, including the introduction of exotic species (art. 73). Most importantly, as article 74 indicates, the recognition of such rights to nature does not entail the prohibition of any use, extraction and exploitation of natural resources. The pursuit of *buen*

⁴⁸ P. Benalcàzar Alarcòn, *Il buen vivir - sumak kawsay - La costruzione di un paradigma per una diversa umanità (Ecuador)*, in «Futuro Indigeno. Il Futuro Delle Americhe», R. Martufi and L. Vasapollo, edited by, Milano, Jaca Book, 2009, p. 325 f.

⁴⁹ Houtart, *El concepto de sumak kawsay (buen vivir) y su correspondencia con el bien común de la humanidad*, p. 71, cit.

⁵⁰ M. Melo, *De Montecristi a Cochabamba*, in *Los derechos de la naturaleza y el derecho a la existencia*, C.E. Gallegos-Anda and C. Pérez Fernandez, edited by, Quito, Ministerio de Justicia, Derechos Humanon y Cultos, 2011, p. 97 f.

vivir, and of the rights of *buen vivir* (human rights to water and food, a science and culture, etc), are said to prevail over the intact conservation of nature, though they are limited by the duty to use natural resources in rational and sustainable ways (art. 83). *Buen vivir* is also used as the guiding principle and final goal of the regime of development of the state (Title VI, *Development Structure*). Development is defined precisely as the dynamic and sustainable union of economic, political, social, cultural, and environmental processes leading to *buen vivir* (art. 275). Hence, development is called upon as not only sustainable but also inclusive of cultural and environmental features.

In order to live up to the concept of *buen vivir*, the Constitution calls for the protection of human individual and collective rights, as well as nature's rights (art. 277). Title VII (articles 340-415) is entirely dedicated to the realization of *buen vivir* with comprehensive articles which address the following rights: education, health, social security, habitat, nutrition, culture, leisure and media, science, traditional knowledge, risk management, population, and transport. In chapter II, dedicated to *Biodiversity and Natural Resources*, Ecuador commits to the pursuit of sustainable development goals for the sake of present and future generations while respecting the environment (art. 395), applying the precautionary principle⁵¹, and committing to act for the complete restoration of environmental damages (art. 396 and 397). Most importantly, art. 397 recognizes the duty of the state to accept all appeals of natural and juridical subjects, groups and communities addressed at the halt of environmental damages, even if such subjects are not directly affected by the damage. Moreover, it reverses the burden of proof to the accused, which now has the duty to show that its activity is not actually damaging the environment.

Finally, in art. 400, echoing the 1992 Convention on Biological Diversity, Ecuador asserts its sovereign rights over natural and genetic resources present in its territory and commits to manage them according to the interests of present and future generations.

⁵¹ According to the precautionary principle, «where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation», United Nations Conference on Environment and Development, *Rio Declaration*, Principle 15.

3.2. *Buen Vivir*

The adoption of the 2008 Constitution was praised by many scholars, indigenous leaders, and environmental activists as a victory over inefficacious anthropocentric approaches based on the recognition of human interests as the sole worth of legal protection⁵². The recognition of a set of rights to nature implicitly recognizes it as an entity having moral standing and being worthy of legal protection⁵³, regardless of its utility for human beings. The victory was described as the overtaking of indigenous traditional ethics over Western ethics, as the transformation of indigenous teachings into legal words, as the perfect convergence between indigenous worldviews, the law and the decolonization of the country⁵⁴, and as the cast away of the unsustainable *American way of life*⁵⁵. The inclusion of a concept derived from their tradition into the Constitution was cherished as the result of political and social changes finally retrieving their collective memory⁵⁶.

Buen vivir is called by many to be the foundation of such a shift in the role of indigenous peoples traditions and in the relationship between nature and human beings. It is a shift from an anthropocentric to a cosmocentric model which is associated with, according to Arturo Escobar, a «“conceptual breakthrough” in the development models of the last decade»⁵⁷. Catherine Walsh considers *buen vivir* as the holistic vision of the world of Andinean indigenous peoples based on the idea of harmonic wellbeing in

⁵² V. Bretón, D. Cortez, and F. García, *En busca del sumak kawsay*, in «Íconos, Revista de Ciencias Sociales», 48, 2014, p. 9 f.

⁵³ Melo, *De Montecristi a Cochabamba*, p. 137, cit; Baldin, *I diritti della natura nelle Costituzioni di Ecuador e Bolivia*, p. 27, cit.

⁵⁴ E. Fitz-Henry, *The Natural Contract: From Lévi-Strauss to the Ecuadorian Constitutional Court*, in «Oceania», 82-3, 2012, p. 269; Melo, *De Montecristi a Cochabamba*, p. 123 f., cit; Bretón, Cortez, and García, *En busca del Sumak Kawsay*, p. 9 f, cit.

⁵⁵ J.M. Tortosa, *El Futuro Del Maldesarrollo*, in «Revista Obets», 4, 2009, p. 67–83; Acuna Rozo, *Il costituzionalismo in vigore nei paesi dell'america latina*, cit.

⁵⁶ Houtart, *El concepto de Sumak Kawsay (buen vivir) y su correspondencia con el bien común de la humanidad*, p. 57, cit.

⁵⁷ A. Escobar, *Una minga para el postdesarrollo: lugar, medio ambiente y movimientos sociales en las transformaciones globales*, Lima, Universidad Nacional Mayor de San Marcos. Programa Democracia y Transformación Global, 2010, p. 25 (my translation).

communion with nature⁵⁸. Nature is not only one of the elements of life, it is the mother who cares for her sons and daughters, providing them with «space, food and elements»⁵⁹. *Buen vivir* is described as a practical and spiritual vision that guides humans, and all interconnected aspects of their life (social, cultural, spiritual, economic), towards a balanced and fair relationship with nature⁶⁰. Walsh adds that *buen vivir* is also embraced by Afro-American communities of former slaves⁶¹. According to her, the underlying principles of *buen vivir* are not a speciality of Ecuadorian or Latin American indigenous peoples, but are instead the world-wide alternative to Western capitalistic worldviews. For Ecuador, Walsh writes, the principles of *buen vivir* are the alternative to the colonially imposed philosophy of economic development, of consumerist versions of the good life. They are the needed alternative to find the right balance between humans and the environment, following the teachings common to all indigenous peoples in the world⁶². Accordingly, also the Confederación de Nacionalidades Indígenas del Ecuador describes the concept of *buen vivir* as the new model of life, alternative to Western ones and suitable for the whole world to reach happiness and harmony with mother nature⁶³.

3.2.1. A Fuzzy Concept

Notwithstanding its success, the path traced by *buen vivir* is paved with shadows and pitfalls. In fact, the concept of *buen vivir* appears to be very fuzzy⁶⁴, not as clear and specific as needed to guide the development of a country towards a one-direction non-anthropocentric and harmonic relationship with the environment. For Sánchez Parga, the Constitution is doomed to remain at a *constituent* state of *lex ferandi*, too nebulous to be transformed into

⁵⁸ C. Walsh, *Interculturalidad, estado, sociedad. Luchas (de)coloniales de nuestra época*, Quito, Universidad Andina Simón Bolívar, Ediciones Abya-Yala, 2009, p. 216.

⁵⁹ *Ibidem*.

⁶⁰ *Ibidem*, p. 220.

⁶¹ *Ibidem*, p. 213.

⁶² *Ibidem*, p. 215 ff.

⁶³ Houtart, *El concepto de Sumak Kawsay (Buen Vivir) y su correspondencia con el bien común de la humanidad*, p. 59, cit.

⁶⁴ For the use of *fuzzwords* and *buzzwords* in the development discourse, see A. Cornwall and D. Eade, edited by, *Deconstructing Development Discourse. Buzzwords and Fuzzwords*, Warwickshire, Practical Action Publishing in association with Oxfam GB, 2010.

a coherent and comprehensive system of laws and institutions⁶⁵. The fuzziness of *buen vivir* makes it too vulnerable to uses that are not in line with the indigenous traditions and with the overall call of the Constitution for a different relationship with the environment.

Hidalgo-Capitán and Cubillo-Guevara argue that consensus on its meaning does not go beyond the very basic idea of way of life in harmony with nature⁶⁶, and, as such, it is not suitable to be the «vertebral axis» of the Constitution⁶⁷. Acosta looks at *buen vivir* from the grounds of indigenous traditional knowledge and worldviews, in search of a new relationship with nature, but warns against the inappropriate transformation of such concept in an advertising motif to brand all state projects, even the most anthropocentric ones⁶⁸. Accordingly, Bretón et al. and Viola Recasens claim that the concept is ambiguous and equivocal, a sort of a catchall used to fit very different perceptions and approaches, from the natural resources extractive programs of the government to the pro-indigenous rights projects of non-governmental organizations⁶⁹. Houtart follows suite, maintaining that *buen vivir* has also been used to label unsustainable extractive projects under human rights promises with the excuse of planned redistribution of profits to the poorest layers of the population⁷⁰. For Hidalgo-Capitán and Cubillo-Guevara, *buen vivir* changes features every time a different author or politician approaches it⁷¹. Depending on their political, ideological or philosophical point of view, they fill *buen vivir* with different meanings and picture it as having different origins. Different meanings that range from those more concentrated on the protection and revitalization of indigenous peoples rights and

⁶⁵ J. Sánchez Parga, *Discursos retrovolucionarios: sumak kausay, derechos de la naturaleza y otros pachamamismos*, in «Ecuador Debate», 84, 2011, p. 36.

⁶⁶ A.L. Hidalgo-Capitán and A.P. Cubillo-Guevara, *Seis debates abiertos sobre el sumak kawsay*, in «Iconos. Revista de Ciencias Sociales», 48, 2014, p. 26.

⁶⁷ Senplades, *Plan nacional de desarrollo/ Plan nacional para el buen vivir 2013-2017*, p. 23, cit.

⁶⁸ A. Acosta, *Riesgos y amenazas para el buen vivir*, «Ecuador Debate», 84, 2011, p. 44–51.

⁶⁹ Bretón, Cortez, and García, *En busca del sumak kawsay*, p. 11 ff.; A.V. Recasens, *Discursos “pachamamistas” versus políticas desarrollistas: el debate sobre el sumak kawsay en los andes*, «Iconos. Revista de Ciencias Sociales», 48, 2014, p. 60.

⁷⁰ Houtart, *El concepto de sumak kawsay (buen vivir) y su correspondencia con el bien común de la humanidad*, p. 72 f., cit.

⁷¹ Hidalgo-Capitán and Cubillo-Guevara, *Seis Debates Abiertos Sobre El Sumak Kawsay*, cit.

culture, to those actually interested in socialist development agendas that use *buen vivir* as a label both for projects aimed at the increase of economic activities (including unsustainable ones), and for those with post-development schemas concerned with the protection of the environment and the democratization of economic and political activities. All these different positions enrich the concept but also foster its lack of clarity and ability to stand for conflicting aims, potentially conflicting among each other, conflicting with indigenous worldviews and aspirations, and conflicting with the protection of the environment.

Buen vivir is, in fact, at danger of being used to argue in favour of a classical anthropocentric development paradigm: as long as development is promoted as a way to improve poor peoples' lives, to increase inclusion and promote the protection of basic human rights (listed in the Constitution as *Derechos del buen vivir*), it could be argued that it promotes *buen vivir*, regardless of its environmental impact. *Buen vivir* also stands for inclusion, multi-ethnicity, rights to education and work, which are all aims that can be achieved with an increased income for the government through the (unsustainable) exploitation of natural resources.

Buen vivir entrusts the state with a set of duties concerning the environment precisely as a means to achieve the protection of a set of human rights, the *rights of buen vivir*. Hence, it could be maintained that it promotes an anthropocentric approach rather than a non-anthropocentric one. In fact, the use of environmental resources to achieve *buen vivir* is not prohibited – it is explicitly allowed (art. 74). Moreover, article 14 declares that the protection of the environment and the conservation of a healthy and ecologically balanced environment are public interests and rights of the Ecuadorian people. Therefore, the Constitution is treating nature, also, as an element which has instrumental value, as an element to be used to achieve the wellbeing of people.

The fuzziness of *buen vivir* leaves it exposed to interpretations that alienate it from its indigenous roots. The next paragraph faces this problem questioning the very labelling of *buen vivir* as an indigenous concept. Then, a broader view on the Constitution will propose a way out towards a more concrete and environmentally-concerned *buen vivir*.

3.2.2. *An Indigenous Concept?*

The lack of clarity on the meaning and content of *buen vivir* and its shifting grounds from anthropocentric to non-anthropocentric positions is connected to the question to what degree it really belongs to indigenous peoples worldviews of the Andes. Bretón et al. argue that it is not as firmly rooted in Andean indigenous traditions as it is often suggested⁷². According to Viola Recasens, there is no evidence in anthropological literature of the use of the concept in indigenous societies before the advent of the 2008 Constitution⁷³. He argues that *buen vivir* was created *ad hoc* to revive the culture of the subordinated groups of the society – indigenous peoples – but not through a real understanding of their worldviews and practices. It is rather an act of political ventriloquisms⁷⁴, of «invented traditions» based on an idealized and stereotypical vision of indigenous peoples deeply rooted in ecology and anti-capitalistic ideologies⁷⁵. Viola Recasens calls it «a postmodern version of Rousseau’s “noble savage”»⁷⁶. Other authors are softer in their critique and call it a case of «re-creation» by indigenous scholars, which have transformed a concept existing in some indigenous peoples by filling its gaps and determining its blurred borders using modern ideologies and rhetoric⁷⁷.

According to Viola Recasens, the lack of clarity and the ambiguous indigenous/non-indigenous features of *buen vivir* make it not completely appropriate to guide a consistent political and economic change of a country⁷⁸. On the contrary: it even fuelled

⁷² Bretón, Cortez, and García, *En busca del sumak kawsay*, cit.

⁷³ Viola Recasens, *Discursos “pachamamistas” versus políticas desarrollistas: el debate sobre el sumak kawsay en los Andes*, p. 63, cit; see also Hidalgo-Capitán and Cubillo-Guevara, *Seis debates abiertos sobre el sumak kawsay*, p. 32, cit.

⁷⁴ Bretón, Cortez, and García, *En busca del sumak kawsay*, p. 12, cit.

⁷⁵ Viola Recasens, *Discursos “pachamamistas” versus políticas desarrollistas: el debate sobre el sumak kawsay en los andes*, p. 64 ff., cit.

⁷⁶ Viola Recasens 2014, p.69 cited in C.E. Gallegos-Anda, *Development in Ecuador “the bifurcation of modernity and good living”*, *Greenconference Proceedings*, 2015 (my translation). Even though it is usually attributed to Rousseau’s *Discours sur l’origine de l’inégalité parmi les hommes*, 1745, he does actually use the term noble savage anywhere in the text. It was instead coined, in 1609, by Marc Lescarbot in his book *Histoire de la Nouvelle-France*, see T. Ellingson, *The Myth of the Noble Savage*, London, University of California Press, 2001, p. XV.

⁷⁷ Hidalgo-Capitán and Cubillo-Guevara, *Seis debates abiertos sobre el sumak kawsay*, p. 33, cit.

⁷⁸ Viola Recasens, *Discursos “pachamamistas” versus políticas desarrollistas: el debate sobre el sumak kawsay en los Andes*, p. 64, cit.

problems concerning its practical implementation, worsened by the lack of means – economic, institutional, social, and cultural – and of political will.

No matter how well founded these critiques might be, it is very hard to delineate the actual content of indigenous traditions. Indigenous culture and worldviews have not remained still and unchanged through the last five hundred years, contrary to what the noble savage myth would suggest. They have transformed as all cultures transform and they have incorporated and reacted to newcomers' concepts and principles. To expect that indigenous peoples' worldviews and traditions remain *pristine* and untouched by Western ideas, concepts, and vocabulary is the first step to doom them to succumb to external pressures or vanish into history. Consequently, even though *buen vivir* may not appear as the perfect translation of an ancient tradition into a Spanish juridical wording, it may be considered as a positive product of the interaction between indigenous traditions and left and green movements, accompanied by the adoption of the human rights vocabulary and rhetoric by indigenous peoples⁷⁹.

The problems linked to the difficult and heterogeneous interpretation of the fuzzy concept of *buen vivir* do remain nevertheless. However, they could be overcome thanks to the other innovative feature of the Ecuadorian Constitution: the inclusion of rights of the environment within its provisions. As we will see below, the fuzziness of *buen vivir* can be put aside by such a strong clue for a non-anthropocentric interpretation of the Constitution.

3.3. *Rights of the Environment*

Recognizing nature as a right holder means to treat it as a subject, as a person. This presupposition – made explicit in art. 10 – elevates nature to the level of humans and groups. Other fictitious persons, such as corporations and organizations, which are not human, nor centrally hinged in human beings as groups and minorities, are already recognized as subjects of law. Corporations can enter contracts, and through them they can become holders of rights – most typically rights of property –, but they are not recognized as holders of interests so important to be granted special

⁷⁹ For a critique over indigenous peoples and the use of human rights rhetoric, see R. Niezen, *The Origins of Indigenism. Human Rights and the Politics of Identity*, Berkeley, University of California Press, 2003, p. 118.

protection in constitutions, the same protection attributed to human and group rights⁸⁰. The allocation of rights to nature in the Ecuadorian Constitution, therefore, is ground-breaking: it follows a non-anthropocentric cosmocentric conception of the environment. Holistic, cosmocentric perceptions of nature – such as indigenous peoples' and Leopold's ones – present the environment as a source of duties and responsibilities in its integrity, and such duties are concentrated on the actions that humans have to follow. Ecuador's Constitution proposes a right-based approach to a cosmocentric vision, extending legal rights to elements of the environment – living and non-living – on the lines of what Christopher Stone suggests in *Should Trees have Standing?*.

Stone gives an example of a right-based approach which is neither animal-rights based nor biocentric – he does not regard only individual animals as rights-holders, but all living beings, including plants, rivers and species. Stone does not focus on the environment in its entirety, but rather on aggregated assets of nature, such as entire ecosystems and species, as well as *single* elements, such as streams and mountains. He argues that as the evolution of law has entailed the enlargement of the holders of rights to satisfy differentiated needs and interests, hence their evolution should now lead to the recognition of rights to the environment. The Ecuadorian Constitution does not only entitle nature with rights (art. 10) but also meets the requirements that Stone regards necessary for the recognition of rights to nature (articles 71 and 72): some public authoritative body is willing take action if the rights are violated; the natural asset concerned can start a legal action by asking for it through their representatives; courts must take injury to the natural asset as relevant and the relief granted must aim at benefiting/restoring the natural asset⁸¹.

Importantly, the approach chosen by the Constitution seems to suggest that the conservation of the environment as a whole is more essential than the protection of a single animal or plant, as animal rights ethics would require. There is, in fact, no reference to animal

⁸⁰ The attribution of such rights to nature is not unproblematic. A number of questions emerge: who is entitled to claim them and to determine what stands in nature's interest? Which rights prevail over others and is there a hierarchy between human rights and nature's rights? However, those questions will not be treated in the present article.

⁸¹ C. Stone, *Should Trees Have Standing? Law, Morality and the Environment*, Oxford, Oxford University Press, 2010, p. 4.

rights and nature is always addressed in its entirety or as composed of macro-elements, including species and populations. This distinction is relevant from the point of view of conservation actions. In fact, as seen above, individualistic approaches based on rights of certain animals or of all living beings (the first two streams of non-anthropocentric ethics: animal rights and biocentric views) are not always suitable to promote the conservation of the environment because they do not allow certain conservation practices such as the eradication of invasive species.

Vis à vis the fuzziness of the central concept of *buen vivir*, nature's rights can have an essential role in the Ecuadorian Constitution. They set the limit beyond which the quest for *buen vivir* may not go: in the attempt to improve human lives – from cultural, economic, spiritual points of view – private and state actions may be conducted in accordance with the respect for nature's rights. The idea of a possible coexistence between human use of the environment and its protection is not problematic: it endorses the indigenous understanding of human-environment relationship – as opposed to the idea of wilderness and pristine environment⁸². As long as development fuelled by the idea of *buen vivir* is pursued with respect for the rights of the environment, the non-anthropocentric approach of the Constitution could be saved. Just as human rights recognized in constitutions act as the limit to the power of the state, nature's rights could act as the limit to the state's and human beings' power in the Ecuadorian Constitution. The recognition of rights to the environment could be a clear sign of the direction that the Constitution could take towards a non-anthropocentric cosmocentric approach, innovative for a constitution, inspired by indigenous peoples worldviews, and highly promising for the conservation of the environment.

Interestingly, Viola Recasens raises critiques against labelling the idea of the rights of nature as *indigenous*⁸³. He recognizes that many indigenous peoples have maintained sustainable practices and lifestyles, but they differ, he claims, from the aims and means of

⁸² The terms *pristine environment* and *wilderness* are often connected to an early conservation approach called *fortress conservation*, according to which the protection of the environment could only be guaranteed by shutting people out of protected areas altogether as they were always bound to use resources unsustainably, see Claus, Kai, and Satterfield, *The Roles of People in Conservation*, p. 266, cit.

⁸³ Viola Recasens, *Discursos “pachamamistas” versus políticas desarrollistas: el debate sobre el sumak kawsay en los Andes*, cit.

positions based on the rights of nature. When dealing with nature's rights, nature turns into a definite being – separated from human beings – while, as noted above, indigenous worldviews tend to perceive humans as part of the environment⁸⁴.

Indigenous customary laws are centred on the purpose of protecting the wellbeing of the community through the control of individual actions and the imposition of practices that are respectful of the environment. The perception of a strong dependence of the community on the surrounding environment is, in fact, deeply entrenched in their customary laws and it is acknowledged that environmental degradation is threatening the community. Thus, customary laws create systems of entrenched duties and limits to guide community members towards a non-detrimental use of the environment, and to entail them with the responsibility to protect it. In such a traditionally intimate human-environmental relationship – a structure at the centre of which there is a sense of responsibility – the recognition of a set of rights to nature might appear different from the recognition of stewardships duties. Nevertheless, these responsibilities could be seen «as the flip side of the human duties within a legal system that recognises rights» to the environment⁸⁵. The Constitution has chosen a rights-based language, which is not completely alien to the idea of duties and responsibilities towards nature. It is its counterpart. In fact, article 83 prescribes the duty of all Ecuadorians to respect the rights of the environment, and protect the territorial integrity of Ecuador and its natural resources. In addition, article 399 refers to «State guardianship over the environment and joint responsibility of the citizenry for its conservation»⁸⁶. Precisely because indigenous relationship with the environment and their institutions diverge from those of states, the translation of indigenous worldviews into the legal system of a state may not be the most accurate *literal* translation. But it may still promote the conservation of the environment suggesting alterations to the classical anthropocentric approach of the law⁸⁷, such as the

⁸⁴ Iorns Magallanes, *Maori Cultural Rights in Aotearoa New Zealand: Protecting the Cosmology That Protects the Enviroment*, p. 279, cit.

⁸⁵ C.J. Iorns Magallanes, *Nature as an Ancestor: Two Examples of Legal Personality for Nature in New Zealand*, «VertigO - La revue électronique en sciences de l'environnement», 2015, p. 10.

⁸⁶ Kotzè and Calzadilla Villavicencio, *Somewhere Between Rhetoric and Reality: Environmental Constitutionalism and the Rights of Nature in Ecuador*, p. 23, cit.

⁸⁷ *Ibidem*, p. 6.

inclusion of nature's rights, while at the same time furthering the protection of indigenous recognition and rights⁸⁸.

4. Conclusion

In 2000, the Nobel prize winner Paul Crutzen suggested that the Earth had entered a new geological epoch, the Anthropocene⁸⁹, characterized by a radical change in the relationship between humans and the environment⁹⁰. As a geological epoch, the Anthropocene has not yet been validated but it is widely used «to designate the period of Earth's history during which humans have a decisive influence on the state, dynamics and future of the Earth system»⁹¹. Regardless of whether or not it can be considered a geological epoch, the Anthropocene can be used as a metaphor to draw attention to the current environmental crisis. The Anthropocene and the very creation of such a term raises our awareness towards the threat that humankind is for the Earth. Whether we take a weak anthropocentric position or whether we stand on the side of non-anthropocentric ethics, we need to reduce our impact on the planet. We may do it to save present and future generations from suffering or to protect their fundamental rights; or we may foster the protection of the environment because we believe it has an intrinsic value independent from our needs and interests, or because we perceive animals and plants as living beings deserving to pursue their ends in healthy and diverse ecosystems. Each of these ethical approaches has its pros and cons in terms of effectiveness and is of different political and economic appeal; each has high costs for what is our standard of living, especially in rich Western societies. Each requires us, and most importantly our

⁸⁸ Iorns Magallanes, *Maori Cultural Rights in Aotearoa New Zealand: Protecting the Cosmology That Protects the Environment*, p. 275, cit. Iorns refers to the recent Whanganui river example, on the topic see also A. Kothari and S. Bajpai, *Can the Ganga Have Human Rights?*, in «The Hindu», 2017.

⁸⁹ C. Hamilton, C. Bonneuil, and F. Gemenne, *Thinking the Anthropocene*, in *The Anthropocene and the Global Environmental Crisis. Rethinking Modernity in a New Epoch*, C. Hamilton, C. Bonneuil, and F. Gemenne, edited by, London, New York, Earthscan Publication, Routledge, 2015, p. 1.

⁹⁰ Boyd, *The Environmental Rights Revolution. A Global Study of Constitutions, Human Rights and the Environment*, p. 10, cit.

⁹¹ Subcommission on Quaternary Stratigraphy, *Working Group on the Anthropocene*, 2016, at <https://quaternary.stratigraphy.org/workinggroups/anthropocene/>. See also J. Zalasiewicz, C. Waters, and M.J. Head, *Anthropocene: Its Stratigraphic Basis*, in «Nature», 541, 2017, p. 289.

governments, to change the current ways of exploitation of natural resources.

This article has analysed an attempt to change a state's relationship with the environment through the inclusion of the notion of *buen vivir* and the recognition of rights to the environment. The 2008 Ecuadorian Constitution was the first to ever recognize a set of rights to the environment: rights to existence, conservation, regeneration of life cycles, structure and function and evolutionary processes. The Constitution, however, was not the first to recognize rights to natural assets as Germany, India, and Switzerland have already recognized rights to animals. Hence, Ecuador was not the first to move from anthropocentric to non-anthropocentric ethics (even though certain animal rights positions rather seem to imply an enlargement of the concept of *anthropos* – particularly including human-like animals – than a real shift to non-anthropocentric approaches), but the first to embrace, more specifically, a rights-based cosmocentric approach, following Stone's *Should Trees Have Standing?*.

The Constitution recognizes rights to the environment and underlines that the state is responsible for conservation and restoration of natural assets, but it also recognizes that such rights do not entail the prohibition of use, extraction, and exploitation of natural resources. This should, however, not come as a surprise. It would be irrational for a state to sustain the complete prevalence of the environment over its citizens' needs and to recognize complete prevalence to the right to existence of nature over its use. Moreover, a lot depends on the interpretation of the idea of nature. If it is interpreted along cosmocentric approaches, according to non-individualistic stances, the use, extraction, and exploitation of natural assets is not, in itself, wrong if practiced in sustainable ways. In the Ecuadorian Constitution the purpose of natural resources use, extraction, and exploitation is the pursuit of the *buen vivir*, while the limit is the respect of the rights of the environment.

However, the concept of *buen vivir*, or *sumak kawsay*, is a fuzzy and scarcely defined term: it seems to act as a catchall term lumping together potentially contradictory post-development, anthropocentric and non-anthropocentric positions. It is, in fact, being used by Ecuadorian political and economic actors to label very different kinds of activities – from the most environmentally sound to the most detrimental – by presenting them as aimed at

increasing the economic, cultural, and/or social aspects of the lives of Ecuadorian citizens.

Buen vivir also does not seem to have been rooted in indigenous anthropological literature before the writing of the Constitution. However, it would not be appropriate to deny any influence of indigenous peoples and their cultures and claims on the Constitutional development of the country – underlined by the presence of indigenous representatives at the Constitutional Assembly. Indigenous culture and worldviews are not static entities conserved indistinctly since the arrival of the colonizers. They have changed and they have incorporated elements of Western traditions, in particular human rights traditions and rhetoric, and are now embracing ideas which may promote their cosmologic approaches in the relationship with the environment, including the recognition of rights, and legal personhood, to environmental elements.

If accompanied by a coherently environmentally concerned government, the inclusion of *buen vivir* in the Constitution could provide the basis for a real environmental revolution in Ecuador. This is to say if it is, in fact, interpreted together with the insertion of rights of nature, and if the new Constitution re-acquires a non-anthropocentric approach, based on the recognition of moral standing to nature and its constituting elements. Nature's rights to existence, conservation, regeneration, structure, and evolutionary processes cannot go unnoticed simply because *buen vivir* has undefined borders and contains elements of anthropocentric positions.

It may be that the Ecuadorian example, which suggests the incorporation of indigenous worldviews in national and international law, is the right way forward.

The revival and deliberate construction of environmental ethics from the raw materials of indigenous, traditional, and contemporary cognitive cultures represents an important and essential first step in the future movement of human material cultures toward a more symbiotic relationship, however incomplete and imperfect, with the natural environment.⁹²

Nevertheless, as Callicot reminds us: «compliance with an ethic, even one hardened into law, is voluntary». The incorporation of new environmental ethics in constitutions may be the first step, but the next needs to be the creation of a common aspiration for

⁹² Callicott, *The Challenge of a World Environmental Ethic*, p. 69, cit.

human behaviour towards the conservation of the environment⁹³. I believe there is a lot to learn from indigenous peoples, but a deeper understanding and a more profound psychological change is needed to become accustomed and assimilated to *a new environmental ethic*.

⁹³ *Ibidem*, p. 66.