Posthuman rights struggles and environmentalisms from below in the political ontologies of Ecuador and Colombia

Rosemary J Coombe*

York University, Toronto, Canada

David J Jefferson**

University of Canterbury, New Zealand

In a decolonial determination to resist the modern ontological separation of nature from culture, political ontologies and posthuman legalities in Andean Community countries increasingly recognize natural and cultural forces as inextricably interrelated under the principle of the pluriverse. After years of Indigenous struggles, new social movement mobilizations and citizen activism, twenty-first-century constitutional changes in the region have affirmed the plurinational and intercultural natures of the region's polities. Drawing upon extensive interdisciplinary ethnographic research in Ecuador and Colombia, the article illustrates how Indigenous, Afro-descendant and campesino communities express multispecies relations of care and conviviality in opposition to modern extractivist development through the concept of buen vivir. These grassroots collective life projects and life plans articulate rights 'from below' to support new practices of territorialization that further materialize natures' rights and community ideals. Although human rights have modern origins, the implementation of third generation collective biocultural rights to fulfill natures' rights may help to materially realize community norms, autonomies and responsibilities that exceed modern ontologies. The ecocentric territorial rights struggles and posthuman legalities we explore are examples of a larger emergent project of decolonizing human rights in a politics appropriate to the Anthropocene.

Keywords: *political ontology, posthuman legalities, territorialization, rights of nature, biocultural rights, collective rights, Indigenous life projects, multispecies ethnography*

1 INTRODUCTION

Since the turn of this century, aspirations of endless economic growth and continuous improvement in quality of life for human populations have given way to existential anxieties over climate change, an ongoing mass extinction event in which a quarter of all plant and animal species are threatened due to the impact of human activity, and the dire need to feed a burgeoning human population. The vast majority of contemporary legal frameworks implicitly rely on a conceptual dichotomy that conceives

* rcoombe@yorku.ca

** david.jefferson@canterbury.ac.nz

of human individuals and institutions as legal subjects, while non-humans (eg, plants, animals, rock formations) and ecosystems are understood merely as objects for appropriation and anthropocentric use. In some countries, citizen activists and new social movements have spurred governments to reconsider how laws govern human/nature interactions. Instead of reproducing the modern ontological separation of nature from culture, such initiatives insist that natural and cultural forces be recognized as inextricably interrelated and humans understood to be part of nature. Such ecocentric perspectives increasingly inform a reimagining of human/nature relationships in the interpretive expansion of rights-based regimes and the visions of rights-based struggles.

While ecocentric posthumanist legal imaginaries are being developed in many parts of the world, we situate our inquiry in two countries that share a common border, Ecuador and Colombia. All of the member countries of the Andean Community (which comprises Bolivia and Peru as well as Ecuador and Colombia) are unique in having constitutionally or otherwise legally embraced their plurinational and intercultural natures (the pun is intended) after years of social struggles to articulate the nature of their polities. This shift has served to open up new political space for ontological plural legalities in a way that allows for a capaciousness of environmental concern. We focus on Ecuador and Colombia because activism in these two countries enables us to examine the posthuman turn in assertions of rights from below, in contexts where human relationships with what we might call nature have long been narrativized by Indigenous, Afro-descendant, *campesino* and other local communities in and through epistemologies of care for socionatural territories. Often, these communities work with organized social movements and NGOs to articulate environmental rights and responsibilities in biocultural terms.

The values and norms of local cosmovisions are widely articulated in the biologically diverse terrains of Ecuador and Colombia to assert the legitimacy of territorial ontologies that feature multispecies relationships and responsibilities. Indigenous, Afro-descendant, *campesino* and other local communities assert themselves as political subjects, narrating collective social, cultural and economic rights (eg, biocultural rights, farmers' rights, ecosystem rights, heritage rights, and food rights)¹ in territorial projects to reclaim and vitalize connections to worlds beyond the human, at least as the Western world understands that concept.

Notwithstanding their similarities, posthuman legal experiments in Ecuador and Colombia have taken distinct paths. While the plurinational state of Ecuador has adopted a comprehensive and holistic posthuman environmental law framework at constitutional, legislative and regulatory scales, law reform in Colombia has taken place primarily in the judicial arena and the subsequent administrative implementation of judicial rulings that create new forms of governance which rely upon a long history of acknowledging Indigenous worldviews that include humans in a broader cosmos peopled by other spirits and living beings. As we shall explore, in Ecuador, nature is constitutionally recognized as a subject with its own rights, whereas courts in Colombia have extended legal subjectivity and rights to certain environmental systems such as rivers. These are typical modes of posthuman legal experimentation that provide grist for comparative analysis. However, in this article we focus as much on the political work, life plans and struggles of communities and social movements to articulate

1. See Rosemary J Coombe and David J Jefferson, 'Food Rights as Environmental Rights in Ecological Enterprise: Seeds of Change in the Andean Community' (2021, in progress).

natures' and biocultural rights² as we do on state activity, because it is in this collective work that we find posthuman legalities to be most clearly emergent.

Communities in both countries have been the subject of extensive ethnographic research, which enables us to situate such posthuman legalities and territorial articulations of rights in a wider interdisciplinary consideration of what anthropologists of Latin America call political ontology. In these endeavors, rights and responsibilities are articulated with other agents of territory in lively ecosystem assemblages politically affirmed as collective life projects (in Ecuador) or life plans (in Colombia).³ Our studies are ethnographically grounded in grassroots, community and social movement practices. Fortunately, the fields of anthropology, geography, political science and natural resource management alongside the work of Latin American intellectuals collaborating with Indigenous and other social movements, provide us with a wide range of ethnographically-grounded studies with which to illustrate these processes, which take place as much in local projects and struggles as in formal legal claims.

A variety of theories drawn from new materialism, feminist materialism and studies of governmental technology influence our arguments. We take our departure from early science and technology studies (STS) perspectives critical of what Latour called the modern (ontological) constitution that divided nature from culture,⁴ exploring instead what Haraway long ago deemed naturecultures.⁵ This orientation is shared amongst Ecuadorian and Colombian intellectuals, organized Indigenous peoples and their allies, new social movements and community advocates who articulate local ecosocial relationalities in the political assertion of alternative ontologies. Following anthropologist Arturo Escobar, we pay 'a renewed attention to materiality ... through a focus on practice or relations, networks, embodiments ... ascertaining the production of the real through manifold relations linking human and non-human agents'.⁶

2. We pluralize nature here to respect and reflect the plural cosmologies in which relations between humans and nonhuman living beings are politically asserted and recognized in Andean Community countries.

3. In using the term 'life projects' we invoke Mario Blaser's use of the concept to describe how Indigenous peoples not only resist state and market driven development initiatives, but also how they articulate and enact visions of the world and the future that 'diverge from development in their attention to the uniqueness of people's experiences of place and self and their rejection of visions that claim to be universal'. Mario Blaser, 'Life Projects: Indigenous Peoples' Agency and Development' in Mario Blaser, Harvey A. Feit and Glenn McRae (eds), *In the Way of Development: Indigenous Peoples, Life Projects and Globalization* (Zed Books 2004) 26. However, we also acknowledge the long history of Colombian indigenous peoples' efforts to counter modern development in their articulation of community life plans, a process well explored amongst the Nasa, the largest ethnic group in Cauca Province, by David Gow in *Countering Development: Indigenous Modernity and the Moral Imagination* (Duke University Press 2008). Cauca is the home of the oldest Indigenous rights organization in Colombia (CRIC), which was instrumental in the 1990s in publicizing concepts of interculturality and the need for communications between a plurality of peoples with distinctive cosmologies. Cosmologies became politically articulated as cosmovision, a concept that understands humans to be part of a larger cosmos, rooted in territories shared in harmony with other living beings. For example, peoples, animals and plants are all Nasa, and all such humans are part of the cosmos. See Joanne Rappaport, *Intercultural Utopias: Public Intellectuals, Cultural Experimentation, and Ethnic Pluralism in Colombia* (Duke University Press 2005).

4. Bruno Latour, *We Have Never Been Modern* (Harvard University Press 1993).

5. Donna Haraway, *The Companion Species Manifesto* (Prickly Paradigm Press 2003) 1.

6. Arturo Escobar, 'Latin America at a Crossroads: Alternative Modernizations, Post-Liberalism, or Post-Development?' (2010) 24 *Cultural Studies* 1, 40.

This emphasis on material relationality is necessary to take seriously the plurinational and intercultural nature of the decolonial political imaginaries in which rights-based practices and assertions now figure. Moreover, as communities struggle to make their territorial projects of caretaking and stewardship legible as the basis for biocultural rights, we consider how these may need to be materialized in governmental technologies.

Our discussion is structured as follows. We first address the principle of the *pluriverse* as a theoretical concept that frames the interdisciplinary study of new political ontologies in Latin America to which our work contributes. Then we consider the history of constitutional and political changes in Ecuador and Colombia that have enabled these polities to be recognized as plurinational and intercultural. We show how such principles have enabled a widespread enunciation of alternative aspirations for socioeconomic futures framed by Indigenous concepts of living well (or *buen vivir*), which have become significant – if highly contested – tropes for articulating and focusing environmental struggles against extractivism. These new political and economic imaginaries, we argue, have also served to support new understandings of territory and practices of territorialization. Such principles and territorializations have extended and materialized rights practices in the two countries. These include the legal recognition of natures' rights and their implementation through the granting of biocultural rights to human communities who understand themselves as responsible parts of a larger cosmos. Finally, we show why and in what circumstances such legal projects should be considered 'posthuman legalities' despite the ongoing significance of humans in their recognition and realization. We conclude by suggesting that the ways in which rights practices and struggles are changing in Andean Community countries have potential global implications.

2 WELCOME TO THE PLURIVERSE: PLURINATIONAL AND INTERCULTURAL NATURES

The Latin American colonial experience is absolutely central to understanding Western modernity. Scholars of decoloniality locate the birth of modernity in the post-1492 conquest of the Americas, rather than in the European Enlightenment, and in the making of a capitalist world system that subordinated and subjugated the knowledges of non-European groups to a hegemonic Eurocentric mode of knowing that claims universality.⁷ The notion of pluriversality was born in widely distributed and articulated social desires to break modern bonds of dominance; it calls for a recognition of the coexistence of many worlds in an acknowledgement of diverse cosmologies, in which Western universalism is but one.⁸ This is a decolonial political project which attempts to legitimate and make legible 'territories of difference'.⁹ Opposition to the colonial matrix of power in Andean Community countries has provoked a widespread 'resistance to the universalist project of modernity' in the 'articulation of alternative projects that

7. Ulrich Oslender, 'Geographies of the Pluriverse: Decolonial Thinking and Ontological Conflict on Colombia's Pacific Coast' (2019) 109 *Annals of the American Association of Geographers* 1691, 1693 (citing Escobar).

8. *ibid.*

9. Arturo Escobar, *Territories of Difference: Place, Movements, Life, Redes* (Duke University Press 2008).

enable a pluriverse of socionatural configurations'.¹⁰ As anthropologists Mario Blaser and Marisol de la Cadena explain, the proliferation of discussions about the Anthropocene have been accompanied by 'the explosion of protests coming from worlds – usually labelled indigenous – currently threatened by the possibility of immediate destruction by anthropogenic practices'.¹¹

In Latin America, the Anthropocene is experienced through extractivism, as mountains are removed to more efficiently search for minerals, rivers are dammed and rerouted for commercial hydroelectric purposes, rainforests are converted into oil palm plantations or into lots for cattle feed, and plants cultivated over millennia are threatened by genetically engineered monoculture crops. What is being destroyed here is not just 'nature' but also other-than-human persons, such as earth-beings and forest animals, spirit masters in these worlds. Rather than characterize such processes as the destruction of nature and the harms to non-human beings as 'cultural beliefs', Blaser and de la Cadena ask us as readers to reject the concepts of both nature and culture and to imagine, instead, that we live in a world of many worlds, or a pluriverse.¹² They urge us to consider collectives that do not understand their worlds in terms of a division between nature and culture, and their particular enunciations of alternative ecologies, distinctive cosmologies and other proposals for survival.

As an analytic tool, the pluriverse emerges from specific community experiences and ways of living in ecological worlds that are being asserted in Latin America as counter-hegemonic alternatives to dominant development paradigms in place-based practices of care, in the context of Anthropocene politics. The term 'political ontology' is used to reject and supersede modern concepts of political economy and political ecology that continue to privilege ideas of nature that cannot engage such local antagonisms to extractivism, defenses of ecologies or territorial life projects as political practices.¹³ Originating with Zapatista struggles against universalizing free trade agreements, which enabled and encouraged extractivist activities that threatened the forests and food sources upon which peoples' livelihoods and lifeworlds depend, grassroots protests against extractivism have proliferated in Latin America. Indigenous groups have led many of these struggles, often in partnership with heterogeneous allies, including NGOs, peasants, Afro-descendant communities, workers' unions, university students, liberation theology clergy, feminists and environmentalists.¹⁴

10. Arturo Escobar, *Designs for the Pluriverse: Radical Interdependence, Autonomy, and the Making of Worlds* (Duke University Press 2017).

11. Mario Blaser and Marisol de la Cadena (eds), *A World of Many Worlds* (Duke University Press 2018) 1.

12. *ibid* 4.

13. *ibid* 6. See also Mario Blaser, 'Political Ontology: Cultural Studies Without "Cultures"?' (2009) 23 *Cultural Studies* 873, 876 (conceptualizing 'political ontology' as signifying 'the politics involved in the practices that shape a particular world or ontology', as well as 'a field of study that focuses on the conflicts that ensue as different worlds or ontologies strive to sustain their own existence as they interact and mingle with each other'); Mario Blaser, 'Ontological Conflicts and the Stories of Peoples in Spite of Europe: Toward a Conversation on Political Ontology' (2013) 54 *Current Anthropology* 547, 547 (discussing political ontology as a 'project' that, emerging from the convergence of Indigenous studies, science and technology studies, posthumanism and political ecology, tackles ontological conflicts as a 'politicoconceptual' problem).

14. Blaser and de la Cadena (n 11) 3–4.

Much of the early Latin American literature on the decolonial emerged from the humanities;¹⁵ its arguments were philosophically sophisticated but lacked ethnographic specificity, leading many scholars to call for ethnographic fieldwork and grounded studies in exploring this terrain.¹⁶ Fortunately, anthropologists, geographers, political ecologists, and increasingly conservation ecologists and natural resource scholars have filled this gap. Lawyers, too, are beginning to grapple with how law might ‘learn how to come to terms with other agents of the territory that are not resources’.¹⁷

The project has special urgency in Ecuador and Colombia, where social struggles and constitutional reforms have entrenched notions of plurinationalism and interculturality while conferring distinct rights on Indigenous, Afro-descendant and other ethnically distinct peoples acknowledged to have distinctive cosmologies.¹⁸ Such reforms, however, are merely the early results of ongoing struggles of ‘social groups located on the oppressed side of colonial binaries: black and indigenous people, women, peasants, marginalized urban dwellers of all sorts’ from whose ‘subaltern realities, we now get a wide variety of proposals for “worlding” life on new premises; in other words, for constructing other worlds’.¹⁹ In these countries, we see territorial rights struggles in defense of life projects,²⁰ commons and multispecies relationships

15. Walter de Mignolo is perhaps the most influential scholar in this tradition. See, eg, Walter D Mignolo, *The Idea of Latin America* (Blackwell Publishing 2005); Walter D Mignolo, *The Darker Side of Western Modernity: Global Futures, Decolonial Options* (Duke University Press 2011).

16. Blaser and de la Cadena (n 11); Oslender (n 7).

17. Canal Capital Bogota, ‘Conversaciones en Casa con Gustavo Wilches-Chaux’ (#*ConversacionesEnCasa*, 22 April 2020) <<https://www.youtube.com/watch?v=0Uy2RBA5B14>> accessed 7 December 2020.

18. The Indigenous population in Ecuador numbers close to 1.1 million across 14 different nationalities, meaning that Ecuadorians who self-identify as Indigenous comprise at least 6.3 percent of the total population of more than 17 300 000. In Colombia, the Indigenous population has grown dramatically in recent years and now accounts for 4.4 percent of the country’s population, with more than 1 905 600 individuals spread across 115 different Indigenous peoples. Dwayne Mamo (ed), *The Indigenous World 2020* (34th edition) (International Work Group for Indigenous Affairs, 2020) 397, 381. Meanwhile, according to the 2018 census, more than 9.3 percent of the total population of Colombia (more than 4 670 000 people) self-identifies as Afro-descendant. Dirección Nacional de Estadística (DANE), *Población Negra, Afrocolombiana, Raizal y Palenquera* (DANE, 2019) <<https://www.dane.gov.co/files/investigaciones/boletines/grupos-etnicos/presentacion-grupos-etnicos-poblacion-NARP-2019.pdf>> accessed 22 January 2021. In Ecuador, data from the 2020 census were not available at the time of writing. The previous (2010) census registered more than 1 041 500 people (7.2 percent of the total population) as self-identified Afro-Ecuadorians, but civil society organizations estimate that Afro-descendants comprise at least 10 percent of the total population, stating that official statistics are inaccurate due to problems with self-classification. Minority Rights Group International, ‘World Directory of Minorities and Indigenous Peoples – Ecuador’ (May 2018) <<https://www.refworld.org/docid/4954ce3223.html>> accessed 22 January 2021. It is important to recognize, however, that Indigenous and Afro-descendant peoples are not politically significant simply or even primarily because of their population size, but rather because they are recognized constitutionally as peoples and nations.

19. Arturo Escobar, *Pluriversal Politics: The Real and the Possible* (Duke University Press 2020) 4.

20. There is a substantial body of literature on the territorial rights struggles of Indigenous, Afro-descendant and *campesino* groups in Ecuador and Colombia. See, eg, Christopher Courtheyn, ‘Territories of Peace: Alter-Territorialities in Colombia’s San José de Apartadó

that articulate local alternatives to modern development and make ‘the nature of nature’ the basis of a vital politics.²¹ Escobar sees these as struggles to sustain a pluriverse:

... to use the wise Zapatista formula, ‘a world where many worlds fit’. In this sense, many territorial struggles (by Afrodescendants, indigenous peoples, peasants, and often times poor urban dwellers) can be seen as ontological struggles; they interrupt the globalizing project of fitting many worlds into one. The knowledges that these struggles produce might be particularly relevant for the search for post-capitalist, sustainable plural models of life.²²

Afro-Colombian activists, for example, have communal territorial aspirations as part of their claims to pursue culturally distinct autonomous life projects based upon specific ontologies. The ‘Process of Black Communities’ (PCN) insistence on a ‘right to territory’ for example, combines land, or nature, with the culturally specific ways in which grounded lifeways and beings are understood, lived with and cared for.²³

Whether on the Pacific Coast, in the Andes, or across Amazonia, such political ontologies ‘express environmental grammars in which human/non-human relations create culturally unique assemblages—relational ontologies and affective attachments to different and alternative life practices’.²⁴ Colombia’s 1991 Constitution recognized these Afro-descendant peoples as distinct cultural groups entitled to communal ownership of vast areas of riverine tropical rainforest lands in the Pacific lowlands under the new political authority of more autonomous community councils. As anthropologist Ulrich Oslender suggests, Latin American constitutional reforms that inscribe notions of interculturality and confer differential rights on Indigenous and Afro-descendant populations acknowledged to have distinct cosmologies, recognize existing pluriverses.²⁵

Plurinationalism has been authoritatively acknowledged in both countries. Although Colombia’s 1991 constitutional reform only recognized the country’s pluriethnic and multicultural dimensions, its grant of jurisdiction to Indigenous authorities and their political visions has made the plurinational frame a familiar one. After the

Peace Community’ (2017) 45 *Journal of Peasant Studies* 1432; Marcela Velasco Jaramillo, ‘The Territorialization of Ethnopolitical Reforms in Colombia: Chocó as a Case Study’ (2014) *Latin American Research Review* 126; Jasmin Hristov, ‘Indigenous Struggles for Land and Culture in Cauca, Colombia’ (2005) 32 *Journal of Peasant Studies* 88. In the present article, however, we are not focused on human collective territorial rights, but rather on environmental rights made posthuman. Exploring the relationship between these two groups of rights is beyond the scope of this essay.

21. Cecilie Vindal Odegaard and Juan Javier Rivera Andia, *Indigenous Life Projects and Extractivism: Ethnographies from South America* (Palgrave Macmillan 2019) 4.

22. Arturo Escobar, ‘Sustaining the Pluriverse: The Political Ontology of Territorial Struggles in Latin America’ in Mark Brightman and Jerome Lewis (eds), *The Anthropology of Sustainability* (Palgrave Macmillan 2017) 239.

23. Oslender (n 7) 1700. See also Giovanna Micarelli, ‘Development Illness and the Indigenous Pursuit of the Good-Life: A View from Colombian Amazonia’ in Boaventura de Sousa Santos and Teresa Cunha (eds), *Economies of Good Living: Against the Waste of Economic Experience* (Routledge, Taylor & Francis, in press), DOI: 10.13140/RG.2.2.20253.13280 for Colombian Amazonian peoples’ similar understanding of rights as tied to practices of responsibility and proper care for socioenvironmental relations.

24. *ibid* 1701. Life practices is a term used by Oslender in a fashion similar to the use of life projects and life plans by others.

25. *ibid* 1695.

enactment of the 1991 Constitution, Colombian Indigenous peoples strived to articulate plurinational norms as particularly apt for the country.²⁶ In both Colombia and Ecuador, plurinationalism was institutionalized as the result of Indigenous peoples' struggles for autonomy and self-determination using international rights principles.²⁷ Throughout the Andean Community region, plurinationalism is an ongoing, evolving political project engaging multiple communities who challenge racialized state structures and extractivist economies. In Ecuador and Colombia, the plural peoples recognized as having distinct cultures and territories also include ethnically distinct coastal (Montubio) and Afro-descendant communities who struggle against oil extraction, mining concessions and palm oil plantations that threaten their livelihoods. The plurinational project serves their decolonial aspirations for alternatives to development that recognize collective rights and distinctive territories.²⁸

In her study of decolonial political achievements in Ecuador, cultural studies theorist Catherine Walsh shows how the significantly rewritten 2008 Constitution was conceived on the basis, not only of plurality, but of interculturality.²⁹ The plurinational project had its origins in organized Indigenous peoples' arguments in the 1980s and 1990s that the European modern nation state was only one of several national forms. Social movements, led by the major Indigenous political organization CONAIE (Confederation of Indigenous Nationalities of Ecuador), proposed that Ecuador recognize itself as a plurinational state four times before ultimately achieving success in the 2007–8 Constituent Assembly that drafted the new Constitution. Over

26. The recognition of Indigenous peoples as having collective rights as such, made the idea of the state as a polity comprised of several nations a familiar one. Colombian scholars, Indigenous public intellectuals, Indigenous organizations and social movements used the language of interculturalism and borrowed the language of plurinationalism from other regional activist movements over the 25 years following the enactment of the 1991 Constitution, while the country's Andean Community neighbors formally embraced such concepts in constitutional reforms. For an extensive discussion of how understandings of Indigenous cosmovisions and plurinationalism evolved alongside Indigenous jurisdiction and juridical articulation in the Cauca region, for example, see Rappaport (n 2). Despite the efforts of diverse social actors, the terms of the 1991 Constitution set limits to the extension of potential political understandings of plurinationalism in Colombia. For example, while the Constitution's pluriethnic and multicultural framework of rights newly empowered Indigenous and Afro-Colombian populations, the regime simultaneously denied that *campesinos* maintained culturally based relationships with territory and nature. Subsequently, *campesinos* fought against the official perception of the peasant condition as fundamentally economic rather than cultural. Activists achieved some legal recognition for their cultural ties to territory in the 1994 agrarian reform law (Ley No 160), which regulates Campesino Reserve Zones. See Andrea Reyes Bohorquez, 'Las Zonas de Reserva Campesina como Figuras para el Desarrollo Rural Colombiano' (2013) 22 *Perspectivas Rurales Nueva Época* 109. *Campesino* cultural and territorial rights were further recognized in the Comprehensive Rural Reform chapter of the 2016 Peace Agreement, discussed in later sections of this article.

27. Rachel Sieder (ed), *Multiculturalism in Latin America: Indigenous Rights, Diversity and Democracy* (Palgrave Macmillan 2002); Roger Merino, 'Reimagining the Nation State: Indigenous Peoples and the Making of Plurinationalism in Latin America' (2018) 31 *Leiden Journal of International Law* 773, 774.

28. Merino, *ibid* 789.

29. Catherine Walsh, *Interculturalidad, Estado, Sociedad: Luchas (De)coloniales de Nuestra Época* (Universidad Andina Simón Bolívar/Ediciones Abya-Yala 2009). Principles of interculturality were also being forged in Colombia during this period. For a discussion of the pluralist and intercultural nature of Indigenous political movements in Colombia see Rappaport (n 2).

two decades, Indigenous peoples argued that such recognition did not imply separatism but rather their existence as nationalities within the state, having rights to self-determination in 'their own processes of economic, social, cultural, scientific and technological development'.³⁰

Like Indigenous organizations, Afro-Ecuadorian groups represented by CODAE (Corporation for Afro-Ecuadorian Development), presented a proposal based on the model of a multiethnic, intercultural and inclusive nation,³¹ oriented to undermine colonial racism. Ultimately, Afro-Ecuadorians were also recognized under the 2008 Constitution as a distinct people with collective rights alongside *campesino* and Montubio communities. Nonetheless, Walsh argues that 'notwithstanding the endorsement of the proposal by other social sectors including women, environmentalists, black communities, LGBTQ groups, workers, intellectuals, academics, and others', plurinationalism was 'in essence a Kichwa-Serrano Indigenous proposal'.³² Still, if one looks at the original CONAIE plan, with its emphasis on intercultural and bilingual education and health services, the expansion of collective rights to autonomy, territory and the administration of justice, an ecological, communitarian and equitable economic model protecting community, collective property and food sovereignty, many of the principles later elaborated in the concept of *buen vivir* – embraced by subaltern groups and diverse social movements across the Andean Community region – are clearly prefigured.

In both countries, interculturality was understood as a political and epistemic process to challenge the dominance of Western culture, bolster traditionally excluded identities and create greater respect between different social groups. The concept rejects multiculturalism and its recognition of discrete cultures, embracing instead the mixings characteristic of the region. It emphasizes interactions between culturally different knowledges, practices and principles of life³³ in processes of dialogue and exchange. In the Colombian case, where the 1991 Constitution established 'the legal potential for a truly plural nation', Indigenous peoples used the concept of interculturalism to pose 'a radical alternative to the multiculturalism that might dampen the political potential inherent in this significant moment'.³⁴ They did so by insisting upon 'new horizontal relationships in the paradigm of a pluralist state' while injecting 'cultural difference into leftist calls for radical political pluralism'.³⁵

The principles of plurinationalism and interculturality have recently yielded greater rights for Indigenous Ecuadorians. In May 2019, seven plaintiffs of the Waorani nationality filed a protective action claim in the Provincial Court of Pastaza against the Ecuadorian Ministry of the Environment and the Ministry of Energy and Non-Renewable Natural Resources alleging that the government had failed to comply with the principles of plurinationalism and interculturality in creating the country's 2011 petroleum cadaster.³⁶ The new cadaster nearly tripled the size of the 2010 cadaster and encompassed 76 percent of the territory controlled by seven Indigenous nationalities.³⁷

30. Walsh (n 29) 104.

31. *ibid* 140.

32. *ibid* 106.

33. *ibid* 45.

34. Rappaport (n 2) at 130–3; Gow (n 2) at 122–3, 142–3.

35. Rappaport (n 2) at 130.

36. Sala Multicompetente de la Corte Provincial de Pastaza, No. de Proceso: 16171-2019-00001 (7 November 2019) 2.

37. *ibid*. It also affected territories traversed by the Tagaeri and Taromenane (Indigenous peoples living in voluntary isolation).

When leases were granted to numerous corporations, nine Amazonian Indigenous organizations, joined by CONAIE, signed the 'Resolution of the Indigenous Nationalities and Peoples of Orellana, Pastaza and Morona Santiago', demanding that the leases be withdrawn, their territorial rights be respected and a permanent moratorium on petroleum extraction in their territories be imposed out of respect for their cosmovisions, collective rights and the rights of nature.³⁸ They called for civil society organizations and NGOs to join their struggle and expressed their solidarity with other international movements against extractivist activities that threatened peoples' territorial rights, food sovereignty and the rights of nature.³⁹

The Ministry agreed to conduct a process of obtaining prior consent (*consulta previa*) from the Indigenous communities affected by the leases and consulted 10 469 people.⁴⁰ The NGO *Fundación Pachamama* then provided evidence that 141 497 people should have participated, and thus that only 7 percent of the affected population had been consulted.⁴¹ The government nevertheless presumed the requisite consent and opened bidding for petroleum leases in May 2013. Five years later, a new round of bidding was announced for blocks of land not previously allocated, including one on Waorani territory. At an assembly held in May 2018, the 'Mandate of the Waorani People of Pastaza for the Defense of Our Territory and Our Forms of Life' was issued, declaring their sacred territory to be free from petroleum exploitation activities.

In August 2018, Waorani leaders asked the Ecuadorian Ombudsman to investigate the deficiencies in the *consulta previa* process; the report of the proceedings found evidence of numerous governmental rights violations, including of Indigenous peoples' rights to self-determination and of their right to free, prior and informed consent with respect to development in territories to which they had rights.⁴² This evidence supported the May 2019 protective claim that the Waorani filed in the Provincial Court, whose November 2019 ruling declared that the affected Waorani communities' right to self-determination and consent had been violated in the constitutional context of plurinationalism and interculturality.⁴³ The former was held to refer to the co-existence of various nations and peoples, while the latter pertained to the proper relations of respect between them; the government's *consulta previa* was held to be insufficiently intercultural because the Hydrocarbons Secretariat did not respect the internal decision-making structures of the Waorani communities, excluded traditional authorities and did not follow culturally appropriate timeframes.⁴⁴

38. Resolución de las Nacionalidades y Pueblos Indígenas de Orellana, Pastaza y Morona Santiago frente a la política estatal petrolera y la pretensión del Gobierno Nacional de implementar la décima primera ronda petrolera en nuestros territorios ancestrales (7 February 2012). This Resolution was signed by CONAIE, the Confederation of Indigenous Amazonian Nationalities of Ecuador (CONFENIAE), the Association of Waorani Women of Ecuador (AMWAE), the Interprovincial Federation of Shuar Centres (FICSH), and the Presidents of the Achuar Nationality of Ecuador, the Kichwa People of Sarayaku, the Shiwiar Nationality, the Shuar Nation, the Sapara Nation and the Ancestral People of the Huito.

39. *ibid* art 10.

40. Sala Multicompetente de la Corte Provincial de Pastaza, No. de Proceso: 16171-2019-00001 (7 November 2019) 3.

41. *ibid*.

42. *ibid* 4.

43. *ibid* 39.

44. *ibid* 4.

As the Waorani case demonstrates,⁴⁵ Indigenous activism to get the principles of plurinationalism and interculturality constitutionally recognized and ongoing rights struggles to protect territorial life projects have ultimately yielded judicial precedent, giving nations, nationalities, peoples and communities enhanced jurisdiction over extractivist development.⁴⁶ Ultimately, the political use of plurinationalism in Ecuador and Colombia has made ‘the recognition and incorporation of cultural/epistemological/ontological diversity ... a *central tool for the transformation of the present*, instead of being only an action to protect or conserve a *heritage from the past*. There [is]...no *buen vivir* without plurinationality’.⁴⁷

3 ALTERNATIVES TO DEVELOPMENT: *BUEN VIVIR*

Perhaps no concept in Latin America has attracted as much academic attention as that accorded to the utopian political principles of *buen vivir* and/or *sumak kawsay*. Despite the ways in which different Latin American governments have taken up (or taken over) the terms in recent years, a 2019 encyclopedia entry written by influential Ecuadorian political advocates insists that *buen vivir* continues to have a vital, critical and oppositional meaning:

... which share[s] a radical questioning of development ... [while] offering at the same time alternatives beyond it. ... It is not akin to the Western concept of well-being or the good life, [because it offers] an ontological opening to other forms of understanding the relation between humans and nonhumans which do not imply the modern separation between society and nature. ... *Buen vivir* displaces the centrality of humans as the sole subject endowed with political representation (by recognizing the intrinsic value of non-humans and the rights of nature [and] the acceptance of nonhuman subjects) ... [and] the key role of women in the defense of communities and nature rooted in a specific territory.⁴⁸

Although *buen vivir* (good living) is a Spanish translation of the Quechua and Aymara notions of *sumak kawsay* and *suma qamaña*, respectively – which express cosmologies of Andean Indigenous peoples (particularly from Bolivia, Ecuador and Peru) – similar notions exist among Indigenous peoples elsewhere in Latin America: *ñande reko* (Guarani), the Amazonian Achuar *shür waras* and the Mapuche *küme mongen*.

45. At the time of writing, the Waorani case was still being litigated. In May 2020, the Constitutional Court of Ecuador agreed to hear the case on the grounds that the subject matter it presented was novel, given that the Court had not yet opined about the limits and standards for the free, prior and informed consent process, and that doing so would be critical to fulfil the promises of a plurinational state. Corte Constitucional del Ecuador, Caso No. 1296-19-JP (18 May 2020) 2.

46. The principles of plurinationalism and interculturalism have also been influential in the interpretation of natures’ rights to include respect for Indigenous territorial life projects and environmental understandings. Maria Akchurin, ‘Constructing the Rights of Nature: Constitutional Reform, Mobilization, and Environmental Protection in Ecuador’ (2015) 40 *Law and Social Inquiry* 937, 939.

47. Miriam Lang, ‘Plurinationality as Strategy: Transforming Local State Institutions Toward Buen Vivir’ in Elise Klein and Carlos E Morreo (eds), *Postdevelopment in Practice: Alternatives, Economies, Ontologies* (Routledge 2019) 186 (italics in original).

48. Monica Chuji, Grimaldo Rengifo, and Eduardo Gudynas, ‘Buen Vivir’ in Ashish Kothari and others (eds), *Pluriverse: A Post-Development Dictionary* (Tulika & Authors Upfront 2019) 111–12.

In Colombia, Inga, Misak, Yukpa and Cofan peoples have their own concepts of good living, which is evident in their *planes de vida*.⁴⁹ All of these concepts share ideas of living in plenitude, in a state of harmony and balance between human socialities and the life forces of natural beings.⁵⁰ The political use of *buen vivir* in the wider region can be traced back to the early years of this century⁵¹ but it has become the site of hegemonic struggle only in the last decade as it has been incorporated into state constitutions, legislation and policy. Many scholars insist on the importance of distinguishing between statist and ecologist usages of the term, and its resonance in subaltern territorial struggles to frame new political strategies.⁵² *Buen vivir* departs 'from the Western epistemology of linear progress because most indigenous world-views do not conceive a beginning or end in time, so there can be no "development" insofar as there is no preliminary situation of underdevelopment'.⁵³ Unlike contemporary variants such as sustainable development or participatory development, the search is not for alternative forms of development, but rather for alternatives *to* development and its ever-expanding use of 'resources', which has been so profoundly disruptive to the Global South and dangerous to planetary futures.⁵⁴

Historically, resource extractivism was the basis for most state development policies in Ecuador and Colombia, as in many other countries throughout the Latin American region, which helps to explain the dynamic tensions around the concept's formulation and its implementation. Once *buen vivir* was incorporated into state constitutions, legislation and environmental and developmental policy, its meaning and definition became both increasingly dominant and increasingly contested. It is now a matter of contention for public intellectuals, debated in political theory, political economy and policy studies, while also deployed by social movements and Indigenous organizations.

49. Diana Esperanza Oliveros Fortiche, 'Plan de Vida Yukpa: Relaciones entre el Territorio y el Buen Vivir' (2017) 46 *Nomades* (Col) 81–94; Leidy Marcela Bravo Osorio, 'Saber Vivir Allí como Principio de Vida Inga' (2021) 53 *Folios* 199–214; Martín Vásquez Ramírez, *reConstruyendo Caminos: Planes Integrales de Vida v Postdesarrollo* (Masters Thesis, Universidad de los Andes, 2013). Although these scholars find principles of *buen vivir* to be expressed in Colombian Indigenous life plans, others suggest that as one of the functions assigned to Indigenous authorities by the federal government, the design of such territorial plans (Indigenous *planes de vida*) still tend to be constrained by bureaucratic requirements which disallow full expressions of Indigenous difference. See Micarelli (n 23).

50. Roger Merino, 'An Alternative to "Alternative Development"?': *Buen Vivir* and Human Development in Andean Countries' (2016) 44 *Oxford Development Studies* 271, 276.

51. Adrian E Beling and others, '*Buen Vivir* (Good Living): A "Glocal" Genealogy of a Latin-American Utopia for the World' (2021) 48(3) *Latin American Perspectives* 17.

52. Merino (n 50) 271.

53. Ibid 280 (citing Alberto Acosta, 'Sólo Imaginando Otros Mundos, Se Cambiará Éste. Reflexiones sobre el Buen Vivir' in H Ivonne Farah and Luciano Vasapollo (eds), *Vivir Bien: ¿Paradigma No Capitalista?* (Cides, Umsa 2011); Gustavo Esteva, 'Más Allá del Desarrollo: la Buena Vida' (2009) 445 *Revista América Latina en Movimiento* 1; Eduardo Gudynas, 'Buen Vivir: Today's Tomorrow' (2011) 54 *Development* 441; Unai Villalba, 'Buen Vivir vs Development: A Paradigm Shift in the Andes?' (2013) 34 *Third World Quarterly* 1427.

54. Ashish Kothari, 'Radical Well-Being Alternatives to Development' in Philippe Cullet and Sujith Koonan (eds), *Research Handbook on Law, Environment and the Global South* (Edward Elgar 2019) 65. See also Alberto Acosta, *El Buen Vivir: Sumak Kawsay, Una Oportunidad para Imaginar Otros Mundos* (Icaria 2013); Alberto Acosta, Esperanza Martínez and Martínez Yáñez Martínez, *El Buen Vivir: Una Vía para el Desarrollo* (Abya Yala 2009).

After originally intending to abandon extractivist policies under their new constitutions, many Latin American governments came to view natural resources as the best means for financing social projects for national well-being along conventional lines of modern development. The statist extractive position (known as ‘republican biosocialism’, ‘twenty-first century socialism’, or ‘*buen vivir* socialism’)⁵⁵ uses *buen vivir* rhetorically to administer populations and label extractivist projects as friendly to national social objectives. This position tends to be critical of ‘indigenist’ *buen vivir pachamamistas* as animist, essentializing and idealist. Widely appropriated by governments (eg, Ecuador nominates its development plan the ‘National Plan for the *Buen Vivir*’), the discourse has been taken up in electoral democracy to proclaim all forms of public infrastructure ‘works for *buen vivir*’.⁵⁶

As *buen vivir* was institutionalized in Andean Community countries, most notably in the Constitutions of Bolivia and Ecuador, the concept was also incorporated into a larger politically oriented ecological platform inspired by Indigenous thought and the search for ways to recover and revalue nature-society relations.⁵⁷ Beyond these different conceptualizations of *buen vivir*, however, ‘the concept is being reappropriated by indigenous movements to articulate a politics of self-determination aimed at state transformation’.⁵⁸ *Buen vivir* continues to be a banner flown in the political work of Latin American Indigenous and Afro-descendant peoples when forging life projects that put their territorial knowledge, wisdom and visioning center-stage in managing resources.⁵⁹

In the 2008 Ecuadorian Constitution, *buen vivir* operates as ‘a framework for a set of rights, as well as the mechanism of implementation of those rights’ according to political scientist Roger Merino.⁶⁰ Simultaneously, however, the Constitution maintained an anthropocentric and state-centered perspective based upon natural resources, which (until quite recently) allowed the state to exploit resources in Indigenous territories on behalf of national interests, without recognizing the need for the free, prior and informed consent of Indigenous peoples. In practice, the consultations that took place in advance of development projects tended to legitimate pre-determined initiatives, rather than to create opportunities for Indigenous peoples to express their life projects. In 2018, Merino concluded that the legal and political institutionalization of *buen vivir* had not challenged the political economy because the new institutions continued to operate within a larger logic of extractivism.⁶¹

Ecological concerns have been a core theme in Ecuadorian politics since the rise to power of organized Indigenous peoples in the mid-1980s. CONAIE and its electoral movement, Pachakutik, became the dominant oppositional force in the 1990s,

55. For a description of republican biosocialism in the Ecuadorian context, see René Ramírez, ‘Socialismo del Sumak Kawsay o Biosocialismo Republicano’ in Secretaría Nacional de Planificación y Desarrollo (SENPLADES) (ed), *Los Nuevos Retos de América Latina. Socialismo y Sumak Kawsay* (SENPLADES 2010); for twenty-first-century socialism, see Heinz Dieterich, *Der Sozialismus des 21. Jahrhunderts: Wirtschaft, Gesellschaft und Demokratie nach dem globalen Kapitalismus (Politik & Denken)* (Kai Homilius Verglas Gruppe 1996); for *buen vivir* socialism, see Boaventura de Sousa Santos, ‘Hablamos del Socialismo del Buen Vivir’ (2010) 9 *Camino Socialista* 4.

56. Lang (n 47) 187, n 3.

57. Eduardo Gudynas, ‘Buen Vivir: Today’s Tomorrow’ (2011) 54 *Development* 441, 444.

58. Merino (n 50) 272.

59. Kothari (n 54) 66.

60. Merino (n 50) 274.

61. *ibid* 276.

making demands for social justice that were articulated as rights claims to ecological territorializations, which were more legible to their transnational interlocutors than the assertion of specific Indigenous cosmologies.⁶² The demands of Indigenous movements historically focused on ethno-cultural rights, but increasingly came to emphasize a critical post-anthropocentric vision.⁶³ Pachakutik has advocated for local-level alternatives to extractivist industry such as eco-tourism and biodynamic farming, viewing these as opportunities for more permanent and better remunerated work. Allied ecological organizations agree that safeguarding the environment means respecting the rights of Indigenous peoples as guardians of the forest and of biodiversity.⁶⁴

We put emphasis upon the Indigenous and ecologist articulations of *buen vivir* because these most clearly inform grounded rights-based struggles. Literary theorist Jorge Marcone aptly evokes *buen vivir* as the central principle of a Latin American popular environmentalism that provides regional answers to the question ‘How are human identities and responsibilities to be articulated when we understand ourselves to be members of multispecies communities that emerge through the entanglements of agential beings?’⁶⁵ Environmental sociologist Miriam Lang describes *buen vivir* initiatives as local community territorializing projects that continue to thrive in Ecuador despite and perhaps because of the government’s extractivist agenda.⁶⁶ Increasingly the principle finds material form in territorial enterprise, exemplified ethics and practical norms of governance. Lang’s ethnographic study of community endeavors under the *Coordinadora de Gobiernos Locales Alternativos*, for example, found people engaged in redefining relations with nature and deepening democracy in projects of agroecology promising greater autonomy from world markets.⁶⁷ In the Andean highlands, communities strive to fulfil *buen vivir* principles in the way they develop localized hydro-electric infrastructure, conserve their forest heritage and create networked water reserves.⁶⁸

Although the Constitution conflates *buen vivir* and *sumak kawsay* to signify the good way of living in which communities, peoples and nationalities exercise their rights and fulfil their responsibilities, such relationships and responsibilities are articulated differentially by different actors.⁶⁹ For example, Magdalena Fueres is a leader of Kichwa-Otavalo Indigenous women who live in the shadow of Mama Cotacachi, the Andean Mother Mountain. A seed saver engaged in Indigenous

62. Rickard Lalanda and Maija Merimaa, ‘The Discursive Paradox of Environmental Conflict: Between Ecologism and Economism in Ecuador’ (2018) 45 *Forum for Development Studies* 485, 493.

63. *ibid* 505.

64. *ibid*.

65. Jorge Marcone, ‘The Stone Guests: *Buen Vivir* and Popular Environmentalisms in the Andes and Amazonia’ in Ursula K Heise, Jon Christensen and Michelle Niemann (eds), *The Routledge Companion to Environmental Humanities* (Routledge 2017) 227 (quoting Deborah B Rose and others, ‘Thinking Through the Environment, Unsettling the Humanities’ (2012) 1 *Environmental Humanities* 1).

66. Lang (n 47) 176.

67. Miriam Lang and Mabrouka M’Barak, ‘Nabón County: Building *Buen Vivir* from the Bottom Up’ in Miriam Lang, Claus-Dieter König, and Ada-Charlotte Regelman (eds), *Alternatives in a World of Crisis* (Universidad Andina Simón Bolívar 2018).

68. Natasha Chassagne, *Buen Vivir as an Alternative to Sustainable Development: Lessons from Ecuador* (Routledge 2020) 176–7.

69. Lalanda and Merimaa (n 62) 496.

agroculinary tourism,⁷⁰ she insists that ‘there is a specific distinction between *buen vivir* and *sumak kawsay*’, with the former being an economic concept and the latter denoting an ethical ‘conception rooted in Kichwa values and beliefs’.⁷¹ Thus, *sumak kawsay* refers specifically to communitarian values and practices of sharing and coexisting well between human and non-human beings. Unlike the *buen vivir* socialism that state policies have endorsed, *sumak kawsay* involves people living in extended family or community settings, ‘in relation with nature, nutrition, animals and all living things’.⁷²

In comparison to Ecuador, ethnographically based scholarly literature on the use and interpretation of *buen vivir* in Colombia is relatively sparse. Years of violence, conflict and displacement may have prevented the extensive deployment of *buen vivir* as a political and discursive platform for Indigenous, Afro-descendant and *campesino* communities to articulate claims to good living, but communities in Colombia have years of experience in conveying principles of good living in *planes de vida*. Scholarship from the post-conflict period, however, suggests that Colombia was never wholly isolated from the hegemonic struggles of other Indigenous peoples, ethnic communities and *campesino* politics in Latin America. Anthropologist Giovanna Micarelli’s fieldwork amongst nine ethnic groups known as People of the Centre in the Resguardo Indígena Tikuna-Uitoto, occupying 7540 hectares on the periphery of the town of Leticia, explores their longstanding efforts to vindicate Indigenous epistemological alternatives to development.⁷³ Such articulations of the good life are emplaced in territory, which is conceived of as a network of socio-environmental relations that must be cared for under the guidance of ritual experts, through the negotiation and appeasement of the land’s spirit masters. For these peoples, territory is both a socio-cultural construction (a web of physical and spiritual relationships indispensable to life), and a space of sovereignty defined as a place of responsibilities held by people who consider themselves to be part of their territories, rights to which derive from and are continually emerge from their practices of territorial care.⁷⁴

Alternatives to development concepts such as *buen vivir* were quickly incorporated into Colombian peace plans and post-conflict development agendas. Peace talks between the Colombian government and the FARC (The Revolutionary Armed Forces of Colombia) in Havana in 2016 resulted in the drafting of a peace agreement that defined the main goal of the Comprehensive Rural Reform (*Reforma Rural Integral*) to be the pursuit of *buen vivir*.⁷⁵ The agreed objectives were to seek a high quality of life for *campesinos*, *campesinas* (peasant women) and communities, including Afro-descendant and Indigenous women, to fully exercise their rights, and to achieve a quality of rural life which respects the territorial approach and appreciates the ethnic and cultural diversity of communities. The 2017 law designed to facilitate the

70. Magdalena Fueres, Rodrigo Flores and Rosita Ramos, ‘Saving Our Seeds: An Indigenous Perspective from Cotacachi, Ecuador’ in Virginia Nazarea, Robert E Rhoades and Jenna E Andrews-Swann (eds), *Seeds of Resistance, Seeds of Hope: Place and Agency in the Conservation of Biodiversity* (University of Arizona Press 2013).

71. Lalanda and Merimaa (n 62) 496.

72. *ibid.*

73. Micarelli (n 23).

74. *ibid.*

75. Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera, 1. Hacia un Nuevo Campo Colombiano: Reforma Rural Integral (24 November 2016), available at <<https://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=69286>>. Noted in Marccone (n 65).

implementation of the Comprehensive Rural Reform contemplated in the peace agreement also recognized *buen vivir* as a fundamental goal.⁷⁶

In an extensive 2017 ethnographic study of five Indigenous community organizations in the Colombian social economy, business student Alfonso Morales found local versions of the *buen vivir* concept expressed in alternative development projects involving Indigenous and Afro-descendant collectives in mountain, pastoral, jungle and coastal regions around the country.⁷⁷ Although the social and solidarity economy networks in which they positioned their life projects were based on transversal principles of solidarity and reciprocity, communities routinely invested such projects with Indigenous norms and cultural conventions. Such embodied values and practices included *minga* (collective physical, intellectual and political work), *ayni* (embedded obligations of reciprocity), and rituals expressing kinship with non-human persons and obligations to spirits.⁷⁸

Morales found that some Colombian Indigenous and Afro-descendant communities long displaced by guerrillas and traumatized by armed conflict and random violence were returning to ancestral lands from which they had been separated. Participants in these community projects saw themselves as regenerating resilient ecosystems as well as providing employment. The plant nurseries, ecotourism networks, weaving co-operatives, artisans' associations and traditional agricultural enterprises in which these communities invested were understood as efforts to achieve a coherent autonomy in recovered ancestral territories, celebrate their culture and strengthen collective planning. One informant described the community life plan as a tool that must be materialized through an enterprise that would make the land productive for the whole community, while keeping Indigenous knowledge alive in the territory.⁷⁹

Buen vivir was also taken up in ecologically oriented sustainable rural community experiments by Colombian groups who were members of the Council of Sustainable Settlements of the Americas.⁸⁰ Residents repeatedly used the notion of *buen vivir* when discussing community, territory and sustainability issues, and consciously constructed territorial relations through intercultural knowledge exchange when experimenting with alternative lifestyles. Although these communities were neither Indigenous nor ethnically defined, they were deeply engaged in processes of self-reflection on what *buen vivir* really was or could be, suggesting the normative pull of the concept across different Colombian contexts. In most cases, however, *buen vivir* has expressed distinctive understandings of territory in environmentalisms from below. Gustavo Wilches-Chaux describes *buen vivir* in Colombia as:

... those space-times [which] are ... places of encounter between distinct generations, in which ancestral knowledge is transmitted and collective memory is maintained alive, the central nerve of that which now we call the resilience of a territory. There, not only knowledge is taught, that is 'techniques,' but, above all, cosmologies, myths, values ... abilities to interact not only between humans, but with all of the other beings that share their territories

76. Decreto Ley 902 de 2017 (29 May 2017), available at <<https://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=69310&dt=S>>.

77. Alfonso Morales, 'Indigenous-Hybrid Organisations in Colombia: A Multi-Level Analysis within the Buen Vivir Model' (PhD thesis, Open University 2019).

78. *ibid.*

79. *ibid.* 148.

80. Martha Chaves and others, 'Radical Ruralities in Practice: Negotiating *Buen Vivir* in a Colombian Network of Sustainability' (2018) 59 *Journal of Rural Studies* 153.

... in these spaces ... the ground is fertile, allowing ... dialogues of knowledges to germinate. [Our translation from the original Spanish.]⁸¹

4 PRACTICES OF RETERRITORIALIZATION

Increasing governmental attention to climate change and biodiversity loss, alongside growing recognition of community cultural rights, has been reterritorializing rural regions of Latin America for several decades.⁸² Alternatives to development grounded in ecological knowledges such as those now widely referred to as Indigenous life projects are also creating new forms of rural territorialization. Geographers see Latin American social movements as challenging modern European territorializing logics and expressing counter-hegemonic territorialities.⁸³ Territory needs to be understood as continually remade through struggles and social practices.⁸⁴ Explicit attempts to decolonize territory make visible and give political agency to 'different ways of knowing and being and incorporating multiple forms of territory within modern state institutional frameworks'.⁸⁵ Territorial imaginaries are key to collective identities: 'for indigenous communities, territory is often understood as the materialization of their unique relationship to a social and natural space interwoven with symbolic content, sustaining ontologies that recognize the interrelationship between humans and other living beings'.⁸⁶

In Cajamarca, Colombia, ethnographic research suggested that *buen vivir* was a flexible narrative evoked by diverse groups, citizens and social movements to make themselves visible when denouncing and protesting extractive industry.⁸⁷ The term was used in 2014, for example, to mobilize *campesino* opposition to projects that threatened to disrupt ties of solidarity and reciprocity that created communal relationships to territory and to propound non-anthropocentric visions of post-development futures.⁸⁸ Specifically, local communities in the Tolima Department opposed the proposed La Colosa open pit gold mine by organizing socio-environmental activism campaigns that rejected scientific and rationalist accounts of territory and instead affirmed its connotations as a

81. Gustavo Wilches-Chaux, 'Prologue' in Carlos Enrique Corredor Jiménez and others (eds), *Formas Dignas de Co-Existencia: Experiencias Agroecológicas para la Transformación Social en Colombia* (Editorial Universidad del Rosario 2020).

82. Rosemary J Coombe, 'The Knowledge Economy and its Cultures: Neoliberalism and Latin American Reterritorializations' (2016) 6 HAU: Journal of Ethnographic Theory 247. See also Carlos Walter Porto-Gonçalves and Enrique Leff, 'Political Ecology in Latin America: The Social Re-Appropriation of Nature, the Reinvention of Territories and the Construction of an Environmental Rationality' (2015) 35 *Desenvolvimento e Meio Ambiente* 65.

83. Anna Laing, 'Reproducing Territory: Between Resource Nationalism and Indigenous Self-Determination in Bolivia' (2020) 108 *Geoforum* 28, 29.

84. Rogerio Haesbert, 'A Global Sense of Place and Multi-territoriality' in David Featherstone and Joe Painter (eds), *Spatial Politics: Essays for Doreen Massey* (Wiley-Blackwell 2013).

85. Sam Halvorsen, 'Decolonising Territory: Dialogues with Latin American Knowledges and Grassroots Strategies' (2019) 43 *Progress in Human Geography* 790, 801.

86. Laing (n 83) 24.

87. Nathaly Jiménez, Richard Doughman and Luis Montoya, 'The Cajamarcas: Buen Vivir, an Interweaving of Alternatives to Extractivism and to Eco-Territorial Conflicts in Colombia and Perú' (2017) 5 *Crítica y Resistencias* 76.

88. *ibid.*

sacred ‘source of life’.⁸⁹ In the context of the impending environmental damage that the La Colosa mine would cause, Cielo Baez, president of the Association of Agro-ecological Producers of the Anaimé River Basin, suggested that the everyday *campesino* ‘practice of food production in consonance with nature is itself a form of resistance’.⁹⁰ The proposed mine represented an existential threat that led *campesinos* to newly identify as defenders of territory rather than as environmentalists, and to re-evaluate the ecological impacts of their own agricultural practices, develop new production techniques and conserve surrounding forests.⁹¹

If struggles for autonomy and self-determination in modern nation-states nearly always ‘yield overlapping territorialities entangled with modern/colonial and neoliberal ones, despite drawing upon alternative knowledges’,⁹² in Colombia such entanglements have also required ‘negotiation with territories held by drug traffickers, paramilitaries, guerilla organizations and NGOs’.⁹³ Indigenous communities may understand and produce distinct ecologies in their territories through the unique relationships that they struggle to articulate in such circumstances. While war reparations are often associated with human rights activism, the Colombian peace-building process revealed that in rural regions, forms of social, ecological and economic justice were central to *campesino* visions of collective reparations. More particularly, they understood the violence of the extensive armed conflict to have harmed the interconnected lives of humans and nonhumans, destroying ‘multi-generational and mutually constitutive relationships between *campesinos* and the *campo*’.⁹⁴ As anthropologist Angela Lederach argues, the concept of territorial peace required attention ‘to the ways in which *campesinos* build peace within an ecology of mutual relations of care’.⁹⁵

In the social movement Peaceful Process of Reconciliation and Integration of the Alta Montana (the Peaceful Process), Lederach found that peace was expressed as a struggle for territorial rights in the wake of extreme violence against the earth, the water and the trees. More than seven thousand hectares of avocado trees in the region had died, and a fragile ecosystem was direly threatened. In spontaneous mobilizations, rural communities stressed the ‘interconnected lives of *campesinos*, avocado forests, traditional crops, mountain landscapes, and monkeys’,⁹⁶ from which they had been displaced and from which they continued to be violently alienated by extractivist development. At the height of the armed conflict, when *campesinos* had to abandon their care for them, a fungus killed over 90 percent of the avocado trees that provided food security, a primary source of income, shade for other crops, fodder for birds and animals and protection for their water sources.⁹⁷

This profound loss mobilized these *campesino* communities to assert a new, shared territorial identity based upon intimate interspecies relationships of reciprocity – demanding (and ultimately receiving) collective reparations from the state.⁹⁸ This

89. *ibid* 87.

90. *ibid*.

91. *ibid*.

92. Halvorsen (n 85) 796.

93. *ibid*.

94. Angela J Lederach, ‘“The *Campesino* Was Born for the *Campo*”: A Multispecies Approach to Territorial Peace in Colombia’ (2017) 119 *American Anthropologist* 589, 593–4.

95. *ibid* 590.

96. *ibid*.

97. *ibid* 593.

98. *ibid*.

was a struggle for agricultural, ecological and economic rights, articulated in biocultural terms. The incursion of monocropping plantation projects threatened to further erode what was left of this ecosystem and the biodiverse polycultures around which *campesino* autonomy was built, including the waters on which they depend and the species with whom they cohabit. Territorial livelihoods and identity were simultaneously at stake. The Peaceful Process decided to run collectively as a political party in elections, choosing the *mico titi*, the threatened native cotton-top tamarin monkey as the face of their campaign.

The *mico* made ‘powerfully present the absence of ecological life-worlds destroyed’,⁹⁹ rendering visible processes of environmental violence; as an endangered but not extinct species, the *mico*’s was a life that mattered in the multispecies vital inter-relationships defended in this *campesino* political project. This ecological imagination was materialized in movement, as people struggled to re-root themselves in places and identities from which they had been estranged. Without electricity or cell phone service, organizing required constant movement across the vast mountain landscape for meetings to occur between multiple communities.¹⁰⁰ During these meetings, ritual narratives of place and ancestry were performed to re-embed a heritage of multispecies ethics of care. This lively ecosystem, materialized in people’s care for it and its care for them, is returning; the life that the *campo* gives to the *campesino* and the *campesino* to the *campo* has been fundamental to territorial peace and illustrates the powers of environmentalisms from below.

5 ECOCENTRIC ONTOLOGIES: NATURES’ RIGHTS

The environmentalisms and rights from below expressed in contestations over the territorial meanings of *buen vivir* in the plurinational contexts of Ecuador and Colombia both reflect national legal innovations and continue to push them in new directions. Social movements led by Indigenous, Afro-descendant, *campesino* and other local communities lobbied and organized to have nature represented as a subject with rights in national legal regimes and judicial decisions.¹⁰¹ Natures’ rights, however, particularly in Ecuador, have been criticized as endorsing a singular, universalized Nature that merely reifies Western understandings of the world beyond the human.¹⁰² If indeed this was lawmakers’ original intent, there is now, instead, considerable evidence of many distinct naturecultures asserted when natures’ rights are ecocentrically invoked to affirm territorially grounded life projects. Subaltern struggles have used rights-based legal claims to protest and combat the harms caused by extractivist development and industrial capitalist agriculture to the multispecies communities in which they live.

The ecocentric rights to which nature is entitled under Ecuadorian and Colombian law need to be distinguished from the right of human beings to enjoy a healthy

99. *ibid* 597.

100. *ibid* 598.

101. David J Jefferson, *Towards an Ecological Intellectual Property: Reconfiguring Relationships Between People and Plants in Ecuador* (Routledge 2020). See also Erin O’Donnell and others, ‘Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature’ (2020) 9 *Transnational Environmental Law* 403.

102. Mihnea Tănăsescu, ‘Rights of Nature, Legal Personality, and Indigenous Philosophies’ (2020) 9 *Transnational Environmental Law* 429, 433–4.

environment. In both countries, culturized Indigenous territorial rights have been affirmed using the human right to a healthy environment. The rights of nature might be seen to provide a less anthropocentric avenue for redress.¹⁰³ Regionally, however, the Inter-American Court of Human Rights has deemed the two rights to be integrally interrelated:

...the right to a healthy environment as a standalone right, in difference ... [from] other human rights, protects all of the components of the environment like forests, rivers, oceans and others, as a legal end in itself, even in the absence of certainty or evidence of risk to individual persons. In this sense, the Court notes a tendency to recognize legal personality, and, ultimately, the rights of nature not just in judicial decisions but also in constitutional laws.¹⁰⁴

In Ecuador, the constitutional recognition of the rights of nature (*Pachamama*) entails *Pachamama's* right to have her existence respected holistically and her vital cycles, structure, functions and evolutionary processes maintained and regenerated.¹⁰⁵ The Constitution grants *Pachamama* the right to restoration,¹⁰⁶ and the state is obligated to apply precautionary and restrictive measures to curb activities that could lead to the destruction of ecosystems or permanent alterations of natural cycles.¹⁰⁷

New environmental rights in Ecuador and Colombia have served as a means for settling disputes between local communities and government bodies over the development of natural resources, with the former seeking compensation for environmental degradation and dispossession of livelihood resources while demanding more ecocentric approaches to natural resource management. In some instances, these legal disputes have yielded settlements that have created more collaborative approaches to natural resource management, positioning local peoples as stewards or guardians of territorial resources.¹⁰⁸ We might consider these to be environmental and/or Indigenous rights assertions, but to the extent that they involve the assertion of local cosmologies or cultural understandings of ecosystems (depending upon the particular interlocutors) they also seek to affirm what we will later explain to be internationally affirmed biocultural rights.

In the plurinational and intercultural state of Ecuador, rights of nature can be and are evoked by different constituencies in ongoing struggles to articulate and stabilize evolving political ontologies. If, in some instances, Indigenous, Afro-descendant and *campesino* organizations have used these rights to bring legal claims against

103. For a discussion of how the potential of rights of nature laws to realize radical relational ontologies could be achieved, see Iván Darío Vargas Roncancio, 'Conjuring Sentient Beings and Relations in the Law: Rights of Nature and a Comparative Praxis of Legal Cosmologies in Latin America' in Kirsten Anker and others (eds), *From Environmental to Ecological Law* (Routledge 2021) 119–34.

104. Inter-American Court of Human Rights, Opinión Consultiva OC-23/17 solicitada por la República de Colombia sobre Medio Ambiente y Derechos Humanos (15 November 2017), available at <http://www.corteidh.or.cr/docs/opiniones/seriea_23_esp.pdf>.

105. Constitution of the Republic of Ecuador 2008, art 71.

106. *ibid* art 72.

107. *ibid* art 73.

108. Although the use of the terms guardians and stewards in the granting of biocultural rights might suggest that these rights are anthropocentric ones, we do not believe that enrolling humans in this way puts humans in a dominant position. To the extent that such articulations of rights enjoin and enable the further imbrication of local ontologies of mutual care and responsibility between species, they further advance posthuman legalities.

governmental and corporate actors for violations of territorially-based life projects,¹⁰⁹ these rights have just as often been invoked by the Ecuadorian state to further contain and regulate the customary environmental activities on which Indigenous and other local communities have historically relied.¹¹⁰ Not surprisingly, the state has greater power and resources in formal legal arenas, but the articulation of *Pachamama*'s rights is perhaps more critically vital in the political discourses of civil society and the practices of social movements. The galvanizing concepts of the pluriverse and *buen vivir* are developed around living, nurturing socionatures fiercely protected by communities as collective stewards.

Following the adoption of the 2008 Constitution, nature itself became rearticulated by the government, which hoped to limit the extent to which *Pachamama*'s rights could be used to curtail economic activities.¹¹¹ Promoting continued natural resource extraction as central to Ecuador's future, the government challenged the idea that extractive industry undermined the rights of nature, effectively making 'mining mean nature'¹¹² in advocating large-scale mining in the Quimsacocha *páramo* wetlands. Local communities responded by articulating the nature of their territorial identities in protests, peaceful resistance and road blockades.¹¹³ Quimsacocha residents interwove their culturally inflected practices of territorial care with their assertions of *Pachamama*'s rights to engage and enlist academics and environmentalists in support of their cause.¹¹⁴

Ecuadorian Indigenous and *campesino* communities have also made claims under Article 88 of the Constitution, which allows a protective action (*acción de protección*) to be filed where a violation of a constitutional right is alleged. In an early rights of nature case, 15 Tsáchila Indigenous nation plaintiffs filed a suit against the company PRONACA, which operated a large-scale pork processing plant housing 7200 pigs on land adjacent to the Tsáchila Peripa commune, causing serious harm to residents' quality of life, health, environment and livelihoods, and contaminating the community's water, air, and soil.¹¹⁵ From 1993 to 2008, PRONACA had built 40 factories throughout the canton, processing millions of pigs and chickens annually.¹¹⁶ During this period, residents of several communities unsuccessfully appealed to various

109. David J Jefferson, 'Rights of Nature as a Tool for Socio-Ecological Transformation: How Ecuadorian Social Movements Use Litigation to Articulate Biocultural Claims' (nd) (in preparation). See also Craig M Kauffman and Pamela L Martin, 'Can Rights of Nature Make Development More Sustainable? Why Some Ecuadorian Lawsuits Succeed and Others Fail' (2017) 92 World Development 130.

110. Carolina Valladares and Rutgerd Boelens, 'Mining for Mother Earth. Governmentalities, Sacred Waters and Nature's Rights in Ecuador' (2019) 100 Geoforum 68; Carolina Valladares and Rutgerd Boelens, 'Extractivism and the Rights of Nature: Governmentality, "Convenient Communities" and Epistemic Pacts in Ecuador' (2017) 26 Environmental Politics 1015; Louis J Kotzé and Paola Villavicencio Calzadilla, 'Somewhere Between Rhetoric and Reality: Environmental Constitutionalism and the Rights of Nature in Ecuador' (2017) 6 Transnational Environmental Law 401.

111. Valladares and Boelens (n 110) *ibid*.

112. *ibid* 68.

113. *ibid* 75.

114. *ibid* 76.

115. Resolución de la Corte Constitucional 567, Registro Oficial Suplemento 23 (8 December 2009), 1.

116. Kauffman and Martin (n 109) 138.

governmental authorities,¹¹⁷ but after the new Constitution took effect, the Tsáchila took legal action.

In their protective action, the plaintiffs relied upon the constitutional right to live in a healthy environment. In ruling in the plaintiff's favor, however, Judge Pinoargote determined it appropriate to consider the rights of nature that the new Constitution provided, given the damages that PRONACA's factories had caused to water, animal life and ecosystems.¹¹⁸ In so doing, she affirmed that a biocentric, rather than an anthropocentric, judicial philosophy should be followed in considering the constitutional rights of *Pachamama*, and that such rights 'should be applied in the sense that is most favorable to the protection of nature'.¹¹⁹ This judgment set an important precedent, making it clear that Ecuadorian judges should weigh *Pachamama*'s rights in cases alleging ecosystemic harms, even when plaintiffs did not explicitly invoke natures' rights.¹²⁰ The case served to alert Indigenous and other local communities to the significance of such rights in serving naturecultures' interests.

In Colombia, natures' rights have no explicit constitutional recognition, but the Constitutional Court has given substance to such rights by adopting an ecocentric approach to environmental disputes. Ecocentrism suggests that 'the earth does not belong to human beings, it is rather us, the ones who belong to the many species that inhabit it'; nature is recognized as a subject of protection to limit and govern anthropocentric activities.¹²¹ Multiple different Colombian judicial decisions recognize certain natural entities as subjects of rights, an area of rapidly developing judicial activism as communities seek to recover or maintain the resilience of their traditional territories and obtain recognition of their rights to manage them.¹²² Constitutional recognition of the Atrato River was pivotal in this regard.

117. Resolución de la Corte Constitucional 567, Registro Oficial Suplemento 23 (8 December 2009), 1.

118. *ibid* 6.

119. *ibid* 7.

120. Kauffman and Martin (n 109) 138.

121. Ivan Vargas-Chaves and others, 'Recognizing the Rights of Nature in Colombia: The Atrato River Case' (2020) 17 *Jurídicas* 13, 15.

122. Elizabeth Macpherson, Julia Torres Ventura and Felipe Clavijo Ospina, 'Constitutional Law, Ecosystems, and Indigenous Peoples in Colombia: Biocultural Rights and Legal Subjects' (2020) 9 *Transnational Environmental Law* 521, 524. Cases that have recognized natural entities as subjects of rights in Colombia include: *Centro de Estudios para la Justicia Social 'Tierra Digna' y otros v Presidente de la República y otros* (2016) Corte Constitucional [Constitutional Court], Sala Sexta de Revision [Sixth chamber] (Colombia) No. T-622 of 2016 (10 November 2016), 4–7 ('Atrato River case'); *Andrea Lozano Barragán, Victoria Alexandra Arenas Sánchez, Jose Daniel y Felix Jeffry Rodríguez Peña y otros v Presidente de la República y otros* (2018) Corte Suprema de Justicia [Supreme Court], Sala de Casación Civil [Appeals Chamber] STC4360-2018 A (Colombia) ('Amazon case'); *Juan Luis Castro Córdoba y Diego Hernán David Ochoa v Ministerio de Ambiente y Desarrollo Sostenible y otros* (2019) Tribunal Superior, Sala Cuarta Civil Medellín [Medellín State Superior Tribunal, Civil Court number Fourth] N. 2019-076 (Colombia) ('Cauca River case'); *Personería Municipal de Ibagué Ministerio de Medio Ambiente y otros* (2019) Tribunal Administrativo de Tolima [Administrative Tribunal of Tolima] (Colombia) ('Tolima Rivers case'); *Luz Marina Díaz y otros v Empresa de Servicios Públicos del Municipio de La Plata-Huila* (2019) Corte Constitucional [Constitutional Court] No. 2019-114 (Colombia) ('La Plata Huila River case'); *Juan Carlos Alvarado Rodríguez y otros v Ministerio de Medio Ambiente y otros* (2018) Corte Constitucional [Constitutional Court] Tribunal Administrativo de Boyacá [Administrative Tribunal of Boyacá] No 15238 3333 002 2018 00016 01 (Colombia) ('Páramo de

In late 2016, the Constitutional Court declared the Atrato River, threatened by unlawful mining, deforestation and contamination, to be an *entidad sujeto de derechos* (legal subject) with reference to the biocultural rights of the Indigenous and Afro-descendant communities who call the river region home.¹²³ The Court's decision reflects the communities' perception of the river as a spiritual being or ancestor that provides for life and culture and requires care and guardianship, and not merely as a resource to be exploited. As part of its orders for protection of the river's rights, the Constitutional Court devised an innovative and complex collaborative governance scheme involving a number of government entities, non-governmental organizations and local and Indigenous guardians. The ruling emphasized the need for participation by Indigenous and Afro-descendant communities in decision-making about their traditional river territory, and the key role to be played by Indigenous relationships with and knowledge of nature to further its protection.¹²⁴

Other Colombian courts and regional tribunals have since recognized rivers and other ecosystems (the Colombian Amazon, Río Cauca, Páramo de Pisba, Río de la Plata, Río Coello, Río Combeima, Río Cocora, Río Otún and Río Magdalena) as legal subjects based on constitutional principles of rights to a healthy environment.¹²⁵ Many of these legal developments (cases, administrative decrees and legislative reforms) refer to local cosmologies and recognize the close relationships between nature and Indigenous, Afro-descendant or *campesino* communities and have attempted to involve Indigenous communities when putting them into effect. Some scholars, however, argue that subsequent courts have failed to fully appreciate the potential territorial implications of the Atrato validation of biocultural rights, which is fundamental to understanding the significance of the case.¹²⁶

Biocultural rights are premised upon a biocultural paradigm for sustainability, which emphasizes 'how significant ensembles of biological diversity are managed, conserved, and created by different cultural groups'.¹²⁷ The concept of biocultural diversity emerged in the 1990s 'to denote the inextricable link between areas of high biological and cultural diversity', with particular attention to the importance of native people as stewards of this diversity, while recognizing and valuing Indigenous peoples' and traditional communities' culturally specific knowledges and practices.¹²⁸

Pisba case'); 'La sentencia que otorgó derechos al río Otún, en Risaralda' [The sentence that granted rights to Otún River in Risalda] (2019); *Andrés Felipe Rojas Rodríguez y Daniel Leandro Sanz Perdomo v Ministerio de Ambiente y Desarrollo Sostenible y otros* (2019) Juzgado Primero Penal del Circuito de Neiva Huila [First Criminal Tribunal of the Circuit of Neiva Huila] 41001-3109-001-2019-00066-00 (Colombia) ('Magdalena River case').

123. *Centro de Estudios para la Justicia Social 'Tierra Digna' y otros v Presidente de la República y otros* (2016) Corte Constitucional [Constitutional Court], Sala Sexta de Revisión [Sixth chamber] (Colombia) No. T-622 of 2016 (10 November 2016), 4–7 ('Atrato River case').

124. Macpherson and others (n 122) 522.

125. These cases are referenced in n 122, above.

126. Macpherson and others (n 122) 539.

127. Juliana Merçon and others, 'From Local Landscapes to International Policy: Contributions of the Biocultural Paradigm to Global Sustainability' (2019) 2 *Global Sustainability* 1.

128. See generally Kabir Sanjay Bavikatte, and Tom Bennett, 'Community Stewardship: The Foundation of Biocultural Rights' (2015) 6 *Journal of Human Rights and Environment* 7; Giulia Sajeve, 'Rights with Limits: Biocultural Rights: Between Self-Determination and Conservation of the Environment' (2015) 6 *Journal of Human Rights and Environment* 30.

These principles have been globally affirmed by many UN bodies since 1992.¹²⁹ In Latin America, such international principles appear to be particularly influential as courts seek to crystalize the Universal Declaration on the Rights of Nature.¹³⁰

The biocultural perspective draws upon the concept of the co-evolution of human and natural life; it values biocultural diversity as a crucial means for maintaining the resilience of social-ecological systems and the complex inter-relationships between human and ecological well-being¹³¹ in distinct ontologies:

Ontologies are continuously in interaction with knowledges and practices, and through this interaction, distinct realities are enacted in which ... materiality and immateriality are interconnected, indistinguishable, and produce one another. The ontological dimension of the biocultural paradigm refers to the recognition of the diverse ways of conceiving and experiencing nature and their cultural embeddedness. Acknowledging the diversity of ontological systems co-existing on the planet is a necessary condition for a full understanding of human-nature relationships. Many of these relationships ... are particularly important given their ... crucial contribution to local and global well-being and sustainability.¹³²

Proponents of the biocultural paradigm thus stress that it does not presume that different groups of people have different perceptions of a single natural world (which would be a multicultural etic approach), but rather asserts the radical plurality of worlds, and thus, of natures.¹³³ As our discussion of *buen vivir* has illustrated, local articulations of the biocultural paradigm have been instrumental in rights struggles. The paradigm is deployed in opposition to extractivist and industrial encroachments that threaten to despoil or dispossess peasants, farmers and forest-dwelling and coastal riverine peoples of natural systems fundamental to their livelihoods. These are decolonizing territorial struggles to seek protections for ways of life and living

129. First affirmed in the international Convention on Biodiversity (CBD; United Nations, 1992), they were further highlighted in the 2010 Declaration on Bio-Cultural Diversity (United Nations, 2010), adopted by a joint UNESCO-CBD program in 2010 to foster dialogue for sustainable development based on recognition of and respect for different knowledge systems (United Nations, 2010) as well as by the 2012 Intergovernmental Platform on Biodiversity and Ecosystem Services (IPBES). Biocultural perspectives were integrated into the Strategic Plan for Biodiversity 2011–2020 that included 20 Aichi Biodiversity Targets, within which biocultural heritage as seen as a key promoter of resilience.

130. Alberto Acosta and Esperanza Martinez, *Derechos de la Naturaleza: el Futuro es Ahora* (Abya Yala 2009).

131. Merçon and others (n 127) 2. See also Sophie Caillon and others, 'Moving Beyond the Human-Nature Dichotomy Through Biocultural Approaches: Including Ecological Well-Being in Resilience Indicators' (2019) 22 *Ecology and Society* 27.

132. Caillon and others *ibid* 7.

133. Anthropologists working with Indigenous peoples, including those whose territories are situated within the boundaries of the Ecuadorian and Colombian states, provide evidence for the existence of a radical plurality of worlds in diverse local cosmologies. Their work is lauded in critical natural resource scholarship. Although the work of these scholars may challenge the epistemological bases of anthropology, they have largely focused on explaining Indigenous worldviews to non-Indigenous readers rather than exploring the political import of biocultural concepts like *buen vivir* in transforming the politics in which Indigenous peoples' territories are situated and influencing global environmental policy. See Eduardo Viveiros de Castro, 'Cosmological Deixis and Amerindian Perspectivism' (1998) 4 *Journal of the Royal Anthropological Institute* 469; Eduardo Viveiros de Castro, 'Exchanging Perspectives: The Transformation of Objects into Subjects in Amerindian Ontologies' (2004) 10 *Common Knowledge* 463; Philippe Descola, *Beyond Nature and Culture* (University of Chicago Press 2013).

(life projects) that are expressed and realized through intimacies between human, animal, vegetal and ancestral life-worlds.

To return to the Colombian case, the Atrato is Colombia's third longest river and a major economic, strategic and livelihood resource for the thousands of people who use and live alongside it. It runs through the Department of Choco, which is the poorest region in the country, wherein 97 percent of the population is Indigenous or Afro-descendent. The river's heavily forested, biodiverse aquatic basin covers 60 percent of the Department. It is threatened by illegal mining, which contaminates and poisons waters while undermining local livelihoods and the spiritual connections that Indigenous and Afro-descendent communities maintain with the Atrato.

Members of these communities worked with Tierra Digna, a Colombian based human rights NGO to allege in an *acción de tutela* (a legal action that can be sought by any person who requires the protection of fundamental rights) that fundamental constitutional 'rights to life, health, food security, healthy environment, culture, and territory had been violated by the government's failure to control and eradicate illegal mining in Choco'.¹³⁴ They were successful; prescriptive orders to implement the decision included a ban on the use of toxic substances such as mercury and the appointment of a guardian for the river, comprised of a representative from the government and from each of the claimant communities. In its reasoning,

... the Court asserts the protection of forests, rivers, food sources, and biodiversity as elements of a healthy environment have a direct relation and interdependence with the guarantee of the rights to life, health, culture and territory as biocultural rights ... [and] an intrinsic relation among Nature, culture, and the diversity of human species as part of Nature and the manifestation of multiple forms of life, by which the conservation of biodiversity requires the preservation of all ways of life ... that interact with it.¹³⁵

This new constitutional theory of biocultural rights understood such rights to be 'collective rights of communities that carry out traditional roles of regulating nature as conceived by indigenous ontologies', thereby connecting the cultural rights of ethnic communities, their knowledges and natural understandings and their rights in natural resources.¹³⁶ These principles enabled the Court to recognize the jurisdiction of Indigenous peoples as regulators, stewards and decision-makers with regard to river management, creating potential new opportunities to participate in governance as river guardians.¹³⁷

Advocates for greater recognition of biocultural rights also recognize that the full participation of communities in the Global South will necessarily involve the creation of new ethico-political tools of engagement.¹³⁸ As communities struggle to assert their territorial projects of caretaking and stewardship as the basis of biocultural rights, these will need to be materialized in technologies which make community governmental activities more legible, not only to states but to transnational environmental NGOs and other organized Indigenous peoples and communities struggling against

134. Macpherson and others (n 122) 531.

135. Vargas-Chaves and others (n 121) 24.

136. Macpherson and others (n 122) 532. In this article, the co-authors provide an extensive analysis of the parameters of these 'third generation' rights in a close reading of the judgment.

137. For the concept of river guardians, see Elizabeth Macpherson, *Indigenous Water Rights in Law and Regulation: Lessons from Comparative Experience* (Cambridge University Press 2019) 159–60.

138. Caillon and others (n 131).

the forces of extractivist development. In the process, principles of self-determination and indicia of political subjectivity will become more deeply established.¹³⁹

Resilience indicators, for example, are being developed as material means for scientifically measuring and monitoring ecosystem states that capture 'the capacity of systems to absorb shocks and disturbances' but to do so by recognizing the diversity of knowledges in alternative ontologies and promoting their interchange.¹⁴⁰ Such indicators of resilience, if co-produced by conservation scientists and community knowledge keepers, would also facilitate a *diálogo de saberes* [dialogue of knowledges] and thus advance principles of interculturality. In Bolivia, for example, processes for selecting indicators of biocultural landscape well-being have emphasized multi-species relations of caretaking and exchange.¹⁴¹

6 CONCLUSION: DECOLONIZING RIGHTS FOR POSTHUMAN FUTURES

Despite the fact that the Anthropocene points to deep entanglements between humans and nature, conventional environmental law is missing 'deep ontological commitments to [the] cooperation between human beings and the natural world' necessary to support flourishing socio-ecological landscapes.¹⁴² The Ecuadorian and Colombian rights struggles and life projects we have explored, and the posthuman legalities they have forged, make the limits of modern environmental law apparent while suggesting the ecocentric prospects of an emerging third generation of collective human rights. Rights activism in Ecuador and Colombia has elevated new political ontologies and legitimated grounded responsibilities in materializing multispecies territorial jurisdictions. Indigenous, Afro-descendant and *campesino* communities have done so by appropriating and rearticulating rights to actualize their collective life projects. Although human rights may have modern origins, the articulation and implementation of third generation collective rights rendered through a biocultural paradigm to affirm natures' rights have enabled the legal recognition of norms and responsibilities that exceed modern ontologies.

Such rights formations are nascent expressions of posthuman legalities. From a philosophical perspective the post in the posthuman predominantly serves to deny primacy to the human and articulates conditions for an epistemology concerned with non-human experience, recognizing that 'difference is already constitutive of the human species' and 'starts with the recognition of human alterities'.¹⁴³ To this extent, the posthuman challenges dominant Western modern understandings of the human as delimiting the terrain of the term. The posthuman involves a critique of anthropocentrism and destabilizes dualisms such as human/animal; it may deconstruct clear divisions

139. Rosemary J Coombe and Eugenia Kisin, 'Archives and Cultural Legibility: Objects and Subjects of Neoliberal Heritage Technologies' in Tord Larson and others (eds), *Objectification and Standardisation: On the Limits and Effects of Ritually Fixing and Measuring Life* (Carolina Academic Press 2021) 257–92.

140. Caillon and others (n 131) 28.

141. Cynthia Escobar, 'Community Well-Being in Bolivia: An Indigenous Perspective' in Suneetha M Subramanian, Bas Verschuuren, and Wim Hiemstra (eds), *Community Well-Being in Biocultural Landscapes: Are We Living Well?* (Practical Action Publishing 2014).

142. Afshin Akhtar-Khavari, 'Restoration and Cooperation for Flourishing Socio-Ecological Landscapes' (2020) 11 *Transnational Legal Theory* 62, 62.

143. Francesca Ferrado, *Philosophical Posthumanism* (Bloomsbury Academic 2019) 2.

between life and death, boundaries between animate and inanimate beings, and expose 'the dynamic and pluralistic natureculture of matter/s'.¹⁴⁴ All of these dimensions and features of the posthuman are at work in the struggles explored in this article.

Moreover, as an 'after', the post in the posthuman does not mark a sharp break or create a blank page, but 'implies a continuity, a discontinuity and a transcendence (in its literal meaning of exceeding)' of the term to which it is 'post'.¹⁴⁵ The posthuman legalities we have explored decenter the human, see the human as merely part of a larger cosmos, and position humans territorially, in connection with other beings that share it, in relations of mutual care. The post in the posthuman might also be seen to consensually tether humans to territories for which they are responsible, and, in ecological terms, ground and relay affective multispecies energies which enhance the resilience of ecosystems.

If laws are fundamentally anthropogenic constructs, legalities grounded in cosmologies (politically projected as cosmovisions) necessarily create new forms of jurisdiction. The concept of the biocultural at work in global environmental policy circles is heavily influenced by the work of Eduardo Viveiros de Castro,¹⁴⁶ who challenged the idea of nature as providing the universal background for particular cultures, arguing instead for the recognition of multi-naturalism to refer to the plurality of relational worlds of humans and agentive non-humans.¹⁴⁷ From within the Amerindian perspectivism he explores, animals, humans, other beings and spirits all share human traits but see the world from different vantage points. The posthuman legalities being articulated in Andean Community countries might also be seen as upholding the cosmologies of those who honor the humanity of other beings in reciprocal relationships that recognize the points of view, agency, needs and desires of nonhuman others. In so doing, such legalities reach beyond and exceed Western humanism, but they would not be posthuman from the perspectives of those who see other beings – animals, plants, earth-beings and spirits – as sharing a condition of humanity. From their perspective, these legal developments might be understood simply to extend rights that better acknowledge more fully human jurisdictions.

In 2007, Boaventura de Sousa Santos presciently foresaw human rights as an 'emancipatory script' for 'intercultural conversation'.¹⁴⁸ It is not surprising that such conversations are emerging in countries that have enabled peoples to find means to realize and to fulfill the plurinational and intercultural natures of the polity. Considering early Colombian Indigenous struggles against extractivism in the 1990s (which attracted influential Ecuadorian allies), Cesar Rodríguez-Garavito speculated that such unique couplings of collective action and litigation for collective rights held out 'the promise of a grassroots, multicultural redefinition of human rights'.¹⁴⁹ Such a promise, we suggest, is slowly being realized.

144. *ibid* 5.

145. *ibid* 66.

146. Viveiros de Castro's work is regularly cited by environmental policy scholars in journals such as *Environment and Society*, *Journal of Environmental Management*, *Conservation Letters*, *Conservation Biology*, *Biodiversity and Conservation*, and others.

147. Viveiros de Castro (1998) (n 133).

148. Boaventura de Sousa Santos, 'Human Rights as an Emancipatory Script? Cultural and Political Conditions' in Boaventura de Sousa Santos (ed), *Another Knowledge is Possible: Beyond Northern Epistemologies* (Verso 2007).

149. César A Rodríguez-Garavito and Luis Carlos Arenas, 'Indigenous Rights, Transnational Activism, and Legal Mobilization: The Struggle of the U'wa People in Colombia' in Boaventura de Sousa Santos and Cesar A Rodríguez-Garavito (eds), *Law and Globalization from Below: Towards a Cosmopolitan Legality* (Cambridge University Press 2005) 264.

The ecocentric rights practices and struggles we have explored are examples of what Priscilla Claeys names as a larger ‘project of decolonizing human rights’ involving social movements that have positioned themselves as lawmakers through a commitment to articulating human rights from below.¹⁵⁰ These are third generation social, economic and cultural collective rights such as the rights to biodiversity, food sovereignty and agricultural autonomy which found international recognition in the 2018 adoption of the UN Declaration on the Rights of Peasants and Others Working in Rural Areas (UNDROP). The transnational social movements that accomplished this have deep roots in the Andean Community region. The Advisory Committee to the UN Human Rights Council and a core group of states (including Ecuador) considered peasant claims to be legitimate because they were brought by a well-recognized transnational social movement (La Via Campesina) uniting small-scale farmers and peasant organizations speaking directly on behalf of rural peoples through practices of participatory democracy.¹⁵¹

In the articulation of this new group of human rights, transnational activists encouraged the articulation of pluriversal global norms rather than anticipating the vernacularization of universal ones.¹⁵² In other words, local biocultural understandings of food systems maintained their territorial, spiritual and multispecies integrity in this process.¹⁵³ The means by which peasants’ grassroots rights were recognized through their direct representation by agrarian movements without the intermediary of NGOs is a welcome model for the posthuman ecocentric rights struggles we have explored. No transnational social movement has yet emerged to speak directly on behalf of community advocacy of territorial life projects and natures’ rights in struggles against modern extractivist development. Nonetheless, we maintain hope for the evolution of a convergence of collective rights politics articulating natures’ rights and alternatives to development in which many vital worlds of multispecies care and responsibility are recognized as possible worldings for shared futures.

150. Priscilla Claeys, ‘The Rise of New Rights for Peasants’ (2018) 9 *Transnational Legal Theory* 386, 387.

151. *ibid* 395.

152. Robin Dunford, ‘Peasant Activism and the Rise of Food Sovereignty: Decolonising and Democratising Norm Diffusion?’ (2017) 23 *European Journal of International Relations* 145.

153. Robin Dunford, ‘Converging on Food Sovereignty: Transnational Peasant Activism, Pluriversality and Counter-Hegemony’ (2020) 17 *Globalizations* 782.