



**The Sarayaku people and their struggle with the oil
extractive industry**

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Jacqueline Gaybor Tobar

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Members of the Examining Committee:

Dr. Rosalba Icaza Garza

Dr. Kees Biekart

The Hague, The Netherlands

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Inquiries:

Postal address:

Institute of Social Studies
P.O. Box 29776
2502 LT The Hague
The Netherlands

Location:

Kortenaerkade 12
2518 AX The Hague
The Netherlands

Telephone: +31 70 426 0460

Fax: +31 70 426 0799

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Contents

<i>List of Tables</i>	<i>vi</i>
<i>List of Maps</i>	<i>vi</i>
<i>List of Appendices</i>	<i>vi</i>
<i>List of Acronyms</i>	<i>vii</i>
<i>Abstract</i>	<i>viii</i>
Chapter 1 . Introduction	1
1.1. Indication of the problem	1
1.2. Who are the Kichwa indigenous people of Sarayaku?	1
1.3. Objectives and research questions	3
1.4. Justification	4
1.5. Scope and limitations	5
1.6. Methodology	5
1.7. Structure of the document	7
Chapter 2 . Oil, development and the exploitation of natural resources in indigenous territories in Ecuador	8
2.1. Historical background of the oil industry in the Ecuadorian Amazon	8
2.2. <i>Buen vivir</i> and the oil extractive industry	12
2.3. Land and territory in the Amazon: clarifying differences	13
2.4. The right to free, prior and informed consultation	17
Conclusions	19
Chapter 3 . The Sarayaku struggle	21
3.1. The Facts and issues presented	21
3.2. Listening to the Sarayaku's views: The world and the meanings of life	25
3.2.1. Kawsak Sacha	26
3.2.2. The decision-making system: Tayjasaruta	27
Conclusions	28
Chapter 4 . Theoretical framework	29
4.1. The Modernity/Coloniality approach	29
4.1.1. Coloniality of knowledge	31
4.1.2. Coloniality of Power	33
4.2. Collective agency and the need to consider the epistemological/cosmological aspect within it	34
Conclusions	37

Chapter 5 . Sarayaku’s decolonial practices	38
5.1. The camps of peace and life	38
5.2. Special remarks in the Inter-American Court of Human Rights judgment	41
Conclusions	44
Chapter 6 . Final reflections	46
REFERENCES	50

List of Tables

Table 1 Ecuador's structure of exports (millions of dollars and % of total)	11
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List of Maps

Map 1 Map of the Ecuadorian Amazon with the oil blocks and oil companies' concessions as of 1996	16
Map 2 Map of the Sarayaku territory	21

List of Appendices

Appendix 1 Questions made to the Sarayaku representatives	56
Appendix 2 Questions made to the Sarayaku Lawyer	57
Appendix 3 Questions made to the former Catholic priest	58
Appendix 4 Questions made to Catherine Walsh and Jaime Breihl	59

List of Acronyms

CDES	<i>Centro de derechos económicos y sociales</i> Centre for Economic and Social Rights
CEJIL	<i>Centro por la Justicia y el Derecho Internacional</i> Centre for Justice and International Law
CEPE	<i>Corporación Estatal Petrolera Ecuatoriana</i> Ecuadorian State Petroleum Corporation
CGC	<i>Compañía General de Combustibles</i> General Fuel Company
CIDH	<i>Comisión Interamericana de Derechos Humanos</i> Inter-American Commission of Human Rights
CONFENIAE	<i>Confederación de Nacionalidades Indígenas de la Amazonía Ecuatoriana</i> Confederation of Indigenous Nationalities of the Ecuadorian Amazon
CORTEIDH	<i>Corte Interamericana de Derechos Humanos</i> Inter-American Court of Human Rights
EIA	Environmental Impact Assessment
FLACSO	<i>Facultad Latinoamericana de Ciencias Sociales</i> Latin American Faculty on Social Sciences
IASHR	Inter-American System of Human Rights
IP	Indigenous People
ILO	International Labor Organization
KS	Kawsak Sacha
OAS	Organization of American States
OPEC	Organization of the Petroleum Exporting Countries
OPIP	<i>Organización de pueblos indígenas de Pastaza</i> Organization of Indigenous Peoples of Pastaza
RFPIC	Right to free, prior and informed consultation
UNDP	United Nations Development Programme
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

Abstract

This paper explores a political process of enforceability of rights led by the Kichwa indigenous people of Sarayaku over the Ecuadorian state. Ecuador is a country that self-defines as plurinational and intercultural and one that has claimed to give an important place to nature by incorporating the indigenous notion of *buen vivir* in its Constitution. Nevertheless, the findings of this study show that this legal recognition is not reflected in reality. Ecuador is the scene of a number of conflicts that arise from opposing views: one dominant view is rooted in the pursuit of development through oil extraction, and “the other” view focuses on the defense of indigenous territories and nature.

By exploring the Sarayaku struggle for the defence of their territory, this study analyses the importance of spiritual and cosmological dimensions in indigenous resistance processes. The paper will reaffirm the sacred connection between territory, non-human and human beings in an effort to explain different knowledge systems that underlie the indigenous struggle. The Sarayaku people represents an international emblematic political and legal precedent—one in which, on the basis of recognizing their worldview and knowledge systems, the highest tribunal of the Americas, the Inter-American Court of Human Rights, ruled in their favour.

Relevance to Development Studies

The paper contributes to the literature by covering a gap that underestimates spiritual and indigenous cosmological aspects in the explanation of indigenous social resistance processes.

Keywords

Indigenous people, territory, land, knowledge, worldview, modernity, coloniality, decoloniality, collective agency, oil industry, *buen vivir*.

Chapter 1 .

Introduction

1.1. Indication of the problem

This research explores a political process of enforceability and fulfilment of rights led by the Kichwa indigenous people¹ of Sarayaku. The Sarayaku reached a legal and political victory against the Ecuadorian state on 27th June 2012 at the Inter-American Court of Human Rights, which remains an international emblematic precedent in which they stand by their indigenous worldview and struggle to protect their ancestral territory. After almost a decade of litigation, the international justice system ruled in favour of the Sarayaku, who saw their territory, life and culture threatened by the imposition of state oil projects. In particular, this research will focus on the collective agency of the Sarayaku people and will explore their indigenous worldview's role in the political and legal struggle against the oil developmental policies of the Ecuadorian state.

1.2. Who are the Kichwa indigenous people of Sarayaku?

The indigenous people (IP) of Sarayaku live in the tropical forest of the Ecuadorian Amazon. For the Sarayaku their territory is an indispensable part of the construction and maintenance of their identity as Kichwa people. It is from the territory that Sarayaku's traditions, practices and beliefs are derived. The Sarayaku consider their territory to be sacred and deem all elements that exist within it to belong to a harmonious system. Here the living interact with the

¹ In the interviews conducted for this research, the Sarayaku define themselves as *pueblo*, translated to English as people. Aware that Sarayaku can be named community or nation, the term "people" will be used throughout this paper.

dead, the visible with the invisible and the human with the non-human. In this system, nature's equilibrium is indispensable due to the fact that for the Sarayaku the jungle is alive. Therefore the absence of one of its components disrupts the balance of this living system, not only affecting nature, but also the spirits that inhabit those places (Cisneros 2013, personal interview²; Santi 2013, personal interview³).

The Sarayaku know the damage that oil industries have caused to the Amazonian environment and to neighbouring indigenous peoples. They saw and heard stories about the devastating consequences of oil in the Amazon; they saw refineries that spew fire and pollute the atmosphere, poisoned water sources and infertile lands. Knowing these things, they made it clear that they would not allow it to happen to them (Cisneros 2013, personal interview; Santi 2013, personal interview).

In 1996, the Ecuadorian state signed an oil exploitation contract with the *Compañía General de Combustibles (CGC)* on occasion of the 8th international call⁴ for the exploration and exploitation of hydrocarbons. The oil block given to the company was the 23rd, which comprises 65% of the Sarayaku territory. In the process of awarding the block to the company, the Ecuadorian state did not fulfil the international and national legal obligation to inform and consult with the Sarayaku people about the oil project. Despite this fact, the oil exploration activities started. Since 1996, the Sarayaku expressed their rejection to the entrance of the company, as it represented a threat to the quality and integrity of their way of living and a menace to their sacred natural elements. However, the company, with the support of the state, repeatedly entered the Sarayaku's territory and undertook highly destructive activities affecting the sacred elements of their living jungle, and their way of life and integrity. For example, in one of their sacred places the company drilled and deposited 1.433 kilograms of explosives. This material has not been detonated and remains on site.

The Sarayaku understood that the violent actions by the company and the state were driven by a network of powerful interests unrelated to their livelihood system that could not be addressed solely through the local resistance.

² Personal interview with Holger Cisneros, Quito-Ecuador 25 July 2013.

³ Personal interview with Mario Santi, Quito-Ecuador 25 July 2013.

⁴ "The oil calls are invitations that the Ecuadorian government makes to national and international oil companies to allot oil blocks for the exploration and exploitation of oil" (Lara: 2009, 8).

They required other strategies to enable them to demonstrate the abuses done by the Ecuadorian state and preserve their territory from oil exploitation.

1.3. Objectives and research questions

Objectives:

1. To explore the role that the Sarayaku's knowledge and worldview played in their resistance⁵ to the developmental policies and actions of the Ecuadorian state.
2. Identify if their struggle challenged the colonial structures that characterized the state-indigenous relationships that prevail in Ecuador.

In attempting to address these objectives, the main question of this research is:

Does the Sarayaku's worldview play a role in their struggle to defend their communal territory from the Ecuadorian state?

The associated questions that I tackle, leading up to this central one, are:

- a. How have the Ecuadorian oil-related policies affected the fulfillment of rights of the Sarayaku people?
 - How have oil politics oriented Ecuador's development?
 - How are the state's policies grounded on assumptions of techno-scientific knowledge?
- b. How is the Sarayaku's worldview reflected in their collective agency and at the Inter-American Court of Human Rights (CORTEIDH)?
- c. What have the people of Sarayaku interpreted from the entrance of the oil industry into their territory and what are the arguments used to drive them out?

⁵ Following the line of work of this research, the Sarayaku's opposition is named as resistance/struggle. Using these terms allows me to integrate the theoretical, epistemic and methodological perspectives proposed by Walsh (2010), Escobar (2007) and Blaser (2010) when analysing cosmologies.

1.4. Justification

The exploitation of non-renewable natural resources, the damage that these activities have caused to nature and human beings, and the impunity of the perpetrators of these actions is a common and repetitive situation that has been seen in Ecuador since the country became an oil producer. Despite the inclusion of the indigenous notion of *buen vivir* and the rights to nature in the 2008 Constitution, the Ecuadorian state keeps focusing its political will on the protection of the oil industry, assuming that it would lead to the development of the country. I will use the Sarayaku struggle for analyzing the actions and policies carried out by the Ecuadorian governments in relation to the oil industry. In particular, I am interested in how these policies and legal frameworks have affected the fulfillment of the rights of the peoples living in these territories. This study will also analyze how the ideas of development and modernization shape the actions and policymaking of the state. By that, the mainstream view of the state—the entity that is supposed to protect and defend its people—would be challenged.

Besides what is mentioned above, this case study will reveal that IP are actors that are self-organized, able to resist human rights abuses and attempts at domination by the state. To a certain extent, this view aims to challenge Perreault's assertion of how indigenous people's collective agency functions—by which “community- and regionally-based indigenous organizations in Ecuador have been able to advance their claims to the extent they have in large measure because of the multi-scalar networks of development, environmental, and human rights organizations to which they are connected” (2003, 64).

Moreover, reviewing cases of oil damage in Ecuador, I realized that most of them were studied from a legal perspective or from how the victims mobilize against it. However, none of these studies, when they were focused on indigenous people struggle, were aware of the importance of their worldview in directing their resistance.

Finally, despite the fact that the Sarayaku struggle represents a victory and has been more or less spread as such, it has been forgotten and isolated in the national discussion, in academic fields, in law schools and with judicial officers.

1.5. Scope and limitations

This research is not focused on a juridical analysis of the process or on the judgement, but it is looking into how the process of struggle was outlined by the Sarayaku's worldview.

My arrival to Ecuador coincided with a historically important moment for the Sarayaku people. It was the first anniversary of the Court's judgment and the deadline for the Ecuadorian state to comply with its requirements. Many of the Sarayaku people came to Quito for a special event. This allowed me to do the interviews with key actors, who openly cooperated. Nevertheless, it was not easy to get access them. It was only possible because a former work colleague and friend, who used to work with the Sarayaku, made a personal trust recommendation letter on my behalf.

Although I was looking to access the Sarayaku territory and do participatory observation and focus groups, this was not possible. My arrival coincided with the *purina time*. The *purina* is a tradition that takes place during the summer, around the harvest time, and it has great significance for the Sarayaku. In this period children are initiated into the Ñucanchij Yachana *Our Cultural Knowledge* and are taught about their forest, the origins of the world, their relationships with the supernatural, etc. (Cisneros 2013, personal interview; Chávez: 2005). Consequently, during this period, the Sarayaku are constantly dispersed in the jungle

Worth mentioning that, during this process I have been working across languages. All the interviews were done in Spanish, since all the interviewees speak Spanish. The answers have been translated to English by me. Aware that translation is not neutral and that bringing the answers to a foreign language has the possibility of denying their power and the meanings that are attached to that, I have emphasize in not removing the place and context from where the interviewees are coming from.

1.6. Methodology

Primary data

My methodology involves a case study analysis. A central concern in its analysis is to listen to the voices of IP, therefore I conducted qualitative interviews to present the Sarayaku's testimonies. The paper stems as a critique to western

research and intellectuals who have assumed to know all that it is possible to know from indigenous people as if they are objects of study (Smith: 1999). Inspired by Smith's proposal to decolonize methodologies, an important component of the research relies upon the Sarayaku testimonies. Following Smith, special attention is given to the stories told by the Sarayaku (1999). The aim is not to agree or disagree with their testimonies, nor to embody them, but to present them as a useful contribution to further dialogue of knowledges.

I interviewed two of the Sarayaku leaders who participated in the audience at the Inter-American Court of Human Rights in Costa Rica on July 6 and 7, 2011. I asked them to interpret the events that took place since 1996 by themselves. The main objective of these interviews was to make visible their worldview, the relationship they have with their territory and the strategies implemented for its defense. The Ecuadorian lawyer of Sarayaku people is a key actor that was interviewed as well.

Due to the nature of this research, I decided to triangulate data and information, recognizing that having a holistic view would be an important contribution. Therefore, I conducted qualitative interviews among different stakeholders, including one of the team experts who made the anthropological report for the state, a former Catholic Church priest who worked with IP from the Amazon for decades and two academics. All the interviews were conducted on the basis of a guiding scheme which was used in a flexible way. By this I mean that I directed the interviews, but also gave flexibility to the interviewees so that they could freely express their opinions. The questionnaires were translated to English and are presented in the appendices.

This research is being developed in a politically contentious context, therefore the protection of the identities of the interviewees was a priority. This fact was discussed with all the interviewees prior to conducting the interviews. All of them were asked about their willingness to be or not be recorded and remain or not remain anonymous. One interviewee requested to remain anonymous and not be recorded. For the purpose of protecting Interviewee 1 identity, the questionnaire is not attached.

Secondary data

For establishing the context and background of the oil history in Ecuador, I relied heavily on authors with historical involvement on research about Ecuador's political economy since the 1960s. On the other hand, I also reviewed the scientific literature about the Kichwa culture and the Sarayaku people, as well

as the legal documentation concerning the Sarayaku struggle against the Ecuadorian state. It is important to mention that there are significant scientific and bibliographic materials, such as ethnographies and anthropological reports, about the Kichwa culture and the Sarayaku. I also used articles and newspapers as sources of information.

1.7. Structure of the document

Due to the nature of this research and how it has been analyzed during this process, this paper is not structured in the conventional way. Inspired by the work of Blaser (2010), this research takes its main cues from the view and political analysis presented by the Sarayaku people. It looks at the encounter between modernizing visions of development and the territory-based worldview of the Sarayaku. Following this line, it is through their stories of how they explain their process that I gradually understood what sustains it. For getting a big picture, I looked at the general context they were referring to. Based on that, I brought in the theories that helped me to analyze the scenario. Finally, I mobilize the theory to help me explain Sarayaku's ways of living and organizing as decolonial practices.

The framework for analysis is deductive and is as follows: chapter two will start by examining the societal problem as how it is seen in the historical context of the development of the oil industry. This will situate the reader in a context. Following this, chapter three presents the case study and the encounter between the state's modernizing visions of development and the Sarayaku's worldview. Only after presenting the encounter of differences between the actors, chapter four will bring the theoretical perspectives and concepts that help to analyze them. Once the main elements of the Sarayaku worldview and the theoretical approach are analyzed and presented to the reader, I will present in chapter five examples of practices that could be termed as decolonial by the Sarayaku people. Finally, in chapter six I will present my final reflections.

Chapter 2 . Oil, development and the exploitation of natural resources in indigenous territories in Ecuador

On June 28, 1972, a crowd of people gathered on Quito's main avenue emanating a celebration spirit. Children, teenagers, civil society and the military forces were all well-organized and parading. Reporters from different TV channels and radios were broadcasting the event, transmitting a spirit of joy and hope to the audiences. The attendants were clapping and anxiously waiting for the protagonist of the ceremony. Without any hurry, a military tank showed up, not with a confrontational purpose; rather, this time it was fulfilling a surreal function of an allegorical car. Its passing exacerbated the applause and ovations of the audience who were full of curiosity and approached it to have a closer view and to take a portion of what it contained and smear into their face and body. The protagonist was the first Ecuadorian oil barrel, also renamed as the "black gold". The parade continued up to the Military School, where, in an official ceremony, Ecuador presented itself as an oil producing country moving towards a new stage of development (Memoria Ecuador 2009).

This chapter analyzes how the implementation of a system for the exploitation of natural resources has been possible in Ecuador through the political will of the state. It will be explained that the growth of industry has been encouraged by the state through both, political programs and legal reforms, which came accompanied with the violence and discrimination towards IP and the growing problems in the integrity of the Amazonian environment. This chapter also discusses the ethical splitting that implies prioritizing economic interests over more transcendental demands for humanity.

2.1. Historical background of the oil industry in the Ecuadorian Amazon

The Ecuadorian tropical forest is one of the most biologically diverse natural ecosystems on earth (Bass et al. 2010; Larrea: 2006), as well as a very rich territory in non-renewable natural resources. However, this region is currently the scene of a number of conflicts that arise from opposing interests in which there is a large gap in the exercise of power among different stakeholders. The growing impact of human intervention in natural ecosystems, and in particular

the effect of economic and demographic growth of the country in the twentieth century, have been significant in the impact on the environment (Larrea: 2006).

In 1940, oil exploration in the Amazon began with the Royal Dutch Shell Company. However, it wasn't until 1967 that the first major discovery of crude in the Ecuadorian Amazon basin, led by the Texaco Gulf Consortium, occurred. Since that moment onwards, it is possible to distinguish three stages of the oil industry.

The period between 1972 and 1990 is characterized as the oil boom. Ecuador began its exports of crude oil to the international market and in 1973 became a member of the Organization of the Petroleum Exporting Countries⁶ (OPEC). The oil sector assumed an unusual importance in the economic structure of the country, appearing as the promise for development and as the opportunity for reaching modernity (Bodansky: 2012). Until that moment, unexplored the Amazon region was conceived of as an undeveloped space, rich in unexploited natural resources, from which the state should take advantage of in the name of modernity and development. In the early 70s, Ecuador started large-scale oil exploitation projects and in so doing initiated a rapid process of change in the dynamics of the country and principally the Amazon. "During this decade Ecuador experienced the highest growth in its history, nearly doubling the per capita income" (Larrea: 2006, 75).

Therefore, promoting oil exploitation in Ecuador meant getting on the vehicle capable of moving the country to a new stage and transforming it into a modern and developed nation. Through these lenses, the Military Junta⁷ commanded by General Rodriguez Lara spoke in nationalistic terms of "Ecuador's unlimited future and raised hopes that through oil the country would join the ranks of modern nations" (Gerlach: 2003, 36). During this period, Ecuador enacted the Hydrocarbons Law⁸ and assumed a nationalistic policy which resulted in the creation of the state's oil company, Corporación Estatal Petrolera Ecuatoriana (CEPE), and in the investment of the oil revenues in industrializa-

⁶ OPEC "is a permanent intergovernmental organization, currently consisting of 12 oil producing and exporting countries from America, Asia and Africa". According to OPEC, oil "is the vital key to development [and] oil revenues are used not only to expand their economic and industrial base, but also to provide their people with jobs, education, health care and a decent standard of living" (OPEC 2013).

Nineteen years after becoming a member of OPEC, in 1992, Ecuador voluntarily suspended its membership. However, it resumed it in 2007.

⁷ On February 15, 1972, General Rodriguez Lara headed a *coup d'état* that ended the Velasco Ibarra fifth administration. "Army offices determined that corrupt politicians would not make good guardians of the nation's recently discovered wealth"(Gerlach: 2003, 36).

⁸ Supreme Decree 2967, 711 Official Gazette of November 15, 1978.

tion, infrastructure for and construction of hydroelectric plants, a refinery and roads (Larrea: 2006). Nevertheless, in this phase the external debt grew, since Ecuador, as an oil producer country, was eligible for international credits.

The second oil phase is clearly marked by two events. The first one has to do with the prolonged fall of oil prices due to the declining influence of OPEC in the international oil market, hitting a low of \$9 per barrel in 1999 (Larrea: 2006). The second event has to do with the entrance of the conservative government of Sixto Durán Ballén in 1992 and with this the implementation of intense neoliberal policies, programs and adjustments imparted by the Washington Consensus⁹. Therefore, this phase is characterized by the gradual selling of public enterprises to private international companies, the openness towards international companies for oil exploitation, the legal guarantees for foreign investment and labor flexibility (Acosta: 2002).

Within the reformed laws package was the Hydrocarbons Law. In the new law, the state's share of oil revenues drastically decreased from 90% to 33% (Saavedra: 2012). This period is characterized as the downsizing of the state¹⁰, which in other words means that the state gets rid of its investments and social-services and reduces its regulatory role in the national economy, making way for privatizations (Ibid). "The country experienced the fastest impoverishment in the history of Latin America: between 1995 and 2000, the number of poor increased from 3.9 to 9.1 million, which in terms of percentage is 34% to 71%" (Acosta: 2002, 2). Ecuador, then, entered the greatest economic crisis in its history, dollarizing its economy and inaugurating an unprecedented process of massive international migration. Between 1996 and 2005 no president managed to finish the period for which they were elected, and three of them were overthrown in massive protest.

From the early years of the 21st century, an upward trend in international oil prices began marking the opening of a new oil stage: "unlike other similar episodes in the past few years, this rise in oil prices was mainly due to the rapid growth in the international demand with limited possibilities of increasing the international production in the medium term" (Larrea: 2006, 65).

⁹ The term Washington Consensus consist of a set of ten economic policy prescriptions that Latin American countries should pursue to boost growth. It was promoted by Washington D.C.—based institutions, like the International Monetary Fund and the World Bank (Ocampo: 2005).

¹⁰ The reduction of the state to a minor actor during the neoliberal period, facilitated the entrance of numerous transnational oil companies into the country. Several environmental and social problems began in that period, and most of the problems remain unsolved to date.

Unfortunately, this economic prosperity has not been reflected in a better distribution of wealth or equality in the country (UNDP 2010; Pearce: 2004).

Elected the first time in late 2006, Rafael Correa became Ecuador's president. A new Constitution¹¹ was adopted by referendum on September 28, 2008. During Correa's period, on average, oil has enjoyed a high international value. Nevertheless oil prices also experienced a deep fall: in July 2008 oil reached a price of US\$ 117, which by January 2009 declined to US\$ 27 per barrel ('Banco Central' 2013).

Ecuador's economy is substantially dependent on its oil resources. The chart below illustrates the structure of exports in the Ecuadorian economy, and evidence that oil has been the cornerstone of its economy, and its role remains pivotal up to today.

Table 1
Ecuador's structure of exports (millions of dollars and % of total)

PERIOD	TOTAL EXPORTS	OIL			NO RELATED TO OIL							
		Total	Oil & crude	Derived	Total	Traditionals						No traditionals
						Total	Banana	Coffee & processed	Shrimp	Cacao & processed	Tuna & fish	
2003	6.222.693	41,9%	38,1%	3,8%	58,1%	27,9%	17,7%	1,1%	4,8%	2,7%	1,6%	30,2%
2004	7.752.891	54,6%	50,3%	7,9%	45,4%	21,6%	13,2%	1,1%	4,3%	2,0%	1,1%	23,8%
2005	10.100.031	58,1%	53,4%	8,1%	41,9%	19,1%	10,7%	0,9%	4,5%	1,7%	1,1%	22,8%
2006	12.728.243	59,3%	54,5%	8,1%	40,7%	17,3%	9,5%	0,8%	4,6%	1,3%	1,0%	23,4%
2007	14.321.315	58,2%	51,9%	10,8%	41,8%	17,1%	9,1%	0,9%	4,3%	1,7%	1,2%	24,8%
2008	18.818.327	62,3%	56,2%	9,8%	37,7%	15,8%	8,7%	0,7%	3,8%	1,5%	1,0%	22,0%
2009	13.863.058	50,2%	45,3%	9,8%	49,8%	24,8%	14,4%	1,0%	4,8%	2,9%	1,7%	25,0%
2010	17.489.927	55,3%	51,2%	7,5%	44,7%	21,2%	11,6%	0,9%	4,9%	2,4%	1,4%	23,5%
2011 (p)	21.116.141	56,1%	50,6%	9,7%	43,9%	21,3%	10,6%	1,2%	5,5%	2,7%	1,3%	22,7%

Source: Banco Central del Ecuador, 2011

¹¹ In this new Constitution, the election cycle was amended and reelection of the president was allowed. Correa has been reelected 3 times.

2.2. *Buen vivir* and the oil extractive industry

The 2008 Constitution demanded substantial changes to the policy and legal hydrocarbons framework due to the implementation of the indigenous¹² notion of Sumak Kawsay, or *buen vivir*—which translates into English as “wellbeing”—as a guiding principle. In a general sense *buen vivir*,

[D]enotes, organizes, and constructs a system of knowledge and living based on the communion of humans and nature and on the spatial-temporal-harmonious totality of existence. That is, on the necessary interrelation of beings, knowledges, logics, and rationalities of thought, action, existence, and living (Walsh: 2010a, 18).

The Constitutional Preamble states “we decided to construct a new form of citizen coexistence, in diversity and harmony with nature, to reach the *buen vivir*, the sumak kawsay” (2008). The indigenous notion of *buen vivir* became the essence of the national development agenda while being integrated in the public policy framework, as can be seen in the former National Development Plan (2007-2010) and in the current Development Plan¹³ (2009-2013).

To build the *buen vivir*, the new Constitution demanded the creation of consistent legislation and public policies that were supposed to guarantee the mandate of life in harmony with nature. The state's role in the exploitation of nonrenewable natural resources was redefined as can be seen in the “Strategic sectors, services and public enterprises” chapter, articles 313 to 318. According to Alberto Acosta, former president of the national Assembly, the Constitution laid the foundation for concluding the submission to neoliberal and transnational interests. According to Acosta, the goal of the new constitution was the “strengthening of the state and its enterprises, establishing exceptions in certain cases, where it may be necessary to have additional support from foreign private investment” (2011, 96).

Following this line, a new Hydrocarbons Law was promulgated and with this the rules of the game for oil companies drastically changed, forcing them to participate only as service providers. The contracts of transitory participation for the exploration and exploitation of oil changed to contracts of services, by which the companies were forced to pay a fee to the state for the ex-

¹² Noteworthy to say that not all indigenous peoples in Ecuador identify with this philosophy.

¹³ Renamed as National Plan for the *buen vivir*

tracted oil. By this measure the state was assured to have control of 100% of production. On the other hand, as Acosta explains, if the aim was to follow the Constitutional spirit of the *buen vivir*, as how it was discussed in the national Assembly, reforms in inferior legislation and public policies should have gone beyond (2011). In that sense, the Hydrocarbons Law should have included the creation of monitoring systems for environmental control and the necessary procedures for consultation and dialogue with the affected communities, which were not included (2011).

2.3. Land and territory in the Amazon: clarifying differences

The use of the terms land and territory require a special explanation that will allow the reader to better understand the case study later on. The aim is not to define territory, or land in the sense of a single meaning; but rather indicate the issues at stake in grasping how territory has been understood by the Amazon IP in contrast with the notion of land used by the state.

For some Amazonian indigenous people, the use and occupation of land has been conditioned by cultural factors, inherent to each of the IP that have inhabited the territory. Some indigenous Amazonian societies have a different relationship with their territory, conceived as the space where social, spiritual, cultural and biological dynamics occur¹⁴ (Sousa Santos: 2008; Plant: 2002; Gray: 1997; Walsh 2013, personal interview¹⁵; Santi 2013 personal interview). Therefore, the concept of territory is bound to a set of meanings rooted in a tradition which has shaped the knowledge, practices and daily lives of its inhabitants. As Harvey states, the people and their environments, places and identities, are mutually constituted (2001).

The indigenous conception of territory as a system of cultural reproduction has been banished since the first incursion by the hydrocarbons industry into the Amazon, based on the conception of land as a resource from which it is possible to pursue economic profits. Hence, the indigenous territories were regarded as only land¹⁶.

¹⁴ Nevertheless, this relationship shouldn't be taken as a general assumption.

¹⁵ Personal interview with Catherine Walsh, Quito-Ecuador 20 August 2013

¹⁶ There are relevant references on the modern/colonial notion of land as a resource. See for example Shilliam: 2013; Escobar: 2003.

Since the beginning of hydrocarbons industry, the state encouraged the migration of the population from the coast and the highlands to the Amazon. They were engaged in oil exploration, timber, and agricultural cattle-raising establishments (Uquillas: 1984). These new activities were established without observing that these territories were already occupied and were the means of subsistence of many IP.

Territory was conceived as space, from which it was possible to draw large economic profits through the encouragement of capital investment, and so modernization (Grosfoguel: 2009; Escobar: 2008; 2003). Oil exploration provoked a colonization offensive in the Amazon, the disappearance of indigenous ethnicities¹⁷ and also the slaughter and pushed of IP further into the inner jungle for security. According to Uquillas, the occupation of the Ecuadorian Amazon by “outsiders” was a response to social factors and policies that created the favorable conditions for displacement from other regions of the country (1984).

This fits with how Escobar describes modernity and development, as “spatial-cultural projects that require the continuous conquest of territories and peoples and their ecological and cultural transformation along the lines of a logocentric¹⁸ order” (2003, 157). In other words, for their existence, both modernity and development require geographical areas and individuals who, by a system of hierarchy, will respond to the imposed western¹⁹ logic of the developer and the undeveloped.

Following this line, the Bill of Punta del Este, which established the ‘Alliance for Progress’²⁰, promoted an integral land reform in Latin America. This was founded on Rostow’s theory of modernization, which became very popular around the 1950s. According to Rostow, every country had to reach a certain point in economic, political, and social preconditions after which it would start growing rapidly (1960).

¹⁷ “The Tetete IP were killed by the oil companies after the start of oil exploration in 1964. Their last contact with outsiders was with American evangelical missionaries and their sionasecoya translators in 1973” (Wasserstrom et al. 2011, 422).

¹⁸ Logocentrism is the project of ordering the world according to rational principles. More technically, “logocentrism is the metaphysical view that sees in logical truth the only foundation for a rational theory of the world made up of knowable things and subjects, which can then be ordered and controlled” (Escobar: 2003, 166).

¹⁹ The use of the term is aligned to the meanings given by authors from the Modernity/Coloniality approach, who refer to the west as an epistemic location and this means not a geographical location.

²⁰ Initiated by the U.S. President John F. Kennedy in 1961

In 1964, the state enacted the Agrarian Reform and Colonization Law²¹ as well as the Vacant Lots and Colonization Law²², whose objectives were the rapid and radical change of the regime of land ownership and exploitation. Land reform in Ecuador went through several phases and the last, in 1973²³, was directed to encourage the colonization of the Amazon as a means of relieving pressure on land in the highlands and form population centers for the development of the hydrocarbon industry (Uquillas: 1984). It was also intended to help integrate these remote and desolate areas in the Amazon, whose societies were described as ‘backward’, into the rest of the country (Gondard: 2001).

For these purposes, the state created the Ecuadorian Institute of Colonization and Agrarian Reform²⁴ (IERAC). In some cases, land access was made by negotiation and in others, by force (Nieto: 2004). By this time, the communal territories of the IP were not legally recognized; therefore IP didn’t have a legal title for the land they lived upon. The Amazon, previously inhabited only by the indigenous, was rapidly populated by foreigners named *colonos*.

Years after these policies took force, the former president of the Confederation of Indigenous Nationalities of the Ecuadorian Amazon, (CONFENIAE), Valerio Grefa, said that the Amazon territories didn’t need to be colonized, emphasizing that the land which may have appeared as vacant, belonged to indigenous nationalities which have inhabited them since ancient times (*El Hoy* 1991). The traditional geographical location of the indigenous settlements in territories rich in natural resources is not related to the state’s intervention, rather to the indigenous modalities of possession, use of land and natural resources, which dates back hundreds of years.

In 1992 in the context of the 500 years of indigenous resistance, the Organization of Indigenous Peoples of Pastaza (OPIP) organized a historic indigenous march of 240 km from the Amazon to Quito for the legal recognition of their territory and within it, their autonomy and the right to make decisions about their natural resources (Viteri, 1992). In an interview of Cristina Gualinga, former Sarayaku leader, she expresses, “our watchword was: for the territory, for life, we rise up” (Prieto: 1996)²⁵.

²¹ Enacted November 7, 1964.

²² Enacted September 9, 1964.

²³ The Law was reformed by Decree 1172.

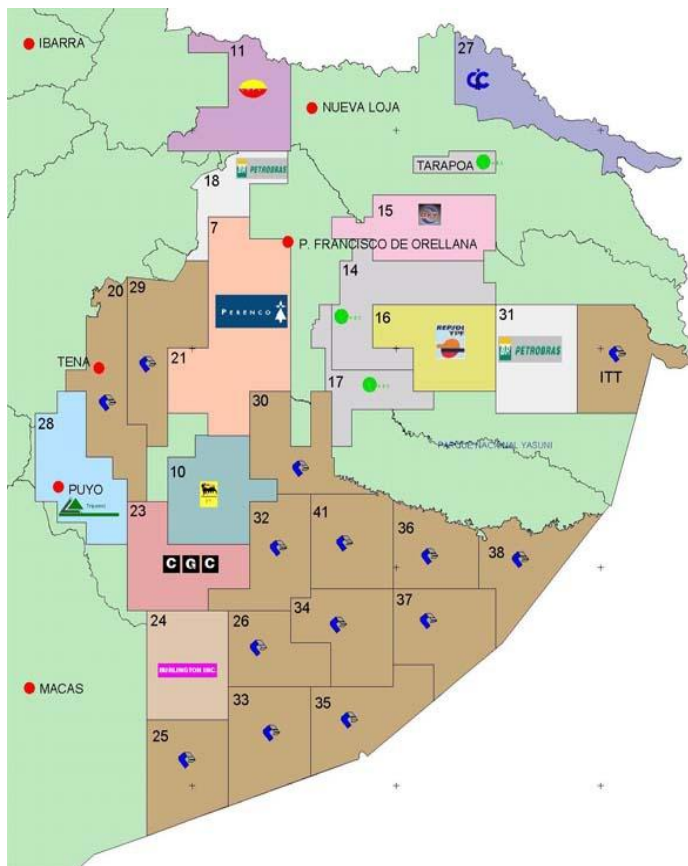
²⁴ Converted by the Agrarian Development Act 1994 in the National Institute of Agrarian Development [INDA].

²⁵ Interview made by Mercedes Prieto to Cristina Gualinga in Quito-Ecuador. November, 1996.

The government awarded the land titles to the IP, ignoring the demands of political and administrative autonomy (Almeida et.al 2005; Walsh: 2002; Walsh 2013, personal interview). Not least in this process "lands were arbitrarily divided and did not coincide with the mutual agreement limits between indigenous people, nor did they reflect the land use patterns" (Chavez: 2005, 30). Therefore, their territories were affected by the implementation of the "oil block" system. Oil blocks are large land areas of around 200.00 hectares awarded to companies or the state for the exploration of oil. Under this system, the state has the authority to manage the natural resources that are located on or below these blocks. Evidently, the new limits didn't represent the real division of territories between the different ethnicities that inhabited these areas. The graph below illustrates the way in which the oil blocks were drawn. It shows the state's imposition of new territorial limits over the previously established indigenous boundaries. Block 23-CGC corresponds to Sarayaku territory.

Map 1

Map of the Ecuadorian Amazon with the oil blocks and oil companies' concessions as of 1996



Source: Dignity international, n.d.

2.4. The right to free, prior and informed consultation

The state's obligation to consult IP prior to taking action likely to affect their traditional territories has been expressed as the right to free, prior and informed consultation (RFPIC). In a general view, the RFPIC entails a process of dialogue and participation conducted in good faith between the state and the IP for making free decisions about issues that concern and affect them (UN: 2010; UN: 2005). The RFPIC in Ecuador is primarily drawn from international regulations²⁶, international jurisprudence of the Inter-American Human Rights system²⁷ and national legislation.

In accordance with the Tribal Peoples Convention 169²⁸ of the International Labour Organization (ILO) and the United Nations Declaration on the Rights of Indigenous Peoples²⁹ (UNDRIP), the Ecuadorian state has the obligation to consult IP concerning any measure that may have a direct impact on them, in particular prior to taking action likely to affect their ancestral territories.

The spirit of consultation constitutes the cornerstone of Convention 169. The Convention guarantees the right of IP to decide their own priorities in relation to the development process when it affects their lives, beliefs, institutions and territories. According to article 6, paragraph one of the Convention, governments shall:

- (a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly (1989).

This means that the consultation process must consider and respect IP's traditional methods of decision-making. To clarify the passage above, the United Nations Department Of Economic and Social Affairs (UNDESA) in the International Workshop On Free, Prior And Informed Consent and Indige-

²⁶ Refer also to the American Convention of Human Rights, the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.

²⁷ See Case of the Mayagna (Sumo) Community of Awas Tingni v. the Republic of Nicaragua, CORTEIDH, 31 August 2001. Also see the case of Saramaka People v. Suriname, CORTEIDH, 28 November 2007.

²⁸ Signed by Ecuador in 1998 and ratified in 1999.

²⁹ Adopted by the United Nations General Assembly during its 61st session in New York City on 13 September 2007

nous Peoples, explained that, the consultation process should be made through:

traditional institutions, such as councils of elders, or it may involve more contemporary structures such as locally elected leaders who are recognized as true representatives by the community or the peoples concerned (UN: 2005, 2).

As mentioned in the Convention's previous article, another important part of the right to consultation is representativity. Therefore, if a consultation process is not developed with the organizations that are truly representative of the indigenous, then the resulting consultations would not comply with the requirements of the Convention. Complementing this, paragraph 2 of the same article establishes the importance of "good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures" (1989).

Moreover, the obligation to consult should be read in the light of article 7.1 of the Convention: "The peoples concerned shall have the right to decide their own priorities for the process of development **as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy**³⁰ [...]" (1989).

Like the Convention 169, the UNDRIP expresses the right to prior consultation in similar terms in its article 19:

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them (2007).

Finally, in the Sarayaku Judgement, the Court establishes that "the obligation to consult, in addition to being a treaty-based provision, is also a general principle of international law" (2012, 45). This is a very important statement because, as such, it involves the state's duty to organize the entire governmental apparatus through which public power is exercised, in order to legally guarantee the free and full exercise of this right.

³⁰ My emphasis.

In the local arena, in June 1998 Ecuador adopted a new Constitution³¹ that recognized the collective rights of the indigenous peoples³². The fifteen collective rights included in the Constitution revealed popular processes of conceptualization, debate and demands carried out by the indigenous peoples (Walsh 2013, personal interview). Among this set of rights, article 84, numeral 5 included the right to be consulted regarding plans or programs for the exploration and exploitation of non-renewable resources on their lands (1998).

In the Constitution of 2008, article 57 recognizes the right to free prior informed consultation on programs for prospecting, producing and marketing nonrenewable resources located on indigenous lands and which could have an environmental or cultural impact on them. However, this does not require the consent of affected people. Complementing this, the Citizen Participation Organic Law includes a chapter on prior and informed consultation which gathers principles from the international regulations and the Constitution. It is important to note that according to article 83 of this Law, in case of having a majority opposing the project in question, the project will not be affected and it will be carried out on the condition of ‘minimizing the impacts’ (2010).

Conclusions

This section has shown how oil discovery, and along with it the launch of public policies and legal frameworks, marked the beginning of a new relationship between the state, the Amazonian people and the environment. This relationship was guided by a vision of control over people, places and resources. A central notion in this scenario is the annulment of the indigenous organizational forms that used to govern these territories under their own understandings and knowledge. An example of that is the oil block system, which reflects a discriminatory practice against IP with regard to their own modalities of possession and relation with their territories.

This discriminatory scenario continues until now, despite there are certain milestones of historical significance regarding the recognition of rights for IP.

³¹ The Sarayaku used this Constitution to carry their case to the Inter-American System.

³² From February to April 1998, the CONAIE (Confederación de Nacionalidades Indígenas del Ecuador) organized national mobilizations of IP, to demand the National Constituent Assembly the approval of collective rights of indigenous nationalities. Noteworthy that collective rights demands raised from indigenous people are not only limited to the Ecuadorian scope; it constitutes a trend in many other Latin American countries. For more information, refer to the work of López Bárcenas in his book *Indigenous People and Autonomy in Mexico*.

In this chapter were discussed the inclusion of the collective rights in the 1998 Constitution, the ratification of International Covenants on the RFPIC and in the insertion of *buen vivir* in the 2008 Constitution. Its 'entrance' in the political and legal frameworks is the result of processes of struggle of IP and social movements for achieving justice and social transformation.

Nevertheless, it is not possible to think that the recognition of rights are sufficient measures for solving the IP's territorial issues. As can be seen nowadays under the regime of *buen vivir*: large scale mining projects, for the first time in the history of Ecuador, are being massively promoted by the government (Bebbington: 2012). Another example can be found in the lack of consent as a mandatory legal requirement in the application of RFPIC. This shows the disadvantaged conditions of IP in regard to decision making processes. To date, in the national legislation there is no regulatory framework that describes the mechanisms and processes of application of the RFPIC.

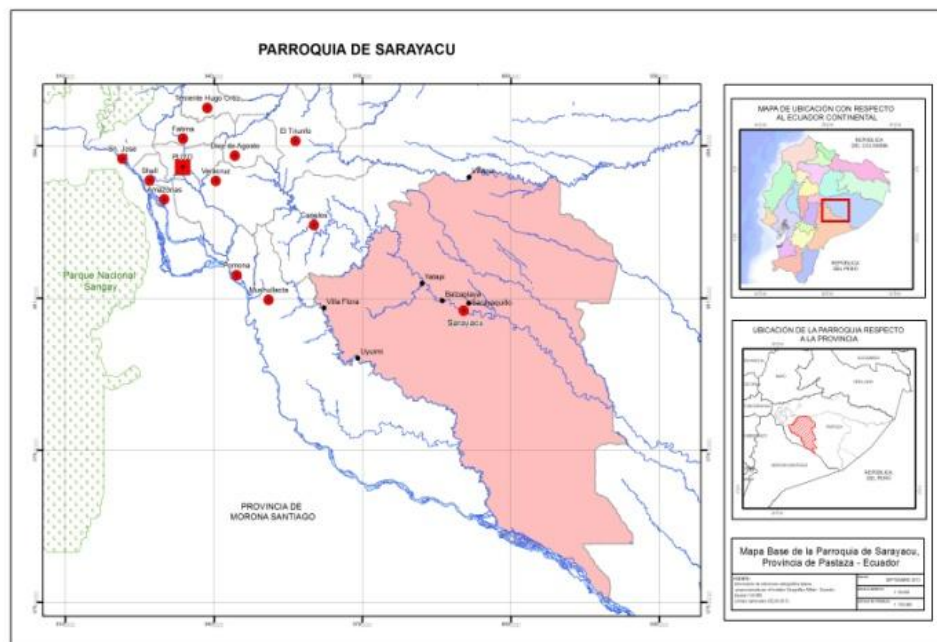
Chapter 3 . The Sarayaku struggle

3.1. The Facts and issues presented

The Sarayaku territory constitutes one of the biggest Kichwa ethnicity settlements in the Amazon. Its population is an association of five communities: Sarayaku Centro, Cali Cali, Sarayakillo, Shiwacocha and Chontayacu, which together form a population of about 1,235 inhabitants (Court Judgment: 2012). “The Sarayaku subsist on collective family-based farming, hunting, fishing and gathering within their territory following their ancestral traditions (Ibid: 2012, 17).

In 1992, in a response to the indigenous movement’s demands and mobilization, the government³³ legally recognized various indigenous territories. The Sarayaku were awarded the legal title to 135,000 hectares of the land upon which they have lived for centuries. The map here shows the location of the Sarayaku territory.

Map 2 Map of the Sarayaku territory



Source: Andrade, 2013

³³ Through the IERAC.

On August 26, 1996, the Ecuadorian government signed with the General Fuel Company (*Compañía General de Combustibles, CGC*) a partnership contract in which 200,000 hectares of Amazonian territory were allocated to the company for the exploration and exploitation of hydrocarbons (Court Judgment: 2012). As mentioned, the concessioned area overlapped 65% of the Sarayaku's territory (Melo: 2004).

The contract stipulated the obligation to obtain the permit from third parties to reach the area in order to carry out activities (Court Judgment: 2012). Since its signature, the Sarayaku rejected the company's entrance up to the point that in 1999 the activities were suspended. This suspension lasted until 2002. During the period of suspension the company tried several strategies to renew its activities, such as offering development projects, money or personal gifts. Tayjasaruta, which is the Sarayaku's main decision-making organ, rejected the company's offers. Meanwhile, other neighbor indigenous communities (Pakayaku, Shaimi, Jatún Molino and Canelos) signed agreements with the CGC (Cisneros 2013, personal interview; Judgment Inter-American Court: 2012).

By the time that the CGC re-started its seismic prospecting activities in July 2002, the State already acquired the international commitment to guarantee the right to consultation established in the Convention No. 169. The 1998 Ecuadorian Constitution, which recognized the collective rights of IP, was also in force. Despite this, the Ecuadorian government gave the company military support for entering to Sarayaku territory. By this, the CGC managed to advance their activity destroying part of their sacred jungle ('Sarayaku' 2013).

Consequently, Sarayaku representatives travelled to Quito, the capital city, seeking the legal help of the lawyers of the Centre for Economic and Social Rights³⁴ (CDES). Cristina Gualinga, former Sarayaku leader, asked them to take over the case (Melo 2013, personal interview)³⁵. Simultaneously, the Sarayaku contacted other Sarayakus who lived around the world looking for international support. One of them, Carlos Viteri, who lived in Washington, took the responsibility and went to several human rights offices—only one of

³⁴ CDES is a NGO that seeks to address, through human rights, the urgent threats posed by extractive development model in Latin America ('CDES' 2013).

³⁵ Personal interview with Mario Melo Quito-Ecuador, 29 July 2013.

them, the Center for Justice and International Law³⁶ (CEJIL), accepted the legal case (Melo 2013, personal interview).

The Sarayaku managed to articulate a network of allies that upheld the legal case in the Inter-American System of Human Rights (IASHR)³⁷. In 2003, the Sarayaku General Assembly, with the support of CDES and CEJIL, filed a complaint before the Inter-American Commission on Human Rights (CIDH). They requested urgent intervention to safeguard their rights that were violated during seismic work of CGC.

After a couple of months, the Commission issued precautionary measures³⁸ in favor of life and integrity of some Sarayaku members that were violently attacked by the military forces. The Ecuadorian government ignored these measures. Hence, by 2005, the Commission expanded the measures, issuing a disposition to remove the dynamite left in the Sarayaku's territory. Since August 2007, the State has removed only 14kg of the explosives (Court Judgment: 2012).

In January 2010, the Commission released a resolution on the case to the Court for a final judgment. The CORTEIDH is an autonomous judicial institution whose purpose is the application and interpretation of the American Convention on Human Rights³⁹. Once the case was in the Court, in July 2011, a public hearing was held in its headquarters (Costa Rica). The Court listened to the testimonies of the victims, witnesses and experts from both sides. After the hearings, and by an invitation of the Ecuadorian state, the Court decided that prior to the declaration of the judgement, it will carry out an *in situ* visit to the Sarayaku territory. April 21, 2012 was the first time in history that the Court took the unusual step of visiting the place where conflicts take place. Representatives of the government, the Sarayaku lawyers and partner NGO's were among the group as well. The Court's objective was to see for themselves the sacred places in which the reported events have occurred and observe the dynamics of the people (Melo 2013, personal interview).

³⁶ CEJIL is a non-governmental, non-profit organization that protects human rights in the Americas through the international human rights law ('CEJIL' 2013).

³⁷ The IAHRS system is part of the Organization of American States, an international organism that represents the countries of the Americas. The IAHRS was born with the adoption of the American Declaration of the Rights and Duties of Man in April 1948. The IASHR is composed by the CIDH and the CORTEIDH ('OAS' 2013).

³⁸ The mechanism for precautionary measures is established in Article 25 of the Rules of Procedure of the CIDH

³⁹ The Convention defines the human rights which the ratifying States have agreed to respect and ensure ('OAS' 2013).

On June 27, 2012, the highest Court of Justice of the Americas declared the responsibility of the Ecuadorian state. According to the Sarayaku's lawyer, "the trial was always hard. The State's defense often consisted in denigrating, discrediting and accusing the Sarayaku people of being delinquent, violent and even a stick in the wheel of development" (Melo 2013, personal interview).

The Court found that the state violated the rights to consultation and to indigenous communal property; the right to life, to personal integrity and liberty; and the rights to judicial guarantees and to judicial protection⁴⁰. Additionally, the judgment indicates that "any violation of an international obligation that has caused damage entails the duty to provide adequate reparation" (Court Judgment: 2012, 77).

Furthermore, the Court took a big step acknowledging the violation of the collective rights rather than the individual rights of the community's members. On previous occasions, in cases concerning IP, the Court has declared violations to the detriment of the members of indigenous communities; however, in this case, the Court expressly established that "international law on indigenous peoples recognizes rights to the peoples as collective subjects of international law and not only as members of such communities or peoples" (2012, 66).

The legal Secretary of the Presidency of Ecuador, Alexis Mera, publicly declared that the Ecuadorian Government will comply with the Court judgment (*El Telégrafo* 2013). According to the Ministry of Human Rights, the payment ordered by the Court was made to the Sarayaku people (*El Telégrafo* 2013). Nevertheless, other points of the judgment are pending. On August 1, 2013, Wilson Mayorga, Secretary for Human Rights, held a meeting with the representatives of the Sarayaku and other public entities such as the Ministry of Environment, the Intelligence and Rescue Group and the local Government. The topics addressed in this meeting were the removal of the dynamite and the public apologies that the government has to make to the Sarayaku people ('Ministry of Human Rights' 2013).

The 19 October 2012, the former Ministry of Non-renewable Natural Resources, in his declarations about the eleventh oil call to be convened on

⁴⁰ Despite its importance, the legal analysis of the process and judgement are not the focus of this research.

November 28, 2013, denied that Sarayaku territory is within the blocks to be tendered. Nevertheless, it is important to quote his declaration by which he expressed: "With Sarayaku the first action is to clean the dynamite" ("Ministry of Non-renewable natural resources' 2013). This announcement opens the question that, if the first step is to clean the dynamite, which would be the second?

3.2. Listening to the Sarayaku's views: The world and the meanings of life

For the Sarayaku not all spaces in their territory comply with the same function. There are areas for hunting, planting and harvesting food, which all the inhabitants can freely access. But also, their forest has sacred areas, such as lakes, hills and swamps, which are inhabited by powerful spirits. Not everybody can access these places—only the *yachak* (wise man) is allowed to go to these places since this person has the permissions of the spirits that guard this place (Santi 2013, personal interview).

The Sarayaku people comprehend how their lifestyle could change with the entrance of the oil industry. They have seen the damages in other indigenous people. By making a comparison with the Hoarani Amazonian indigenous ethnicity, which has been affected by the oil industry for decades, Cristina Gualinga explains:

[the Hoarani] don't want to sleep out anymore, they want to sleep in expensive hotels, they don't want to wear cheap stuff, they want expensive things. Who teaches that? The company. Of that's what I'm talking about when I say that they destroyed the indigenous culture (Prieto: 1996).

Progressively, the oil industry transforms local diverse economies, partly oriented to self-reproduction and subsistence, into market-driven economies and changes local cultures into cultures that increasingly resemble dominant modern cultures (Escobar: 2008). Complementing this, Santi expresses:

Oil companies destroy nature. If we let them in, from where are we going to eat, get medicines, and have contact with the spirits? When that happens, our people become workers of the companies, they migrate, they become criminals. We don't want that for our people (2013, personal interview).

As evidenced in this declaration, the Sarayaku, beyond defending their territory, defend their everyday practices and their forms of organization which are articulated to a strong relationship with the nature.

3.2.1. Kawsak Sacha

There are no easy ways to define Kawsak Sacha (KS). Its comprehension is essential for understanding the Sarayaku people's struggle and resistance over all these years. KS, translated into English as "living jungle", constitutes the life philosophy of the Sarayaku, and it defines the socio-cultural and economic organization of their society.

Just as the term implies, the living jungle, the jungle of beings, "is a territorial space destined to elevate different emotional, physical and spiritual facets vital to the functioning of the Sarayaku people's lives" (Santi 2013, personal interview). Under this notion, the animals, plants, rivers, mountains, stones, everything that is in their jungle, has a *supay* or spirit. Some of them have very strong powers that can even control nature and govern the relations within its territory. All these spirits and magic beings freely move between the different worlds that according to their worldview exist: jaipacha, ucupacha and jahua-pacha (Chavez: 2005).

KS is also the area of knowledge transmission for the *yachak*. It is the place through which it is possible to enter the world of the wise, interact with the different spirits and acquire knowledge (Cisneros 2013, personal interview). "These are areas where the wise beings interact with the protectors, so that animals don't flee and the natural balance is maintained" ('Sarayaku' 2013). For entering this other world, the *yachak* needs to drink *ayahuasca*, a powerful and hallucinogenic medicinal plant that only grows in the jungle and under specific environmental conditions. Not all the people are entitled to do this—only a few that have followed a long path of instruction and had got the permission of the spirits. The *yachak* are the guardians of knowledge, they receive the message from these spirits, they communicate between the different worlds and they give the message to other people from the community (Santi 2013, personal interview). Being able to communicate with the spirits, the *yachak* is also capable of curing diseases by using the plants that grow in their same sacred area. Finally, since the *yachak* receive their knowledge from the spirits, they are a strong actor and social reference for all the Sarayaku in the decision making and counselling.

KS is also the Sarayaku's life philosophy, which entails the responsibility to preserve and ensure the continuity and existence of everything that lives in their territory. "Living in KS make us guardians of nature, we are taking care of the world's lungs" (Santi 2013, personal interview). In that sense, anything that has an effect on the KS goes beyond a material damage; it breaks the harmonious system of linkage with the non-human world. Therefore, the Sarayaku's main priority consists in its defense. Should not be forgotten that having the ability to communicate with the beings in their territory makes them capable of producing their own knowledge systems.

3.2.2. The decision-making system: Tayjasaruta

The Sarayaku have a formal organizational system: the Government Council of Tayjasaruta. It was legally recognized in 1979 by the Ecuadorian government⁴¹. It is composed of the president, vice-president, leaders of various committees and ancestral authorities. To become the president of Tayjasaruta the person has to be trained (at least have finished high school) and know the problems that occur inside and outside the community. Having essential skills for dialogue with external stakeholders is also mandatory. Noteworthy is that the president doesn't receive a salary; it is an honorary position (Santi 2013, personal interview).

The Sarayaku have their own legal system that has jurisdiction in the Sarayaku territory. Tayjasaruta is composed by ancestral judges. It is also the organ in charge of solving conflicts that arise in the daily life of the community. Sarayaku's worldview is reflected in this legal system. An example of this is the statement maintained by Tayjasaruta: "Territorial defense is the main priority of Tayjasaruta. Any attack on the territory shall be punished. All the Sarayaku people are committed to territorial defense" (Santi 2013 personal interview).

Finally, the Tayjasaruta is the principal decision making organ in the Sarayaku. It voices the social, cultural and political demands of the people. It has decision-making capacity in internal and external conflicts, albeit its main task is to dialogue with different stakeholders outside Sarayaku on the basis of

⁴¹ Recognized through the Ministry of Social Welfare, Ministerial Agreement No. 0206. Its legal status was reformed and approved in June 10th, 2004 by the Council for Development of Nationalities and Peoples of Ecuador, by resolution No. 024 ('Sarayaku' 2013).

decisions made at meetings with Sarayaku members (Chavez: 2005; Cisneros 2013, personal interview). Therefore, Tayjasaruta has been a key instance for contacting and establishing a relationship between the Sarayaku people, the team of lawyers and the press. Not only do the Sarayaku's authorities participate in Tayjasaruta's meetings, sometimes even local or regional government authorities from outside the community are invited to participate.

Conclusions

Sarayaku's relationship with their territory is a substantial element of their identity and spirituality as a people. As expressed by Cisneros, "our life is based on the natural elements that surround us, their loss represent the loss of our identity as a people" (2013, personal interview). The ways Sarayaku understand the world and from where their essential systems of organization derive, is rooted in their KS and protected by the Tayjasaruta. The Sarayaku have kept performing their own organizational and knowledge systems based on the connection with their territory that has been transmitted by the *yachak*.

Chapter 4 . Theoretical framework

After introducing the case study and the historical gaze into the oil-industry-state-Sarayaku relationship over the last 17 years in Ecuador, and getting acquainted with some elements of Sarayaku's worldview, the following section presents the analytical tools that have been employed throughout this research. The first section gets into the Modernity/Coloniality (MC) approach, explaining in detail the coloniality of knowledge and the coloniality of power. Following this, the MC framework will be mobilized to explore the notion of collective agency. This theoretical perspective aims to serve the purpose of raising the need of integrating the IP worldview as a first order question in the analysis of social resistance against oil extraction. In this way, worldview as something that is instrumentally used to achieve a goal is questioned. In contrast to this, the framework displayed here offers an understanding of worldview, as a way of life, and as a way of being that challenges some taken for granted assumptions underpinning collective agency theories.

4.1. The Modernity/Coloniality approach

This section analyses the MC approach, drawing on literature developed by a group of Latin American scholars. Among them are Escobar, Mignolo, Walsh, Sousa Santos and Quijano, who, through the lens of coloniality, offer a new understanding and different historical interpretation of modernity and of social struggle. It is necessary to make it clear from the beginning that, although the point of origination of this approach was located in South America, its scope is not limited to this geographical setting. It is important to make this clarification, because there is an unconscious tendency to think that theories that originate in the Third World are valid only for the Third World, while theories that originate in the First World have a universal validity. It is a belief linked to assumptions such as that the whites have knowledge, philosophy and science, and the indigenous and blacks have wisdom, experience and culture (Mignolo: 2012). And so, one of the contributions of this theoretical framework, as will be shown, is that of breaking these paradigms.

From the MC approach the analytical unit for critically analysing modernity is by using the formula modernity/coloniality, by which there is an integral relationship between both, coloniality is constitutive of modernity. Regarding the spacial and temporal origins of modernity, the MC collective project places

it in the colonial experience, in the conquest of America after 1492, and not in commonly accepted landmarks such as the enlightenment or the end of the eighteenth century (Quijano: 2007; Escobar: 2006; Mignolo: 2012). Colonialism refers to a structure of domination and exploitation, where the political control in a given population, is held by another of a different identity, whose headquarters are also in another territory (Quijano: 2007; Escobar 2007). The establishment of racial hierarchies by the imputation of the European superiority and rationality and the marginalization of the one who was not European are as well, fundamental axes of this process. Coinciding with this, Acosta and Machado argue that since Spain invaded the AbyaYala⁴² with a strategy of domination for exploitation, Europe imposed an view that legitimized the European superiority over the inferiority of the other: the ‘civilized’ over the ‘primitive’ (2012). Thus, the understanding of modernity exposes how its construction is based on the creation of the category of ‘the other’, which, by not being part of the western universality, a set of actions of domination and exclusion are imposed. For instance,

[I]n the sixteenth century, Spanish missionaries judged and ranked human intellect and civilization by whether the people were in possession of alphabetic writing. This was an initial moment in the configuration of the colonial difference and the building of the Atlantic imaginary, which will become the imaginary of the modern/colonial world (Mignolo: 2012, 3).

This example reveals the hierarchical component that the modernity system entails, with the connected subalternization of the knowledge and cultures of this other. Spearheading this hierarchical system is the European civilization, especially the white man that, along with the idea that it’s modern status should be followed by other different cultures, the other needs to move towards being advanced, developed, civilized and rational. The repression fell, above all, over gender, race, the modes of producing knowledge, understanding nature and languages. It was followed by the imposition of the use of the rulers’ own patterns of expression, and of their beliefs and images. These beliefs and images served not only to impede the cultural (re)production of the dominated, but also as a very efficient means of social and cultural control (Quijano: 2007). Thus, the foundation of modernity “consisted of affirming the point of arrival of the societies in which the men who were telling the story and conceiving modernity were residing; it provided and still provides the justi-

⁴² It is the name by which the Kuna peoples of Panama called the territories that are now referred as "America". The term recovery has political connotations. Naming is a political will to exercise dominion over the object named. (Dávalos: 2002)

fiction for the continuing colonization of time and space” (Mignolo: 2012, 10).

While colonialism and within it, the physical control of the territories and peoples ended, coloniality remains as an on-going and prolonged form of domination in the world. For the purposes of this research, coloniality of knowledge and coloniality of power will be explained.

4.1.1. Coloniality of knowledge

The prevailing idea that western knowledge is universal entails and reproduces the same hierarchical system aforesaid, by which different epistemologies, like the non-scientific forms of knowledge have been discredited. Moreover, the diversity of knowledge systems underlying the practices of different social groups across the world has been suppressed or even considered as non-existent by the dominant and western view. So, the coloniality of knowledge is understood as an active and partialized process of construction of what to consider as a valid or not valid knowledge (Sousa Santos: 2008). In that way the modern western epistemology becomes an aspiration, and the bridge that allows non-western societies, to relate to the social and modern world.

Differences between worldviews become explicit and turn into sites of conflict, mostly due to western expansion, when alternative notions of relationships to territory and knowledge threaten the integrity of societies (Sousa Santos: 2008). As presented in the case study, by being incompatible with the modern/colonial definition on what for instance territory means, confrontations between two different worldviews took the form of cultural, legal and political struggle on an international scale. From the modern perspective, territory is defined from an anthropocentric point of view, considered as an external and separated body to human beings, therefore, as a resource, susceptible to be possessed (Shilliam: 2013; Hale: 2006).

Writing from a clearly Resources Mobilization perspective on social movements theory, Bebbington offers a view that explains that the impact of extractive industries is unacceptable for the affected people, specifically when it implies dispossession of water and territory (2012). Being more specific, Bebbington explains that conflicts derived from the extractive industries are originated by three main reasons. The first reason has to do with uncertainty. The extractive industry raise doubts and fears within the affected people which culminate in conflict around efforts to establish new mines, wells or pipelines. The second reason is related to the on-going operations of extractive enterpris-

es. People complain about things they have lost, like the access to water or land. The last has to do with the search for opportunities from the extractive industries. People are looking for work, or take advantage from the royalties of the company (2012; 2013).

Bebbington's view is of course, something difficult to deny in Ecuador. Nevertheless, what Bebbington's view obscures and is not taking into consideration is that for some indigenous people, as for example for the Sarayaku, territory is not solely understood as a resource from which they can be materially dispossessed. As seen before in the Sarayaku's worldview, territory entails a complex set of meanings that modern knowledge has devaluated and subordinated, classifying this conceptions as mystical and folkloric (Breihl 2013, personal interview)⁴³. Therefore, it is not surprising that authors like Bebbington, inspired by the Resource Mobilization theory, are more concerned by the dimension of the economical/material dispossession and pay little or no attention to cosmological understandings of territory.

The theoretical propositions outlined in this previous paragraph, being useful for explaining socio-environmental struggle for extractive industries, do not offer the basis for explaining that there are other underlying elements for struggling. As explained before, since the colonial period the indigenous were categorized as inferior and their knowledge has followed the same fate. According to Sousa Santos, this process of actively producing something that exists as non-existent, is "a form of epistemicide" (2008, XIX). Under this light, the case study presented could be understood not only like a social struggle against the extractive industry, it is an illustration of what has been termed as epistemic struggle (Sousa Santos: 2008; Walsh 2013, personal interview). In short, the Sarayaku resistance is also about epistemic violence in which the modern colonial system operates, reducing their worldview and hence, their political organizational system as irrelevant.

Moreover, Fernandez Osco explains that indigenous actions and protest express an "indigenous episteme and worldview that structures socio-political relations and practices according to a model of horizontal solidarity rather than a vertical chain of command characteristic of the modern state" (2010: 29). What has been categorized by western knowledge as folkloric or grouped as cultural manifestation, is actually a political system of organization, which has a historical background and is constantly in construction. In the case of indigenous Amazonian societies, the source of this knowledge and these practices is

⁴³ Personal interview with Jaime Breihl, Quito-Ecuador. 20 August 2013.

place-based resistance, which is marked by historical actions of relegation and discrimination—in other words, the rationality of coloniality.

4.1.2. Coloniality of Power

Coloniality of power analyses how the classification and control of people by categories⁴⁴ such as race, gender, religion, knowledge and economy is historically constructed and is the pillar on which the modern/western society rests (Mignolo: 2011; Quijano: 2007). By reason of the topic addressed in this paper, when analyzing coloniality of power, I will focus exclusively in examining the notion of race as one of the foundations of the modern/colonial world. Being more specific, coloniality of power is understood as an “established system of social classification and identification based on the repression of native identities and on the conformation of a negative common identity – *lo indio*⁴⁵” (Walsh: 2002, 67). Following Quijano, race is the organizing principle that structures all of the multiple hierarchies of the modern system (2007).

To understand why coloniality of power is important in the analysis of the Sarayaku struggle, it is fundamental to look back to the colonial period and analyse how the idea of race was created as such. Recognising these historical realities will help to understand the role that colonization and coloniality of power have had in shaping the social imaginary towards indigenous people in Ecuador.

The colonization of America produced a new mental category for organizing the relations between conquered and conquering people. Race emerged as the “biologically structural and hierarchical differences between the dominant and the dominated” (Quijano: 2000, 216). What it is important to mention is that race was not only focused on the physical differences between dominant and dominated, but was also associated with the creation of cultural differences. Cultural differences followed the same fate of the physical differences and were ranked as superior or inferior (Quijano: 2000). This pattern of power influenced the formation of new social identities that were associated with hierarchies, and so relations of domination and control. The indigenous is

⁴⁴ These categories will be discussed in future research projects since they go beyond the scope of this research.

⁴⁵ *Lo indio*, translated from Spanish to English as the indigenous.

one of the created categories constructed in the social imaginary, which by connoting savage or uncivilized, became a marginalized group in society.

In the following centuries this Eurocentric perspective of racial differences was imposed on the world population. With the shift from colonies to independent states, coloniality of power came to operate. Numerous characteristics of the newly formed states were duplicative of the colonial past (Quijano: 2007). Thus, in the Ecuadorian context, indigenous people represent the figure of the colonial subaltern that carries on its shoulders the global colonial difference, the racialised colonial wound, which suppose to “deny people’s dignity and provoke people’s shame about inferiority” (Mignolo: 2005, 388).

4.2. Collective agency and the need to consider the epistemological/cosmological aspect within it

The previous analysis is not complete without studying collective agency from the colonial wound. Therefore, it will be pointed out how in a system of oppression, in which IP’s knowledge has been marginalized, collective agency operates as a transformative force. Having done this I will question the importance of looking into the spiritual/cosmological aspects of collective agency. My intention is to show the importance of considering the IP worldview and spirituality as a first order question, and not simply as residual elements of their collective agency. The final intention of this section is to demonstrate how necessary it is to find frameworks that include and link these dimensions in collective agency, and not to separate them.

Why collective agency? The notion of *people* outlines and creates a relation of collectiveness through which its members come to recognize themselves as a ‘we’ and not as sole individuals. Agency is attributed to a collective subject who are all the members of the people. The defence of territory entails the defence of a complex configuration of place-based social relations and cultural constructions that entails not a single, but all the members of a community (Escobar: 2008). Following the line of what has been examined in previous chapters, cultural and spiritual matters deserve a place alongside this analysis.

The mainstream view that focuses the study of collective agency on winning or losing something, presented by Bebbington (2012; 2013) is a useful but not a sufficient theoretical framework for analysing this case study. Neither

is the one presented by Diani, in which rational motivations are those that thrust people to get together (2011). The spiritual and cosmological component behind this 'force' is not explored under these views. Therefore, the Modernity/Coloniality approach will be used as the central element for analysis.

Following MC, Walter Mignolo situates us in the modern/colonial world and in how the colonial matrix of power functions. He brings us back to the coloniality of power, and by this into race, in the sense of racism, as the key concept that enables and justifies oppression and exploitation (2005). Mignolo develops the term of political agency locating its roots in the colonial wound (2005). He explains that the colonial wound generates in first place a critical consciousness in which the agency of the subaltern is characterized by its resistance to elite politics, culture and history, in other words, "the subalterns appear as agents caught in the web of hegemonic power and their struggle emerges as a consequence of their consciousness of being in exploitative conditions" (2005, 382). Complementing this, Neil Lazarus brings to the table the importance to switch the way to look at the colonized/subalternized, by which it ceases to be a passive constituted subject/object of the colonial matrix, and takes its place as an active self, conscious of its colonial history and capable to change it (Lazarus: 1994).

Adding to what is mentioned above, an important point raised by Morton is that the political voice and collective agency of subaltern groups have often been characterized as spontaneous acts of violence, with no political content or organization (2003). This brings us back to the discussion of the coloniality of knowledge and power. The foundation of the actions of resistance and political proposals that emerge from indigenous groups, since they are based on their cosmological and spiritual knowledge, which have been marginalized, have spread this fate to invalidate and delegitimize its actions, thus characterizations such as what Morgan explains have a place on the academic table.

Hence, it is important to recognize that cultural values and worldview permeate the collective agency process. For this Arturo Arias uses the concept of cultural agency, when analyzing the Maya movement in Guatemala. The concept has its origins in the definition of coloniality of power and how by that ongoing process, IP have been marginalized. The term brings a useful contribution for understanding how indigenous processes of self-empowerment, organization and action work. It is based on the revaluation of their own culture, worldview and languages; recognizing that by being indigenous, they have been subalternized through history.

Therefore, “worldview is the central systematization of conceptions of reality to which the members of a society assent (largely unconsciously) and from which stems their value system” (Mwaura: 2008, 53). Mwaura makes an interesting argument about this, where she explains that people’s worldview “is their basic model of reality and it serves several functions including; explaining how and why things are the way they are and why they continue or change” (2008, 53). Then, it is fundamental to consider worldview as a basic component for understanding collective agency. Once this is explained, dealing with cultural agency in the words of Arias means to “focus on the ways in which ethnic and linguistic diversity, unjustly neglected and overlooked for the most part, present opportunities, as well as challenges, for the construction of a democratic citizenship” (2006, 251). In that way, IP organize and resist based on “their own idea of what constitutes a good life, and their culture and spirituality gives them a sense of self-worth and dignity” (Mwaura: 2008, 56).

It is important to have frameworks for explaining the motivation of actions and political processes of resistance of IP. The particular cosmological and spiritual components, which not only mark their culture but their way of doing politics, are shown as real and epistemically legitimate. In relation to this, Walsh uses the term of epistemic agency (2010; 2002). For example when she describes the process of inclusion of the indigenous notion of *buen vivir* in the Ecuadorian Constitution. She explains that its inclusion is a result largely of “the social, political, and epistemic agency of the indigenous movement over the last two decades” (2010, 18). By this, my intention is to remark on the need to understand that there are different ways to think and act in the world, and the importance to recognize epistemic differences when looking at collective agency.

It should not be forgotten that for the Sarayaku there is an important contribution for the maintenance, guidance and victory of their struggle held also by non-humans and spirits with whom they communicate. Here, I would like to emphasize that what was previously mentioned was not imagined and is not a tale, despite how these expressions have been categorized as such by the modern system when legitimizing the existence of a single and universal truth. This is the Sarayaku’s truth of what and how their process occurred. Watts has called this a place-thought relationship—a space where territory and thought are never separated because one cannot exist without the other. So, “place-thought is based upon the premise that land is alive and thinking and that humans and non-humans derive agency through the extensions of these thoughts” (2013, 21).

For Watts, analyzing collective agency from an indigenous point of view requires one to accept the existence of a 'pre-colonial mind' and so, of the indigenous knowledge systems, on which human beings and the spiritual, animal and other worlds interrelate and communicate (2013). She gives a step forward by establishing that there, "agency circulates through human and non-human worlds in the creation and maintenance of an indigenous society" (2013: 20). Therefore, what constitutes 'society' from these perspectives refers to interactions between these worlds rather than solely amongst human beings. In that sense, she states that "agency has erroneously become exclusive to humans, thereby removing non-human agency from what constitutes a society" (Watts: 2013, 20).

Conclusions

Colonialism did not finish with the independence and the end of physical domination of territories. Its continuity has adopted the shape of coloniality which is currently manifested in different forms of domination. Racism is an important example of this, as well as the disqualification of other forms of knowledge by means of suggesting their inferiority. Thereby, diversity in its multiple manifestations, like knowledge, has a load on its shoulders that, if it has come to be seen, is going to be categorized as a system failure in the modern/colonial world. Academia has played a key role in fostering this process of relegation. Native/indigenous knowledge has been given an inferior status over the universally/western valid knowledge systems. Hence, there is an urgent need to discard these assumptions and observe the value that IP have in their knowledge production due to the closer connection to places where it is produced (Escobar: 2008).

Despite the analysis of gains and cost when studying collective agency has been influential in the social movements and social theory literature, in cases such as the one presented, different frameworks that go beyond this mainstream view, are needed. Collective agency, as explained before, needs to be explained from different lenses that enrich the academic debate of a contested term. On this, from an indigenous experience and perspective, Watts opens the spectrum of debate of a new understanding of collective agency.

Chapter 5 . Sarayaku's decolonial practices

*It wasn't European law, it wasn't government law that was the reason we survived.
It was the law of our elders, of our own Māori people (Saana Murray)*

After having introduced the case study and the theoretical framework, this chapter analyses the Sarayaku struggle through the lens of decoloniality. By decoloniality I mean, the dismantlement of the colonial structures of hierarchization and underestimation through racial and epistemic differences (Grosfoguel: 2009). Hence, this section analyzes how, despite the long history of imposition and violence held by the state over indigenous people and their knowledge, it still remains and is manifest in this particular case as an open anticolonial struggle. In order to explore Sarayaku's decolonial practices I will analyse the camps of peace and life (CPL) and how, as a political response and resistance to modernity/coloniality, they imply another way of thinking and knowing the world. The second element to be explored has to do with the Court's analysis of the epistemic injustices and the material and immaterial forms of oppression held by the state towards the Sarayaku's worldview and knowledge systems. In the final judgment there is also the expressed intention of seeking inclusive ways to recognize the plurality of knowledges and fomenting the dialogue and legitimacy between them.

5.1. The camps of peace and life

In July 2001, CGC Company and the Ecuadorian Ministry of Defense signed an agreement on military security. The state agreed to guarantee the safety of the oil process by providing support with military forces⁴⁶. During the last trimester of 2002 and the first trimester of 2003, CGC and the military forces entered the Sarayaku's territory against the will of its people in order to carry out the seismic activities. As a result of that, in an attempt to detain the advance of the seismic process, the Tayjasaruta declared a state of emergency and the establishment of the CPL.

Four military bases were installed in Sarayaku to give support to the company. This prompted more aggressions against the Sarayaku people (Narváez:

⁴⁶ It's worth mentioning that at this time the military/colonel Lucio Gutierrez was the Ecuadorian president. He came to power amid a *coup d'état*, initially allied to the indigenous movement.

2010). Nevertheless, Sarayaku defined their own life-choices and pursued their goals of defending their territory, even though they were facing big hostilities from the state, like direct violent attacks. Men, women, elders, youth and children mobilized to different parts of their territory and formed the CPL, standing guard, resisting and preventing the entrance of foreigners. This strategy was based on ancestral solidarity values which contrasted to the powerful forces of military protection.

According to Villaverde, this was possible because “Sarayaku’s system of organization and respect to the knowledge of their elders hasn’t been contaminated by the offerings of the oil companies, hence they have remained firm” (2013, personal interview)⁴⁷. This statement was confirmed by Cisneros, when he explains that the *yachak* had an important role in the sustainability and direction of the struggle against the Ecuadorian state:

Throughout the period of conflict, the *yachak* transmitted us the energy and the power of the jungle and the spirits that inhabit there which help us to resist and sustain our process, showing us the path that we should take (2013, personal interview).

As an entry point for understanding why this way of organization was possible, it is indispensable to listen to some reflections. According to one of the Sarayaku representatives,

the struggle for our territory has never been a whim; it’s been based on the real understanding of who we are as a kichwa people. We all cease to be Sarayaku if we don’t have our territory. We feel proud to be Sarayaku, that’s why our children, elders, women and men have never stopped fighting (Santi 2013, personal interview).

In other words, this particular relationship with the territory reflects a different level of awareness towards the elements that inhabit there. Therefore, its defence is going to arise from all the members of it, who feel that their source of identity is being threatened.

The territory functions as a space for knowledge production, which in this case provides a path to construct decolonial knowledge, which is fundamental for learning and not losing the meaning of how to live a good life according to their worldview. Thus, people who understand its value and don’t want their knowledge to be extirpated, work in solidarity and reciprocity to defend it. The potential contained in the territory is behind the actions of this indigenous

⁴⁷ Personal interview with Javier Villaverde. Quito-Ecuador. 16 August 2013.

group. As Osco states, their “territory nourishes the political memory and the critical consciousness of the oppressed but not defeated” people (2010, 34).

Nevertheless, the state in pursuit of imposing their developmental model, omitted and annulled the existence of these other ways to relate with nature. The relation of the Sarayaku with the beings that inhabit the jungle is considered fanciful and folkloric and opposed to development because is not reasonable, nor scientific, thus invalid. This can be shown by something that took place during this period of confrontation:

At the place known as PINGULLU, a tree whose name is LISPUNGU, of approximately twenty meters in length and one meter in width was destroyed [...] the company employees entered the sacred forest in PINGULLU and destroyed all the trees that existed there, particularly, the great tree of Lispungu, which has left [healer Cesar Vargas] without the powers to obtain his medicine and to cure the illnesses of his family (CORTEIDH, 2012).

The given example highlights the profound impact on the social and spiritual relationships that the people have with the different elements of the natural world that surrounds them. When these elements are destroyed and harmed by the state, the denial and incapacity to admit that different knowledges, cultures and political systems exist is evidenced. Moreover, it implies the continuity of the violence and disrespect towards the ones who are racially different and considered hierarchically inferior.

Once again we get into the terrain of the annulment of the other and their own notions of life and what is sacred to them. For the mainstream western point of view, it’s about a tree, a resource to be manipulated, contrary to what it represents by being a source of creative power for political life alternatives.

Nevertheless, for the state, the incident mentioned above is just a pre-fabricated discourse, as can be revealed in the testimony of one of the team experts who worked for the state in the trial⁴⁸: “the Sarayaku’s idea of fighting for their territory was only a discourse craftily implemented to win the case” (Interviewee 1: 2013)⁴⁹. However, according to another external vision of the conflict given by the former priest, “the Sarayaku people sustained their struggle in their original civilization legacies and defending their own sources of

⁴⁸ The interviewee number 1 asked to remain anonymous and not be recorded.

⁴⁹ Personal interview with Interviewee 1, Quito-Ecuador. 18 August 2013.

knowledge, contained in their sacred places” (Villaverde: 2013, personal interview).

The radical opposition and resistance of the Sarayaku impeded the full negative effect of their territory by the oil company. Thinking and acting according to their own epistemology is a legitimate political act for overcoming and rejecting the politics of modernity and development. The CPL impeded the entrance of the company in their territory and the beginning of the extractive activities. Nevertheless, despite their resistance, over this period the CGC loaded 467 wells with approximately 1,433 kilograms of explosives, at deeper and superficial levels, and left them scattered across the territory (Court judgment: 2012).

5.2. Special remarks in the Inter-American Court of Human Rights judgment

After receiving the Sarayaku representatives in the seat of the Court to testify and after the Court made an *in situ* visit to the Sarayaku territory, it made a final judgement⁵⁰. Nevertheless, the Court in addition to making an extensive legal and factual examination in its judgement, incorporated as legitimate the Sarayaku indigenous knowledge systems as will be shown below.

On intangible and spiritual bounds

The Court makes an inclusive analysis of territory, IP and the right to property recognized in article 21 of the American Convention on Human Rights, which states:

Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society. 2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law. 3. Usury and any other form of exploitation of man by man shall be prohibited by law (1969).

⁵⁰ There will be a future opportunity to further the analysis of the judgment of the Court.

As can be understood from article 21, in first place, there is no expressed relation between property and IP. Nevertheless, the Court puts these issues to be discussed on the table: “The indigenous peoples have a community-based tradition related to a form of communal collective land ownership; thus, land is not owned by individuals but by the group and their community” (2012, 36). Therefore, the Court recognizes that there are other forms of the right to property, influenced by traditional customs and practices of each people and that it “would be tantamount to maintaining that there is only one way to use and dispose of property, which, in turn, would render protection under Article 21 of the Convention illusory for millions of people” (2012, 36). Moreover, the Court takes a step forward by recognizing that “given this intrinsic connection that indigenous and tribal peoples have with their territory, the protection of property rights and the use and enjoyment thereof is necessary to ensure their survival” (2012, 37).

Following this line, the special relationship and the profound intangible and spiritual bounds that the Sarayaku have with their territory were demonstrated in the public hearings—recognized and legitimized by the Court in the judgement. In order to determine the existence of a relationship between IP and their traditional lands, the Court has established that:

(i) this relationship can be expressed in different ways depending on the indigenous group concerned and its specific circumstances, and (ii) that the relationship with the land must be possible. The ways in which this relationship is expressed may include traditional use or presence, through spiritual or ceremonial ties; sporadic settlements or cultivation; traditional forms of subsistence such as seasonal or nomadic hunting, fishing or gathering; use of natural resources associated with their customs or other elements characteristic of their culture (Court Judgment: 2012, 37).

These “requirements” were confirmed by the Court through the public declarations made by Sarayaku members and special reports⁵¹. For instance, Sabino Gualinga, Sarayaku’s *yachak* expressed that: “Sarayaku is a living land, a living forest; it contains medicinal trees and plants, and other types of beings” (2012, 38). Recognizing the magnitude of what this means for the Sarayaku people, the Court points out that the lack of access to their territory may prevent them from using and enjoying their traditional activities; accessing their traditional health systems and jeopardizing the preservation of their way of life, customs and language (2012). Strengthening this argument, the Court also vali-

⁵¹ The Court validated and incorporated as a piece of evidence the anthropological report done by FLACSO, on the social and cultural impacts of the presence of CGC in Sarayaku. For more information refer to: FLACSO (2005) Sarayaku: el Pueblo del Cénit, 1st Edition, CDES-FLACSO, Quito

dates and incorporates once again in the judgement what Sabino Gualinga expressed:

In this sector, half the beings that preserved the ecosystem have now gone. [...] They are the ones that maintain the jungle, the woods. If there is too much destruction [...] the mountains will also collapse. We live in the Bobonaza river basin and this has been totally affected. **All those who wish to cause damage don't understand what they are doing. We do understand it, because we see it**⁵² (Court Judgment: 2012, 63).

The Court validates this statement, even though the indigenous understanding of the world in which the environment is something more than a resource, has often been seen as fiction by the modern society, rather than being something real. The division of nature and humans assumed by the modern/western discourse has facilitated the implementation of the discourse of progress and modernity “that affirm the supremacy of time over space and of culture over nature, severing nature’s role as a constitutive dimension of modern wealth and of capitalism’s development” (Walsh: 2002, 70). In that sense, the modern knowledge system as the only way for explaining the world and as a sufficient understanding of reality, thus removing the possibility of a complementarity of knowledges (Sousa Santos: 2008). Moreover, in an effort to demonstrate that in its analysis the idea of the Court is not to place “them” versus “us”, the Court leans towards the ability to recognize that there are different systems of knowledge in the world, and as such, that the extractive activities bring real negative effects to:

Their cultural identity, since there is no doubt that the intervention and destruction of their cultural heritage entailed a significant lack of respect for their social and cultural identity, their customs, traditions, worldview and way of life (2012: 63)

By this, the Court also pushes for the debate about the co-existence of a diversity of knowledge, by which IP are no longer seen as only recipients of rational knowledge, but also as legitimate producers.

⁵² My emphasis.

On breaking monocultural hegemony

Finally, there is an important element in the orders of the judgement which the state is obliged to implement:

[M]andatory training programs or courses that include modules on the national and international standards concerning the human rights of indigenous peoples and communities, for military, police and judicial officials, as well as other officials whose functions involve relations with indigenous peoples (2012, 92).

In Ecuador, largely due to the contribution of the indigenous movement, there has been a growing recognition of the cultural diversity, which has resulted in defining itself as a plurinational and intercultural state. As has been argued, unfortunately the same cannot be said of the recognition of IP epistemological diversity, which means “the diversity of knowledge systems underlying the practices of different social groups” (Sousa Santos: 2008, XIX). In that sense, we face an incomplete recognition and therefore, the possibility to continue with the marginalization of IP that rely their existence in their own knowledge systems. In such a way the judgement constitutes an attempt for breaking with the violent idea of monocultural hegemony, under which modern/western knowledge is the only legitimate way of knowledge.

Furthermore, the judgement order opens the possibility to start walking towards the political, epistemic and legal revalorization of other knowledge systems. The order pushes towards the incorporation of new pedagogies for an institutional transformation. Here is important to keep in mind that this “does not mean to make a *melting pot* where the indigenous and the mestizo knowledges merged. This means an active construction on the basis of both, in which their differences are kept alive” (Breihl 2013, personal interview). In that sense, the Judgement’s order represents the opportunity to disengage from MC, which means to recognize other knowledge systems, to be able to see the contributions and limitations that arise from them and finally, to allow its coexistence.

Conclusions

The use of violence and military forces by the state was implemented as a legitimate mechanism to organize society and continue with the oil extraction initi-

ative. The opposition and demands of the Sarayaku were not regarded by the state as valid, in fact they appeared to be more an obstacle for the development of a profitable initiative. In those cases occurs what Mignolo has explained: “when people do not buy the package willingly or have other ideas of how economy and society should be organized, they become subject to all kinds of direct and indirect violence” (2007, 450).

The rationale of the IP to defend their territory is reduced to folkloric manifestations, not even close to being conceived of as legitimate expressions of their way of understanding the world and doing politics. In Walsh’s words “the indigenous cosmology has been subalternized for the purpose of getting subalternates” (Walsh 2013, personal interview). What motivated and sustained the political resistance of the Sarayaku is their knowledge system. The CPL and the judgement reveal how on the basis of their worldview, there is a structured system of socio political organization that challenges a powerful system of oppression. The decision of mobilization and confrontation entailed grave risks for their lives, integrity, health, and nutrition. Despite this, their own philosophies such as solidarity, where everybody is bound together as one, and horizontality, where no matter their role in the community (leaders, elders, child, women, men) they organized to manifest their resistance, defend their territory and guarantee their existence as a people. For the Sarayaku, it is clear that “the development of industrial projects is incompatible with the sacredness of [their] territory, because nature is uncommodifiable” (Cisneros 2013, personal interview).

Finally, the Judgement’s contribution is twofold. First, it is an opportunity for thinking in a different and wider way about rights. The Court emphasised the need to consider and incorporate spirituality, other cosmologies and ways of understanding and living in the world as fundamental basis for making rights effective. In that sense it becomes relevant to integrate these other knowledge systems as a mandatory practice in the modern/western system of law for the fully enjoyment of rights. The other contribution is the political relevance of the Judgement itself in the sense that it constitutes evidence on how indigenous knowledge is nourishing the western/modern law system. This can be interpreted as the first steps for transforming the modern-legal structures that are governed by the idea of a single and universal truth, into more inclusive and valuating ones.

Chapter 6 . Final reflections

This final chapter starts by reviewing the main ideas raised in this paper.

Chapter two presented the different periods of the Ecuadorian extractive industry to give the reader a macro context in which the Sarayaku indigenous resistance is unfolding. The facts were shown as historically constructed power relationships and not as isolated events, which showed that despite the inclusion of legal frameworks for the protection of indigenous rights and the environment, Ecuador has not been able to overcome the extractive model imposed during the colonial times.

Chapter three, offered a historical and factual overview of the Sarayaku struggle against the Ecuadorian state. It presented important details that showed the state's colonial practices of discrimination towards indigenous people's rights. The chapter "zooms in" on the Sarayaku's worldview that would later allow the reader to understand the struggle for their territory. Thereby, the life philosophy of KS was explained to show the relation of coexistence and respect to nature and territory that the Sarayaku people have. Finally, based on the assumption that indigenous people are self-organized under their own worldview, the chapter presented the organizational system of the Tayjasaruta as the means by which it was possible to organize their political and legal resistance processes.

Chapter four presented the theoretical framework of the analysis by bringing the approach of Modernity/Coloniality. Using this approach allowed me to demonstrate that the epistemic foundation of the modern/colonial system, which marginalized people for the reason of race and other knowledge systems, is a source of domination over the IP (Mignolo: 2005). Collective agency was also examined in this chapter, and by this it was stressed that there are other important elements, such as worldview and spirituality, that need to be integrated when analysing and understanding the IP struggle.

In chapter five the previously explained elements that were presented in this paper, were examined as a whole. Here it is possible to understand how the Sarayaku's worldview and their indigenous knowledge are the driving forces through which they direct their resistance to the developmental policies and actions of the Ecuadorian state. It is thus demonstrated the role that the Tayjasaruta has in organizing people for the defence of a system they all want

to protect: Kawsak Sacha. The violent attempts to enter into Sarayaku territory and the disrespect of the indigenous epistemic systems reveal the colonialist state's role. The chapter also discusses certain important aspects of the judgment which display a different perspective of how to relate to indigenous knowledge systems and worldview in the western legal system. The Judgment highlights the importance of valuing these differences and not hiding them.

On the basis of what is mentioned above, the main contributions of this paper are twofold. In terms of theory, the paper opens a discussion with theories on indigenous social resistance, which often consider as irrelevant the notion of worldview and spirituality on the struggle of IP. Thus, it demonstrated the importance of not only looking at what these IP have been doing for the defence of their territory, but to look into what academia has not given enough attention: how IP's worldview and spirituality influences their decisions and actions. Therefore, the paper's contribution is to depart from the worldview as something fundamental when analysing IP struggle and how these practices of struggle are actually helping to challenge concepts presented by the Academia. As shown, overlooking the existence of these elements does not allow one to really see that their struggle is an epistemic struggle. Such predispositions of ignoring these elements are a constituent part of the epistemological posture of universalism that lies within academia and continues to define what counts as valid and which individuals produce it (Sousa Santos: 2008).

The second contribution of this paper has been methodological. Although the presented case study is very relevant for doing a legal analysis, this work goes beyond that, and uses a focus that has not been done before. By conducting interviews with the actors directly involved and obtaining firsthand information, it was possible to explain the underlying reasons that characterized the Sarayaku process. This allowed me to present a more critical understanding of the motivations and values that encouraged the Sarayaku resistance. By this, the paper offers the opportunity to deepen the discussion about what is territory and indigenous rights, but especially raises the debate around the knowledge of IP as a valid form of knowledge in its own right. Moreover, analysing the Sarayaku struggle from this perspective becomes a resource for debating the different types of knowledge that exist in societies and this is particularly important in Ecuador, a nation that defines itself as a plurinational and intercultural.

However, this research also had its challenges, and its nature forced me to get out of my comfort zone. I am not an anthropologist, and I come from a professional background of Law. Nevertheless, if at the beginning this represented a challenge, it became a process of learning in itself and allowed me to

navigate through the different disciplines. Bringing into the analysis of this case, cultural, ethnographical, legal, and social movement studies. By doing this, the study offers a multidisciplinary perspective in its analysis. Worthy to mention is that this research has been a self-reflexive process and as such, has provoked me deep reflections in multiple ways.

By using an empirical case which has been paradigmatic, this paper aims to be a small contribution to the literature on social resistance. The Sarayaku are not the first IP that have had conflicts with oil activities in the Ecuadorian Amazon, nor will they be the last. Many groups have tried to organize and counteract environmental violations in the Amazon, but just a few have succeeded in the process. Using Cisneros words, this has been possible because “we have never ceased to be proud to be indigenous and feel honoured of our own race, traditions and understandings of the world. We have not allowed ourselves to feel ashamed, even though that is something that has been tried to impose on us for more than 500 years” (Cisneros 2013, personal interview). In that sense, bringing reflections on modernity/coloniality and by presenting the decolonial practices of Sarayaku, the intention of this paper has been of demonstrating that IP knowledge is as any other, theoretically valid. This validation does not mean an uncritical way of relating to indigenous knowledge due to the fact that it is different from the modern knowledge systems. Instead of that, the intention is to understand that indigenous knowledge and western/modern knowledge are two amongst the variety of knowledge systems that exist in this big universe, not being one superior that the other. Rather, that each have limitations and contributions, and by looking through these lenses it is possible to open the floor for promoting the dialogue across them.

Worth mentioning that the concerns raised in this research exceed the debates on social struggle. Related to the topic of this paper is the analysis of the exposure and distribution of environmental and social impacts derived from the extraction of hydrocarbons by transnational companies in Ecuador. Further research is required to deepen this discussion. In the future it is desirable to analyse, through the lenses of environmental discrimination and environmental justice, how the populations that are socio-political and economically disadvantaged are the frequent target of environmental damages.

Finally, what has been discussed in this paper will hopefully contribute in provoking future research on the fields of International and Human Rights Law. My special emphasis on both lies in the dual nature that Law has. On one hand it constitutes a modern/colonial instrument that organizes the daily life of a society, but at the same time is a powerful tool for struggle and transfor-

mation. Therefore, instead of denying the wisdom of the different knowledge systems that exist within a society, it is time to realize how they enrich it and also apply that significance in the system of Law in an exercise to decolonise it.

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Appendix 1 Questions made to the Sarayaku representatives

- Who are the Kichwa people of Sarayaku?
- What happened in 1996?
- Why did Sarayaku reject the entry of CGC Company in their territory?
- What is 'territory' for the Sarayaku?
- How is Sarayaku organized?
- What is Kawsak Sacha?
- What is the role of the *yachak* for the Sarayaku people?
- What are the 'camps of peace and life'?
- How do you describe the state's actions during the period of confrontation?
- How did Sarayaku fight the state's and the Company's actions?
- What does this legal victory mean for Sarayaku and for indigenous movement in Ecuador?
- What role did other indigenous organizations, NGO's and religious organizations have in your process?
- What relevance does the Judgment has for the Sarayaku people?

Appendix 2 Questions made to the Sarayaku Lawyer

- How did you become Sarayaku's lawyer?
- Legally speaking, what was Sarayaku's problem?
- What were the plaintiffs arguments used against the Ecuadorian state?
- What were the arguments used by the state?
- What role did other indigenous organizations and national or international NGOs play in the process?
- How would you describe the audience in Costa Rica and the visit of the Court in Sarayaku territory?
- In a broader view, how would you describe the relationship between the Ecuadorian state and the Amazonian indigenous peoples?
- What role did other indigenous organizations, NGO's and religious organizations have in the process?
- What relevance does the Sarayaku Judgment has regarding indigenous rights?

Appendix 3 Questions made to the former Catholic priest

- For how long time did you work in the Ecuadorian Amazon?
- Did your work involved contact with the indigenous people?
- How do oil companies operate when they arrive to indigenous territories in the Amazon?
- Have you work with the Sarayaku people?
- How do you describe the Sarayaku struggle?
- According to you, what do you think made possible that the people of Sarayaku stayed together in their struggle?
- What makes the Sarayaku different from the neighbor communities that signed agreements with the company?
- What role does the Catholic Church play inside Sarayaku territory?

Appendix 4 Questions made to Catherine Walsh and Jaime Breihl

- How the public policies related to indigenous people in Ecuador have evolved since the 60s?
- How do you evaluate the 2008 constitutional process in Ecuador in terms of its legal and institutional redesign considering the incorporation of the *Buen Vivir*?
- Do you consider that *Buen Vivir* has become a discursive tool of the government?
- Do you think that the inclusion of *Buen Vivir* in the 2008 Constitution has signified a disentanglement from the extractive development model?
- Regarding the indigenous movement in Ecuador, what role does worldview play in the indigenous resistance/struggle?
- Why the indigenous cosmology has been treated as subaltern?
- Does the incorporation of the indigenous notion of *Buen Vivir* signifies a change in this 'subalternization'?