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Martina Nebbiai

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**ECUADOR'S NEW WATER LEGAL
FRAMEWORK (LORHUyA, 2014): AN ASSESSEMENT
OF THE FIRST FIVE YEARS OF IMPLEMENTATION
THROUGH THE LENS OF PLURINATIONALITY AND
CAMPEsINO'S *BUEN VIVIR***

by

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BA: Political Science

MA: Management and Development of Human Resources

MA: Communication and Media

DISSERTATION

Submitted in Partial Fulfillment of the
Requirements for the Degree of

**Doctor of Philosophy
in Latin American Studies**

The University of New Mexico
Albuquerque, New Mexico

JULY 2020

DEDICATION

To Helena Sophia and Lisetta

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by

Martina Nebbiai

**B.A. Political Science
M.A. Management and Development of Human Resources
M.A. Communication and Media
Doctor of Philosophy, Latin American Studies, 2020**

ABSTRACT

A preliminary assessment of the first five years of implementation of Ecuador's new *Ley Organica de Recursos Hidricos, Usos y Aprovechamiento de Agua* (LORHUyA, 2014), exploring its impact on small irrigators communities, through the lens of *Buen Vivir*. A communication-based action research and political ecology of water in Ecuadorian marginalized *Campesino* communities, elucidating the repercussions of state-centralized water policy on the customary water management systems, and the disconnect between policy as determined nationally vs implemented locally. This research investigates the gap between Ecuador's plurinational recognition of cultural rights, epistemic diversity, citizens' participation and community control outlined by *Buen Vivir*, and *de facto* practices of policy implementation around water. In the face of the Western superiority biases that still persist within the new Ecuadorian water law, the results of the case-study in the self-identified Indigenous and *Mestizo Comuna* of Oyacoto of the rural parish of Calderon (Pichincha, Ecuador), challenge social science research that expect marginalized communities to either

resist or reproduce social hierarchies and systems of domination, pointing instead to a much more complex reworking of Ecuador's social formations in the era of *Buen Vivir*.

Keywords: Ecuador, Buen Vivir, LORHUyA, customary water systems, participation, plurinationality.

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INTRODUCTION

i. : Opening

In the last two decades, the Latin American region has been the scenario of significant transformations both politically and socio-economically. Various scholars (Acosta, 2010, Escobar, 2010; Gudynas, 2011; Larrea, 2011; Villalba, 2011, among others), agree that the possibilities activated by the new cultural and political forms, opened an alternative path towards a “*New Beginning*” (Escobar, 2011 p. 2) for the region. As argued by Arturo Escobar (2011), “processes of importance might be taking place at the level of the state” (Escobar, 2011 p. 1), leading to a “re-invention of democracy and development” (Escobar, 2011 p. 2).

The disappointing results of the neo-liberal reforms embraced by most Latin American countries since the 1960’s, and applied even more zealously after the crafting of the Washington Consensus (1989), led to the search of alternative forms of modernization, which tried to incorporate other epistemologies, knowledges (see, for example, De Sousa Santos, 2010), and where different critical trajectories might “find a convergence space” (Escobar, 2011 p.3).

The case of Ecuador was of particular interest, in the middle of what was referred to as “the political spring” (Villalba, 2011 p. 11) of the Latin American *Left Turn*. The feeling that the transformations under way since the election of Rafael Correa in 2007, and the implementation of the new 2008 constitution, might “entail a rupture with the past” (Escobar, 2010 p. 5), was supported by various authors (Acosta, 2010; Acosta & Martinez, 2009;

Escobar, 2010; Gudynas, 2011; Larrea, 2011). By tapping “into [the] broadly based unrealized expectations and desires for inclusion and change” (Leiva, 2008 p. 20) of six hundred million Latin Americans, the paradigm of *buen vivir* kindled hopes and dreams for a promising “*lucha epistemica y politica*” (Macas in Escobar, 2010 p. 4), aimed at the solution of unresolved socioeconomic problems, and the rise of an alternative understanding of development.

However, despite the vivid fermenting of expectations originated by the debate on *buen vivir*, irreconcilable tensions are emerging between the “dualist ontology” of modernity sustained by Ecuador’s state laws and plans of development vs “the cultural constructions... that emphasize relationality and reciprocity” (Marurana & Varea, 1987 in Escobar, 2010 p. 9) proposed by the *sumak kawsay* (buen vivir in Kichwa) spirit within the 2008 constitution.

The 2008 constitution was meant “to enable the structural transformations needed to advance the social and political project of *Alianza Pais* and bring about a new model of society through a different vision of development, territorialization, identity (pluricultural), and nation (plurinational)” (Escobar, 2010 p. 20). While on the one hand, the new Ecuadorian constitution indeed “entails a ‘conceptual rupture’ with the conceptions of development of the previous decades, ...[whose goal is] the development of the *sumak kawsay*” (Escobar, 2010 p. 21); on the other hand, the principal instruments for its implementation, such as the *Plan Nacional de Desarrollo*, and -particularly- the laws dealing with the management of natural resources, are challenging the innovative foundational epistemologies (Acosta, 2009; Escobar, 2010; Gudynas, 2011), implied by the various titles and sections of the 2008 constitutional text.

The 2008 constitutional text, with “an unprecedented ‘biocentric turn... formalizes the recognition of the rights of nature (called *Pachamama*, thus reinforcing the importance of Indigenous knowledge), recognizing it as a subject (art. 72)” (Gudynas, 2011 p. 5). And, undeniably, the rethinking of the Ecuadorian society as “pluri-national”, “intercultural”, and based on direct “citizens’ participation” is impressive (Constitution of the Republic of Ecuador, 2008). Notwithstanding, the materialization of these principles in concrete policies has proven more than challenging.

Although, the ‘*revolucion ciudadana*’ is based on a concept of *desarrollo humano*” (Escobar, 2010 p. 21) and defines development as:

the pursuit of the collective wellbeing of everybody, in peace and harmony with nature, and the unlimited survival of human cultures. The *buen vivir* presupposes that the real liberties, opportunities, abilities and potentialities that individuals have be broadened in such a way that they allow to achieve simultaneously those goals valued as desirable by each individual – seen simultaneously as a particular human being and as universal- as well as by society, the territories, and the diverse cultural identities. Our concept of development pushes us to recognize, value, and understand each other in order to enable the self-realization and the construction of a shared future (SENPLADES n.d., p. 59 in Escobar, 2010 p. 21-22).

clearly, “an economistic and technocratic view of development” (Escobar, 2010 p. 22), persisted widespreadly within many state’s laws and policies. In the text of the first *Plan Nacional de Desarrollo* (2007-2010), for example, we read: The view of human development requires a sufficiently broad platform of economic growth, fostered by gains in productivity under conditions of social economic, and environmental efficiency in the use of resources (SENPLADES n.d., p. 64 in Escobar, 2010 p.22).

In this sense, even if as suggested by Walsh (2008) the notions of ‘plurinationality’ and ‘interculturality’ undoubtedly opened up “a ‘new political agenda’ that should influence ‘the long-term vision of development’” (Walsh, in Escobar, 2010 p. 25); however, in Escobar’s words, the “viability of the notion of plurinationality requires profound changes in the social structures that underlie the monocultural monoepistemic, and uninational State”

(Escobar, 2010 p. 25). And, unless these principles find a projection in the substantial implementation of coherent governmental policies, they will soon join the garbage receptacle of empty populist rhetoric. For this reason, the governmental policies responsible for the implementation of the plurinational and postdevelopmental state of *revolucion ciudadana* deserve close monitoring and attention.

The *Preamble* of the 2008 *Montecristi* constitution states that Ecuador: ... decided to construct a new form of citizen coexistence, in diversity, and harmony with nature, to reach el *buen vivir*, el *sumak kawsay*' (Constitution of the Republic of Ecuador, Preamble, 2008).

As I will try to demonstrate through this work, independently from the definition of *buen vivir* one chooses to use (an exercise I refrain from, since it goes beyond the scope of this research), whether referring to Alberto Acosta (2010)'s description of a new post-developmental paradigm (Acosta, 2010), constructed participatively by the diverse people of Ecuador; or, whether relying on Walsh (2010)'s emphasis on the "ancestral knowledge, biodiversity, ...and collective rights of historically unprotected groups" (Walsh, C. 2010. p. 18), it can be reasonably argued that, since 2008, the Ecuadorian State has been motivated by *buen vivir* policy objectives (poverty reduction and income redistribution, education and participation of marginalized groups, intercultural and plurinational reform, infrastructural enhancement, among others).

The principles embraced by the constitutional text, however, often "contrast[s] with the advances of public policy" -particularly as to environmental legal frameworks- (Ospina in Villalba, 2011 p. 14). In this sense, "it is licit to ask oneself" about the reasons for "the distance existing" between what *buen vivir* promises, and what the government is doing; whether it reflects a mere "difference in the rhythm of the transformation process", or whether "it is not that the Government's pace is slower than expected, but that the project,

the orientation and the direction of the changes is a different one” (Ospina in Villalba, 2011 p. 14).

It is not surprising that the implementation of *buen vivir* is facing quite a few obstacles, both theoretically and practically. The relationship between civil society and the state is becoming increasingly tense; as, in most cases “the government is assuming the leadership in the promotion of *buen vivir*, ending up controlling the entire process to the expense of a real, free participation of citizens organizations” (Gudynas, 2011 p. 15). It is on this second aspect of appropriation of *buen vivir* that we think it fundamental to focus the analysis, since it might end up mining the basis for the viability and sustainability of the new paradigm, implying the *de facto* ”dissolution of the arenas of collective construction” (Gudynas, 2011 p. 15).

In spite of the good intentions, as Mero, Ramírez & Espinoza 2018, (p. 5) demonstrated in their research on the effects of *buen vivir* policies (from 2007 to 2017 throughout the three ‘National Plans’), in fact, a lot of money and energy is being spent nationwide with few or no results, particularly as to what concerns Ecuador’s marginalized populations wellbeing. This highlights the increased importance of research to understand and substantiate the reasons of the incongruence from a multidisciplinary perspective.

Ecuador's self-definition as a multi-national unitary state in its constitution, in addition to being one of the most relevant political phenomena in contemporary Latin America, kindled the hopes of all those of us concerned with social justice, by establishing a new form of state: solidarity-based, recognizing the rights of nature, and the demands of the Indigenous, Afro-Ecuadorian and *Montubio* movements as part of a socialist and revolutionary Ecuador (Cruz, 2013).

In spite of this, the tensions originated by intercultural mis/perception as to the idea of collective wellbeing (often at the basis of the failure of potentially empowering developmental effort of the populations involved) (see i.e. Sprain & Boromisza-Habashi, 2013), competing ontologies, western knowledge superiority biases, and power unbalances continue to crystalize the “modern” culture of Ecuador’s *buen vivir* initiatives, without considering the repercussions on the well-being of communities and those who inhabit them.

Probably, in order to become effective transformative tools, and to play an important role in the recognition of Indigenous, *Montubio*, Afro-Ecuadorian and *Mestizo* communities’ customary normative systems-, *buen vivir* state policies would have to “entail a more substantial transformation of modern institutions, in order to create multiple spaces for those alternative worlds and knowledges that have remained invisible,... that have been actively produced as non-credible alternatives to what exists by dominant discourses” (Escobar, 2010. p 39; De Sousa Santos, 2007 in Escobar, 2010 p. 39). Conversely, the state’s vision of *buen vivir* (particularly in relation to environmental policies) is still based on a technical, modernizing idea of “progress”, contrary to the *sumak kawsay* spirit.

A new approach is thus needed in order to allow planners and policy makers to fill-up currently overlooked and crucial areas of participative, intercultural and plurinationally focused grassroots action, both in the policy making phase and throughout the development projects’ implementation process, so that diverse interests, needs, worldviews and conceptualizations are accurately assessed, and the goals of the *buen vivir* plans of action can be advanced with enhanced embeddedness.

As highlighted by Rodriguez Salazar, “the persistence of interpretive frameworks far from the epistemic alterity that underpins the proposals of *buen vivir*” (Rodriguez Salazar,

2016 p. 350); and, “the still persisting conceptualizations based on western positivist thinking”, end up vilifying “the understanding of its decolonial and paradigmatic content” (Rodriguez Salazar, 2016 p. 350). This tension, which is causing an important disruption within the *revolucion ciudadana*, as Villalba (2011) argues, is further complicated by the actual implementation of “a double legislation”, where “a ‘Popular Solidarity Economy Law’ might be passed, [in combination] with a ‘Production Code’ consolidating conventional economic structure and strategies” (Villalba, in Villalba, 2011 p.15). Or, where an environmentally revolutionary constitution is passed, in combination with a water law implying a technocratic water management, institutions, and strategy.

While the 2008 constitution enshrines “citizen participation and multitudinous rights for every imaginable group in society....in the course of policy conflicts, the Government has balked when groups demand active participation” (Conaghan, 2011 p. 275). As Conaghan (2011) underlines, president Correa increasingly “opted for a top-down approach aimed at co-opting grassroots organizations and marginalizing those that dared to defy the president’s [developmental] agenda” (Conaghan, 2011, p. 275). And his successor, president Lenin Moreno, followed a similar path. This, is made possible by the fact that, as Villalba (2011) highlights, the implementation of the principles inherent in the 2008 constitutional text “is purportedly left ambiguous, and it is hard to find trace of the channels through which it is to be constructed” (Villalba, 2011 p. 15); and, most importantly, enforced.

Starting the very first *plan del buen vivir*, inaugurated during the government of president Correa, and throughout the most recent *plan toda una vida* (2017-2021), implemented by president Lenin Moreno, for instance, one of the transversal axis of

Ecuador's developmental strategies gravitates around prioritizing efforts focused on Indigenous and *Campesino*' communities; particularly, as to *soberania alimentaria* (food sovereignty), and irrigation water related developments (*Objetivo n. 6 Plan Nacional del Buen Vivir, 2017-2021*). Although water is a global issue, in fact, the livelihoods of more than 5 million rural Ecuadorians (*Censo de Poblacion Rural del Ecuador -INEC-, 2010*), with their low-income levels, geographic remoteness, and high dependence on agriculture, are particularly menaced by the increasing water crisis.

A great emphasis has, thus, been put on the importance of customary systems and local self-determination since then; however, at the same time, the recent Latin American shift toward homogenizing policymaking, via state-directed water legal frameworks (after decades of neoliberal recipes), is adversely impacting the survival of diverse communities' identity, voice, rights to exist, and to self-rule. The monitoring of *buen vivir* plans implementation and repercussions should, therefore, be a priority; particularly, in terms of the knowledge/understanding needed in the rural Ecuadorian context, foreshadowing what is to come in the future wellbeing of these communities.

In spite of this, the outcomes of what ought to have been *buen vivir* -inspired policies, have not received much attention so far, much less, as to what concerns the collective wellbeing of disenfranchised Indigenous, *Montubio*, and Afro-Ecuadorian peasants' communities. In order to fill part of this gap, the purpose of this study is to inquire about, a specific case: the implementation of Ecuador's new water law (*Ley Organica De Recursos Hidricos, Usos,y Aprovechamiento -LORHUyA, 2014-*) through the lens of Ecuador's collective *buen vivir* (wellbeing) policy.

While “Ecuador boasts one of the most progressive water frameworks for water rights protection in the world” (Bebbington, 2012, p. 8), in fact, when it comes to reality, instead of listening to local “claims to self define their own water rules, nature values, territorial meanings and user identities” (Boelens, Hoogesteger, Swyngedouw, Vos & Wester, 2016, p. 8), the Ecuadorian state has intensified the pressure of top-down, standardized, developmental water policies, thus threatening the plurinational and interculturally sensitive future of Ecuador’s ‘*Camino del post-desarrollo*’ [post-development path] (Acosta, 2010).

The purpose of this research project is to analyze the repercussions of the new Ecuadorian water law (LORHUyA -*Ley De Recursos Hidricos Usos y Aprovechamiento*-, 2014) and secondary legislation, and to monitor the social, political and community wide impacts of the response the Ecuadorian state of *citizens’ revolution* has been offering (or not), to the long-standing problems of water injustice it was meant to put an end to. The research questions that guide my study aim to probe the impact of policy implementation choices of Ecuador’s Sole Authority for Water (*Secretaria Nacional del Agua* -SENAGUA-), and to determine how these translate in subsistence-irrigators’ communities day-to-day realities, whether contrasting with the redistributive, plurinationally, and environmentally-sustainable paradigm-shift enshrined in the 2008 Ecuadorian constitution, or enhancing it.

Although many aspects of the new LORHUyA echoed the provisions outlined in the 2008 constitution of *buen vivir*, and in spite of the official rhetoric on social justice, intercultural, and participatory sensibility; in fact, “many of the country’s indigenous [and small irrigators’] groups were [are] concerned that this new water law did [does] not safeguard their interests sufficiently” (Hyer, 2015, p. 63-64). In this dissertation, I argue that the new water law, which was meant to break a historic scenario of confrontation between

the national and the community level of water management, offering a collaborative framework of integrated action between social organizations and the institutions that regulate water resources, maintains within its articles a centralized, and “exclusionary view of policy building” (Zapatta, 2017, p. 86), which does not live up to the plurinational, redistributive, and participatory standards set by the objectives of *buen vivir*.

To ensure the research is addressing the local water management policy impact through the eyes of the participants directly impacted by the changes recently implemented by the national water administration as to customary water management practices, and plurinational citizens’ participation in water policy decisions (with an eye, specifically, to the enhancement of irrigation water *buen vivir*), this study will be framed using a political ecology perspective (see Forsyth, 2003; Peet & Watts, 1996; Peet, Robbins & Watts, 2010; Robbins, 2004, 2012, among others), and will embrace a review of the literatures on water justice and hydrosocial territories (see Arroyo & Boelens (eds.), 2013; Boelens 2010, 2012, 2013, 2014, 2015; Boelens, Hoogesteger, Swyngedouw, Vos & Wester, 2016; Bebbington, 2012; Hoogesteger, 2016, Yacoub, Duarte & Boelens, (eds.), 2015, Isch, Boelens & Pena (eds.) 2012, among other authors), which contributes to the exploration of “territories as spatial configurations of people, institutions, water flows, hydraulic technology and the biophysical environment that revolve around the control of water” (Boelens, Hoogesteger, Swyngedouw, Vos & Wester, 2016, p. 1).

Although political ecology has sometimes been criticized, as it “tend[s] to reduce nature to a matter of resources..., and in so doing, fails to account for the more dynamic and complex aspects of the multitude of life that constitutes nature (Karlsson, 2018, p. 22), the focus of this research is specifically directed to highlight how “water raises issues of

importance (that) go well beyond the specifics of water extraction [and wishes to] serve as an argument within an argument” (Bebbington, 2012, p. 1), thus becoming of broader relevance for political analysis “lying as it did [does] at the core of the relationship between development and democracy in the [Latin American] region” (Bebbington, 2012, p. 2). Within this context, it is argued that a lens of analysis which considers ecology as “part of a [broader] system of power and influence” (Robbins, 2012, p 13) such as political ecology, may represent the vessel, through which water injustice becomes “tractable to challenge and reform” (Robbins, 2012, p. 13).

The challenge, as affirmed by Escobar (1999), is not to deny the political, but instead, to “fully acknowledges the constructedness of nature while suggesting steps to weave together the cultural and the biological on constructivist grounds” (Escobar, 1999, p. i), so that research doesn’t end up neglecting those local aspects that exist beyond power and privilege. Those embedded and culturally infused aspects that may represent important tools for the empowerment and agency of Ecuador’s self-defined Indigenous, *Montubio*, Afro-Ecuadorian and Mestizo *comunas* and communities against historical discrimination.

My aim here is, thus, to place the dynamic topics of water as a natural system in a conversation with “water” as a socio-political-economic system of *buen vivir*, seeking to complement the position of a critical political ecology researcher by means of participatory action research approach (see Allen, 2000; Ayre, Wallis, & Daniell, 2018; Campos, Alves, Dinis, Truninger, Vizinho & Penha-Lopes, 2016; Chambers, 2008; Chevalier & Buckles, 2013, 2019; Gricelda, Paúl & Niurka, 2018; Kindon, Pain, & Kesby, 2007; Acero López, Cajiao, Mejia, Durán, & Díaz, 2019; Rahman, 2008; Reason & Bradbury, 2008, among others), aiming at the co-construction of knowledge in partnership with community

participants, locating myself as an active self-subject in the research narrative, and, simultaneously, foregrounding collaborative endeavor and traditional local understanding of the impacts of the new water legal framework on the well-being of the populations involved.

ii. Conceptual Frame

The purpose within this section conflates important theoretical, empirical, as well as analytical aspects into a single narrative. As research aiming to have a social justice intent and agency, in fact, the present work required interdisciplinary and overlapping strands of scholarship, with composite modes, methods, and levels of enquiry whose rationale demands as much hybrid forms of clarification. This conflation is required in order to learn the extent to which the Ecuadorian state has advanced successfully its plurinational and participatory agenda in the context of water law and practice, thus explaining the lingering question of whether and how the implementation of the new water legal framework actually lives up to the constitutional standards, and whether it actually benefits (or not) Ecuador's communities *buen vivir*.

In order to probe the complex field of water in all its dimensions, and in an attempt to translate the results of academic research into an actual contribution for the improvement of co-participants' living conditions, first of all water had to be recognized as a "contested concept", as it has been central to the scholarship and work of political ecologists (see Forsyth, 2003; Peet & Watts, 1996; Peet, Robbins & Watts, 2010; Robbins, 2004, 2012, among others). In a quest for new ways of connecting theory with day to day local water praxis as well as broader power issues, the approach to this research was framed by a review of the literatures on 'water justice' (see Hendriks, 2015; Hicks, 2015; Gelles, 2015; Guevara-

Gill, 2015), and embraced the concept of ‘hydrosocial territories’ (see Arroyo & Boelens (eds.), 2013; Boelens 2010, 2015; Boelens & Doornbos, 2001; Boelens, Zwarteveen & Roth, 2005; Boelens, Hoogesteger, Swyngedouw, Vos, & Wester, 2016; Bebbington, 2012; Hoogesteger, 2016, Yacoub, Duarte & Boelens, (eds.), 2015, Isch, Boelens & Pena (eds.) 2012, among other authors), defined as ”socially, naturally and politically constituted spaces that are (re)created through the interactions amongst human practices, water flows, hydraulic technologies, biophysical elements, socio-economic structures and cultural-political institutions” (Boelens, Hoogesteger, Swyngedouw, Vos, & Wester, 2016, p. 1).

More importantly, water also had to be invested with the strategic role it plays in the development of communities, imbued by notions of collective “*buen vivir*” (Escobar, 2010 and 2011, Acosta, 2010; Walsh, 2010; Gudynas, 2011; Martinez-Novo, 2014, and Altmann, 2019, among others), and plurinational notions of autonomy and intercultural self-determination (Hoekema, 2002; Merino, 2008 and 2018, Gogoi, 2018; Walsh, 2008). The essence of this research endeavor lies, therefore, at the intersection between water studies, social justice, and *buen vivir* theory, hopefully informing a future of wellbeing for the Indigenous, *Montubio*, Afro-Ecuadorian, and *Mestizo* small irrigators’ populations of Ecuador. To this end, again, the work of Rutger Boelens guided this study throughout the analysis of the dynamics of *Andean* water normative levels, and the revision of culturally embedded case studies of Ecuador’s rural realities (Boelens & Doornbos, 2001; Boelens et al. 2005; etc).

In order to avoid the risk of locking this research in “*a priori* categories”, the overarching political ecology theoretical frame, was integrated by a communication-based approach (the Ethnography of Communication, as per Dell Hymes, 1962, 1967, 1972), and

developed through a three-year-long participatory action research endeavor (see Allen, 2000; Chambers, 2008; Chevalier & Buckles, 2013; Kindon, Pain, & Kesby, 2007; Rahman, 2008; Reason & Bradbury, 2008, among others), in a “joint effort” toward local empowerment (Beverley, 1989; Ellis, Adams & Bochner, 2011; Rochelau, 2015) in which the narratives of researcher and co-participants collaboratively contribute to gain insights “on specifications of locally embedded factors” (Abdel-Fattah, 2015 p. 309).

Hymes’ Ethnography of Communication -EOC- (1962, 1967, 1972, 1974), is both a theory and a method of discourse analysis within the wider context of the social and cultural practices and beliefs of the members of a particular culture. Informed as it is by the idea that communication and culture are intertwined (Hymes, 1962, 1967, 1972, 1974), the EOC represents a promising tool, which contributes to explore social knowledge, perception and acceptance of (or resistance to) the new water legal framework

Additionally, this dissertation implied an extensive work of Ecuadorian legal texts analysis (2008 Constitution of the Republic of Ecuador, 2014 *Ley Organica de Recursos Hidricos y Aprovechamiento*, and Ecuador’s water secondary legislation to LORHUyA, (*Reglamentos, Instructivos,Codigo Organico Territorial*, etc), for which I relied fully on Maria Lane’s suggestion on the importance “to excavate the knowledge and assumptions underlying policies and their implementation”, in order to illuminate the way in which the “study of how ...[state] based water management strategies were [are] proposed and negotiated within specific cultural, legal, and historical contexts” (Lane, 2011, p. 24, see also Lane, 2000), impacts these policies’ acceptance and functioning locally.

Therefore, the discussion on the new water legal framework (LORHUyA and secondary legislation), was approached not from a “pure legal perspective”, but more as a

culturally impregnated communication piece to be probed by Discourse Analysis. By simultaneously referring to international and national power dynamics, and to the way different actors utilize different narratives from the LORHUyA to advance their interests, anthropological “thickness” (Geertz, 1973, p.10) was thus added to the interpretation of key legal excerpts, in terms of what they represent in the daily life of the populations involved, and not merely in terms of strictly legal implications.

Moreover, the reading of Alex Zapatta’s legal analysis of both the articles of the 2008 *buen vivir* constitution and the LORHUyA, helped me to trace the controversial path for revealing the top-down, homogenizing intent inherent in the 2014 water law (Zapatta, 2017); which, in various sections, deeply contradicts the dominant official rhetoric of *buen vivir* and intercultural citizens’ participation. The recurrent inobservance of the law (lack of enforcement), and the systematic histories of abuse perpetrated by powerful actors, and backed by the Ecuadorian state, I witnessed throughout my community-based action-research endeavor, and personal experience in the water participatory arenas to the present day, indeed, often reached sad paradox, when compared to the redistributive water justice discourse of Ecuador’s authorities, thus justifying a critical interpretation of the normative text.

In order to situate my analysis within the debates surrounding the issues of the right to ‘self-determination’ and ‘autonomy’ for Indigenous peoples, I revised literature on these two central concepts (particularly, the United Nations Declaration of the Rights of Indigenous Peoples -UNDRIP-, and the International Labor Organization -ILO- Indigenous and Tribal Peoples Convention n, 169, among others), excavating the idea that “Indigenous peoples should be able to [...] freely pursue their economic, social and cultural development”

and that “Indigenous peoples should have the right to decide the process of development in relation their own lives, lands, institutions, beliefs ...”, as well as “to exercise control, to the extent possible, over their own economic, social and cultural development.” (ILO Declaration 169, 2018, Article 7, Paragraph 1).

I explored national and international legal tools, and contrasted them with the experiences witnessed during the community-based process, transitioning away from discussions of theoretical interest, and rather striving to maintain a “productive tension”..— between what I observed, the “modern” ways of knowing acknowledged by Ecuador’s new water legal framework, and toward what appeared to be perceived or to be taking place in the specific contexts. This lens of analysis, led me to put constant emphasis on the dynamic feedback between me as a researcher and the co-participants (both at the official, and at the community-based level), highly cherishing personal dialogue, while trying to avoid the common mistakes of either “depoliticizing water”, turning it in something “technical and neutral”, and removing its “eco-socio-political components” (Boelens, personal conversation, Fall 2017); or, conversely, denudating it of the intimate cultural meanings constantly negotiated and recreated within an interview process.

An interdisciplinary scholarly effort that was sought to challenge “canonical ways of [...] representing others (Spry, 2001, as cited in Ellis, Adams & Bochner, 2011, p. 1), and “treat research as a political, socially-just and socially-conscious act (Adams & Holman Jones, 2008, as cited in Ellis, Adams & Bochner, 2011, p. 1). Thus, opening-up the range of possibilities for questioning the relationships between different perspectives on water and the ways we produce knowledge about it, by “eschewing rigid definitions of what constitutes meaningful and useful research” (Ellis, Adams & Bochner, 2011, p. 3), and by means of “an

approach that acknowledges and accommodates subjectivity, emotionality, and the researcher's influence on research, rather than hiding from these matters or assuming they don't exist (Ellis, Adams & Bochner, 2011, p. 2).

Objectives/Aims

- This project seeks to explore the recent evolution of water discourse, regulatory policies, and laws that are now intended to guide Ecuadorian water planning, given a legal framework in Ecuador that is seeking to re-define its own relationship with nature and water resources, as well as with plurinationality and intercultural citizens' participation through the lens of *buen vivir*.
- This project seeks to identify conditions or factors that impact community *buen vivir* (wellbeing) and determine the potential correlations with Ecuador's new water legal framework/administration, in terms of locally embedded customary water management traditions and plurinational citizens' participation.
- This project seeks to examine the differing perceptions of men and women from both communities and water institutions of Ecuador, and their diverse reactions to the socio-economic, and cultural changes seen (or not) in their communities/professions due to the implementation of the new water legal framework.

Research Questions and Goals

The primary contribution of this dissertation is to uncover the impact of Ecuador's recently implemented state water policies on the wellbeing of small irrigators' populations, in order to propose both policy and process changes to improve water self-governance outcomes in their communities. Additionally, this dissertation provides insights regarding how water is becoming a language in which today's marginalized communities of Ecuador

can articulate and imagine for themselves new forms of self-determined *buen vivir* and social justice.

An exploration of Ecuador's diverse water realities lays at the heart of this research. Interdependent actors and practices that create culturally impregnated 'waterworlds' in multi-sited Indigenous, Afro- Ecuatorian, *Montubio*, and Mestizo *Comunas* and Communities. A progress report of the impact of LORHUyA in its first five years of implementation in terms of recognition of legal pluralism, and customary irrigation water practices, with the participative ideas and challenges it conveys about water development, as they are perceived and negotiated by local co-participants, constitutes the guiding rationale of this research, articulated by the following questions:

- RQ1: How does the new water law (LORHUyA, 2014), underlying discourse touches ground in Ecuador's diverse communities?
- RQ2: Where have the new national water management norms encountered resistance; and, where are they instead readily embraced, and leveraged into local *buen vivir* favorable outcomes?
- RQ3: What can the inclusion of local perspectives add to our understanding of the LORHUyA in terms of community *buen vivir* around water?

iii. Overall Project Description and Methodology

The research provides a review of Ecuador's 2008 constitution and new water legal framework (LORHUyA, 2014), as secondary data collection; which, combined with community-based data regarding local individual and group perspectives, and perceptions,

constitute the basis for answering my research questions, and for filling the existing gap as to the analysis of the repercussions of the national *buen vivir*-based environmental policies and practices through the eyes of Indigenous, *Montubio*, Afro-Ecuadorian and *Mestizo* small irrigators' communities (as well as through my eyes and personal experience, both as a researcher, and as an active member of Ecuador's newly LORHUyA-constituted system of citizens' water arenas).

The starting point of this research, maintains that a deeper understanding of the way water legal frameworks translates into *Campesino* realities, impacting their *buen vivir*, represents the first step towards a culturally fit and effectively beneficial implementation. Keeping in mind that the “struggle for water is simultaneously a struggle for power” (Boelens & Doornbos, 2001, p. 352), the political ecological analysis of water object of this research, discloses not only how power differentials both at the national and local level might impact the outcomes of the LORHUyA for the implementation of developmental water projects (at times, in a way that is different from the expected one); but, also puts to the foreground the different manifestation of ontological ‘tensions’ vs ‘encounters’, among diverse water normative levels, and the underlying vision of *buen vivir* inherent within them.

The communication-based approach (EOC), merged with a first person experiential narrative, allows “in-depth and intimate understanding of people’s experiences” (Willis, Kiesinger & Tillmann-Haely, 1997, p. 121 as cited in Ellis et al., 2011, p. 6). It allows to present my own voice through the use of self-reflective personal data, locating myself as an active “self-subject” in the research, together with “the stories of others” (Rocheleau, 2015, p. 29), and, thus, to create a sense of “mutuality in the struggle” (Beverley, 1989, p. 21); while, at the same time, striving to overcome practical obstacles and barriers to community

wellbeing through participatory action research endeavors, beyond “social science’s ontological, epistemological, and axiological limitations” (Ellis & Bochner, 2000, as cited in Ellis, Adams & Bochner, 2011, p. 1) and stiffness.

Here below, the overall methods employed in this multi-sited project (Oyacoto, Pichincha; Rio Grande, Manabi’; Daule-Peripa/Baba, Guayas-Babahoyo; Urcuqui, Imbabura; San Pablo de Amali, Bolivar), as well as the reasons for the final selection of the self-identified Indigenous and Mestizo *Comuna* of Oyacoto as primary research case-study (chapter IV of this dissertation), are described.

Research Methods

Each data collection tool was chosen to provide information regarding several variables that gave important insight regarding community or institutional contexts, thoughts and perspectives regarding the current water legal framework, as well as customary water traditions, and/or normative barriers to the local implementation of water *buen vivir*, in a strive to envision possible alternatives/solutions, with particular reference to active citizens’ participation in water policy-making, toward a more interculturally-sensitive and integrated water governance.

The Ethnography of Communication (EOC) holds that when people interact, they display their culture (Hymes, 1962, 1967, 1972, 1974). Because of this, this discourse analysis lens is the promising portal through which this project seeks to explore social knowledge, perception and acceptance of (or resistance to) the new water legal framework, focusing on the researcher’s and the participants’ own words and perceptions, rather than relying merely on a-priori research categories, and “struggling to offer real voice to subjects “by dialogically engaging with reality” (Blommaert, 2009, p. 257) of participants.

A self-reflexive stance, moreover, made it possible for me to “convey my own situated and partial knowledge as part of a larger movement and a journey, a coalition and a coalescence of people seeking to decolonize themselves, their professions, social and environmental movements, and the terms of encounters across distinct cultures, histories and geographies...” (Rocheleau, 2015, p. 29), of Ecuador’s water *buen vivir*.

Research context

The data is deriving from community-based fieldwork undertaken in diverse self-identified Indigenous, Afro-Ecuadorian, *Montubio* and *Mestizo* small irrigators’ *comunidades* and communities of Ecuador. After almost three years of dedicated fieldwork, and the comparative exploration of five case-studies in multi-ethnic irrigators *comunidades* and communities (Oyacoto, Pichincha; Rio Grande, Manabi’; Daule-Peripa/Baba, Guayas-Babahoyo; Urcuqui, Imbabura; San Pablo de Amali, Bolivar: all of them disenfranchised, *campesino*’ communities where the contrast between official rhetoric, and water realities was equally stunning in terms of water justice, participatory (in)sensibility, and subsequent impacts on collective *buen vivir*), the case-study in the self-identified *Kitus* Indigenous and *Mestizo Comuna* of Oyacoto (Calderon, Pichincha), was chosen to be presented as the primary case-study for this dissertation, for the reasons specified in the section below.

Data collection

In all research sites, data deriving from semi-structured interviews, observation and participant observation at community gathering, *Mingas*, and weekly *Comuna* meetings, were collected and then, triangulated/contrasted with in-depth personal interviews, and online feeds of Ecuador’s water authorities’ officials, and academic, as well as environmental NGOs water professionals and activists.

The interviews explored included (but were not limited to) the following themes: 1. Water and local leadership, 2. Representation of plurinational voices in water participatory policy making bodies (UPHL, DH, and National Water Councils), 3. Day-to-day operations of water users in collective systems, 4. General characteristics of autochthonous/ancestral traditions of water management; as well as, 5. Perceptions of the degree of local vs, state ownership of water project infrastructure, 6. History of irrigation water systems management/power relations in terms of ethnicity, gender, and class, 7) Knowledge of the new water legal framework, and the changes LORHUYA implies at the national vs local level on water praxis, 8. Perceived impact as to both customary water management, and community social fabric.

I targeted (through snow-ball sampling), both culturally specialized informants (Bernard, 2011) with expertise in the water field, as well as community residents and local water leaders. A diversity of resident perspectives (in terms of age, gender, race, class, and ethnicity), captured the diverse perspectives on water of autochthonous (either natives or residents in the community for longer than 10 years) stakeholders.

Additionally, data deriving from participatory action research developed in occasion of water assemblies, meetings, as well as weekly visits occurred to the SENAGUA and environmental NGO's to meet with water officials and professionals (both as an academic researcher, and as an active member of the state Sole Authority for Water's participative water councils), were integrated and contrasted.

Co-participants elaborated extensively on themes of local and national water management and policy, successes and failures in the implementation of either state-run, or

locally management and funded water-projects, as well as perceived LORHUyA policy-linked future directions for water in the region.

Spontaneous informal interviews were also collected through hand-written fieldnotes during 2-3 days stays which took place on weekly basis with residents in the communities and the Sole Authority for Water (SENAGUA) representatives, during technical visits, as well as participant observation at conciliatory meetings, and during “*veedurias*” (observer role deriving from water councils’ responsibility), and accompaniment within everyday “*vida en la comunidad*”, integrating the EOC and participatory action research data bundle.

Apart from community field-based research, a second co-occurring research site in the current study was developed within Ecuador’s water institutions’ professionals (state, NGO’s, universities, water councils’). Face to face individual interviews, as well as online comment sites (water institutions representatives’ public Tweeter/Facebook accounts), offered a compilation of feeds written by Ecuadorian water officials and professionals between 2014 and 2019 (June. 30th, 2019), which were analyzed for thematic patterns [intercultural/plurinational, state/customary, participation/participative, integral/integrated management, environmental sustainability/conservation] related to water policy by examining the digital “paper trail” (Lincoln & Guba, 1985, p. 276), without interacting directly in the stream of comments.

Lastly, archival resources and information from web sites of local water agencies, reports form locally active NGOs, SENAGUA, and government sources such as the Ecuadorian Ministry of Water (data base), water-boards and *Comuna*’s internal memos (*actas, estatutos*, etc.) were gathered, as well as correspondence shared voluntarily by co-participants.

As argued by Ellis (2004) “layered accounts use[ing] vignettes, reflexivity, multiple voices, and introspection” (Ellis, 2004 and 1991, as cited in Ellis, Adams & Bochner, 2011, p. 6), may “provide an in-depth and intimate understanding of people's experiences with emotionally charged and sensitive topics” (Ellis, Kiesinger & Tillmann-Healy, 1997, p.121 as cited in Ellis, Adams & Bochner, 2011, p. 6). Interviews in Oyacoto, as well as in all the other communities visited, usually consisted of multiple interview sessions, and, unlike conventional academic (and sporadic) “one-on-one interviews with strangers”, my interviews were “situated within the context of emerging and well-established relationships among participants and interviewers” (Adams, 2008, as cited in Ellis, Adams & Bochner, 2011, p. 7). Therefore, while striving to situate myself “simultaneously as an observer, a listener, a thinker, an advocate, an investigator, a participant and analyst” (Rocheleau, 2015, p. 29), I relationally and empathetically witnessed examples of personal and collective water cosmovisions, through multiple “encounters with ... different and alternative practices, policies and ways of being” (Rocheleau, 2015, p. 29).

I yielded emic insight into views of Ecuadorian local water users, prioritizing those subjects traditionally “excluded from authorized representation” (Beverley, 1989, p. 13), while seeking to discern through the eyes of the populations involved, the main obstacles and barriers to these communities’ *buen vivir*.

Analysis

Field notes, interview transcriptions, and archival documents excerpts, were compiled and analyzed using available qualitative analysis software. A preliminary open coding endeavor identified emerging patterns, themes and/or deviations, on the basis of local residents’ or institutional representatives’ categorizations, use of specific words and

analogies (Bernard, Wutich, & Ryan, 2016). This led to a more reasoned categorization and the assessment of reconcilable vs competing perspectives on water and good living between the community and the national state.

The analysis of the primary case-study provides an overall background description, merged with vignettes, each providing a view of what appeared to be either a disruptive element, or, conversely, appeared to be contributing to the overcoming of traditional power inequalities within the community. Transcripts were also analyzed using the EOC framework, (as per Hymes, 1962 and 1967, 1972, 1974). Findings were summarized in narrative form, and easy to read text format geared for a wide audience.

Qualitative vs Quantitative

The research questions were best suited for Qualitative research (Denzin & Lincoln, (Eds.), 2011), for a number of reasons. It provided the flexibility needed for an interdisciplinary endeavor combining diverse branches of social sciences (community development and regional planning, and water policy analysis). It provided a comprehensive research framework by allowing the exploration through multiple methods to focus in the context where the phenomenon occurs. This, made it possible to seek for tensions, and categorizations than foreshadowed data (Marshall & Rossman, 2016), and to develop a deeper understanding of the topic, opening a dialogue between the case and the context (Flyberg, 2001, as cited in Marshall & Rossman, 2016). All this strengthened the researcher's ability to probe participants on issues newly identified and provided richer context into the way in which individuals measured impact of LORHUyA on the *buen vivir* (wellbeing) of their communities, in their own 'water terms'. Additionally, the case study design allowed a richer inquiry perspective (Herriott & Firestone, 1983), offering the opportunity to develop

more substantial comparisons between theory and practice, and consequentially more meaningful outcomes (Yin, 2017), through a collaborative endeavor which involved research participants as active collaborators (McNiff, 2014).

Positionality

Power relations in fieldwork exist and must be acknowledged. “The situated and partial nature of our understanding of ‘others’” (England, 1994, p. 80-89) impacts every phase of a research endeavor, and being conscious of our biases, values, experiences and how these impact our relationship with others is fundamental in qualitative research.

As a person and a scholar, I have my own perspectives. If, on the one hand, as a woman and a mom I may understand the roles and implications that surround being a white, middle-class, ‘female human’ in a urban, latin american society, I lack understanding of what it is like to be a ‘female-human’ of color in a *Campesino*, marginalized *Comuna*.

Also, although it is believed that the superposition of diverse analytical self-subjects participating in a research (putting in relation different subject positions) may allow deeper understanding of a phenomenon under study, the fact that I locate myself as a privileged, university-instructor, while I am working with disadvantaged communities, unavoidably, will have an impact on research, which must be made explicit from the very beginning of the endeavor.

First, I must be aware that I was initially invited from my academic and professional subject position. I had thus a privileged entrance into the world of co-participants, but I was, and I still am an outsider. I position myself as an activist deeply concerned with the accompaniment and wellbeing of the communities in my research sites, with ties with some of the co-participants that I have cultivated over years of fieldwork and volunteering in

Ecuador, where I have been working as a University instructor for the last 10 years, and where I am an active member of citizens' participatory water councils both at the regional, and national level (at the time of writing, I am a representative of the *Consejo de Cuenca de la Demarcacion Hidrografica del Esmeraldas -the Esmeraldas' hydrografical demarcation watershed council*, and the national coordinator of the *Consejo Nacional Sectorial Del Agua Del Ecuador -the national sectoral council of water-*).

I think of myself as an outsider (with ties to the NGOs that work with these communities), whose experience as a participant in this search for a community-driven analysis of the new water law and *buen vivir*, can be equally meaningful "bringing to the fore new relationalities, pluriversals and processes of interculturalization" (Walsh, 2015, p. 10), but still an outsider, bearing a power differential vis-a'-vis the community.

When working with disadvantaged communities, it is particularly important to establish a relationship of confidence and mutual respect with co-participants. Therefore, throughout this research, I strove to minimize social distance and redress the power differentials (impossible to neutralize), in order to avoid barriers and facilitate open communication, I explicated my position and identity, finding points in common in order to establish a collaborative partnership, in an attempt to to sincerely cultivate a mutually beneficial relationship with both female and male community co-participants, as well as with representatives of water authorities, or NGO's.

In order to do this, a continuous process of reflexivity was required (Malterud, 2001, 483-484), not to overlook (to the extent possible) how the researcher's background impacted research, by "examining ... [myself] as a researcher, and the research relationship, by

examining one's conceptual baggage, one's assumptions and preconceptions" (Hsiung, 2010), identifying and addressing both the ascribed and the achieved identities I am bearer of.

My interest in water struggles was identified through discussions with colleagues around a coffee-table about barriers to the long-term implementation of *buen vivir* in marginalized rural communities. My trust in action research outcomes for community development led me to choose a participatory research method hoping to build the capacity of community members to conduct their own research or data gathering activity in the future. The reader of this dissertation must nevertheless be aware that, although I am deeply concerned with the wellbeing of communities, and I hope that this activity will inform a plan of action to develop long-term solutions to water justice problems within the sites of my research, I do not reside within any of the communities under study, and I am not personally impacted by any issue related to village life.

iv. The Oyacoto Case-Study

In this study, I examined in particular the dynamics of water-making in a specific self-identified Indigenous and *Mestizo* water community, the *Comuna* of Oyacoto of the rural parish of Calderon (Quito, Pichincha, Ecuador).

Selection of Specific Study Area -The community of Oyacoto-

The *Comuna* of Oyacoto was selected as my primary case-study for important reasons: compared to the other research sites I visited, it allowed to monitor more closely the shift implied by the Humberto Cholango national administration of Ecuador's Water Secretariat (SENAGUA, 2017-2019), with the implementation of the *Acuerdos Ministeriales*

N. 2017-0103, N. 2018-0031 and N. 2018-00194 respectively, in terms of customary water management repercussions (the community-based research in Oyacoto started in June 2016 with an exploratory pilot-study, and continued throughout June 2019, offering a privileged time-frame to monitor “before and after” LORHUyA affectations, particularly, since the new water legal framework was not complete until the entry into force of the *Instructivo* to the law in September 30th, 2016). Additionally, in this particular research site, I was able to build a deeper personal relationship of mutual respect and trust with the members of this community, which contributed to witness and understand how the broader overarching relations of power both between the self-identified “*Kitus*” indigenous locals and SENAGUA representatives, as well as among stakeholders within the *Comuna* (situated particularly within structured ethnicity, class and gender power relationships that may enable or limit everyday participatory co-construction of water alternatives), impacted locally the implementation of the LORHUyA. Four vignettes were chosen to exemplify how some of the provisions of the new water legal framework are touching ground locally in this sense.

The Oyacoto multi-phase research project started with a preliminary study, consisting in the communication-based analysis of the conflict which originated in the Ecuadorian self-identified Indigenous (*Kitu Kara*), and *Mestizo Comuna* of Oyacoto; where “unable communication” (Habermas, 1981), seemed to be menacing the profitable exploitation of a recently implemented water system (2014); which, instead, should have boosted the economy and improved the *buen vivir* (wellbeing) of Oyacotenos, and developed through a participatory action research framework in order to probe the broader implications of the implementation of the new water legal framework on traditional community customary water systems.

Site and Project Description

The research activities took place within the geographical boundaries of the *Comunas* of Calderon, Pichincha -Ecuador-. Commonly referred to as the ‘Olla de Oro’ (‘Pot of Gold’, as an ancient Ecuadorian legend narrates that there was gold hidden in the mountains), Oyacoto is 6,912 feet above sea level. The peri-urban village is located at Km 19 on historic *Panamericana Norte*, the principal arterial road, 3km north-east of the center of the rural parish of Calderón (Quito, Pichincha, Ecuador). Environmentally the region is extremely dry, with large areas eroded by strong winds. Deforestation is severe. Oyacoto is a self-defined Indigenous and *Mestizo Comuna Ancestral*.

Comunas, according to the 2008 Constitution of the Republic of Ecuador, are legally recognized as holders of collective rights (i.e. art. 57, 60, see also COOTAD art. 99), and they can be defined as:

human settlements that identify as descendants of the ‘*Kitus*’ who maintain their own cultural and identity trait ... [i.e. the collective ownership of their territories], because of their remote origin, they have been given the character of ‘*ancestrales*’...and for the first time in the *Magna Carta* they are granted the category of holders of collective rights” (Andrade, 2016, p. 15, 18).

Comunas Ancestrales are those that despite their peri-urban location keep intact the cultural, social and spiritual traits traditional of the Andean worldview, as well as a strong rural vocation and relationship to their territory, the forms of organization of power, the exercise of democracy; collective activities such as *minga*; processes for the transfer of land ownership; for the entry or exit of its members; Traditions such as: the yumbadas, the rucus, the pingables, and principles of life such as: llakirina "do not add, do no harm", loves shua "not stealing", loves llulla "not to lie", loves muka... Traits that show that to this day they maintain a community life and in close harmonious relationship with their territories” (Andrade, 2016, p. 19)

The case of the *Comuna Ancestral* of Oyacoto, thus, offers a valuable example of the challenges to maintain land and water resources, as well as traditional rural and ethnic identity, that more broadly Ecuador’s Indigenous communities nowadays face.

In 2010, impelled by an Italian NGO, few community female members established and became members of the ‘Association of Women of Oyacoto’ (*Grupo de Mujeres*). The creation of the local women’s association coincided with the quest for a new irrigation water system/infrastructure (the Umayacu water source), which was finally built, implemented and started its operation in 2014, after the community submitted the required documents to the Secretariat of Water (SENAGUA) to legalize the irrigation project and the *Grupo de Mujeres* (women’s group administering the newly created *junta de riego*) in accordance to the new water law (LORHUyA, 2014).

The tensions that seemed to be originated by the implementation of the new water infrastructure were monitored and put into a conversation with the new *Ley de Recursos Hidricos, Usos y Aprovechamiento del Agua* (LORHUyA, Asamblea Nacional de la Republica del Ecuador, 2014). The harsh conflicts arisen in the community right after the implementation of the new irrigation water system (2014), and its *de facto* scarce functioning, due mostly to what appeared to be the unwillingness/incapability of reaching an agreement among community residents as to the use of the water-source, the turn-taking required for an even-distribution of the scarce water-supply to all the community; and, the repeated attempts to sabotage the water-pumping system both by comunards of the higher part of the *Comuna*, as well as by the neighboring *Comuna* of San Miguel (Calderon, Pichincha) whom never agreed, in the first place, to the authorization granted by the Sole Water Authority (Secretaria Nacional del Agua, -SENAGUA-) of that water source, represented in fact a valuable example of a broader difficulty, which appeared to be inherent in the implementation of LORHUyA, adversely affecting the achievement of *buen vivir* goals for Ecuadorian small irrigators’ communities, with their rigid, ‘one-fits-all’ provisions.

The expected result of this research project was the identification of undetected, possibly competing conceptualizations that represented an obstacle to productive outcomes for the *Comuna* of Oyacoto in terms of water management, as well as significant power unbalance (both at the local :gender/ethnicity-based, and at the national: state normative vs customary normative level) among stakeholders, which -unless acknowledged and re-equilibrated-, would represent a barrier to the achievement of the community's water *buen vivir* goals.

It was hoped that the information obtained through a community-based participatory action research process, in which Oyacoto community members -irrigation water beneficiaries, and non-beneficiaries-, and other stakeholders involved were enlisted to provide ongoing input, and oversight regarding the entire process), would inform the SENAGUA's planning activities, as well as the decisions by local Oyacoto leaders, simultaneously contributing to answer my research questions:

RQ1: How does the new water law (LORHUyA, 2014), underlying discourse touches ground in the self-identified Indigenous and *Mestizo* Comuna of Oyacoto?

RQ2: Where have national water management norms encountered resistance; and, where are they instead readily embraced, and leveraged into local *buen vivir* favorable outcomes?

RQ3: What can the inclusion of local perspectives add to our understanding of the LORHUyA in terms of community *buen vivir* around water?

In order to ensure the research was addressing the local problem through the lens of the community, the sampling strategy utilized during the exploratory phase was a snowball sampling process in which the researcher selected individuals based on their subject position.

The sampling frame included research participants (male and female) whom the researcher knew directly, and others whom were selected either randomly or based on recommendations from community contacts. The various phases of research were conducted within a communication-based, and participatory action research framework.

Twenty (20) key informants: nine (9) self-identified indigenous residents, three (3) non-indigenous Ecuadorian locals, three (3) representatives of the NGO in charge of the irrigation water infrastructure, and five (5) SENAGUA officials were sought to help shape and guide the research inquiry.

Study participants included the following:

- Community members who reside in the village of Oyacoto (10 years minimum).
 - Community youth (over the age of 18).
 - Community elders (until the age of 70).
 - Both male and female community members.
 - Community members who served in political positions in Oyacoto (i.e. *Cabildo de la Comuna, Juntas de Riego de Umayacu-Chusalongo, Grupo de Mujeres*, etc).
- NGO's representatives.
- Community members who are from Oyacoto but live outside the community.
- State officials (SENAGUA, *Ministerio de Ambiente, Ministerio de Agricultura*).

The information collected through observation, participant-observation and interviews was categorized into patterns and themes i.e. plurinational and customary use of

water; knowledge of the existing water legal frame, Community leadership and participation, gender and power unbalances within the community, local *buen vivir*, through review of the data. In order to determine the individual, economic, political and community wide impacts of the recently implemented water system, this research sought to provide the community individual and group perspectives, concerns and solutions around water that the community leadership could utilize to take decisions aimed at improving the quality of life (*buen vivir*) of its residents.

Each data collection method was chosen to provide important insight regarding community water contexts, thoughts and perspectives regarding current local strengths and problems, assets and barriers to water problem solution. Demographic information was collected to ensure that a broad range of perspectives be included in the planning phase, as well to compare and analyze the responses from various subject positions, such as gender, age, status in the community and a variety of other factors. A category for unknown variables was included to provide room to explore issue areas that arise out of the responses from interviewees. Co-participants were also encouraged to talk freely and elaborate on their experiences. All the interviews were transcribed and analyzed in later stages.

v. *Dissertation Overview*

The first part of *Chapter I* provides a brief analysis of *buen vivir* principles related to water, environmental protection, citizens' participation rights and plurinationality, as enshrined in the 2008 Ecuadorian Constitution. I rethink the insistence of the 2008 Montecristi Constitution (considered one of the most advanced and complete in terms of

nature and water rights) on the importance of collective and ancestral water management, as linked to the strive for auto determination of Ecuador's indigenous/social movements.

Chapter II presents the background of the new water law, and a personal translation of the key sections and titles of LORHUyA (2014) and its bylaws (available only in Spanish). The third and fourth sections of this chapter will revise in depth the articles dealing specifically with customary water management and citizens' participation, with a focus on the existing ambiguities between the principles of *sumak kawsay* (*buen vivir* in Kichwa), and the state-controlled, homogenizing philosophy underlying the new national water legal framework (Zapatta, 2018), in the face of Ecuador's rich tradition of plurinational water practices and diverse, locally-embedded, normative levels (see Boelens, Zwarteveen, & Roth, 2005 among others).

After situating Ecuador's obligations under the 2008 *buen vivir* constitution and comparing them with those descending from the 2014 water law, *Chapter III* of this dissertation, analyzes the ambiguities emerged from the legal texts' revision, as well as from fieldwork in my sites of research. Additionally, the implications of Ministerial Agreements N. 2017-0031, N. 2017-0103, and N. 2018-00194 and their potential contribution as a corrective to the stunted recognition the LORHUyA envisions in relation to customary water normative frameworks, and citizens' participation, will be explored.

Chapter IV, transitions to examining my primary case-study, the self-identified Indigenous and Mestizo *Comuna Ancestral* of Oyacoto of the rural parish of Calderon (Pichincha, Ecuador), in light of the impacts deriving from the implementation of the new water legal framework on local customary water management traditions, as well as with a focus on the capacity of disruption vs creation of community relations around water. This

chapter enlightens the ways in which collective water tradition are negotiated, created and re-created through a complex network of national vs local relations among stakeholders (see, for example, Boelens, 2011, 2015 among others), with differing levels of empowerment, and within a set of contradicting water cosmovisions, and coexisting normative hybridity. I argue that analyzing the diverse water actors' perceptions and understandings of the state's normative level in local terms of legitimacy, and power-relations, contributes to elucidate how water management frameworks are dynamically "adapted" and "adopted" in culturally infused "water-territories", or, on the contrary, encounter obstinate resistance.

Finally, *Chapter V* discusses research findings, and illuminates the practical implications of this endeavor. By problematizing the issue of the dynamic and diverse normative level imperatives, that need to be acknowledged and met in the Ecuadorian plurinational water context, local resistance to some aspects of LORHUyA, is understood as a counter-hegemonic space, and a strive for auto determined social justice (Altmann, 2019), for the right to be different. My analysis, relying on the extensive works of Boelens and other *Justicia Hidrica* committed scholars (Boelens & Doornbos, 2001; Hendriks, 2015; Gelles, 2015; Guevara-Gill, 2015; among others), concludes with a call for the re-examination of traditional dichotomies in water making such as local/national, customary/state, insider/outsider distinctions (Boelens & Doornbos, 2001, p. 352), in an effort to emphasize the need for a hybrid re-attunement of sociopolitical state-citizens' power relations, which may affect water practices, as well as negotiations over the meanings of local *buen vivir*.

The final paragraph of this chapter briefly explores the limitations of the study and suggests future paths to complement this research.

CHAPTER I

Buen vivir, Plurinationality, and Water Rights under Ecuador's 2008

Constitution

i. Introducing the context surrounding Ecuador's new water legal framework

Legislations provide the basis for governments intervention and action, and establish the context and the frame for other ...entitites' action
(TAC Background Papers, N. 4, 2000, p. 40)

Ecuador's new water legal framework is seen as necessarily intertwined with the *buen vivir* paradigm shift (Villalba, 2013) enshrined in the 2008 *magna carta*. Therefore, although the analysis of the principles of Andean *sumak kawsay* (the kitchwa for *buen vivir*) goes beyond the scope of the present research, being the contention between the new national water legal framework, and the community-based water management practices of Ecuadorian Indigenous, *Montubio* (back-country coastal peoples), Afro-Ecuadorian and *Mestizo* communities one of my primary concerns, this introductory chapter offers a brief review of the implications of *buen vivir* as to what relates to the rights of nature, plurinationality, and citizen's participation within the constitution of the republic of Ecuador.

After introducing the concept of *buen vivir*, and how it intertwines with those of nature, plurinationality and citizens' participation, I present the fundamental constitutional rights and obligations of the Ecuadorian state in relation to its agenda of plurinational recognition of Indigenous, *Montubio* and Afro-Ecuadorian communities (with a particular nod to customary rights), then I explore the unprecedented principles on environmental

protection and recognition of the right to water present within the 2008 *Magna Carta*; and, finally, I rethink its insistence on the importance of citizens' participation as a means to voice the rights of marginalized subsistence-farming populations, and to achieve their self-determined development and water justice. The chapter concludes with a brief reflection on the importance of the insertion of the Andean concept of *sumak kawsay* within Ecuador's 2008 constitution (one of the most advanced and complete constitutional texts existing in terms of water rights), marking a 'before and after' in terms of natural resources and their management for the benefit of society, and the quality of life of citizens.

The main legislation governing water use in Ecuador includes, the following:

- The 2008 *Constitucion de la Republica del Ecuador* (as well as the *Buen Vivir* Plans 2009-2013, 2013-2017 descending form it, and the *Plan Nacional Toda Una Vida* 2017-2021).

- The 2014 *Ley Orgánica De Recursos Hídricos, Usos y Aprovechamiento* (LORHUyA. *Segundo Suplemento R. O. N. 305 del 06-08-2014*), and its bylaws (i.e. *Reglamento a la Ley Orgánica de Recursos Hídricos, Usos y Aprovechamiento del Agua - Primer Suplemento R.O. N. 483 del 20/04/201*; *Instructivo para Conformación y Legalización de Juntas Administradora de Agua Potable y Saneamiento; Juntas Administradoras de Agua Potable y Saneamiento Regional; y. Juntas de Segundo y Tercer Grado, y el "Instructivo para conformación y legalización de Juntas de Riego y/o Drenaje"* *Acuerdo Ministerial N. 1400 del 30-09-2016*).

- The 2010 *Código Orgánico de Organización Territorial, Autonomía y Descentralización* -COOTAD-, last revised in 2015, particularly, as to irrigation water.

These legal sources, in association with Ecuador's diverse tradition of local customary water norms, constitute the framework within which national water policies are designed, and implemented, and rights, rules and restrictions are imposed on water access, use, and management.

ii. Intercultural and plurinational Ecuador: Water, recognition and self-determination.

We women and men, the sovereign people of Ecuador, recognizing our age-old roots, wrought by women and men from various peoples, celebrating nature, the *pachamama* (mother earth), of which we are a part and which is vital to our existence,...calling upon the wisdom of all the cultures that enrich us as a society,...hereby decide to build a new form of public coexistence, in diversity and in harmony with nature, to achieve the good way of living, the *sumak kawsay*; a society that respects, in all its dimensions, the dignity of individuals and community groups... (Preamble of the Constitution of the Republic of Ecuador, 2008 - Georgetown University translation-).

It appears clearly, from the preamble, that the 2008 constitution of Ecuador, is strongly intertwined with the recognition of plurinationality which considers “nationalities political economic entities with differentiated cultural histories and with a right to their territory and autonomous internal political administration [and languages]” (Jameson, 2011, p. 67), putting unprecedented emphasis on citizens’ participation, “providing a distinctly anticapitalistic alternative” (Jameson, 2011, p. 63), and celebrating the beginning of a new relationship with nature.

The majority of its provisions are aimed at promoting social justice, and the *buen vivir* (wellbeing) of all Ecuadorians, with no distinction. *Buen vivir* or “*sumak kawsay*, is the orienting concept of the new Ecuadorian constitution” (Walsh, C. 2010. p. 18), a concept -as

suggested by Walsh (2010)-, necessarily vinculated with “interculturality, respect for diversities, and harmonic co-existence with nature” (Walsh, 2010, p. 18),

The first article of the constitution establishes that:
 Ecuador is a constitutional state of rights and justice..., unitary, intercultural, multinational and secular state...;
 Sovereignty lies with the people, whose will is the basis of all authority, and it is exercised through public bodies using direct participatory forms of government (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation-).
 Whereas, article 275 reads:
 ... The good way of living shall require persons, communities, peoples and nationalities to effectively exercise their rights and fulfill their responsibilities within the framework of interculturalism, respect for their diversity, and harmonious coexistence with nature. (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation-).

The conceptualization of a plurinational state of *buen vivir*, arises from the historical evolution of the revindication of different Indigenous, *Montubio*, and Afro-Ecuadorian organizations, against centuries of dispossession and marginalization. The interculturality implied by the construction of a plurinational state, questions colonial relations of power, and projects an egalitarian and inclusive society, whereby all constitutional and human rights can be enjoyed without discrimination, offering an alternative to the current civilizational crisis (Sarango, 2016).

According to Sarango (2016), in fact, “the principle of plurinationality and thus the plurinational state... questions the bourgeois state-nation, which inherits absolutism, the scale of social classes, colonialism and racism (Sarango, 2016, p. 637).

The construction of a pluralistic nation warrants an orientation by the state that seeks evolution within diverse spheres of society, toward the achievement of the social, economic and cultural wellbeing of the country. The first of the areas to be transformed is the socio-economic, ensuring equity for citizens; the second is the political character, which allows for changes in power structures; and, finally, the socio-cultural sphere, aimed at a recognition of

diversity, leading to mutual learning and exchange among cultures (GEE, 2013). It is a “consensual economic, social, political and legal organization of the various nations that constitute it [...], the multi-national state will then be the nation of nations and their government, the government of all governments” (Sarango, 2016. p. 647).

One of Ecuador’s greatest riches is the existing diversity: geographical, cultural and environmental. In Ecuador there are 13 indigenous nationalities, each maintaining its own language and culture. There are also numerous *pueblos* within the nationalities, that maintain their identity according to their history, knowledge, customs, territory, forms of government and economic activities (Porras, 2017).

Historically, Ecuador’s Indigenous peoples, *Montubios*, and Afro-descendants have been silenced and marginalized. The 2008 constitution marks an important step in terms of the recognition of the country’s diversity, and the respect for their traditions, social organization and customary systems of own justice (*derecho propio*), within the framework of a unitary state.

A multi-national and intercultural state needs to listen to the various voices, scrutinize the context in which they emerge, their needs, and seek an equitable relationship between the individual and collective rights of its citizens (Regaledo, 2015), recognizing diversity with the aim of building an intercultural community space, where dialogue between cultures overcomes the controversies arising from traditional discrimination and exclusion, reaching a shared sense of belonging, building in day-to-day praxis the concept of multinationality and interculturality (Arroyo, 2013).

As underlined by the Ecuadorian Confederation of Indigenous Nations (CONAIE), plurinationalism must advocate for the:

Equality, unity, respect, reciprocity and the solidarity of all nations [...] It recognizes the right of nationalities to their territory, internal [political]-administrative autonomy, that is to say to determine their own process of economic, social, cultural, scientific and technological development; to [ensure] the development of their cultural and political identity (CONAIE, 1994, p. 12).

In this sense, article 21 of the constitution provides that Ecuadorians “have the right to build and uphold their own cultural identity, to decide their belonging to one or various cultural communities, and to express these choices [...] to disseminate their own cultural expressions” (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation-). And, article. 23 promotes “equality in diversity” (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation-).

With reference to the constitutional principles, Ecuador is therefore a country where a diversity of peoples, ethnicities and cultures coexist in a unitary way. Multiculturalism aims at complementarity and cultural exchange at all times, building the path toward a united, equal and equitable society (Villacís, 2018).

Cultural tension is one of the primary challenges that the new paradigm of *buen vivir* needs to embrace, meeting the theoretical and practical challenges arising from the diversity of various peoples, and ethnicities seeking to coexist (Grijalva, 2008). This cultural difference manifest in Ecuadorian citizenship, while -on the one hand-, strongly settles on the rights established by the 2008 constitution, it simultaneously requires an external questioning of the very system of rights it creates. Ecuador’s constitution recognizes the collective rights of cultural identity, and accords to respect their way of establishing justice; nevertheless, the supreme rule that indigenous people must abide remains the constitution, and their local normative levels cannot contravene what is established by the *magna carta* (Grijalva, 2008).

The second section of chapter 4 on “Rights of communities, peoples and nations” (Title II), dealing in its article 171 with the topic of indigenous justice, for example, establishes that:

The authorities of the indigenous communities, peoples, and nations shall perform jurisdictional duties, on the basis of their ancestral traditions and their own system of law, within their own territories, with a guarantee for the participation of, and decision-making by, women. The authorities shall apply their own standards and procedures for the settlement of internal disputes, as long as they are not contrary to the constitution and human rights enshrined in international instruments. The state shall guarantee that the decisions of indigenous jurisdiction are observed by public institutions and authorities. These decisions shall be subject to monitoring of their constitutionality. The law shall establish the mechanisms for coordination and cooperation between indigenous jurisdiction and regular jurisdiction (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation-).

This means that Ecuador’s communities starting 2008 are entitled to apply their ancestral traditions and *derecho propio* (their own norms and procedures) within their territorial jurisdiction, granting decision making for internal conflict resolution. It is important to point out the unprecedented responsibility of the state not only to respect, but also to enforce that indigenous jurisdiction decisions be observed, and to facilitate coordination between the indigenous and regular jurisdictions. The renewed emphasis on the recognition of legal pluralism, however, remains subordinate to the constitution.

The 2008 constitution establishes a broad catalogue of collective rights of indigenous, *Montubio*, Afro-Ecuadorian peoples, nations, comunas and communities, giving rise to a multi-national constitutionalism based on egalitarian intercultural relations that oblige to redefine and reinterpret citizens’ rights, and to restructure the institutionality of a nation state in the interests of the diverse peoples inhabiting it. New positive actions are required, nevertheless, from the state in order to achieve real equality. These actions must be consistent

with the day-to-day reality lived by the peoples of Ecuador, whom throughout history have suffered due to the absolute oblivion/oversight of the governments in office (Narváez, 2017).

In this sense, it can be argued that -in the last decade-, Ecuador has been experiencing a plurinational re-birth, based on an alternative, intercultural proposal, articulated by the different social movements, and including a strong participation of those who were traditionally excluded, making possible a pluriversal foundation for the development of a pluralist, and trans-civilizational interculturality both at the national and the local level, as expressed by the indigenous movement in the country (Sarango, 2016). The constitutional re-birth of a multi-national and intercultural Ecuador marks an important step in the path toward equality and equity. Plurinational constitutionalism can, in fact, only be profoundly egalitarian, since it is founded on the equal and respectful relationship of different peoples and cultures, legitimizing and maintaining unity as a guarantee of diversity (Cruz, 2013).

According to article 56 of the constitution:

Indigenous communities, peoples and nations, the Afro-Ecuadorian people, the Back-Country people (*Montubios*) of the inland coastal region, and communes are part of the single and indivisible Ecuadorian state (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation-).

Interculturality and plurinationality, are thus understood as the social and ethical political project implemented by the 2008 Constitution, establishing complementary perspectives, since pluralism recognizes and describes the reality of the country within which different Indigenous nationalities coexist with Afro-Ecuadorian, *Montubios*, white and mestizo peoples, and invoking relationships and articulations of equal partnership (Walsh, 2008).

The implementation of a multi-national and intercultural State guarantees the constant observance of collective agreements that facilitate the coexistence of different cultures and nations within the State. Adopting a multicultural approach becomes the focus of the multi-national state's public policies, in order to foment the harmonious coexistence of the different cultures co-existing in the country (CNP, 2009). In this sense, in Ecuador, indigenous leaders propose today multinationality as a form of national integration, which recognizes cultural difference, spaces of autonomy and self-government as a condition for decolonization, and the construction of equitable or intercultural relations between the different cultures of the country. It represents an advancement of the policies stimulated by the 2008 Constitution, and the fulfilment of the principles of equality and social justice inherent within it (Cruz, 2013).

Many articles of the 2008 constitution aboard the topic of *buen vivir* and its relation to *plurinacionalidad*. In conformity with the rights incorporated in the constitution of the republic, Indigenous and ancestral *comunas*, communities, *pueblos*, and *nacionalidades*, the Afro-Ecuadorian and *Montubio pueblos*, through their different forms of organizations, not only enjoy state recognized *personeria juridica* (legal personhood) (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation), they are recognized and guaranteed (article 57) numerous collective rights, among them to “preserve and promote their practices of biodiversity and [its] natural environment [management]”, “to take part in the use, exploitation, administration and conservation of renewable natural resources to be found on their lands”; and “to preserve and develop their own forms of social organization and coexistence, and to the generation and exercise of authority in their legally recognized

territories, and ancestrally owned communal lands (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation).

And, article 57 continues:

to freely uphold, develop and strengthen their identity, feeling of belonging, ancestral traditions and forms of social organization, to not be the target of racism or any form of discrimination based on their origin or ethnic or cultural identity, to keep ownership, without being subject to a statute of limitations, of their community lands, which shall be unalienable, immune from seizure and indivisible, to keep ownership of ancestral lands and territories and to obtain free awarding of these lands, to participate in the use, usufruct, administration and conservation of natural renewable resources located on their lands; and, especially, to free prior informed consultation, within a reasonable period of time, on the plans and programs for prospecting, producing and marketing nonrenewable resources located on their lands and which could have an environmental or cultural impact on them; to participate in the profits earned from these projects and to receive compensation for social, cultural and environmental damages caused to them. To keep and promote their practices of managing biodiversity and their natural environment, to keep and develop their own forms of peaceful coexistence and social organization and creating and exercising authority, in their legally recognized territories and ancestrally owned community lands, to create, develop, apply and practice their own legal system or common law [which, however, cannot infringe constitutional rights], [and, finally] “to not be displaced from their ancestral lands, to uphold, protect and develop collective knowledge, to uphold, restore, protect, develop and preserve their cultural and historical heritage as an indivisible part of Ecuador’s heritage (Constitution of the Republic of Ecuador, 2008 – Georgetown University Translation-).

Last but not least, “the state shall provide resources for this purpose” (Constitution of the Republic of Ecuador, 2008 – Georgetown University translation-), thus protecting community rights, and the right to self-determination of Ecuadorian peoples and nationalities to freely strengthen their identity; preserve permanent ownership of their lands; keep the ancestral possession of them as well as their territories; participating in the use, usufruct, management and conservation of natural resources found in the demarcation of their possessions; and, demanding free and informed consent on the exploitation of natural

resources within its territory; and acknowledging the right to maintaining, protecting and developing collective ancestral knowledge... (Asamblea Nacional, 2008).

Articles 59 and 60 establish specifically the recognition of the rights of the *Montubio*, and Afro-Ecuadorian peoples, *comunas* and communities to carry out a process of integral, and sustainable human development (Asamblea Nacional, 2008), and to have their ancestral territorial organization and collective form of resource ownership recognized.

Article 59

The collective rights of the coastal back-country people (*Montubios*) are recognized to guarantee their process of integral, sustainable and durable human development, the policies and strategies for their progress and their forms of societal management, on the basis of knowledge about their reality and respect for their culture, identity, and own vision, in accordance with the law (Constitution of the Republic of Ecuador, 2008 – Georgetown University translation-).

Article 60

Ancestral, Indigenous, Afro-Ecuadorian and coastal back-country (*Montubios*) peoples can establish territorial districts for the preservation of their culture. The law shall regulate their establishment of communities (*comunas*) that have collective land ownership recognized as an ancestral form of territorial organization (Constitution of the Republic of Ecuador, 2008 – Georgetown University translation-).

Good living is defined by Walsh as “a wager for change from the demands for equality and social justice”, from “the recognition, validation, and dialogue of peoples and their cultures, knowledges, and modes of life” (Walsh, C. 2010. p. 19). The 2008 *Montecristi* constitution decrees that ancestral, Indigenous, Afro-Ecuadorian and *Montubio* peoples have the right to form territorial constituencies with the aim of preserving their culture, as the ultimate conquest of a multi-national state and, thus, represents a significant step forward toward *buen vivir* and for the government and these ethnic groups, allowing them to constructively face the future (Ayala, 2014). Multiculturalism, thus, allows to recognize and to value the ancestrality and identity of Ecuador, to accept that each people has a broad and different vision regarding its traditions, customs, values, and knowledges, so that a social and

egalitarian state can be created, by virtue of the equal fruition of human rights professed by the *magna carta* (Villacís, 2018).

For Ecuador, declaring itself a multi-national and intercultural state, to include the diverse nationalities and peoples existing in the country as a foundation of Ecuadorian identity is an important conquest after centuries of discrimination. For the first time, cultures are understood as the experience that modulates all the knowledge spread and practiced by the different societies, which impact on the formation of the present State (CNP, 2009) enriching it for a better future.

The knowledge of *sumak kawsay*, as suggested by Inuca (2017), “comes together for an anti-colonial struggle and also as an alternative to neoliberalism, capitalism and development” (Inuca 2017, p. 157). Thus, multi-nationality and interculturality become simultaneously a project as well as a necessary tool in the transformation of the state and society, a transcendent break with the uni-national framework, emphasizing the plural and national as a structure to visibly integrate the objectives that these ideologies, and to seek true equality, inclusion, harmonious coexistence and respect for human rights (Walsh, 2008), as well as the rights of nature.

As argued by Boelens, Hoogesteger, Swyngedouw, Vos, and Wester (2016) “territorial struggles go beyond battles over natural resources as they involve struggles over meaning, norms, knowledge, identity, authority and discourses” (Boelens et al., 2016, p. 1). A multi-national and intercultural state is one, therefore, where an efficient, sustained and permanent process of relationship, communication and mutual learning is constantly being developed, a collective and conscious effort is brought about on the part of its citizens, based

on mutual respect and creativity, eradicating discrimination, ethnocentrism, economic exploitation and social inequality (Ayala, 2014).

Ecuador, by virtue of major constitutional reforms and through the empowerment of national indigenous organizations such as the Confederation of Indigenous Nationalities of Ecuador (CONAIE), showed national ethnic diversity within a framework of interculturality, where indigenous people become major social actors. Likewise, multi-nationality guides the construction of a new form of economic, political and social organization that puts an end to the colonial and dominant stigma to which Ecuador had been subjected for centuries. In this way, a pluralist state is an organizational structure that contributes to the construction of a fair society veiling for public interests (Barabas, 2014).

Plurinational *buen vivir* is a new model of development envisaged in the 2008 Ecuadorian constitution, a broad and inclusive model, which respects the diverse and ensures the realization of a decent life for all people, communities, peoples and nations equally. As highlighted by Altmann (2019), however, in spite of recent improvements “Indigenous peoples have been and still are largely excluded [...]. This exclusion is linked to colonialism and [the ongoing] the coloniality of power” (Altmann, 2019, p.7), a coloniality that is referred “not only [to] the economic but also the cultural” (CONAIE, 1989, p. 281).

For a state it is not easy to overcome its neo-colonial imprint (Grijalva, 2008). It will take time, and a new state structure is required to really implement the good living in Ecuador’s diverse communities, a *buen vivir* “which combines classist and ethnic visions and feeds on interdisciplinary debates” (CONAIE, 1994, p. 12), of knowledge, identity, power, and social justice. As argued by Hidalgo, Guillen & Deleg, to implement *sumak kawsay* a constant attention from the state and its political organizations will be required, in order to

generate progress and policies aimed at equality, and the inclusion of all its citizens (Hidalgo, Guillén, & Deleg, 2014).

iii. Sumak kawsay and pachamama: The constitutional basis of water management.

Over the last decade, interculturality have had great influence on the policies and actions of a government concerned with the idea of building a plurinational state, and seeking equity in society (Tamayo & Serrano, 2008). The paradigm of the good living emerged in parallel with the multi-national and intercultural state projects, and it integrated the ethical principles and traditional knowledge of indigenous culture, to become the basis for a new Ecuador, conceived as a scenario of intercultural thinking under construction, toward a future of sustainable development and better management of natural resources, a gift given to man by the *pachamama* (Larrea & Greene, 2017).

Sumak kawsay postulates an intercultural encounter of different cultures on a basis of equality. A paradigm change rooted in multilayered histories, identities, cultures, and ecosystems. A necessary condition for the correct implementation of multiculturalism is the decolonization of western thought, by promoting a holistic vision integrating Ecuador's different ancestral cultures and their relationship with nature, achieving a better environmental management (Kárpava & Moya, 2016).

The previous paragraph underlined that Ecuador, as a constitutional state, focused on guaranteeing Indigenous, Montubio and Afro-Ecuadorian peoples the conservation of their traditional forms of social organization and cosmovision. This explicit constitutional

emphasis on interculturality, appears to have deepened normative texts prominence on the protection of nature (Antúnez & Díaz, 2017).

Ariruma Kowii (2011), states that *sumak kawsay*:

is an ancestral Andean conception of life that has remained in force in many indigenous communities to this day. “*Sumak* means the ideal, the beautiful, the good, the realization; and *kawsay* is life, in reference to a dignified life, in harmony and balance with the universe and the human being, in short, the *sumak kawsay* means the fullness of life” (p. 5).

And, indigenous leader Luis Macas (2010), identifies *sumak kawsay* as a fundamental day-to-day “concept and practice” of the communitarian structure. A community system, which -according to the Confederation of Indigenous Nations of Ecuador -CONAIE- (1989), is:

a community of history, language, culture and territory; ... fight[ing] to recognize the multi-national, multi-ethnic and multilingual character of Ecuadorian society; by recognizing the native territories as they are the basis of [our] livelihood and the social and cultural reproduction of the different nationalities; ...for the right to self-management and for the right to have a political representation that allows [us] to defend [our] rights and raise [our] voice (CONAIE, 1989, p. 279).

In the Andean cosmovision, *sumak kawsay* is thus a system of life that recognizes harmony with nature, understanding man as an intrinsic part of the environment that surrounds him. *Sumak kawsay* is built around the community, a political organization whose maximum expression of authority is the assembly and other internal authorities recognized by its members (president, secretary, treasurer, shaman, among others), and around an economic paradigm which is incompatible with a capitalist model that commodifies everything, including nature (CDH, 2017).

In this sense, interculturality and ‘multinationality’ in environmental management “becomes a point of entry for demands [traditionally] excluded by the [state’s] policy ...

[and] allows for a proper political critique of the Ecuadorian state” (CONAIE, 2013, p. 18). By means of the concept of *sumak kawsay*, and the defense of *pachamama* inherent within it, it becomes possible for the indigenous movement to "challenge and expose social injustice and economic exploitation, the inefficient and outdated legal and administrative system, as well as the undemocratic nature of the state and institutions of power" (CONAIE, 2013, p. 18).

The principles founded in the Andean tradition, believing that nature is a living organism and is subject of rights, and opening space to the life not only of man but of all living beings, in a renewed view of the modern concept of wellbeing, stimulates humanity to find new paradigms of development, pushing for a constitutional recognition and guarantee for the respect of mother nature (Pinto, Cerneiro, Augustus, & Maluf, 2018).

Sumak kawsay is postulated, in this sense, as an alternative to the development model based on the pursuit of progress through economic growth: a model, against which, the peoples and nationalities of the Andean lands, put on the discussion table of the *asamblea constituyente* the proposal of an alternative way of life (Pérez & Cardoso, 2014). A new social model of coexistence, based on the harmonious relationship between the state, society, and nature, by virtue of a deep recognition of equality in diversity, enhanced citizens' participation in decision making, and the right to environmental and social *buen vivir* for all.

The impact of the participation of non-traditional sectors, that for centuries were discriminated against and politically ignored was evident during the workings of *asamblea constituyente*, bringing about a fair recognition of the long struggle of the historically voiceless, and the indigenous peoples' movement (Rodas, 2015).

As a result of their struggle, starting from the September 2008 referendum ratifying the new constitution, Ecuador becomes an intercultural and multi-national state, and establishes a wide range of unprecedented rights, specified throughout various sections. Title II “Rights” of the 2008 constitution, in particular, after establishing in chapter 2 the “Rights of the good way of living (*buen vivir*), dictates in its chapter 4 on "Rights of communities, peoples and nations", the maintenance of ancestral territories, free, prior and informed consultation for extraction projects, exercise of own rights, and establishment of territorial constituencies; while chapter 5 establishes rights and mechanisms for representation and participation, with specific reference dedicated to citizens’ and communities’ participation as to environmental decision making (Asamblea Nacional, 2008).

Chapter 7 (of Title II), deals specifically with the rights of nature, recognizing in article 71 the rights of nature to reproduce, and restore itself according to its rhythms. Additionally, it provides that the state must enforce and incentivize the protection of *pachamama*, and that any person may enforce the rights of nature together with public authorities.

Article 71. Nature, or *pachamama*, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.

All persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature. To enforce and interpret these rights, the principles set forth in the constitution shall be observed, as appropriate.

The State shall give incentives to natural persons and legal entities and to communities to protect nature and to promote respect for all the elements comprising an ecosystem (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation).

As argued by Hyer (2015) “Ecuador’s constitution is among the first to recognize and guarantee the rights to nature. Not only may the indigenous peoples of Ecuador claim this

right, but also the entire populace may call upon the government to live up to its obligation to respect and protect nature” (Hyer, 2015, p. 77).

Article 72 indicates the right of restoration of nature, and article 73 mandates the application of precaution measures for ecosystem altering or endangering activities.

Article 72. Nature has the right to be restored. This restoration shall be apart from the obligation of the state and natural persons or legal entities to compensate individuals and communities that depend on affected natural systems. In those cases of severe or permanent environmental impact, including those caused by the exploitation of nonrenewable natural resources, the state shall establish the most effective mechanisms to achieve the restoration and shall adopt adequate measures to eliminate or mitigate harmful environmental consequences (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation).

Article 73. The state shall apply preventive and restrictive measures on activities that might lead to the extinction of species, the destruction of ecosystems and the permanent alteration of natural cycles. The introduction of organisms and organic and inorganic material that might definitively alter the nation’s genetic assets is forbidden (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation).

Additionally, article 74 mandates that *comunas*, communities, *pueblos* and *nacionalidades* be recognized the right to enjoy the resources of nature in order to achieve the *sumak kawsay*.

The articles related to the good way of living, to the alternative to development, and to the protection of the environment are many and spread throughout the constitutional text. The State is responsible for planning a sustainable, national development, as well as for an equitable resource redistribution in order to achieve *buen vivir*. A state-run post-developmental model, which benefits peoples, *comunas*, communities, and nationalities, so that they can live well, and enjoy their right to a healthy and ecologically balanced environment that ensures good living (Macías, 2012).

An entire title of the 2008 Constitution (Title VII), is dedicated to “the good way of living system”. However, it is article 395 of section one on “Nature and the environment” in

chapter 2 on “Biodiversity and natural resources”, that specifically, recognizes important environmental principles, and links them to *buen vivir* objectives:

1. The State shall guarantee a sustainable model of development, one that is environmentally balanced and respectful of cultural diversity, conserves biodiversity and the natural regeneration capacity of ecosystems, and ensures meeting the needs of present and future generations.
2. Environmental management policies shall be applied cutting across all sectors and dimensions and shall be mandatorily enforced by the State at all of its levels and by all natural persons or legal entities in the country’s territory.
3. The State shall guarantee the active and permanent participation of affected persons, communities, peoples and nations in the planning, implementation and monitoring of all activities exerting environmental impacts.
4. In the event of doubt about the scope of legal provisions for environmental issues, it is the most favorable interpretation of their effective force for the protection of nature that shall prevail (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation-).

Sumak kawsay, as the aspiration of many peoples of the region: as a legal concept under construction, whose origin arises in the customary law of the natural peoples of the Andean region. *Sumak kawsay* as the recognition of the environmental rights of indigenous peoples, which contributes to the adoption of numerous legal bodies within a multi-national and intercultural state (Antúnez & Díaz, 2017).

The concept of *sumak kawsay* serves, therefore, as the basis to authenticate all public policy decisions resulting in an environmental planning tailored to the needs of the population. Good living has constitutional weight and rank, this is momentous in the protection and enforcement of human rights and nature rights, giving the state a fundamental role as guarantor (HRC, 2017).

The *sumak kawsay* in the constitution can be understood either as a principle, a regime and a right. Article 275 of the constitution integrates it with reference to the good life that must be enjoyed fully. And, the legal body established in article 277 indicates the

measures that the state must take to achieve the conditions which will allow citizens to enjoy good living in the terms expressed by the supreme rule (Asamblea Nacional, 2008).

A resolution of Ecuador's constitutional court of March 25th, 2010 has held that the *sumak kawsay* is part of the structure of the state and strengthens the governance project that will lead the Ecuadorian society toward a good life. It bases its foundation on sustaining a balance between human beings, natural resources and development in the framework of the functioning of public policies established by the state (Sentencia N. o 006-10-SEE-CC, Caso N. o 000S-09-EE, March 25th, 2010).

Within environmental protection special attention is granted to water. Ecuador's peasants' peoples historically suffered from precarious living conditions, lacking this vital resource for their subsistence. They advocated firmly for its redistribution as a means for the preservation of nature and a better quality of life (Martínez, 2017).

The harmony between *sumak kawsay* and *pachamama*, as the constitutional basis of water management allows to facilitate a full life (*vida llena*). The sustainable management of water represents an essential element for the achievement of good living and harmonization with mother nature (Martínez Moscoso, 2017), particularly for Indigenous, Montubio and Afro-Ecuadorian peoples of Ecuador, who relate to water in many ways: not only for human consumption, or irrigation, but also for ancestral spiritual and ceremonial purposes.

The normative emphasis accorded by the 2008 constitution to the protection of water is unprecedented for a legal text. The constitution of Ecuador extends legal personhood to non-human entities as is the case of nature and all the resources within it (among which water). Ecuador can, therefore, be considered as a pioneer, enshrining the rights of mother earth in its highest value and hierarchical norm (Pinto, Cerneiro, Augusto, & Maluf, 2018),

granting water a special legal category (National Assembly, 2008). As highlighted by Martínez, water was recognized as a human right that everyone can access and use by the UN, two years later (Martínez Moscoso, 2017).

Ecuador undoubtedly exhibits one of the most complete constitutional framework on water, establishing rights and mandating obligations that -as Hyer (2015) suggests “affect the [whole] interpretation and implementation” (Hyer, 2015, p. 76), of the new relationship established with nature, and of the concept of good living.

Alex Zapatta (2017), highlights that section I of chapter 2 “Rights of the good way of living” (Title II), characterizes water as one of the ‘*bienes nacionales de uso público*’ (national goods of/for public use) (p. 77). And, while “the *ley de Aguas* de 1972 (1972 water law) institutionalized a role for the state in the management of water: that of regulator of the multisectoral management of hydrological resources...The constitution of 2008 gives a new characterization to water, that of ‘*patrimonio nacional estratégico*’ (national strategic asset)” (Zapatta, 2017, p. 77). As established by article 12, in fact:

The human right to water is essential and cannot be waived. Water constitutes a national strategic asset for use by the public and it is unalienable, not subject to a statute of limitations, immune from seizure and essential for life (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation-).

Moreover, Article 13 and 14 of the II Title of the constitution not only promote food sovereignty, by recognizing “[the] right to safe and permanent access to healthy, sufficient and nutritional food, preferably produced locally and in keeping with their various identities and cultural traditions” (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation), they also declare “matters of public interest” the rights of the citizens “to live in a healthy and ecologically balanced environment that guarantees sustainability and

the good way of living (*sumak kawsay*)” (Constitution of the Republic of Ecuador, 2008 - Georgetown University translation-).

Another example of the constitutional guarantee granted to water access as an obligation of the Ecuadorian state, is offered by the provisions contained in article 276, which mandates the development structure -among other important objectives-, the following:

Article 276.[4]. To restore and conserve nature and maintain a healthy and sustainable environment ensuring for persons and communities equitable, permanent and quality access to water, air and land, and to the benefits of ground resources and natural assets (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation-).

This objective, as well as all those contained in article 313 of chapter 5 (Title VI on “Development structure”), reserving the state “the right to administer, regulate, monitor and manage strategic sectors”, and specifically establishing that to be done according to “the principles of environmental sustainability, precaution, prevention and efficiency” represent another important step forward in the protection of water sustainability, subordinating them to the “general welfare of society” (Constitution of the Republic of Ecuador, 2008 - Georgetown University Translation).

Article 313. The state reserves the right to administer, regulate, monitor and manage strategic sectors, following the principles of environmental sustainability, precaution, prevention and efficiency.

Strategic sectors, which come under the decision making and exclusive control of the state, are those that, due to their importance and size, exert a decisive economic, social, political or environmental impact and must be aimed at ensuring the full exercise of rights and the general welfare of society.

The following are considered strategic sectors: energy in all its forms, telecommunications, nonrenewable natural resources, oil and gas transport and refining, biodiversity and genetic heritage, the radio spectrum, water and others as established by law (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation).

Article 318 of the same chapter -however-, is probably the most illuminating as to the post-developmental paradigm proposed with respect to water management, establishing not only that water “is a vital element for nature and human existence”, and that it constitutes “part of the country’s strategic heritage for public use”, and represents an “imprescriptible and unalienable” domain of the nation, it goes further, expressly forbidding any form of water privatization.

Article 318. Water is part of the country’s strategic heritage for public use; it is the unalienable property of the state and is not subject to a statute of limitations. It is a vital element for nature and human existence. Any form of water privatization is forbidden (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation-).

By establishing that, as a vital element for public use, it must be assumed only by the state or the communities, it allows all Ecuadorians to exercise their sovereign water rights (Núñez, 2018) on an equality basis.

Art 318 ... The management of water shall be exclusively public or community based. The public service of sanitation and the supply of drinking and irrigation water shall be provided only by legal entities of the state or communities (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation).

Also, by establishing that water will be managed solely by the state or the communities, stating that the state must assume the responsibility to guarantee community initiatives around water access, use, administration and exploitation (through incentives and alliances between the State and the community in the rendering of the services),

Art 318 ...The state shall bolster the management and operating of community initiatives with regard to the management of water and provision of public services, by encouraging alliances between public and community bodies for the provision of services (Constitution of the Republic of Ecuador, 2008 -Georgetown University Translation-).

The State ensures its inhabitants access to water not only as a simple constitutional declaratory statement, but -rather- as a whole livelihood process, giving it full recognition as a means to allow economic, social and cultural development (Judgment No. 0006-10-SEE-CC, 2010).

Art. 318 ...The state, through the sole authority for water, shall be directly responsible for planning and managing water resources for human consumption, irrigation to guarantee food sovereignty, ecological wealth and productive activities, in this order of priority. State authorization will be required for the use of water for productive purposes by the public, private and grassroots solidarity sectors, pursuant to the law (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation-).

Finally, according to article 318, the state, through the Sole Authority for Water (later identified as the National Secretary for Water -*Secretaria Nacional del Agua*- SENAGUA-) becomes the sole and direct responsible of the planning of water resources, and establishes a strict constitutional order of priority in the use of water, in accordance with the principles of respect for nature (ecological flow), equity, solidarity (irrigation for food sovereignty), redistribution (no privatization to prevent hoarding), participation and plurinationality (recognition of community management) enshrined in the principle of *sumak kawsay* or *buen vivir*.

The importance of environmental justice, equity, solidarity, and of putting an end to water hoarding is the face of Ecuador's historical social injustice, is clearly reflected in the structure of the constitutional text (Martínez Moscoso, 2017). It is important to point out that, as argued by Zapatta (2017), "water hoarding was [such] a topic of concern for the constituent assembly" (Zapatta, 2017, p. 84), that the constitution dedicated two of its transitory XXVI and XXVII provisions to the issue, by establishing the auditing of all

previous water concessions/authorizations, avoiding abuse, and guaranteeing more equitable access and distribution:

Transitory disposition XXVI. Within three hundred sixty (360) days as of the entry into force of the present constitution, the concessions for the public services of water and sanitation shall be audited financially, legally, environmentally and socially. The state shall decide the term of validity, the renegotiation and, if appropriate, the termination of these concession contracts, in accordance with the provisions of the present constitution and on the basis of the results of the audits.

Users living in extreme poverty shall be forgiven any water use debts they might have incurred up until the entry into force of the present constitution (Constitution of the Republic of Ecuador, 2008 -Georgetown University Translation-).

Transitory disposition XXVII. The executive branch, within two years after the entry into force of the present constitution, shall review the situation of access to irrigation water for the purpose of granting concessions, avoiding abuse and inequity in the fees charged for water use, and guaranteeing more equitable distribution and access, especially for small and medium-sized farm and cattle producers (Constitution of the Republic of Ecuador, 2008 -Georgetown University Translation-).

Ecuador has managed to position the concepts of *sumak kawsay* and *pachamama*, as a constitutional principle, recovering a holistic vision of the human being, as an intrinsic part of society and nature. In this context of protection of nature, water is more than a resource, it is considered an exhaustive part of the culture of peoples, communes, nationalities, peasants, farmers and also of urban users. Hence, energetic legislative actions are given for good water management (CODENPE, 2012).

In conclusion, it can thus be argued that, the insertion of the concept of *sumak kawsay* with its inherent respect for the rights of *pachamama* into the current Constitution, undoubtedly marked a ‘before and after’ in terms of natural resources and their management for the benefit of society, and the quality of life of citizens. Throughout Ecuador's constitutional history (with more than 20 constitutional texts), it is the first time that a legislative tenor has been adopted that agglomerates approaches from indigenous peoples, and proposes the fundamentals of their cosmovision as the core axis for the wellbeing and of

the entire Ecuadorian society (Cortez, 2011), the preservation of their living environment, and “hydrosocial territories” (see Boelens, Hoogesteger, Swyngedouw, Vos, & Wester, 2016, among others).

iv. Citizen participation and water justice

Water is increasingly becoming a contentious issue of great concern both at the national and international level. The increasing speed of water resources depletion has reduced the capacity of restoration required by its ordinary cycles, putting living beings and human health conditions, as well as the national security of any society, at risk (Ortiz, 2013).

The object of this section is to illuminate the importance of a change in traditional blue-print water exploitation and management choices, incentivizing locally embedded, and culturally infused citizen participation as an important tool for preserving the sustainability of the resource, its redistribution, and the enhancement of water justice.

By engaging in a brief review of the most relevant and innovative principles enshrined in the 2008 Ecuadorian constitution as to participation, we underline the meaningfulness and positive impacts that the participative water management approach may bring about on citizens’ *buen vivir*.

The importance of participation

Free access to information, an authentic socially just participation in environmental matters such as water are a right for both society and governments, representing key elements for achieving environmentally sustainable development and protection of nature. For this reason, the Latin and Caribbean countries have drawn up several plans to establish public

policies that allow citizens' participation in the protection and conservation of water resources, which serve as a basis for the preservation of life in the planet (ONU, 2012).

Democratic citizens' participation and access to information favor the transparency required to take the relevant actions in complex water conflict resolution, contributing to the building of trust necessary for the creation of alternative solutions, and enhanced efficiency in environmental policies and regulations aimed at the sustainability and good living of human beings (ECLAC, 2018).

The informed participation of society in the water management of a country is an integrative element, which involves the concerns and knowledge of the population, aimed at finding solutions through decision-making. It has been shown that when there is active public participation in the resolution consensus, this increases the capacity of governments to respond to citizens' concerns and demands effectively, and improvements are made in terms of acceptance and compliance. In addition, the citizens involved in the discussions on the problem solution, feel a deeper sense of commitment to the situation they face, particularly when their contribution takes place in an early stage of decision-making. An authentic participation in environmental matters may, therefore, prevent (or, at least, contribute to stem) socio-environmental conflict in the future (Morosevi, 2011).

In this sense, all citizens should be accorded the right to actively participate in public decision-making on environmental issues and aspects. The right to citizens' participation, involves, on the one hand, the possibility of access to public information on environmental issues and their impact, and on the other to issue ideas and opinions. It promotes open, transparent and responsible dialogue between the state, the investment project holder and the surrounding community, being a starting point for building trust between all the actors

involved. It should also be acknowledged that the population shall have the right to an inclusive citizen participation adapted to their language, use and customs (Perevochtchikova, 2013).

In this regard, it is important to underline that there exist diverse mechanisms of citizen participation: some are mandatory and others volunteer. In general, each [environmental] project carried out, ought to contemplate participative mechanisms that adapt to the social reality of the environment in which it is developed/takes place: workshops, public hearings, the information office, and the suggestion box, among others; nevertheless, it is noteworthy that citizens' participation does not end with the environmental impact study, it shall develop throughout the entire life of the project, and include the mechanisms necessary to build an informed community, prepared to have an opinion and participate, a participating population that contributes to improving the quality of environmental policies, and their impact by promoting the sustainable development of a country for the benefit of society (Santandreu, 2007).

As Altmann (2019) suggests, historically in Ecuador, "... the inclusion of indigenous demands in politics only works through organizations that are already part of the policy" (Altmann, 2019, p. 18). This is an unfortunate tradition for a country, because citizens' access to information and actual participative agency in policy making provides individuals, groups and organizations with a tool to protect environmental rights and participate in the colloquium to decide on the most correct resolution measure, allowing access to clear, impartial, timely and independent judicial and administrative proceedings, that -in the event of damage to those rights by the state or individuals-, observe, redress and compensate for environmental damages (ECLAC, 2018)

An important input as to citizen participation enhancement in relation to environmental resources management, was offered by the United Nations Conference on Environment and Development, held in Rio de Janeiro in 1992, which boasted a point of change in the recognition of the importance of the benefit of informed, participation and justice in addressing environmental challenges. The conference established several important principles for governments to comply with, in terms of environmental participation of citizens. principle No.10 states the following:

The best way to deal with environmental issues is with the participation of all concerned citizens, at the appropriate level. At the national level, any person should have adequate access to the environmental information available to public authorities, including information on materials and activities that pose a danger in their communities, as well as opportunity to participate in decision-making processes. States should facilitate and promote public awareness and participation by making information available to all. Effective access to judicial and administrative proceedings, including compensation for damages and relevant remedies, shall be provided. (ONU, 1992, p. 2).

In this regard, rights to information access, justice and public participation in environmental issues are a central element of the juncture between the nature and human rights, so that this relationship between the state national policies and citizens forms the basis for the establishment of environmental democracy and the sound establishment of public policies linked to good governance. It is also provided that participative decision-making can enhance the standards and the legitimacy of decisions in environmental matters, reducing inequality and social poverty (ECLAC, 2018).

Until the 1980s the main issues to be addressed were those relating to participation in the protection of human rights, from the 1990s onwards the big issue becomes the environmental impact and the damage to social life that this warns (CEDA, 2009), as over

the last decades several environmental conflicts negatively impacting nature, caused the increasing depletion and scarcity of its resources (water in particular).

In the Ecuadorian context, the environmental issue takes hold from organized civil society: diverse social organizations and groups that generated significant efforts to ensure their own environmental political agenda, a lawful institutionalization and, a legal framework that allows to regulate the extraction and rational use of natural resources (CNP, 2017).

As Bouguerra (2005) maintains, it is necessary to analyze the water policy simultaneously from its economic viability, social capacity, ecological responsibility and appropriate use to avoid compromising future generations and other living creatures with whom water is shared (Bouguerra, 2005); however, throughout history, in water exploitation and management a reduced technical perspective seems to have predominated, disregarding the broader social and environmental consequences. This restrictive focus contributed to a sense of collective irresponsibility founded on the manipulation of what is to be intended as the “general interest” of populations (Arrojo, 2016). This manipulation (purposely, or not) represents a powerful tool for a vitiated management of available resources, effectively legitimizing policies where decisions favor water planning and management (Ortiz, 2013) at the expense of the protection of nature and the *buen vivir* of the populations involved.

Citizen participation and water justice have been addressed from different lenses, alternatively focusing on the supply of the resource, on its demand, and/or promoting the idea that, by means of the very water management technology implementation, like the development of large hydraulic infrastructure projects, the demands of water access and availability would be simultaneously addressed (Morosevi, 2011).

Emerging from this socio-technical perspective, which starts from the premise that the demand for drinking water is met through infrastructures contributing to normalizing consumption patterns (López, 2008), a profit-based philosophy on water extraction and management has reduced the sense of public responsibility of water institutions, and given rise to social inequality in water access and to the commodification of the resource. Meaning that public participation is reduced to a few people or entities, such as industries and productive sector delegates, lacking societal representativity, and allowing governmental authorities to develop water exploitation activities almost without considering the cluster of citizens who are directly affected by this form of management. Additionally, stimulating the creation of bureaucratic models in which the mostly affected are the lower echelons of society (Arrojo, 2016).

The consequence of this is an inevitable breach of two of the most fundamental principles enshrined in the 2008 Constitution of Ecuador: such as, the right to water, and the right to enjoy a good quality of life. citizens' participation in the *buen vivir* constitution is meant to entitle society to have a saying in national policies, and express challenges and needs as to the situations affecting their lives. This is particularly important as to decision making related to environmental and water, areas where -traditionally-, the voices of the territories and the dispossessed have been silenced.

As Zwartveen & Bolens (2010) underline -historically- those who controlled property rights controlled the processes of allocation, distribution and management of water. The struggles for the preservation and good management of the hydraulic resource are the best manifestation for the characterization of water justice arising within the conceptualization of water rights linked to the social relations of power (Zwartveen &

Boelens, 2010). Additionally, Globalization sharply elevated the number and heterogeneity of competitors over local water sources, leading to increased demand and reduced resource availability, creating conflict and tensions. Top-down state interventions, in combination and intertwined, with a neoliberal policies favoring some users over others, generated processes of water hoarding that contributed to poverty and threatened water and food security for those with less power and voice, while generating a the progressive depletion of the environment (Zwarteveen & Boelens, 2010).

According to Galárraga (2004), in Ecuador, water-based inequalities have been even worse than those based on land. Community irrigation systems, useful for smallholder farmers who produce the majority of the country's food, and make up 86% of the users, only have 22% of the irrigated land area and 13% of the total flow. While, according to official figures, 67% of the flow is concentrated in the private sector, which accounts only for 1% of agricultural production units (Galárraga, 2004).

As a corollary of the above, water is considered to flow into the hands of a few users from privileged sectors, who are expressly interested in turning this resource into an immediate benefit, rather than thinking about the potential long-term consequences on the environment and human health. This represents a danger for national and international food security and environmental sustainability (ONU, 2010).

Finally, the traditional misrepresentation, and subordinate position granted to the great variety of locally established water rights, by means of manipulative strategies of inclusion and vacuous official recognition, contribute to the top-down homogenizing control that the state exercise over territories with diverse realities and needs. Such a lack of authentic recognition, that often makes local regulatory systems illegal, propose top-down

state-determined water developments, imposing culturally unfit standard recipes which contribute to the depletion of hydrology, causing life on the planet to perish (Gentes, 2002).

The legal or subordination of certain local regulations, combined with the illegalization of others, facilitates and strengthens the political control and vertical power of water bureaucracy, helping neoliberal sectors to incorporate local groups and organizations into the market system. Citizens' participation and the implementation of water justice would instead mean that knowledge exchange and transfer take place simultaneously and on equal bases, facilitating the concentration and enforcement of water rights and resources (Zwarteveen & Boelens, 2010).

Ecuador's public investments in water management has historically been directed for the benefit of well-off areas and actors. Access to natural resources, has usually reflected the interests of those groups that can influence the construction of local, national and international rules of distribution. Therefore, it seems reasonable to argue that, instead of just discussing the most suitable forms and governance models of public, private or community (among others) water management strategies, as Zwarteveen & Boelens (2010), suggest it is essential to analyze the underlying power structures, the operational logics behind water games, and how they materialize in the current forms of distribution (Zwarteveen & Boelens, 2010).

Ecuador's environmental social movements resistance, has ignited an alert light, and in the last two decades more attention has been directed to this phenomenon, revealing the importance of emphasizing more on water dispossession with the aim of making society aware of the damage that is done to nature, and to the human being himself (Tituaña, 2014).

According to CEDA (2009), public policies related to water use in Ecuador led to conflicts particularly between civil society actors concerned with the demand of water for human consumption, and actors demanding water for the production of energy in other regions of the country (CEDA, 2009). Indeed, this natural resource is much more than a chemical compound, it is a vital resource for the daily life of ecosystems. It has great meanings of social and cultural nature, and it is currently one of the resources that presents a serious problem of access (Ortiz, 2013).

As illustrated in the previous section, Ecuador's embracing of a new relationship with nature and among its population, implied as a fundamental transversal objective: "the improvement of the quality of life; a just, democratic, productive and solidarity-based economic system with equal distribution of development benefits" (Walsh, C. 2010. p. 19).

The renewed coexistence, approved by the constitution, based on diversity and exchange with nature toward the achievement of *buen vivir*, highlighted the human and fundamental right to water, as an essential element of which the state had to be the main guarantor, and the duty to protect water resources needed to be shared with all citizens, constitutionally responsible for ensuring its good management and sustainable exploitation, in the face of the severe problems of populations increasingly affected by environmental undue exploitation (Palazuelos & Villarreal, 2013).

As suggested by Walsh (2010), "the promotion of participation and social control including equitable representation of diverse identities in all areas of public power; ...and the protection and promotion of cultural diversity, social memory, and cultural patrimony" (Walsh, C. 2010. p. 19) was presented as the key to reach the *sumak kawsay*, throughout the debate of the constituent assembly.

The growing scarcity of water and its indiscriminate use over the last four decades increased water conflicts, mostly between private actors and users who organized themselves through social movements in defense of their rights, advocating for resource redistribution, environmental sustainability, and territorial auto-determination in relation to water management. This, translated into increasing social demands for the establishment of enhanced rights for citizens to have a say in the face of the historical water hoarding on behalf of privileged sectors of the Ecuadorian population.

The rules added by Ecuador's new constitutional legal framework to this water dispute are important areas in the struggles taking place (UN, 2014). Being water certainly one of the natural resources mostly affected by depletion and unjust distribution, within a national scenario that visibly and progressively limits the availability of the water (whose supply is directly involved in the health and wellbeing of citizens), Ecuador's 2008 constitution establishes unprecedented provisions as to citizens' participation as to environmental policies and direct democratic decision making.

The 2008 constitution attempts, for the first time, to achieve an authentic, direct citizen participation in water decision making through an emphasis on community management, for the benefit of the people and not with the aim of increasing wealth for the wealthiest (Martínez Moscoso, 2017).

Ecuadorian state authorities -who had traditionally undermined the potential of institutionalized social control exercised by the citizens, both in terms of conflict mediation over water and energy in Ecuador (CEDA, 2009), as well as in terms of positive practices for the preservation of the ecosystem, and for the prevention of the depletion of drinking water, rather focusing on the short term economic benefits that the extraction of the resource

provides (CEDA, 2009). Starting from 2008, the Constitution establishes unprecedented provisions as to citizens' participation in environmental national policies and direct democratic decision making.

The great diversity of environmental, social and economic factors that affect or are affected by poor water management justified the importance of establishing water justice in conjunction with citizen participation. To this end, a paradigm shift was important, implementing new simultaneous action on water supply and demand, relying not only on technological advances and blue-print good practices. Water justice had to be embedded socially, its management and conservation, linked to territorial development, and to the protection and specificity of ecosystems (De Miguel & Tavares, 2015).

As suggested by Alex Zapatta (2017), "The demand for a democratization of the state that became latent during the constituent process has one of its most tangible expressions in the demand for a broader and more authentic social participation in the formulation and implementation of public policies" (Zapatta, 2017, p. 84). Such claims translated, in the inclusion throughout the articles of the new constitutional text of the idea of participation as a tool for achieving social control and water justice.

By establishing a rigorous order of priority for water allocation "The state, through the sole authority for water, shall be directly responsible for planning and managing water resources for human consumption, irrigation to guarantee food sovereignty, ecological wealth and productive activities, in this order of priority" (Article 318, Constitution of the Republic of Ecuador, 2008 -Georgetown University translation-), as well as by listing thoroughly the "Rights to participation" (Title II, chapter 5) to which ecuadorian citizens are entitled, the

2008 constitution takes important steps toward the development of a democratic, transparent and inclusive, integrated water governance.

According to article 61, Ecuadorians have a right to:

1. To elect and be elected.
2. To participate in affairs of public interest.
3. To submit projects of grass-roots regulatory initiatives.
4. To be consulted.
5. To audit activities conducted by the government.
6. To recall authorities elected by universal suffrage.
7. To hold and discharge public office and duties on the basis of merits and capacities and in a transparent, inclusive, equitable, pluralistic and democratic selection and designation system that guarantees their participation, on the basis of criteria of gender equity and parity, equal opportunities ... (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation’).

Thus, putting human consumption, food sovereignty, ecological flow and social justice first in terms of importance.

Article 66, in chapter 6 “Rights to freedom” recognizes the rights to “[3] personal well-being” and a “[2] a decent life that ensures health, food and nutrition, clean water, housing, environmental sanitation”; it also guarantees “[24] The right to participate in the cultural life of the community...”, as a means to achieve “[27] The right to live in a healthy environment that is ecologically balanced, pollution-free and in harmony with nature” (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation’).

The right to participation is emphasized, again in article 83 of chapter 9 on “Responsibilities”, which mandates among the duties and obligations of Ecuadorians “[17] to participate honestly and transparently in the country’s political, civic and community life” (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation’).

Additionally, the entire chapter 2 on “Public policies, public services, and public participation”, of Title III “Constitutional guarantees” dealing specifically with citizens’ participation, in the final paragraph of article 85, reads as follows:

3. the drafting, implementation, evaluation and monitoring of public policies and public services, the participation of persons, communities, peoples and nations shall be guaranteed (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation’).

And, Title IV “Participation and organization of power”, in the first section called “Principles of participation” of chapter 1 on “Participation in democracy” mandates:

Citizens, individually and collectively, shall participate as leading players in decision making, planning and management of public affairs and in the people’s monitoring of State institutions and society and their representatives in an ongoing process of building citizen power. Participation shall be governed by the principles of equality, autonomy, public deliberation, respect for differences, monitoring by the public, solidarity and interculturalism.

The participation of citizens in all matters of public interest is a right, which shall be exercised by means of mechanisms of representative, direct and community democracy (Article 95, Constitution of the Republic of Ecuador, 2008 -Georgetown University translation-).

Therefore, stressing, once more the importance of direct community democracy, building of citizen power, always governed by the principle of interculturalism and autonomy. While, the following article 96 in section 2, on “Community organization” establishes that:

All forms of organizing society are recognized as an expression of the people’s sovereignty to develop processes of self-determination and to influence public decisions and policymaking and for social monitoring of all levels of government, as well as public and private institutions that provide public services... (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation-).

Underlining the principle of decentralization of power and the diversity of forms it can be expressed by:

Organizations can be articulated at different levels to build up citizen power and its forms of expression; ... (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation-).

Article 100 and 101 of section 3 on “Participation in the different levels of government” reiterate the importance to create “entities of participation”, “representatives of ...the society of the territorial sphere”, by “[4] building up democracy with permanent mechanisms for transparency, accountability and social control, [5] promoting citizen training and fostering communication processes...”, in order to stimulate “civic-mindedness” (Article 100, Constitution of the Republic of Ecuador, 2008 -Georgetown University translation-), and the “purpose of participating in ...debate and decision making” (Article 101, Constitution of the Republic of Ecuador, 2008 -Georgetown University translation-).

Article 157, additionally, establishes the “basis of a parity approach, ... governed by the principles of rotation of power, democratic participation, inclusion and pluralism” (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation-).

It is -however-, the first section on “Nature and duties” of chapter 5 (Transparency and Social Control Branch of Government), that, in articles 204, 205, and 206, the constitution designates the people of Ecuador as “the mandator and prime auditor of public power, in the exercise of their right to participation” (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation-). And, establishes the competent bodies constituting the transparency and social control branch: the council for public participation and social control, the office of the human rights ombudsman, the office of the comptroller general, and the super intendencies. Also, underlining that all social control entities shall be recognized “administrative, financial, budgetary and organizational autonomy” (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation-).

These articles (206, 207), not only assign the state the responsibility to “to draw up public policies for transparency, monitoring, accountability, promotion of public

participation and the fight against corruption” (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation-), they also mandate this important responsibility to be shared with the candidates elected for social control entities, whose candidates must be “proposed by social organizations and citizenry” (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation-).

Finally, Article 215 establishes the duties of “The Office of the Human Rights Ombudsman”, among which, stands out “the protection and guardianship of the rights of the inhabitants of Ecuador”, among which the right to “participate, control and evaluate the state’s public policy decision making”. Article 227, on the other hand, defines public administration as constituting “a service for the collectivity”, which ought to be governed by principles of decentralized participation and transparency (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation-).

After going through the articles of the 2008 constitution of “*revolucion ciudadana*” (citizens’ revolution), it seems undeniable that participation has acquired an unprecedented significance. This, in a country with “the greatest biodiversity on the continent” (Hidalgo & Laforge, 2011, p. 289), and in association with the principles of *sumak kawsay* and respect for the *pachamama* embraced by the new *magna carta*, can have a great positive repercussion on the overcoming of the country’s environmental “inequities and structural contradictions” (Hidalgo & Laforge, 2011, p. 290).

In a country with such a rich ethnic and cultural diversity to be found especially in subsistence farming communities “30% of the population lives in rural areas” (Hidalgo & Laforge, 2011, p. 289), Citizen participation may become the ultimate tool available to Indigenous, *Montubio*, Afro-Ecuadorian, and *Mestizo* communities of Ecuador to achieve

their culturally infused *buen vivir* and the self-determined environmental sustainability that is a pre-requisite to it.

v. Conclusion

This introductory chapter offered a brief review of the implications of *buen vivir* particularly, as to what relates to the rights of nature, plurinationality, and citizen's participation, in order to introduce the context surrounding the new water legal framework.

Self-definition as a multi-national unitary state in its constitution created one of the most relevant political phenomena in contemporary Latin America, establishing a new form of state, recognizing the demands of recognition, participation and environmental protection of the Indigenous, Afro-Ecuadorian and *Montubio* movements as part of a socialist and revolutionary Ecuador (Cruz, 2013).

The 2008 *Montecristi* Constitution is considered one of the most advanced and complete in terms of nature and water rights, and its insistence on the importance of collective and ancestral water management, as linked to the strive for auto determination of Ecuador's indigenous/social movements, implied a transformation both at the socio-economic, and the political, as well as the socio-cultural sphere (GEE, 2013).

Various sections of the *magna carta* specifically, recognize important environmental principles, and links them to *buen vivir* objectives. This insistence on environmental protection, intertwined with Ecuador's participative, and intercultural re-birth are to be found throughout the whole constitutional text from the very preamble on, till the final transitory dispositions.

The focus established on the rights to direct democratic participation as a tool for ensuring equity for citizens with no restrictions, while simultaneously seeking an equitable relationship between the individual and collective rights of its citizens (Regaledo, 2015), is decidedly marked within the constitution of *revolucion ciudadana*.

The normative focus on the protection of nature is unprecedented for a legal text. The constitution of Ecuador extends legal personhood to non-human entities as is the case of nature and all the resources within it (among which water). Ecuador can, in this sense, be considered as a pioneer, enshrining the rights of mother earth in its highest value and hierarchical norm (Pinto, Cerneiro, Augusto, & Maluf, 2018), reserving the state “the right to administer, regulate, monitor and manage strategic sectors”, yet specifically establishing that to be done “in accordance with the principles of environmental sustainability, precaution, prevention and efficiency” (Constitution of the Republic of Ecuador, 2008, Georgetown University translation). This represents an important step forward in the protection of water sustainability, subordinating water policy-making to the wellbeing of society as a whole.

Within environmental protection, the 2008 Constitution grants undoubtedly special attention to water. The State ensures its inhabitants access to water not only as a simple constitutional declaratory statement, but -rather- as a whole livelihood process, giving it full recognition as a means to allow economic, social and cultural development (Judgment No. 0006-10-SEE-CC, 2010).

There exists, moreover, a focus on mutual learning and exchange among cultures (GEE, 2013) that is evident throughout the chapters of the 2008 Constitution, and represents a fundamental part of its *buen vivir* objectives and unprecedented post-developmental paradigm shift.

It can be argued that the 2008 Ecuador's constitution conceives a new scenario of intercultural thinking under construction, toward a future of sustainable development and better management of natural resources (Larrea & Greene, 2017). It establishes a new responsibility of the state not only to respect, but also to enforce the principles of a *sumak kawsay*, built around the community, and around an economic paradigm which is incompatible with a capitalist model that commodifies everything, including nature (CDH, 2017).

After briefly introducing the concept of *buen vivir* and how it intertwines with those of plurinationality, self-determination, underlying their importance when it comes to the rights of nature, the first paragraph of chapter I analyzes the context surrounding Ecuador's new water legal framework, presenting the fundamental constitutional rights and obligations of the Ecuadorian state in relation to water treatment.

The second paragraph presents more in depth the idea of water-struggles as a tool for plurinational recognition and self-determination of Ecuador's Indigenous, *Montubio* and Afro-Ecuadorian and *Mestizo* peasants' communities, with a particular nod to customary rights, and the importance of legal pluralism for the achievement of an authentic paradigm shift.

The third paragraph explores the constitutional base of water management, illuminated by the concepts of *sumk kawsay* and the respect for the *pachamama*. As argued by Hyer (2015) "Ecuador's constitution is among the first to recognize and guarantee the rights to nature. And, not only may the indigenous peoples of Ecuador claim these rights, but also the entire populace may call upon the government to live up to its obligation to respect and protect nature" (Hyer, 2015, p. 77). The fundamental relation that Indigenous, *Montubio*

and Afro-Ecuadorian communities have with nature, turns, in this sense, into a fundamental tool for the protection and sustainable conservation of the environmental resources present in their territories. The explicit constitutional emphasis on interculturality, appears to have simultaneously deepened normative texts prominence on the protection of nature (Antúnez & Díaz, 2017), as -according to the 2008 *magna carta*- the state must not only guarantee that indigenous jurisdiction decisions be observed, but must also facilitate coordination between the indigenous and regular jurisdictions, respecting their diverse cosmovision.

Finally, in the fourth paragraph, the importance of citizens' participation for water justice is highlighted as a means to voice the rights to an auto-determined development of the subsistency-farming populations of rural Ecuador. The 2008 constitution attempts, for the first time, to achieve an authentic, direct citizen participation in water decision making through an emphasis on customary community management, for the benefit of the people and not with the aim of increasing wealth for the wealthiest (Martínez Moscoso, 2017).

Starting from 2008, the Constitution establishes unprecedented provisions as to citizens' participation in environmental national policies and direct democratic decision making, as, Water justice not only has to be embedded socially, its management and conservation need to be linked to territorial development, and to the protection and the specificity of ecosystems (De Miguel & Tavares, 2015). Additionally, and more importantly, it has to be culturally infused, self-determined, and brought about by the populations directly involved as a way of empowerment, and agency enhancement in their fight against historical privileges.

The underlying object of this paragraph was to illuminate the importance of a change in traditional blue-print water exploitation and management choices, incentivizing locally

embedded, and culturally infused citizen participation as an important tool for preserving the sustainability of the resource, its redistribution, and the enhancement of water justice.

In conclusion, it can be argued that, the insertion of the concept of *sumak kawsay* with its inherent respect for the participation rights of the plurinational peoples and nations of Ecuador into the current Constitution, undoubtedly marked a ‘before and after’ in terms of natural resources and their management for the benefit of society, and the quality of life of citizens. Throughout Ecuador's constitutional history (with more than 20 constitutional texts), it is the first time that a legislative tenor has been adopted that agglomerates approaches from indigenous peoples, and proposes the fundamentals of their cosmovision as the core axis for the wellbeing of the entire Ecuadorian society (Cortez, 2011), the preservation of their living environment, and “hydrosocial territories” (Boelens, Hoogesteger, Swyngedouw, Vos, & Wester, 2016).

CHAPTER II

The Organic Law on Hydrological Resources, Uses and Exploitation of Water (LORHUYA, 2014).

This chapter constitutes the second section of my endeavor concerning the analysis of Ecuador's new water legal framework. After identifying in the first chapter of this research, the issues that had the greatest resonance during the Constituent Assembly political and legal debates (respect for nature, plurinationality, and citizens' participation, as instances of collective *buen vivir*), and briefly exploring the articles of the 2008 constitution that descended from it; in the II chapter, the analysis goes one step forward, revising the text of Ecuador's new water law (*Ley Organica de Recursos Hidricos, Usos y Aprovechamiento*, LORHUYA, 2014).

In the following chapter I illuminate comparatively the constructions and tensions inherent in the new water law (LORHUYA, 2014), which could be adversely affecting the 2008 constitutional environmental, participative and intercultural goals previously underlined. Drawing on a political ecology perspective, I explore Ecuador's new national water law, (and main regulations), with an eye on its repercussions on Indigenous, *Montubio*, Afro-Ecuadorian and *Mestizo* subsistence irrigators, and their collective struggles for the strengthening of self-determined, participatory decision-making, and the achievement of equitable water redistribution.

A brief introduction on the importance of the diverse water management traditions characterizing Ecuador's rural communities (paragraph i), will be followed by a revision of the main contents and scope of the new 2014 water law (paragraph ii). The personal

translation of the main titles and sections of the LORHUyA will build the basis on which to develop the main analytical points of this research, with a section dedicated to the contention present within the new water legal framework between the state's promises of a water plurinational agenda vs the homogenizing constraints imposed to customary water normative systems by the technocratic provisions of the LORHUyA (paragraph iii), followed by another one exploring in depth the paradox of the emphasis on integrated water management vs the top-down stiffness hindering the participative contribution of Ecuadorian citizens as to water management. Chapter II concludes with a preliminary reflection addressing the tensions revealed by the analysis of the legal text between the state centralized vs pluricultural and participatory visions of water management conflated within the law.

i. The claim for a new water legal framework

The *buen vivir* water spirit (as enshrined in the 2008 Ecuadorian Constitution) should have translated into a “national water policy permeating sectorial and interest divisions, considering water prioritarily as a social resource for basic human needs and the protection of the ecosystem” (TAC Background Papers, n. 4, 2000, p. 40).

The 2008 recognition granted by the state to water as a human right, marked a big step in the path toward the establishment of a sustainable relation with the environment and its conservation, as well as for a greater redistributive effort, based on bottom-up community participation in water management and policy making, with a renewed focus on Plurinational self-determination, and on the recognition of Ecuador's diverse customary law ecosystems, and “hydrosocial territories” (Boelens, Hoogesteger, Swyngedouw, Vos & Wester, 2016)

Many aspects of the new *Ley Organica de Recursos Humanos Usos y Aprovechamiento* (LORHUYA, 2014), echoed the provisions that had been outlined in the 2008 Constitution of *Buen Vivir*. Nevertheless, in spite of the official rhetoric on plurinationality, and intercultural participatory sensibility “Ecuadorians, specifically many of the country’s indigenous [and peasants’] groups, were concerned that this new water law did [would] not safeguard their interests sufficiently” (Hyer, 2015, p. 63-64).

Ecuador’s water legislation, during more than four decades (the previous water law, dated back to 1972), had been disperse in a multitude of bylaws and regulations, often hard to understand, and inconsistent with the daily needs and the customary water management traditions of Ecuador’s diverse rural communities. State’s water policies were, thus, hardly ever implemented locally (CAMAREN, personal interview with coordinator -Quito- December 5th, 2018), favoring, in quite a paradoxical way, the creation and strengthening of locally embedded water normative systems.

Small farmers, represent a very important segment of the agricultural sector in Ecuador (being women a large sub-segment of subsistence farming in almost every province of the country) (see i.e. INEC/ESPAC, 2013; Fueres Flores, M. et al., 2013), according to Ecuador’s National Planning Secretariat data “small and medium-sized agriculture account for 84.5% of UPAS (agriculture production units) ..., while business agriculture accounts for 15% of upas” (SENPLADES, 2014). And, as in most Latin American countries, small scale agriculture and livestock activities, are not only the sole source of self-employment for many marginalized peasants’ populations, but they also represent the fundamental means around which revolve the food sovereignty of the country, defined as:

The right of peoples, communities, and countries to define their own agricultural, labor, fishing, food and land policies which are ecologically, socially, economically

and culturally appropriate to their unique circumstances. It includes the true right to food and to produce food, which means that all people have the right to safe, nutritious and culturally appropriate food and to food-producing resources and the ability to sustain themselves and their societies. Food sovereignty means the primacy of people's and community's rights to food and food production, over trade concerns (Declaration of Nyeleni, 2007, p. 1, 27th February, Sélingué, Mali).

When in 2014, the Ecuadorian state of *revolucion ciudadana* (citizens' revolution) carried out a water sector balance, results showed that, despite the huge inversion, the large water infrastructures (*megaobras y multipropósitos*) promoted by the state were neither generating the substantial increase in agricultural production, nor the economic and social development, and wellbeing that president Rafael Correa (January 15th, 2007- may 24th, 2017) had promised during his first and second mandates.

The dissatisfaction of a large number of users as to the public management of water was widespread. In response to their claims, the state was thus proposing a legal reform, implying a greater openness toward the community management of water, more in line with the increased exploitation of the natural resource (Coloma, 2018), and with the flexibility required by the proliferation of diverse traditions of water management systems, that the previous normative framework had allowed (in large part, due to the relative absence, and the traditional disinterest of the neoliberal state for Ecuador's remote rural areas (ROSCGAE, personal conversation with the director, January 21st, 2019).

Rural poverty was acute in the country. According to the World Bank' indicators, in 2000 half of Ecuador's population was poor, and poverty was more critical in rural areas, where it neared 70 percent (World Bank, Ecuador poverty and wealth. *World Development Indicators* 2000).

Thus, the new water legal framework was meant to resolve a "legislative debt" that existed as

to the right of Ecuadorians to enjoy a new, effective legal instrument that would respond for more than 15 years of social demands from the rural Indigenous, *Montubio*, and Afro-Ecuadorian peasants' peoples, who use water for human consumption, irrigation and production (Accion Ecologica, 2015).

The existing water legislation appeared to have exacerbated the exclusion of the most vulnerable, in the face of the struggles and unheard demands of Ecuador's small irrigators, dealing with fragmented (at times contradictory) normative levels of water access, use and management. Understanding and addressing these challenges was the duty of the new legal framework and represented a crucial condition for the development of a water regulatory environment favorable to peasants' communities (personal interview with the ex-president of AEJUR -*Asociacion Ecuatoriana de Juntas de Riego del Ecuador*-, personal conversation with ex-director, December 15th, 2018) and the achievement of their *buen vivir*.

After a wide-standing struggle of social groups, and unprecedented participation processes throughout the country, social organizations seemed to have finally succeeded in advancing their demands for the creation of a new, socially and environmentally responsible water law, which could comply with the present and future day to day reality of water users, as well as with the protection of the country's collective, social and individual rights (Proaño, M., 2020).

According to the I transitory provision of the 2008 Constitution:

the legislative body, within a term of one hundred twenty (120) days as of the entry into force of the Constitution, shall pass the law that develops the system for food sovereignty, the electoral law, the law governing the judicial branch, the judiciary council, and the law that governs the council for public participation and social control.

While, within a maximum term of three hundred sixty (360) days, the following laws shall be passed:

1. the law governing the functioning of the constitutional court and the procedures for monitoring constitutionality.
2. the law governing water resources, water use and development, which shall include permits for current and future water use and development, their terms of duration, conditions, mechanisms for review and audit, to ensure the formalization and equitable distribution of this national asset. (Constitution of the Republic of Ecuador, 2008, -Georgetown University translation-).

However, although a new National Secretariat of Water -*Secretaria Nacional Del Agua* - SENAGUA-, was readily created through Presidential Decree 1088, published in the Official Register n. 346 of May 27th, 2008 (which, after the new water law was finally passed, became the Sole Authority For Water –(SAW), the new water law, supposed to be implemented by 2010, was not passed until august 2014, its regulations (*Reglamento a la LORHUYA*) were not ready until 2015, and its bylaws (*Instructivo*) had to wait until 2016 to be completed.

In spite of the 360-day deadline established for the legislative body to approve a law to regulate water resources, the LORHUYA could not be implemented within the prescribed period. Alex Zapatta (2017) argues that, “it took five years for that law to be passed, five long years in which eighteen official draft versions were drawn up and reworked” (Zapatta, 2017, p. 72). Between the end of 2008 and mid 2014 Ecuadorians debated animatedly the contents to be included of the new water legislation, “a process marked by disputes around the sense and scope of the text, by tensions and social mobilizations” (Zapatta, 2017, p. 72).

Disappointingly, after almost 6 years of protracted struggle and 18 drafts (personal interview with Alex Zapatta, ex-Subsecretario de Riego y Drenaje SENAGUA, December, 2018), once the final text of the law became available, its provisions soon appeared likely to become restrictive for small farmers’ day to day realities. The water legal framework created by the LORHUYA, instead of contributing to food sovereignty and local wellbeing at the

community level, was almost immediately perceived as an excessively rigid blueprint top-down imposition (Segundo Guayllas, ROSCGAE, personal conversation January 21st, 2019).

Ecuador's small farmers, often perceived as anti-developmental, historically lacked legal recognition, and typically experienced trample by local authorities or competing more well-to-do water users. This negative attitude and neglect, instead of disappearing, persisted manifestly in the new law. Beyond official rhetoric, the traditions of collective customary management continued to be largely ignored by the state's water planning regulations (Segundo Guayllas, ROSCGAE, personal conversation January 21st, 2019). By virtue of the importance of water for the wellbeing of Indigenous, *Montubio* and Afro-Ecuadorian subsistence irrigators communities, they "had good reason[s] to be concerned" (Hyer, 2015, p, 64).

An unprecedented gathering of diverse social forces that "questioned the meaning and contents that the government gave to water policies" (Zapatta, 2017, p. 72) emerged, led to the approval in the second debate of draft n. 17 by the national assembly (May 2010), but the implementation of the law was obstructed by the "pressure generated by an important indigenous and peasant mobilization led by the confederation of indigenous nationalities" (Zapatta, 2017, p. 72), who felt their rights, as established by the United Nations Declaration on the Rights of Indigenous Peoples (ONU, 2007) as well as other international instruments, were being disrespected. This impasse continued until 2014, when -surprisingly-, an even more restrictive draft (number 18), which was neither circulated, nor debated by the public opinion, was approved after a highly contested consultation process (personal conversation with Alex Zapatta, Quito, December 2018).

ii. LORHUYA: Scope & Sections

The 2008 Constitution of Ecuador, and the paradigm of *buen vivir* underlying its titles, chapters, and subsections, constitute the basis validating all laws and policies related to the hydrological resources in Ecuador. As illustrated in the previous chapter, in compliance with the constitutional mandate, water is a human right, and, articles 12, 313 and 318 of the constitution define “water” as “a strategic national patrimony for public use” (*patrimonio nacional estrategico de uso publico*), inalienable, imprescriptible, irrenounceable, and essential to life”

(Constitution of the Republic of Ecuador, 2008 -Georgetown University translation-).

Accordingly, all public policies established in compliance with the constitutional provision on environmental issues (water policies, in particular) are meant to guarantee the basic needs for all its citizens (Verdugo, 2014), fulfilling the constitutional objectives of *buen vivir*, and ensuring that -regardless of race, ethnicity, sex, nationality or social status-, all Ecuadorians can access sufficient water, both in terms of quantity and quality.

Under the umbrella of constitutional principles, and in compliance with the different social policies of good living, the national assembly approved on July, 31st, 2014, the organic law of water resources, uses and exploitation of water -LORHUYA-, which was published in the Official Register no. 305 of August 6th, 2014, and came into force in the country starting the same date. The law has a structure of five titles, seventeen chapters, twenty and one sections, 163 articles, three general provisions, eleven transitional provisions, thirteen repeal provisions and a final provision (Asamblea Nacional del Ecuador, LORHUYA, 2014).

In its Title I, on “Preliminary provisions”, LORHUYA defines water as a good for public use (*bien de uso publico*), establishes the basis for its use, exploitation, and the protection of superficial waters as well as underground aquifers.

Title II on “Water resources” emphasizes the priority of the state to protect water sources, and to provide free access to water for all the population: priorities these, to be achieved by means of the creation of the strategic national water system, and all its entities (SAW, ARCA, EPA, GADs, IPWC, Water Basin Councils).

"Title III on “Rights, guarantees and obligations” provides, among other rights, for the right to water with no discrimination, the right to a democratic participation of various actors, communities, peoples, nations and entities in relation to water management, protection, and conservation.

Title IV on the “Exploitation of water” legislates on the types of use, productive exploitation, and regulates the granting of water licenses, permits and authorizations; also, it establishes norms and procedures for water use, and for the resolution and mediation of controversies, and the economic regimen of water tariffs.

Finally, Title V on “Infractions, sanctions and responsibilities”, provides that the national water authority may discipline any violation of the law and establishes the corresponding sanctions; additionally, it contains the transitory, and derogatory provisions (Asamblea Nacional del Ecuador, LORHUYA, 2014 -personal translation-).

Table 1. Outline of the organic law of hydrological resources, uses, and exploitation of water (LORHUYA)- (Personal elaboration based on Hyer, 2015, p. 82)

Preamble	
Title I – “Preliminary Dispositions”	
a. chapter 1 – About the Principles (articles 1-9).	
Title II – Water Resources	
a. chapter 1 – definition, infrastructure, classification of water resources (articles 10-14). b. chapter 2 – institutionality and management of water resources i. national strategic system and singular water authority ii. water planning iii. management and administration of water resources iv. public services v. water and autonomous decentralized governments vi. community management of water.	
Title III – Guarantees and Obligations	
a. chapter 1 – human right to water b. chapter 2 – right to equality and no discrimination c. chapter 3 – rights of nature d. chapter 4 – rights of users, consumers, and citizenry participation e. chapter 5 – collective rights of communes, communities, peoples, and nationalities f. chapter 6 – preventive guarantees, i. ecological flow and areas of water protection ii. objectives for prevention and control of water pollution g. chapter 7 – obligations of the state for the human right to water i. of obligations and progressivity ii. on uses of water iii. conditions of authorization for use h. chapter 8 – servitudes.	
Title VI – Water Use	
a. chapter 1 – on the type of productive use i. bottled water ii. energy and industrial use of water iii. agriculture iv. use of water in mining v. use of water in hydrocarbon-related activities vi. tourist and thermal use b. chapter 2 – handling and use of subterranean water and aquifers c. chapter 3 – procedural norms for the use of water and resolution of conflicts i. administrative procedure for regulating the handling or use of water ii. resolution of conflicts d. chapter 4 – economic regimen i. tariffs ii. tariffs for use iii. tariffs for productive use.	
Title V – Infractions, Sanctions, and Responsibilities	
a. chapter 1 – infractions b. chapter 2 – sanctions general orders transitory orders derogatory orders final orders	

The centrality of the state

As it can be easily inferred from a quick glance at the preliminary provisions, the new water law had the task of developing the principles presented in the 2008 constitution with regard to water management. Among them: the responsibility of the state to control and manage water as part of the strategic sectors, ensuring *sumak kawsay*, in a sustainable holistic relation with the environment (Asamblea Nacional del Ecuador, T, 2014 -personal translation).

The first chapter of Title I, on “Basic Principles”, specifically establishes that water must be administered exclusively by the state, or community organizations. It provides that

an authorization from the state will be necessary for any use, and/or exploitation of water for productive and economic ends (article 1), and that a Sole Authority for Water -SAW- (*Autoridad Unica del Agua*) be created, that shall be in charge of water planning, regulation and control. Also, it provides that water management, shall have an ecosystem approach (Morales, 2014).

Hydrological resources constitute part of the natural patrimony of the state, its competence shall be concurrently exercised by the central government and its decentralized autonomous provincial, municipal, and parish government levels -GADs- (*Gobiernos Autonomos Descentralizados*), in compliance with the law. Moreover, mirroring the constitution, the LORHUYA, establishes that “water is a national strategic good for public use, inalienable, imprescriptible, dominion, essential for life, vital element of nature and fundamental to achieve food sovereignty” (Asamblea Nacional del Ecuador, LORHUYA, 2014, p. 3 -personal translation).

Article 3. specifies that the main object of the LORHUYA, is:

to guarantee the human right to water as well as to regulate and control the authorization, management, preservation, restauration of hydrological resources, use and exploitation of water, the integrated management and its distinct phases, forms and physical states, in order to guarantee *sumak kawsay* or good living and the rights of nature established in the constitution (Asamblea Nacional del Ecuador, LORHUYA, 2014, p. 3 -personal translation-).

Through LORHUYA, Ecuador has, therefore, “not only nationalized [water], but has also taken the [unprecedented] progressive step of codifying it as a human right” (Hyer,

2015, p. 83), reserving for the state the responsibility to guarantee its protection, conservation, and equal access to water for all.

Article 4 and 5 of the new water law set out the fundamental postulates for the state's responsibility, among them that "water is a strategic patrimony at the service of citizens' needs, and essential element for food sovereignty" (c.), that "any form of private property on water is prohibited" (d.), that "the state guarantees integral and integrated and participatory management of water" (g), moreover reiterating that "water management is public or communitarian" (h) (Asamblea Nacional del Ecuador, LORHUYA, 2014, Article 4, p. 3-4 -personal translation-).

The state's exclusive water control and decision-making power is exercised through the Sole Authority for Water (SWA), and "its management will be aimed at the full exercise of rights and public interest, due to its decisive social, communitarian, cultural, political environmental and economical relevance" (Asamblea Nacional del Ecuador, LORHUYA, 2014, article 4, p. 3 -personal translation-). It is by virtue of its importance for food sovereignty that "no form of appropriation ... regarding water shall be recognized" (Hyer, 2015, p. 84). However, the prohibition of private control of water resources, that article 318 of the constitution delineates, is ratified within the LORHUYA, in a rather inconsistent way.

The text of article 7, in a rather contradictory way, provides "when it might be 'exceptionally' appropriate for private initiative to engage in the management of water resources" (Hyer, 2015, p. 85), such as in the case of "declaration of emergency adopted by the competent authority", or in the case of "the development of administrative sub-processes of the public service, should the competent authority not have the technical or financial

capacity to do so...” (Asamblea Nacional del Ecuador, LORHUYA, 2014, p. 4 -personal translation-), basically re-opening the door to privatization.

This incongruence, as noted by Zapatta (2017), not only contravenes the spirit of article 318 of the constitution, it also “disrespect[s] the mandate contained in the twenty-first transitory of the constitution” (p. 83), which mandates that “in the term of three hundred sixty days from the entry into force of this constitution, the delegations of public services in water and sanitation performed by private entities, will be held , environmentally and socially” (Constitution of the republic of Ecuador, 2008, as cited in Zapatta, 2017, p. 83).

Advancing in our reading of the legal text of the LORHUYA, we notice that according to the new water normative framework, the state must allocate the public budget in an equitable and supportive manner in order to implement policies and for the public rendering of services (art. 9). As provided by articles 10 and 11, although the public domain of water is composed of all kinds of water sources, and it includes public, community or private hydraulic infrastructure; nevertheless, its use must be “in the public interest” (Asamblea Nacional del Ecuador, LORHUYA, 2014, p. 5-6 -personal translation-). This final clause, vaguely prioritizing “public interest”, lends itself to a wide range of interpretations; however , and not too surprisingly, in the last 5 years it seem to have tendentially become a tool for the imposition of state’s top-down policies, regardless of local needs and perspectives, in the name of a -so called- ‘national interest’.

Article 13 of the law, mandates the creation of water protection zones (the preservation, defense and protection of water-related ecosystems constitute, as previously highlighted, an obligation of the state and communities). In this sense, the state has to rationalize water use, by establishing an order of priority for meeting water demand. First

comes water for human consumption; followed by, water use for agricultural activity for food sovereignty, and -in the third place-, water for the preservation of the ecological flow. This *buen vivir*-infused “*orden de prelación*” is reiterated in various articles of the LORHUYA, among them, article 64, 86, 130 (Asamblea Nacional del Ecuador, LORHUYA, 2014, p. 6, 19, 24-25, 34 -personal translation-). Nonetheless, it is noteworthy that the law does not specify which resources will be used for ensuring compliance with the protection of water sources. “No concrete measure for water sources preservation is previewed for communities, nor are the instruments required to make it viable, made available” (Segundo Guallyas, ROSCGAE, personal conversation January 21st, 2019).

Articles 12, 13, and 14 of the LORHUYA, in fact, do not consider in the least that “most areas of water recharge are seated in private spaces, and that the cost of these lands are too high for the acquisition by the drinking water boards” (Segundo Guallyas, ROSCGAE, personal conversation January 21st, 2019). As a consequence, and because nowhere in the new water legal framework an articulation for the protection of water sources between the SAW (SENAGUA), the Environment Ministry (MAE) and peasants’ communities is established, nor a budget for the acquisition of land to protect water sources is provided “the expansion of the ‘*Frontera Agrícola*’ (agricultural frontier), is not prevented, and water sources will continue to be increasingly affected” (Segundo Guallyas, ROSCGAE, personal conversation January 21st, 2019), in spite of the official rhetoric.

While Article 15 establishes the creation of the “national strategic water system, structured by the set of processes, entities, and instruments of organization and coordination of water management”, and formed by a plurality of agencies: 1. The Sole Authority for Water (SAW), 2. The Intercultural and Plurinational Water Council (IPWC) -*Consejo*

Intercultural Y Plurinacional Del Agua- 3.The institutions of the executive function competent in the integrated management of water -*Empresa Publica Del Agua* (EPA). 4. The Agency for the Regulation and Control of Water (ARCA -*Agencia de Regulacion y Control del Agua*-), 5. the Decentralized Autonomous Governments (GADs) -*Gobiernos Autonomos Descentralizados*- the Water Basin Councils (WBC). Thus, proposing an integrated vision of water management (Asamblea Nacional del Ecuador, LORHUYA, 2014, p. 7 art. 15 - personal translation).

If we take a look at the numerous competences of the Sole Authority for Water - SAW, listed in article 18:

- a.the formulation of the policies concerning water quality and water pollution control.
- b.to elaborate the national plan for hydrological resources and the integrated management hydrographic basin plans of hydrological resources and approve the national water planning.
- c.to establish and delimitate the areas and zones of hydrological protection.
- d.to define the administrative delimitation of the hydrographic units.
- e.to grant water authorizations.
- f.to grant legal personhood to drinking water and irrigation and drainage water boards.
- g.to maintain and update the public register of water (PRW).
- h.to declare of public interest the information concerning the availability of superficial, underground or atmospheric water.
- i.to establish coordination and complementarity mechanisms with the gads with respect to the rendering of irrigation and drainage public services, or drinking water, sewage, deputation of residual waters, and others established by the law.
- l.to emit a viability technical report for the execution of the drinking water, sewage, irrigation and drainage waters.
- m.to know and resolve (*conocer y resolver*), with respect to the appeal and other resources interposed concerning the resolutions issued by the Agency for Water Regulation and Control (*Agencia de Regulacion y Control del Agua*).
- n.to ensure the protection, conservation, integrated management and sustainable exploitation of the superficial and underground water reserves.
- o.to establish the general parameters, based on technical and actual (actuariales?) studies for the fixing of tariffs for the drinking water and sewage, irrigation, and
- p.to exercise coactive jurisdiction of all cases of its competence.
- q.to formulate, manage and supervise the annual priorities plan of hydraulic infrastructure, equipment, drainage and flooding; and administer the multipurpose hydraulic infrastructure (*proyectos multiproposito*).

r. to raise awareness of users and consumers with respect to the responsible use of drinking water.

s. to authorize exceptionally and motivatedly the transfer of water from other river basins.

t. to approve the concrete delimitation of the watersheds/ water basins and its possible grouping for planning and management purposes, as well as the attribution of underground waters to the corresponding watershed; and...

(Asamblea Nacional del Ecuador, LORHUYA, 2014, p. 7-8 art. 18 -personal translation).

It appears clearly that the attributions of the SAW are extremely broad, exhibiting -in spite of the official promises of decentralized and integrated governance of water, a rather centralized philosophy of water management.

The content of article 28, 29, and 30, further confirm this logic, providing that it is the SAW to be in charge of the execution of water planning, based on its national water plan and the water basins' planning. At the beginning of each year, the SAW will present a national water resources plan, concerning water infrastructure, water conservation and water protection factors; forecast and conditions of water transfer, and implementation of water balances.

More importantly, as we will explore more in depth in the following section dealing with the principles of legal pluralism and customary water management, it is established that water "users will have to comply with what is established in the national planning. All existing water authorizations will, thus, have to be compatible with what is established in the state's integrated management plans, otherwise they will be reverted in conformity with this law" (Asamblea Nacional, LORHUYA, 2014, p 11-12 -personal translation).

Finally, as we shall see more in depth in the last paragraph of this chapter, although when dealing with the integrated and integral management of water resources, articles 33 and 34 exhibit an ecosystem and water-basin-unit based approach, which includes within it

“space, populations, infrastructure, areas of conservation, protection and productive areas”; right after, these same articles precise that it is the SAW that shall “approve the specific delimitation of the river basins and their possible grouping for planning and control purposes, as well as the attribution of groundwater to the corresponding basin” (Asamblea Nacional, LORHUYA 2014, p.13, art. 34 -personal translation-). In this sense, the integrated management of water, which -according to the 2008 constitution-, represented one of the “transversal axis of the decentralized national system of participatory development planning” (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation-), appears to leave its place to a centralized system of water management and planning in the hands of the state.

Food Sovereignty and water redistribution

As highlighted at the beginning of this paragraph, according to the spirit of *buen vivir* the state had to create public water policies with the aim of progressively ensuring food sovereignty (Secretariat of Water, *Secretaria del Agua* -SENAGUA- 2016). Article n.86 of LORHUYA refers specifically to the state’s redistributive competences (also provided in article 130), and to its responsibility of granting water authorizations in a ‘balanced manner’, respecting the order of priority previously referred to: “human consumption, irrigation for food sovereignty, ecological flow, and productive exploitation” (LORHUYA, 2014, p. 24-25 -personal translation-).

Moreover, Title III of LORHUYA dealing with rights, guarantees and obligations, in its chapter I specifically defines “human right to water” as follows:

article 57.- the human right to water is the right of all people to have enough healthy, acceptable, accessible and affordable clean water, for personal and domestic use in quantity, quality, continuity and coverage (Asamblea Nacional, LORHUYA, 2014, p. 18, -personal translation-).

stressing, once again, the importance on guaranteeing the availability of water with no distinction. Additionally, article 61 reinforces the emphasis of the new water law on the guarantee to equal access to water, and the affirmative action measures that the state will have to develop in favor of vulnerable sectors of society.

The topic of promoting equality and the related responsibility of the state to take the necessary measures, is also re-proposed in article 62, dealing specifically with gender issues:

Article 62.- Any water policy will have to incorporate the gender perspective, so that concrete measures are established to meet the needs specific to women in the exercise of human right the water. Similarly, measures will be taken in order to achieve formal and material equality between women and men, especially within the community participation in water management activities, achieving equality, and the strengthening of women as actors of change” (Asamblea Nacional, LORHUYA, 2014, p. 19, -personal translation-).

However, in spite of this great focus on water just redistribution, a deeper look at the content of the LORHUYA, shows that -within its very articles- are hiding the provisions sufficient to de facto paralyze the constitutionally mandated right to water through its equitable redistribution.

In this respect, the analysis of the text of articles 129 and 130 is particularly meaningful. While article 129 defines water hoarding as:

the provision or the retention, by any means, of a flow or flows of water for use and exploitation in quantities larger than necessary, which harms third parties’. The single water authority, based on a technical study that guarantees use and handling efficiency, shall determine -in each case- the existence or not of hoarding. In the case of water hoarding for use and exploitation, the single water authority, ex-officio or at the petitioner’s request, will resolve the cancellation of the authorizations in a given jurisdiction. then, it will proceed to reallocate the previously authorized water, in accordance with the provisions of this law” (Asamblea Nacional, LORHUYA, 2014, p. 34-personal translation-).

And article 130, on “redistribution and reallocation of water” establishes that:
 - The authority will proceed to the reallocation/shall reassign the reversed water flows, by virtue of the guarantee of the human right to water, irrigation for food sovereignty

and in compliance with the realization of the socially equitable access to use and the productive exploitation of water. the reallocation shall be dictated by administrative act, on the basis of technical efficiency, social, economic, environmental, and of the respective watershed council criteria.

The Sole Authority For Water, ex officio or at the request of a party/at petitioner's request, shall also reallocate the water obtained without authorization, or in case of breach of the conditions of water authorization.

Irrigation water authorizations, which guarantee food sovereignty, granted to community systems holders of collective rights, may only be temporarily suspended, until the cause of the suspension is remedied.

The Sole Authority For Water shall reassign water in accordance with the principles of competence and publicity, on the basis of the order of priority and collective rights affirmative actions in favour of their holders, in compliance with the constitution and the law (asamblea nacional, lorhuya, 2014, p. 34 -personal translation-).

It appears clearly that the definition of “water hoarding” provided by article 129 is extremely vague, and that the principles of social distribution of water (articles 129 and 130) established, do not *de facto* translate into any sanctions for water hoarders. As Zapatta (2017) suggests,” this was one of the causes of greatest deception for social organizations” (Zapatta, 2017, p. 83) when to the final draft of the water law passed in 2014.

Similarly, when stating that “water hoarding” shall be “evaluated” by means of “technical studies that guarantee ‘efficiency’ in the use... of water” (art 129), instead of assessing water theft on the basis of “studies relating to the distribution of water according to agricultural property, to the uses of water, and the [*buen vivir*] benefits that are derived from such uses” (Zapatta, 2017, p. 83): manifestly, the proposed “criteria for re-allocation” are symptomatic of the distance between the LORHUyA and the 2008 constitution.

Most importantly in terms of universal right to water, and water justice, while in compliance with the requirements of the transitory provision XXVII of the 2008 constitution- the transitory provision of the LORHUyA mandates that the SAW, within three hundred and sixty days (360), from the promulgation of the water law in the official registry, would

review the concessions of rights for use and exploitation of water granted under the previous water law (1972), in order to “identify the cases of hoarding, or concentration of water concessions for irrigation...”. And, “within a period of up to one hundred eighty days (180), ...will proceed to initiate and resolve the corresponding individualized files for the cancellation, modification or expiration of authorizations or concessions” (Asamblea Nacional, LORHUYA, 2014, p. 40 -personal translation-); at the time of writing the present work (December 2019), Ecuador is still awaiting for this fundamental transitory dispositions to be implemented.

This, as Zapatta (2017) underlines, was (and still is) very disappointing for the majority of Ecuadorians, and for all those of us who believed in “the extraordinary re-foundational political moment” (Zapatta, 2017, p. 84) in which this law came to light, and whom saw how (purposely, or not) a fundamental opportunity of redressing one of Ecuador’s historical problems of social injustice had been “missed by the legislator” (Zapatta, 2017, p. 84).

Sanctions & Responsibilities

It is in the last Title (V), that the LORHUYA deals with the “breach of the law” and identifies the corresponding sanctions and responsibilities (article 151 on “Administrative Infractions”), distinguishing them in minor infractions, serious infractions and very serious infractions. However, it forgets that establishing standards and sanctions “equal for all”, is sometimes likely to end up becoming a developmental boomerang. This is the case with the sanctions established in the new water law, which -with their technocratic cut-, leave the powerful and technified agro-exporters basically immune, while putting in serious difficulties

small subsistence farmers, whom cannot easily gather the financial resources necessary to keep up with the “technical efficiency” criteria mandated by the law, or its regulations.

Article. 90 of the *Reglamento*. on “water uses and authorizations”, for example, reads:

the holder of the authorization shall install at its own cost the devices for measuring the flow of water in compliance with the terms established by the Sole Authority for Water in coordination with the Water Regulation and Control Agency. The authorization will not be valid without that installation, that must be in operation at the time of its entry into operation. if it is verified that the flow measuring device has not been installed, the reversal of the authorization will be declared by cancelling the corresponding registration in the public water registry (*Reglamento a la ley organica de recursos hidricos usos y aprovechamiento*, 2015,– personal translation-).

Being measuring devices quite expensive, it is likely that the first authorizations to be reverted will be those of small subsistence irrigators, in open opposition to the promises of food-sovereignty and equal access to water for all with no distinction, omnipresent in official discourse.

iii. The plurinational collective rights of indigenous, *Montubio*, and Afro-Ecuadorian Communities under the LORHUyA

The *sumak kawsay* spirit included in the 2008 *Montecristi* constitution, as Altman suggests, “leads to an institutionalization of practices and demands around the territorial autonomy of indigenous peoples, which constitutes political concepts such as indigenous nationality, plurinationality ...”, and, it shall constitute “the formation of a bridge between politics and the excluded” (Altmann, 2019, p. 26).

In the Andean region, water policies and local water institutions historically had an important duty in the management of the water resource, and on the identity of rural communities. However, the different water management systems, and locally embedded

water knowledges of indigenous peoples and peasant communities have been traditionally defied by denial, usurpation and subalternity, translating in a markedly unequal distribution of water, and a lack of recognition of their customary water normative systems. These, are seldom taken into serious account and/or even declared illegal by the state, and other institutions, threatening and violating the rights of these peoples (Gentes, 2002).

The LORHUyA was meant to review this subalternity and embrace the richness of the diverse traditions of Ecuador's customary water management, by opening up to the demands of Indigenous, *Montubio* (Back-Country coastal people), and Afro-Ecuadorian movements through an enhanced acceptance of legal pluralism, as a foundational step for the plurinational rebirth of the country.

Through tireless struggles, social groups had succeeded in putting pressure on the Ecuadorian State demanding respect for the *Pachamama*, in a common front against natural resources' dispossession and hoarding. Ecuador's Indigenous, and peasants' groups pressed to ensure that water sources be protected and exploited in an integrated sustainable way, to guarantee human consumption, and agricultural production for food sovereignty; briefly, to raise awareness for the need to ensure water conservation, and the rights related to water, as a natural resource (Gavilanes, 2017), as well as a culturally-embedded source of identity and social cohesion.

In compliance with international treaties, Ecuador established constitutional precepts according to which Indigenous, Afro-Ecuadorians and *Montubio* peoples, communities, and nations are an integral part of the Ecuadorian state, and a subject of collective rights. As a consequence, they have the right to freely "maintain their traditions and forms of organization". Additionally, they "have the right to participate in the use, usufruct,

administration and preservation of natural resources found in their territories” (Asamblea Nacional 2008).

Ecuador, endorsed various international treaties as to Indigenous rights, such as the Charter of the Organization of American States, that Ecuador ratified in 1950, and whose American Convention on Human Rights, was signed in 1969; the ILO ‘Indigenous and Tribal Peoples Convention’ (No. 169), ratified by the Ecuadorian state in 1998; and, finally, the 2007 ‘United Nations Declaration of Rights of Indigenous Peoples’ (UNDRIP). These international tools establish guidelines for the protection, promotion, and respect of the rights of indigenous peoples determined for their survival, well-being and dignity (ONU, 2007).

Indigenous peoples have the right to participate in decision-making on issues affecting their rights, through representatives elected by them in accordance with their own procedures, as well as to maintain and develop their own decision-making institutions. (ONU, 2007, p. 7).

According to the United Nations Declaration of Rights of Indigenous Peoples, “Indigenous peoples have a spiritual connection to the lands they inhabit, ... they have the right to protect, conserve, and develop those lands, and should enjoy the privilege of state cooperation in these endeavors” (Hyer, 2015, p. 74). The 2008 Constitution embraces these principles and mandates accordingly.

In this sense, the collective rights of Indigenous communities, peoples and nations, *Montubios*, and Afro-Ecuadorians, echoed manifestly in several articles of Ecuador’s new water legal framework.

As illustrated, in compliance with article 318 of the Constitution, two forms of water management are recognized within the LORHUyA: “public” and “communitarian”, and it is established that water management carried out by the communities must be supported and strengthened by the state’s entities, by means of public-communitarian alliances. An opening toward community customary water management is manifest also in of the water law. The content of the LORHUyA, however, is limited compared to its constitutional predecessor.

Technical homogeneity vs Recognition of diversity

If the compliance with article 32 of the LORHUYA, which -as previously illustrated- implies the obligation to form water boards for the management of drinking and irrigation water (articles 45, 47), leaves out many alternative forms of community management of water customarily present among Ecuadorian peasants peoples and nations, thus neglecting the diverse Indigenous, *Montubio*, y Afro-Ecuadorian traditional forms of organizations' in relation to water management, in open contradiction with the spirit of article 318 of the constitution. (LORHUYA, 2014, p.12 -personal translation-), although this aspect of the law was particularly criticized by many, as traditionally in the majority of Andean communities it is the community authority that is in charge of water management -among other aspects of community life (and, i.e. there is no such distinction as that between drinking or irrigation water); and now -according to LORHUYA- in order to receive water authorizations, most communities saw themselves obliged to disrupt their traditional forms of authority to create water boards; this is not a rare *defaillance* within the new water legal framework. Many articles of LORHUYA, in fact, inherently reinforce this contradiction,

According to article 43 (and 47) of the law, concerning «the quality criteria for the provision of the service” by water management boards, it is established that it is according to the state’s Agency for Regulation and Control of Water (ARCA)’s criteria, rather than according to locally embedded criteria of “efficiency” (which, customarily, tend to go beyond the technical aspect) that “the adequacy” of a regulation is verified (LORHUYA, 2014 p.15 -personal translation-).

If we take a look at the competences of the ARCA, listed in article 23,

to dictate, establish, and control the compliance to the sectorial technical norms and parameters in order to regulate the technical level of water management, in conformity with national policies.

to certify the water availability upon request on the basis of the information recorded...

to control the compliance of the obligations contemplated in the use and exploitation authorizations of water.

to control and sanction the breach of the national regulations according to the technical processes designed in order to inform the competent authorities of the failure to comply to the norm.

to investigate and resolve complaints and controversies/disputes which may appear to emit/issue a binding prior report for the obtention of authorizations for all uses and exploitation of water, as well as to emit/issue technical norms for the design, construction and management of the water infrastructure and control its compliance (LORHUYA, 2014 p.9 -personal translation-).

we realize that, as Zapatta (2017) contends, there exists within the LORHUYA “a homogenizing perspective to which organizations that collectively manage water are subject to” (Zapatta, 2017, p .86).

When article 44. establishes, right after, the duties and attributions of the drinking, sewage, irrigation and drainage water boards, underlying the need for a “technical viability permit issued by the SAW” (subsection 3), and the obligation to grant to the state authorities all the information eventually requested as to their internal forms and processes of water management, this top-down logic persists.

This means that community water users will have to adapt their Indigenous customs and traditions as to what concerns the use and protection of water to what is established in the National Water Planning. And, that the existing authorizations of use and exploitation of water will have to be compatible to what is established in the integrated watershed water management plans, and its binding technical requirements otherwise, they will have to be revised in compliance with what is stated in the Regulations of the law (Asamblea Nacional

del Ecuador, LORHUyA, 2014, p. 15 -personal translation-). Another clear sign of constraint to the right of self-determination in the population's water management choices.

Also, although article 48 mandates the “recognition of the collective and traditional forms of management, traditional and collective forms of water management of communes, communities, peoples and nations are recognized, and their collective rights will be respected in the terms previewed in the constitution and the law”, endowing water community systems with “financial, administrative, and internal management autonomy” (Asamblea Nacional, LORHUYA, 2014, p. 16-17, personal translation); the following article (51), on “Breach of Technical Regulation”, establishes that:

in the event of breach of the technical regulations issued by the ARCA for the service rendering, the drinking water administrative board will be notified, so that within the established term it elaborates an improvement plan (*plan de mejora*) the SAW will approve the improvement plan and, once the terms established in the improvement plan have expired, the ARCA will evaluate the service (Asamblea Nacional, LORHUyA, 2014, p. 17, personal translation-). In the case of non-compliance, the drinking water administrative board will be intervened by the decentralized municipal autonomous government (GAD municipal), or by its delegation, by the corresponding parish government, until the improvement plan goals are accomplished/met (Asamblea Nacional, LORHUYA, 2014, p. 17, personal translation-).

If one considers the severity of the risk of an “intervention” of the water-board by the state, as a consequence of the “noncompliance”, and associate it with how complicated it might be for an Indigenous, *Montubio*, or Afro-Ecuadorian peasant community with a different water cosmovision and collective management tradition, to follow a strict blueprint, state-determined technical regulation, and/or to execute an equally state-determined improvement plan without the training and financial support required to implement it (GADs never ending struggles to receive governmental funding, are -unfortunately- widely known to rural communities), it is hard not to realize that little is left of the *buen vivir* formula of

“decentralized-integrated management of water” (e.g. art 34, 35, 36), or of the emphasis on the recognition of “communes, communities, peoples, and nations” customary traditions (e.g. art 45, 46, 48, 52, 53, 54, 55) and own normative systems, whose respect was brought to the foreground within the *Montecristi* Constitution.

This seems particularly preoccupying, since the collective logic of Indigenous, *Montubio* and Afro-Ecuadorian customary water management vs the modernizing, individualized logic of the national water authority, are often hard to reconcile. In this sense, it becomes hard for communities to recognize the legitimacy and logic of the SAW-determined regulations, putting at risk the very implementation of the law, whose enforcement locally on behalf of the state, without the recognition and back-up of the communities, becomes hardly an actual possibility.

The Intercultural and Plurinational Water Council (IPWC)

Article 19 of the LORHUyA creates the Intercultural and Plurinational Water Council (IPWC) -*Consejo Intercultural y Plurinacional del Agua*-, and determines its role as part of the National Strategic Water System. This “national body, involved in the formulation, planning, evaluation and participatory control of water resources”, was understood as “a national sectorial instance for the formulation, planning, evaluation and participative control of the hydrological resources” (Asamblea Nacional del Ecuador, LORHUyA, 2014, p. 8 -personal translation-).

The plurinational participative body shall be:

integrated by representative of the Indigenous, Afro-Ecuadorian, *Montubio*, peoples and nations, drinking and irrigation water community systems, users organizations by economic sector; citizenry organizations of consumers of public services; GADs and Universities, with gender parity (Asamblea Nacional del Ecuador, LORHUyA, 2014, p. 8 -personal translation-).

This intercultural participative body, whose creation opened the hopes of many sectors of the citizenry, understood as it was as an unprecedented tool to give voice to the historically silenced peoples and nations of Ecuador; however, remains merely advisory in the law. If we take a closer look at the attributions of the council, provided by article 20, and by the III Title of the Regulation to the LORHUYA (*Reglamento*, 2015), in its articles 31, 32, and 33 (SENAGUA, 2016, p. 116-118), in spite of the important attributions and responsibilities established for the plurinational council, it appears clearly that the *Consejo Intercultural* “is not endowed with the decisional powers that would be required in order to have a real say in water planning, evaluation and participatory control of water resources” (Zapatta, 2017, p, 80).

Neither, article 20 OF LORHUYA (2015), nor article 33 of the *Reglamento* (2015) dealing with attributions of the *Consejo Intercultural*, provide, in fact, the instruments necessary to guarantee the functioning of the intercultural participative body elected by the Citizens Participation and Social Control Council, nor grant the actual powers essential for the effective implementation of its attributions.

Article 20 reads as follows:

-Attributions of the Intercultural and Plurinational Water Council-

Social control over the guarantee and the exercise of the human right to water and its equitable distribution.

To participate in the formulation, evaluation and control of the public policies for hydrological resources.

To participate in the formulation of the guidelines and the follow-up of the National hydrological resources/Water Plan.

To generate public debates on topics related to the integrated management of hydrological resources/water.

To participate in the of the circulation of information on ancestral knowledge(s) ‘*difusion de saberes ancestrales*’ on the natural properties of water.

To be held accountable to the public for its management.

To contribute and promote/foster the resolution of disputes and conflicts among water users; and,
 All those determined by the Law.
 (Asamblea Nacional del Ecuador, LORHUyA, 2014, p. 8-9 -personal translation-).

Compared with the attributions of the other agencies forming the '*Sistema Estratégico del Agua* (i.e. article 18, on 'attributions of the SAW', or article 23, on 'attributions of the ARCA)'), clearly, the IPWC, will merely "participate in the formulation of ... guidelines" (Asamblea Nacional, LORHUYA 2014, p.12 - art. 28, 29, 30-, personal translation). As Hyer (2015) suggests, "the attributions of the IPWC, do not have any power to affect any of the decisions of the Single Authority for Water" (Hyer, 2015, p. 87). The various Subsections allow for the "participation" of the IPWC in the formation of policies; however, no mention is made to actually binding deliberative power (i.e. see Subsection 2 and 3). This sort of "limited-scope participation", as emphasized by the author, makes the attributions of the IPWC "little more than ceremonially important in that it has no real ability to affect official determinations" (Hyers, 2015, p.87).

In this regard, it can be argued that LORHUyA, with its "distinct lack of authority" (Hyer, 2015, p. 87), while officially promoting ancestral peoples involvement in water management, is not effectively contributing to an authentic intercultural public policy making and plurinationally sensitive water legal pluralism, whose achievement would require an IPWC with more effective tools for the creation, planning, evaluation and participatory control of water resources by the different ethnicities, as provided by the broader view on these rights envisioned in, article 26 of the United Nation Declaration on the Rights of Indigenous People (2007) quoting as follows:

Indigenous peoples have the right to lands, territories and resources that they have traditionally owned, occupied or used or acquired. 2. Indigenous peoples have the

right to own, use, develop and control the lands, territories and resources they possess because of traditional ownership or other traditional occupation or use, as well as those they have otherwise acquired. 3. States shall ensure the legal recognition and protection of such lands, territories and resources. Such recognition shall duly respect the customs, traditions and land tenure systems of the indigenous peoples concerned. (ONU, 2007, p. 8).

It would be hard not to agree with Alex Zapatta (2017) when he argues that the 2014 water law was probably the legal norm which “had more reasons to incorporate a perspective of legal pluralism”; and, instead, it ended up “not only being an unfortunate example of legal monism, but also an example of gross confusion around the nature of customary law” (Zapatta, 2017, p. 88) whose enriching potential contribution was squandered by reserving only a subordinate position to customary community management of water.

Likewise, in its subsection d) and e), article 36 while insisting on the necessity to “recover and promote the ancestral knowledge, research and scientific knowledge of the hydrological cycle” (Asamblea Nacional del Ecuador, LORHUyA, 2014, p. 12 -personal translation-), however, article 36 again ends up “distanc[ing] itself from the constitutional provisions on collective rights of communes, communities, peoples and indigenous nations”, by omitting any explicit “reference to the customary law of these collectivities as to the management and use of water” (Zapatta, 2017, p. 86). In fact, as it may be noted, reference is made to “ancestral knowledge”, but not the slightest recognition appears as to the customary ‘normative level’ (Zapatta, 2017, p. 86); which, in turn, should be acknowledged in the face of the proclaimed legal pluralism orientation of the intercultural state of *buen vivir*.

Even when it comes to spiritual and ancestral uses of water, the attributions of the IPWC seem weak. Article 92 on “Cultural and Sacred Practices”, establishes that:

The Sole Authority for Water will guarantee the integrity and permanence of the places where traditionally commune, communities, peoples and nations practice rites, cultural and sacred water values.

The Sole Authority for Water together with the communes, communities, peoples and nations will carry out and keep a properly updated a National Participatory and Comprehensive Inventory of Sacred Places and Water Rituals.

The administration and conservation of the sacred places related to water, shall be carried out by entities or organizations of peoples and nationalities in whose lands or territories these waters are found, with the support of national programs and projects of the public agencies and the Decentralized Autonomous Governments, in compliance with the Constitution and its Own Rights (Asamblea Nacional del Ecuador, LORHUyA, 2014, p. 26 -personal translation-).

Although a general reference is made with respect to the involvement of communities, peoples and nations in the participatory creation and updating of the ‘inventory’, no explicit mention of the articulation of this process is provided. As argued by Hyers (2015), it is surprising that not even an article invoking the ‘Sacred Water Rituals’ of indigenous communities, peoples and nations of Ecuador, appears to be a sufficiently ‘plurinational’ matter as to trigger the official involvement of the IPWC (Hyer, 2015, p. 93). As argued by Hyer (2015) “Despite the distinct character of an inventory of places sacred to those indigenous groups, the body that is specifically endowed with cultural knowledge is not included as part of the inventory-making process”. Consequently, as the author suggests, “the true role of the IPWC is dubious” (Hyer, 2015, p. 93).

Derecho propio and Customary water practices

According to article 52, on Customary Law or Derecho Propio (Own Law). “Customary practices applied by Communes, Communities, Peoples, Nations and Collectives, for the access, use and distribution of water, shall constitute mandatory practices for its members” and shall be respected by the SAW and its dependencies (Asamblea Nacional del Ecuador, LORHUyA, 2014, p. 17 -personal translation-). Unfortunately, this is

limited only to those customary practices which have been registered by the Sole Authority for Water (not the diverse, actually existing one).

The fact that it is a responsibility of the Single Authority for Water to” keep a register of the customary practices of community systems holders of collective rights, for the access, use and distribution of water carried out by the communes, communities, peoples and nations”, and that only those will be recognized, is an issue of serious concern for many Indigenous, *Montubio* and Afro-Ecuadorian communities.

Additionally, in compliance with this article of LORHUyA, and further extended within the third chapter of its Regulation (*Reglamento*, 2015), the aforementioned practices and rights related to access, human consumption and domestic use of water “may not limit those established in this law” (Asamblea Nacional del Ecuador, LORHUyA, 2014, p. 17 - personal translation-). Therefore, and in a clear sign of their subalternity in relation to the national normative system, the application of the "collective and traditional forms of water management" contained in article 48, 52, and 53 of the law, "is guaranteed" only “as long as they are registered by the Secretariat of Water (SENAGUA) (Zapatta, 2017, p. 87), which will not register customary practices should they “oppose efficient water use” (art. 52). The criteria defining this “efficiency” are, of course, determined by the SAW, and not according to locally embedded own water-views.

Article 52.- Own or customary law.- In accordance with the provisions of article 52 of the Law, customary practices that are in application for access, use and distribution of water by communes, communities, nations and groups, constitute practice mandatory for its members.

For the purposes of general knowledge of these customary practices, the Secretariat of Water will gather the corresponding information for its subsequent incorporation in the Public Registry of Water...

Under no circumstances may such practices limit free access to water for consumption and domestic use under the terms established in this Regulation nor can they oppose efficient water use or good environmental practices. The Hydrographic

Demarcation Authority, or the person in charge of the corresponding Citizen Service Center will not register the customary practices which oppose the provisions of this subsection (Asamblea Nacional del Ecuador, LORHUyA, 2014, p. 17 -personal translation-).

Similarly, when Article 53 provides that exceptionally “customary practice may be invoked and applied to third parties which are not part of the commune, community, people or nations”, it is important to note that this might happen only in the event of “the recognition of relevance of their application” by the Single Water Authority, and should “the third party involved express its consent” (Asamblea Nacional del Ecuador, LORHUyA, 2014, p. 17 - personal translation-).

Therefore, although various articles of LORHUyA recognize “The customary orders of communes, communities, peoples, and nationalities in relation to the access, use, usufruct, and distribution of the water that flows through their lands” (Hyer, 2015, p. 91), which “constitute internal administration practices for the exercise of their collective rights in relation to hydrological cycles” (Hyer, 2015, p. 91); often even “in a situation ... distinctly oriented toward the indigenous groups of Ecuador” (Hyer, 2015, p. 91), the last say is against left solely to the state’s authority, which will determine whether, and when it is “relevant” or not to apply customary orders of collective rights, or official national norms.

The Resolution of Controversies

The participation of communities envisioned by the LORHUyA seems to relate more to the “protection of water and in the administration, operation and maintenance of infrastructure”, rather than as to “the governing, formulation and implementation of policies, planning, integrated management in watersheds, organization and regulation of the institutional water regime and control, knowledge and sanction of infringements”, which are

competences reserved to the public management of water (Asamblea Nacional del Ecuador, LORHUyA, 2014, p. 12 -personal translation-). This is particularly evident when it comes to the resolution of controversies, where the primacy of the SAW in the resolution of conflicts within the members of the water board is uncontested.

According to article 75, the state shall respect customary practices aimed at providing solutions to existing controversies (or those possibly arising). Nonetheless, this is limited by the subordinate position that indigenous laws occupy within the LORHUyA in the face of conventional law (this, is not so in the constitutional provisions). In fact, should controversies arise, and not be possibly resolved internally, they will be resolved by the SAW, and no intervention whatsoever of the Intercultural and Plurinational Water Council (IPWC) is previewed.

Article 75- Dispute resolution. Customary norms of communes, communities, peoples and nations in relation to access, use, usufruct and distribution of water flowing through their lands, constitute internal administration for the exercise of collective rights in relation to the hydrological cycle. The differences that may arise between communes, communities, peoples or nations and people not belonging to these, within their territorial scope, regarding ways to access, use, exploit, distribute, handle or manage water within the same basin, which cannot be resolved by agreement between the parties involved will be resolved upon the parties' request by the Sole Authority for Water (LORHUyA, 2014, -personal translation-).

The self-determination of communities, peoples and nations: A matter of plurinational autonomy or pure declarative formality?

Article 71 establishes the following rights for communities:

(a) conserve and protect water flowing through their lands and territories in which they inhabit and carry out their collective life; b) participate in the use, usufructuary and community management of water flowing through their lands and territories and which is necessary for the development of their collective life; (c) preserve and protect its water handling and management practices in direct relation to the right to health and food; d) maintain and strengthen their spiritual relationship with water; (e) safeguard and disseminate their collective knowledge, sciences, technologies and

ancestral knowledge about water; (f) To be consulted mandatorily in a way that is prior, free, informed, and within a reasonable time frame, on any relevant state regulatory normative decision or authorization that may affect the management of water flowing through their lands and territories; (g) to participate in the formulation of environmental impact studies on activities affecting ancestral uses and forms of water management in their lands and territories; (h) to have access to truthful, complete and timely water information within a reasonable time frame; (i) to participation in the social control of any public or private activity generating an impact or conditions on the ancestral uses and forms of water management in their properties and territories. Communes, communities, Peoples and nations shall exercise these rights through their representatives in the terms provided in the Constitution and the law. (Asamblea Nacional del Ecuador, LORHUyA, 2014, p. 20-21 -personal translation-).

While article (72), dealing with the participation in water conservation, provides that “the communes, communities, peoples and nationalities have the right to demand that the state, through its institutions, develop conservation policies and programs, protection and preservation of water flowing through its lands and territories” (Asamblea Nacional del Ecuador, LORHUyA, 2014, p. 21 -personal translation-).

Article 72.- Participation in water conservation. The communes, communities, peoples and nationalities/nations have the right to the State, through its institutions, articulate policies and programs for conservation, protection and preservation of flowing water for their lands and territories. The exercise of this right will not prevail or undermine any of the powers on water that corresponds to the State (Asamblea Nacional del Ecuador, LORHUyA, 2014, p. 21 -personal translation-).

Similarly, article 73 of LORHUyA legitimizes the use, usufruct and community management of water, specifically establishing that communes, communities, peoples and nationalities have the right to participate in the use, usufruct and community management of water flowing through their lands and territories as a means of strengthening their identity, culture, traditions and rights, in accordance with the legal order; and, therefore, they shall participate in the integrated planning and in the community management of water flowing through their lands and territories, as well as they will be part of the organizations that will be

formed in the water basin (Asamblea Nacional del Ecuador, LORHUyA, 2014, p. 21 - personal translation).

Article 73.- Use, usufruct and community management of Water. The communes, communities, people and nationalities/nations have the right to participate in the use, usufruct and community management of water flowing through its lands and territories as a means to strengthen their identity, culture, traditions and rights, in accordance with the legal system. For this purpose, through the representatives of their organizations and in accordance with this Law, they will participate in the integral planning and community management of the water flowing in their lands and territories as well as they will be part of the water basin organizations of the watershed in which their lands and territories are found (Asamblea Nacional del Ecuador, LORHUyA, 2014, p. 21 -personal translation-).

And article 74 recognizes and guarantees traditional forms of conservation, management and hydrological cycle handling practiced by Indigenous, Afro-Ecuadorian and *Montubio* communes, communities, peoples and nations; as well as the application of their own particular forms, uses, and customs for internal sharing and distribution of authorized water flows.

Article 74.- Conservation of management practices of the water. The application of the traditional forms of handling and management of the hydrological cycle, practiced by communes, communities, people and indigenous nations, Afro-Ecuadorian and *Montubio* groups and their own forms, uses and customs for internal distribution and distribution of authorized water flows (Asamblea Nacional del Ecuador, LORHUyA, 2014, p. 21 -personal translation-).

Looking at all these provisions concerning the recognition of customary water management one might assume that an extensive, revolutionary step forward as to the introduction of legal pluralism and self-determination of Indigenous, Montubio, and Afro-Ecuadorian communities, peoples and nations of Ecuador is provided within the new water legal framework. Nevertheless, beyond the rhetoric of the legal text, hides a contrasting reality and centralized underlying vision of water management/governance.

If one considers that -based on the constitutional principles of equality, solidarity, sustainability, participation and interculturality- the provision and management of water should be achieved within a context of plurinational coexistence of peoples and the spirit of the *sumak kawsay* (Constitution of the Republic of Ecuador, 2008 -Georgetown University translation-). And that, one of the most important sources of water generation is ‘*el paramo*’ (the moors), where indigenous and peasant peoples and communities are seated, whose indigenous justice does not need to be reverted by ordinary justice; then, the primary role of the SAW, and the Autonomous Decentralized Governments (GADs) ought be to guarantee and facilitate an authentic dialogue for the benefit of *buen vivir* and a sustainable environment (Accion Ecologica, 2015), between the national and the local normative levels.

Instead, the *buen vivir* “call for” indigenous peoples to have a substantial role in [water] decision-making processes”, appears “to have weaken to a standard that is less than ‘substantial’” (Hyer, 2015, p. 93) within the articles of the law, subjugated as it is by the centralized, top-down water policies of the state. Although “the law formalizes a series of rights of participation of indigenous communities, communities, peoples and nationalities”, such notion and the struggle for the recognition of customary rights, as asserted by Zapatta (2017), appear to be “developed [in the LORHUyA] as a declarative formality, as a mechanism of social legitimization of state policy” (ZAPATTA, 2017, P. 87).

iv. Citizens’ participation: The LORHUyA and role of the water councils

This section analyses participation from the lens of water management, and revises the provisions of the LORHUyA guaranteeing a role in water decision making for Ecuadorian citizens. A particular emphasis is put on irrigation water, both for its importance

in terms of food sovereignty and improvement of rural populations' living conditions; as well as, because it is in irrigation that blatant water hoarding has been historically recorded (Gaybor, 2008), and where, therefore, Ecuadorian citizens' participation could represent a particularly meaningful asset for an effective oversight, and, hopefully, improved justice in the redistribution of water.

Citizens' participation could be considered the marrow of Ecuador's *buen vivir* state policies. When the 2008 constitution came into office the basis of social control in all matters of public interest were established. Its Title IV on "Participation and Organization of Power" articulates the processes of a new post-developmental paradigm in the country, which designates people's participation as the '*V Poder*' de la Republica (Foros.Ecuador.ec, 13 de Febrero, 2016).

Article 95. Citizens, individually and collectively, shall participate as leading players in decision making, planning and management of public affairs and in the people's monitoring of State institutions and society and their representatives in an ongoing process of building citizen power. Participation shall be governed by the principles of equality, autonomy, public deliberation, respect for differences, monitoring by the public, solidarity and interculturalism. The participation of citizens in all matters of public interest is a right, which shall be exercised by means of mechanisms of representative, direct and community democracy (Constitution of the Republic of Ecuador -Georgetown University translation- Article 95).

The direct participation of society in governmental decision making is articulated in Ecuador within the Organic Law on Citizen Participation and Social Control (Asamblea Nacional, Ley Organica de Participacion Ciudadana y Control Social, 3 de Septiembre, 2009, personal translation-), which identifies citizens' participation as an essential element of the Ecuadorian democracy, implying an active presence of society in binding decisions concerning the life of the country, and the policies emanating from the state in pursuit of the wellbeing of its population. It allows for the creation of autonomous social organizations

with the aim of strengthening the democratic social system. The promotion of citizen participation on behalf of the Ecuadorian state generates various institutions, these promote the capacity for social organization, by increasing the margins of power within it, and by creating mechanisms and actions that ensure compliance with the right of society to fully take part in the decisions of the state (SNCPD, 2012).

Participation within water management has a profound influence on the governance and rational use of the resource. Water has been the cause of large civil mobilizations within the Andean region for years. Ecuador is not exempt from these struggles, that is why- since 2007-, when President Rafael Correa was first elected, the unequal social distribution of this vital resource in the country, became one of the primary concerns within his mandate. This clearly manifested both throughout the debate of the *Montecristi* Constituent Assembly, and - later on-, it translated in the articles of the LORHUyA.

The main objective of participation within the 2008 Constitution was possibly to depoliticize the supervisory bodies guaranteeing the rule of law and justice, by granting a greater autonomy to the diverse peoples of Ecuador, in the forging of a new self-determined democracy, and coexistence for the citizens (Borja, 2016). Participation is, thus, seen as the ultimate expression of the sovereignty of the people, in their struggle for fundamental rights, such as the right to equal access to water. A struggle that expresses new ways to mobilize and manage the development of a nation from below (Borja, 2016).

The constitutional principles of citizen participation reflected under LORHUyA, especially on issues such as the collective rights to water, and/or the co-responsibility of society members in its protection and sustainable use. New participative communicative channels were established parallel to the various *buen vivir* state proposals with the aim of

entitling communities to have greater weight and intervention power within water national development plans. And, according to official discourse, the participation of citizens' in integrated water management envisioned in the new water reforms was meant to promote the construction of a modern, decentralized and deeply democratic state and society, favoring the re-education of institutions related to the development and preservation of water. For its part, citizens' participation in the making of water public policies and the related water institutions, implied a thorough redesign of the process of water policymaking: in planning, execution, monitoring and evaluation. The new modes of public water management, in order to increase the capacity for citizen advocacy and popular control of state action, implied a raise in the sense of responsibility of the state for the achievement of the well-being of its citizens (SNCPD, 2012).

This constitutional principle translated in more than twenty articles of the LORHUyA which refer directly to social participation. The LORHUyA establishes Water Basin Councils, defining them as the collegiate bodies “of an advisory nature and composed of the elected representatives of the Users’ Organizations”, which shall “participate in the formulation, planning, evaluation and control of water resources” (LORHUyA, 2014, p. 25-26 -personal translation-).

The text of article 8, on the “Integrated Management of Hydrological Resources”, in its first paragraph, establishes that an ecosystem watershed approach (or, hydrological basins systems) shall be proposed, defining the hydrographic basin as “the territorial unit delimited by the dividing line of its water draining superficially toward a common riverbed”.

Additionally, it provides that “the integrated management of hydrological resources shall be

a transversal axis of the decentralized national system of development participative planning” ((LORHUyA, 2014, p. 4-5, personal translation,).

However, immediately after, it specifies that “it is the SAW that shall approve the concrete delimitation of the hydrographical basin and its possible grouping for the purpose of management and planning” (LORHUyA, 2014, p. 4-5, personal translation), leaving no possibilities for alternative, more culturally fit, locally embedded delimitation criteria to be adopted by the populations living in the territories comprised within the state-determined water basin.

Similarly, Title II of LORHUyA on “Hydrological Resources” in its art 12, deals with the recovery and conservation of water sources, putting emphasis on the importance of co-responsibility and active participation of communities in the protection of water:

The State, community systems, drinking and irrigation water boards, consumers and users, are co-responsible for the protection, recovery and conservation of the water sources and the management of the *Paramo* (the Andean moors), as well as the participation in the use and administration of water sources to be found in their territories, without prejudice of/without affecting those of the Sole Authority for Water in compliance with this law and the Constitution....

Water users shall be obliged to comply with the technical regulations, provisions and legal regulations established by the Sole Authority for Water (SAW), in coordination with the national environmental authority for the conservation and protection of the water source (LORHUyA, 2014, p. 5-6, personal translation).

It is noteworthy, however, that in its final section, it stresses that this shall not affect the prerogatives of the SAW, somehow, undermining the exercise of direct control over their own development on behalf of “the participative bodies as currently constituted in the water law” (Hyer, 2015, p. 88). This seems to be the key contradiction in the proposed policy and practice of water management: centralized state authority and community self-governance ensconced in the same document.

According to the spirit of *revolucion ciudadana* (citizens' revolution), as envisioned by the objectives of *buen vivir*, peoples should be able to protect their auto-determined customary rights related to environmental development. This aspect seems to be inadequately addressed by the LORHUyA, due to the relative lack of authority under the rules articulated by the new water legal framework, which calls into question the ability of water basin councils to be effective (Hyer, 2015, p. 88).

Article 16, for example, establishes that it is a duty of the state to articulate the actors involved in the achievement of the objectives of the national strategic water system (of which participative water basin councils are an important part); in practice, however, unless the recognition and the “generation of the mechanisms and tools” necessary for “coordinat[ing] public policy plans regarding water resources” is granted (making it possible to link social actors at the different levels of state policy-making), no authentic participation can exist ((LORHUyA, 2014, p. 7, personal translation).

Article 16

1. To articulate the actors that are part of the national strategic water system for the comprehensive and integrated management of water resources; and
2. To generate mechanisms and tools to coordinate the planning and application of public policy on water resources, together with water-related stakeholders and different levels of government, to ensure good living ((LORHUyA, 2014, p. 7, personal translation).

The role of citizen participation carried out by the *consejos de cuenca* (watershed councils') in pursuit of the defense of water quality, food sovereignty and the promotion of improved conditions governing the day-to-day access, use, and management of the natural resource, when compared to the constitutional frame, appears in fact to remain merely declarative within the new water law. The ability of the participative entities recognized by

the LORHTUyA to “coordinate the planning and implementation of public policies on water with the water social actors and the different levels of government, in order to guarantee the *buen vivir*” at times, seems to remain little more than empty rhetoric (LORHUyA, 2014, p. 7, personal translation). A critical analysis of the articles of LORHUyA dealing with the participative articulation among social actors and the state with respect to water; for example, reveals no mention of the actual processes, nor identifies the related responsibilities, as to the provision of the essential articulation mechanisms and implementation tools, that an authentic participation of society would require.

If one considers the treatment of the concept of citizens’ participation in the various articles of 2008 Constitution, it can be inferred that its translation within the new water law, should have not limited itself exclusively to an advisory activity as to the access, use, exploitation, or management of the national waters. Rather, it should have envisioned the recognition of a deliberating role of diverse participative bodies in water planning and policy decision-making, as well as granting real prerogatives in the oversight and control of environmental studies, or technical projects either supporting or banning surface and groundwater exploitation and regulations; thus, constituting an important voice in determining the priorities of Ecuador’s water uses (CONAGUA, 2010).

The Constitutional section “Principles of participation” in its article 96, on “Community organization” provides that:

Article 96. All forms of organizing society are recognized as an expression of the people’s sovereignty to develop processes of self-determination and to influence public decisions and policymaking and for social monitoring of all levels of government, as well as public and private institutions that provide public services. Organizations can be articulated at different levels to build up citizen power and its forms of expression; they must guarantee internal democracy, the rotation of power of their leaders, and accountability (Constitution of the Republic of Ecuador, - Georgetown University translation-).

Opening the possibility for an authentic decision-making power of water management participative bodies of diverse scope and levels of activity within the Ecuadorian waterscape, clearly acknowledging the right of citizens to determinate the “forms of organizing” of their choice, and self-determination of processes for Ecuador’s water participation.

Instead, article 25 of the LORHUyA (2014), defines the water basin councils as follows:

The watershed council is the collegiate advisory body, led by the Sole Authority for Water (SAW) and composed of the elected representatives of user organizations, with the aim of participating in the formulation, planning, evaluation and control of water resources in the respective basin. The watershed councils will also involve the authorities of the different levels of government in the matter of their responsibility. The Regulations of this Law shall establish the territorial scales at which they can be organized, their composition and financing (LORHUyA, 2014, p. 10, personal translation).

Therefore, designating the water basing councils as the only recognized arena of water citizens’ participation, limiting their scope to “advisory” bodies, and leaving the responsibility for their coordination to the National Secretary of Water -SENAGUA- (appointed by a 2008 Presidential Decree 05-1088, as the Single Authority for Water).

Likewise, if one takes a look at the Regulation to the LORHUyA (specifically in articles 25, 26, 27, 28 of *Reglamento*, 2015, p. 111-114), it appears manifest that not only it is the SENAGUA which leads this “collegiate body of a consultative nature” (Zapatta, 2017, p. 80); but -also-, that its rigid state-determined structure includes an important percentage of representatives proceeding from governmental authorities (1 representative for the Provincial GAD -Decentralized Autonomous Government-, 1 representative for the Municipal GAD and Parish GAD, 1 representative of the productive sector, and 1 representative of the university sector); leaving in a condition of subordinate minority the legitimate

representation of communities and peoples of Ecuador, which only get 1 representative for drinking water organizations, and 1 representative for irrigation water organizations.

Moreover, the Regulation of the LORHUyA provides that it is the SAW which is in charge of defining all the processes, as well as the territorial scales at which participatory bodies can be organized, who may compose them, and ensures their financing (SENAGUA, 2016 -Regulation to LORHUyA, 2015, p. 111-116, personal translation). Thus, the role of water basin councils not only remains strictly advisory (SENAGUA, 2016, p. 40-41), and allows no community input in the definition of the territorial scales in which it will be possible to organize participatory bodies; they are defined in scope and composition by the SAW, which shall also provide their processes and financing form (SENAGUA, 2016, *Reglamento*, 2015, p. 112, 113 -articles 25, 26, 27, 28-). The emphasis of the law legitimizes what Alex Zapatta (2017) calls a “vertical schemes” in water management, “formally leaving out important socially embedded and more culturally fit alternatives [of participation], such as “the possibility that municipal or provincial autonomous governments, in an associated way, or through public-community platforms, can assume such responsibility” (Zapatta, 2017. p. 81).

According to the LORHUyA’s Regulation, the Ecuadorian territory shall be divided into *Demarcaciones Hidrograficas* (water demarcations), which are intended to protect the water sources within the hydrographic basin, to manage its resource (equally), to be held accountable for the projects that are implemented within its limits, and to propose to the citizens residing in it, the Environmental Impact Plan (SENAGUA, 2016 -*Reglamento*, 2015, p. 111-116, personal translation). Under these pre-established standard conditions, a genuine

listening to the voices of the residents of a territory, as a true sign of democracy (Vinueza, 2014), begins to appear of difficult implementation.

Article 26 of LORHUyA, when listing the functions of the Water Basin Council, reads as follows:

1. Choose from its members its representatives to the Intercultural and Plurinational Water Council; 2. Participate in the formulation of guidelines and guidelines as well as the follow-up to the watershed management plan, within the framework of the National Water Resources Plan; 3. Generate proposals for sectoral public policies related to water resources, which will be submitted to the Intercultural and Plurinational Water Council, through its representatives; 4. To speak before the Single Water Authority on all matters of interest to you or that request; 5. Participate in the consultation processes carried out by the Single Water Authority and propose priority issues for the management of the basin or the water units that make it up (...). (LORHUyA, 2014, p. 10-11,).

Accordingly, Article 27 *eiusdem*, sets out the different forms of participation that the aforementioned water councils have in the organizations of basin users. The user status of a water basin is assumed taking into account the authorization of the productive use or exploitation of water. Its organization and exercise will be democratic, participatory, with alternance and transparency in accordance with the principles underpinned by the Law (Asamblea Nacional del Ecuador, LORHUyA, 2014, p. 11, personal translation).

Yet, while article 27 defines watershed users' organizations as "the distinct form of organization adopted by the hydrological resources users of each water basin", which will "designate their representatives in the respective water basin council, considering the existing organizations and the distinct economic sectors", it can be appreciated that the sole condition justifying of the water basin user's figure is "the water use or productive exploitation authorization", an authorization granted -once more-, by the SAW (Asamblea Nacional del Ecuador, LORHUyA, 2014, p. 11, personal translation). This leads to an exclusive control of

the participative bodies by the state. A centralization of power which manifests itself, again, in article 42, by mandating that the provisions of integrated water management, established by the SAW, will have to be observed by all levels of planning (regional, municipal, etc).

The joint construction of the water basin management plan should be understood as the result of the creation of spaces for deliberation, discussion, analysis and definitions of programs and activities that serve the characteristics of each basin or sub-account, which are established in a space of discussion between public participation and the institution in charge of the project (Vivanco, 2014).

Likewise, the management of plans and proposals for each water basin should be built in a participatory manner, that is, collectively between the spaces of participation and the water authority and its delegates, thus allowing to obtain double benefits: the strengthening in the action of the watershed organism, and the empowerment of the actors involved by obtaining the support required for the execution of actions that seek integrated water resource management (Córdova, 2013).

Collegiate participation should provide the opportunity for a participatory water space in the basin where local actors can obtain funds and execute the specific actions necessary for the protection of the basin and the access to water to all citizens. However, the fact that the actions taken by the basin council must be supervised and endorsed by the SAW, and obtain its full support for the development and capacity building of local water users and non-users, can represent a serious challenge for the participative management of the basin and the implementation of an authentic bottom-up contribution in water handling (Martínez Moscoso, 2017).

Undoubtedly, in order to achieve the constitutional objective of citizens' participation, guaranteeing adequate summoning processes and social legitimacy, or establishing an effective link between social proposals and national water decision-making within the different levels of state institutions, would require a strong link to be achieved between the two.

Instead, if we take a look at article 23 of LORHUyA we may observe that it is the Authority for Water Regulation and Control -ARCA- (body appointed by to the Sole Authority for Water -SAW-), that shall "exercise the regulation and control of the integrated management of water", through the exclusive exercise of the following competences:

To dictate, establish, and control the compliance to the sectorial technical norms and parameters in order to regulate the technical level of water management, in conformity with national policies.

To certify the water availability upon request on the basis of the information recorded...h. To control the compliance of the obligations contemplated in the use and exploitation authorizations of water.

To control and sanction the breach of the national regulations according to the technical processes designed in order to inform the competent authorities of failure to comply/noncompliance to the norm.

To investigate and resolve complaints and controversies/disputes which may appear
To emit/issue a binding prior report for the obtention of authorizations for all uses and exploitation of water, as well as to emit/issue technical norms for the design, construction and management of the water infrastructure and control its compliance (LORHUyA, 2014, p. 9, personal translation).

Clearly, in article 23, no reference is made to the participative prerogatives that ought to be shared with the citizenry, communities, peoples and nations of Ecuador through their representative instances in relation to water planning, and there isn't any emphasis on the autonomy of choosing the preferred form of organization, decision making, and dispute resolution mechanisms that citizens' organizations ought to enjoy in the name of an authentic

integrated management of water, according to the previously analyzed 2008 constitutional spirit.

Chapter IV on “Rights of users, consumers and citizen participation”, in its article 67 designates water ‘users’ as the “natural, legal persons, decentralized autonomous governments, public entities or community that have an authorization for use and use of water”; and, it differentiates them from ‘consumers’, defined as the “natural persons, legal entities, community organizations that demand water related goods or services provided by users” (LORHUyA, 2014, p. 19, personal translation). Also, it establishes that “Users and consumers have the right to access in an equitable way to the distribution and redistribution of water”, and, specifically the prerogative to “to exercise the rights of citizen participation provided by law” (LORHUyA, 2014, p. 19, personal translation).

Additionally, Article 68 on “Consultation and user obligations”, provides that the Single Water Authority, through the watershed councils, will consult in advance user organizations’ “free, informed, mandatory consent, and within a reasonable period of time, in all matters relevant related to the integrated management of water resources that may affect them accordingly with this law and its regulations” (LORHUyA, 2014, p. 20, personal translation).

Notwithstanding, the requirements and procedures for the creation of drinking and irrigation water boards (*juntas de agua*), which represent local territorial entities of citizen participation under the LORHUyA (article 43 and 47), and are defined as “community-based, non-profit organizations whose purpose is to provide the public drinking and irrigation water services, based on criteria of economic efficiency, sustainability of the water resource, quality in the provision of services and equity in the supply of water” (Asamblea Nacional

del Ecuador, LORHUyA, 2014, p. 15, Art 43 and 47 -personal translation-); in a rather contradictory way, shall be developed under the coordination and according to the procedures established by the SAW (Asamblea Nacional del Ecuador, LORHUyA, 2014, Art 43 and 47 -personal translation).

Also, it is important to note that while Article 69 on the “Promotion of the organization and training”, establishes that:

the Sole Authority for Water as well as the decentralized autonomous governments will strengthen the organization of water users and consumers and will promote its formation where it does not exist. In order to do that, it will set policies of information, diffusion, education and social training for water users, consumers and the general population ((LORHUyA, 2014, p. 20, personal translation). Thus, establishing the responsibility of the state to inform and train water users in order to strengthen their participation. The mechanisms for the articulation and operability of this strengthening, are not created.

Finally, when Article 70 and 82 deal with citizens’ oversight and control, by defining “citizen oversight as a form of social participation”, there is no evidence of the way in which this oversight shall be articulated, and how it will be financed apart from a vague disposition of the responsibility of the state to finance it (and no body enforcing this) also this form of social participation will have to be carried out in compliance with the rigid, prescriptive regulations of the water law (LORHUyA, 2014, p. 20, 23, -personal translation-). Thus, limiting the dynamic scope of these mechanisms of participative control.

Under LORHUyA, citizens’ participation is clearly controlled by the SAW; whose technical requirements, as I try to demonstrate throughout this research endeavor, may risk to hinder the voice of the most vulnerable, and -thus-, the ultimate intent of society to be heard by the authorities, and to address the problems, needs, and priorities of the citizenry.

v. Conclusion

This section was meant to learn through a revision of the text of the LORHUyA the extent to which the Ecuadorian state has successfully advanced normatively its plurinational and citizens' participation agenda in the context of water, recognizing and understanding contradictions within the new water legal framework that make it difficult to implement a redistributive, plurinational and participative water policy.

Although many aspects of the new *Ley Organica de Recursos Humanos Usos y Aprovechamiento* (LORHUYA, 2014), echoed the provisions that had been outlined in the 2008 constitution of *buen vivir*, however, in spite of the official rhetoric on plurinationality, and intercultural participatory sensibility “many of the country's indigenous [and peasants'] groups, were concerned that this new water law did not safeguard their interests sufficiently” (Hyer, 2015, p. 63-64). As highlighted throughout this chapter, the construction of a coherent national water legal framework, appeared -from the very beginning-, quite difficult to implement.

The new water law was meant to break a historic scenario of confrontation between the national and the community level of water management, offering a collaborative framework of integrated action between the social organizations and the institutions that regulate water resources. The Ecuadorian state was supposed to endorse processes of water territorialization both within community actors and within public actors involved in water management, to guarantee a just and efficient access, use, and management of the resource, ensuring political participation and cultural integration, by creating the social actions and policies necessary for the inclusion of the diverse stakeholders involved (Coloma, 2018).

This revision of the new water legal framework, drawing on a political ecology and a water justice rights-based perspective, explored Ecuador's new water law, (and main regulations), with an eye on the potential repercussions on Indigenous, *Montubio*, Afro-Ecuadorian and *Mestizo* subsistence irrigators, and their collective struggles for the achievement of a self-determined, participatory, and equitable water redistribution and decision making.

A brief introduction on the claims for a renewed recognition of the diverse water management traditions characterizing Ecuador's rural communities (paragraph i), was thus followed by a description of the main contents and scope of the new 2014 water law (paragraph ii), introducing the titles and sections of the *Ley Organica de Recursos Hidricos, Usos y Aprovechamiento* (LORHUYA, 2014), dealing specifically with the topics interest of the present research.

As the LORHUYA is officially only available in original language (Spanish), I personally translated the *verbatim* text of the main articles of the law was provided in order to build the basis on which to develop the main analytical points of this revision: the contention present within the new water legal framework between the redistributive vs extractive tendencies simultaneously poking out within the articles of the law (paragraph ii), the state's promises of a water plurinational agenda vs the homogenizing constraints imposed to customary water normative systems by the technocratic provisions of the LORHUYA (paragraph iii); and, finally, the tensions manifesting between a state centralized vs an integrated and participatory vision of water management (paragraph iv).

In spite of the ample norming of the topics linked to water ancestral traditions and water customary community management (art. 71,72,73), the norming of ancestral

management; ritual and sacred places (art. 93), the provisions regarding own or customary law, as well as the ratification by LORHUYA, of the rights to participation and of the citizenry within the official water bodies and institutions (art. 68, 72, 82) (Secretaria del Agua -SENAGUA-, 2016), the issues of customary law recognition and the direct participation of society in water issues, result undermined by the very provisions of the law itself.

A deeper look at the content of the LORHUYA, show that -within its very articles- are hiding the provisions sufficient to de facto paralyze many of the constitutionally mandated rights. What seems to be an “homogenizing perspective”, appears repeatedly within the subsections of the new water law. An “exclusionary view of policy building” (p. 86), as Zapatta (2017) calls it, is perpetuated by the Ecuadorian state, in spite of its plurinational official rhetoric (Zapatta, 2017, p. 86).

Although the provisions analyzed within the articles of the law, undeniably show that community-based customary norms and participative traditions within the management of the water resource are not taken lightly by the new water legal framework, on the contrary they are widely regulated by the LORHUYA. However, the articulation of this recognition, and the functioning of these participatory collective systems seem bound to be closely monitored (and even intervened) by the SAW and its Agency for Regulation and Control (ARCA), by means of excessive bureaucracy requirements, and rigid, state-determined regulations.

Article 35 on the “principles of integrated water management” (subsection e), for example, mandates that social participation will have to be developed merely “in the arenas established within the law and its regulations” (Asamblea Nacional del Ecuador, LORHUYA, 2014, p. 13 -personal translation-); while article 32 establish that community water

management can be rendered only by means of *juntas de agua* (water boards), thus, neglecting the broader possibilities opened by customary Indigenous, *Montubio*, and Afro-Ecuadorian collective traditions.

This top-down stiffness, ultimately, risks to hinder the participative contribution of the most vulnerable, silencing their voices and preventing the opinion of communities and collectives to reaching the ears of the state authorities; in one word, preventing to address the problems, needs and priorities of their territory, and obstructing an authentic, plurinationally-sensitive and integrated management of water.

To ensure the sustainability of water management, it is argued, citizens' participation needs to be encouraged, with an active role in the construction, operation and maintenance of water facilities (CNP, 2017). However, it is also necessary to establish mechanisms of coordination between the SAW and the participative bodies created under LORHUyA (water basin councils and water boards), so that the measures incorporated in the respective 'Development and Management Plans' can be representative of the needs of the populations involved, and can be implemented efficiently, protecting both the rights of nature and the rights of Ecuadorian citizens with no distinction. Apart from vague declarations of principles, instead, no tools or processes are identified within the LORHUyA, allowing an authentic articulation and protection of water rights.

Additionally, while the LORHUYA establishes in its article 59 a shared co-responsibility between the state and the peoples of Ecuador for the protection of the environment, and the sustainability of water and public wellbeing; but, -due to the negative antecedents tainting the relationship between the national state and local peasants communities in relation to water access, distribution and infrastructure building-, the

establishment of public-communitarian endeavors ends up being perceived as “a menace by a large part of the Ecuadorian population” (CAMAREN, December 5th, 2019 -personal conversation with the coordinator).

The traditional strategy of the state to throw all the responsibility for the maintenance of water infrastructure and preservation of sources on the communities, with nothing in return (personal interview with the coordinator of Pueblos *Montubios* del Daule-Peripa, February, 2019), as it often happens with Andean *Mingas* (typically transformed in non-retributed corvee-work) (CAMAREN, December 5th, 2018 -personal conversation with the coordinator), represents another serious challenge for the beneficial implementation of the plurinationally-integrated and participative water governance Ecuadorians wished for.

Unless this climate of diffidence is mended, the promise of the state to bring forward a plurinational and participative water agenda, formulating and generating public policies oriented to promote public-communitarian partnerships and to strengthen the participative self-determination of communities, peoples and nations around water previewed by article 83 will remain unheard.

In conclusion, it appears clearly that the legal environment of water in which Ecuadorian communities will have to operate is complex, characterized by conflicting normative levels, and possibly conflicting ideas of legitimacy held by local participative bodies and the state. Although many of its articles mirror the *buen vivir/sumak kawsay*-infused constitutional mandate, they clearly restrict its spirit, by establishing a legal mandate, and right-after contradicting it within another article/s of the same law, or its bylaws. Or, by either not establishing clear sanctions, and only vaguely defining violations (so that it is merely left to the interpretation of the public officer in charge, whether to properly discipline

them, or whether to simply overlook the application of sanctions), providing a great example of what Alex Zapatta (2017) calls “*malabarismo legal*” (legal juggling) (p. 83).

This, as Zapatta (2017) insists, was (and still is) very disappointing for the majority of Ecuadorians, and for all those of us who believed in “the extraordinary re-foundational political moment” (Zapatta, 2017, p. 84) in which this law came to light, and whom saw how (purposely, or not) a fundamental opportunity of redressing one of Ecuador’s historical problems of social injustice had been “missed by the legislator” (Zapatta, 2017, p. 84).

CHAPTER III

The Mixed Recognition of Ecuador's Water Normative Diversity: The Ministerial Agreements of the SENAGUA's Administration of Humberto Cholango

The propaedeutic legal text revision developed throughout the first two chapters of the present work, allowed to establish a preliminary comparative reflection on the discrepancies manifesting between the text of the new water law, and the 2008 *buen vivir* constitutional spirit. Important concerns as to the potential repercussions of the normative provisions' incongruence started to emerge, as the centralized, top-down vs the participative communitarian principles conflated in the LORHUyA became evident and irreconcilable.

The contradictory aspects of a water law that on the one hand promised and, on the other, undermined plurinationality, food sovereignty and community-based water management, soon started to play out at the local scale, adversely affecting, and -at times-, creating/deepening pre-existing conflicts within Ecuador's Indigenous, *Montubio*, Afro-Ecuadorian and *Mestizo Campesinos'* communities, by perpetuating top-down, and technocratic controls, which subordinate the degree of local self-governance and sovereignty implied by an authentic recognition of *sumak kawsay*.

The contention between the homogenizing vision of water governance perspiring from the articles of LORHUyA - still rooted in a centralized, technical, and developmental recipe- and the legal pluralism -instead- required by community self-governance of water, ensconced in the same document, soon started to provoke resistance on the part of Ecuadorian communities.

The implications of this conflation in community water self-governance will be revised more in depth in the following sections, directly dealing with ambiguities inherent within the articles of the water law, and with the analysis of the legislative reforms that the SENAGUA proposed (or not), in direct response to the push-back of Ecuador's social movements, during the first five years of implementation of the LORHUyA.

After providing a brief introductory revision of the concept of customary law at play within the Ecuadorian context, and a preliminary reflection on the disjuncture running between policy and practice implied by the provisions of the LORHUyA (with a quick nod to the way in which underlying ontologies intersect in water management legal frameworks both at the national and the local level), the ambiguities between the implementation of Ecuador's new water legal framework and community-based irrigation practice will be analyzed, underlining the tensions between the principles of *buen vivir* and the top down, technocratic and developmental vocation of the LORHUyA (first paragraph).

The second part of the chapter (paragraph ii, iii, and iv), transitions to explore how the centralized approach to water management, increasingly manifesting since the entry into force of the LORHUyA, ignited the resistance of small irrigators' communities. I reflect on the ways in which the claims and demands for reform of the water law on the part of Ecuadorian Indigenous, *Montubio*, Afro-Ecuadorian and *Mestizo* communities, found (at least to a certain extent) an interlocutor in *Ministro* Humberto Cholango, a *Kayambi* Indigenous leader who had actively participated in the water struggles and protests during the 2010-2012 Indigenous upheaval, and that -five years later-, was appointed SENAGUA's Secretary of Water (2017-2019) in the government of Lenin Moreno. The articles of three important Ministerial Agreements promoted by the Cholango national administration of the

Sole Authority for Water (SENAGUA), aimed at strengthening the recognition of customary water management systems 2017-0031 (paragraph ii.), the cross cutting axis of interculturality and gender parity 2017-00131 (paragraph iii), and the simplification of tax paying bureaucratic and administrative proceduresa for community systems 2018-00194 (paragraph iv.) are examined.

Finally, the last paragraph (v.) of this chapter, presents a conclusive reflection on the ‘little more than declarative’ effect entailed by the *Acuerdos Ministeriales* 2017-0031, 2017-00103, and 2018-00194, on the *buen vivir* of small irrigators’ communities, allowing to rethink how putting reform on paper does not necessarily change a lot on the ground for communities. Few suggestions deriving from interview material in my research sites (Oyacoto, San Pablo de Amali’, Urcuqui, Daule-Peripa, Rio Grande), as to the path to be followed for a more culturally fit water law, are also briefly included.

i. The Ambiguities of the *Ley Organica de Recursos Hidricos, Usos, y Aprovechamientos*: A preliminary assessment (2014-2019)

Prior to the 2008 Ecuadorian constitution traditional debates dealing with the issue of the country’s development had been characterized by a somewhat one-dimensional approach (OMPI, 2016). The proposal of a new post-development approach expressed a great difference as to the social and political categories to be taken into account, focusing with enhanced strength on difference and historical ill-treatment of the most vulnerable strands of the Ecuadorian society, and thus emphasizing on the respect for those communities whose voice was silenced for years (Bresser-Pereira, 2017).

The paradigm of *buen vivir* with its updated idea of progress, one that goes beyond the economic sphere as the sole element to achieve better living conditions and facilitate prosperity for all Ecuadorians, had great implications within the environmental resources management framework; which, historically, has been a topic of rapprochement and debate as to the role of the state and social development within the country (Bresser-Pereira, 2017).

This ‘environmental dimension’ implied a renewed role for the state: a state assuming the responsibility to sustain the survival of one of the nation’s largest economic activities (agriculture), but -at the same time- a state whom acknowledges and respects the cultural identity of *Campesinos*’ communities, by opening up to a decentralized and integrated management of water. Ecuador’s universe of culturally diverse, non-state normative regulations, locally governing the day-to-day water management in Indigenous, *Montubio*, and Afro-Ecuadorian rural communities was thus “put into the limelight”, requiring the state to turn into a guarantor of plurinational customary rights.

When Boelens, Zwarteveen and Roth (2005) maintain that there is “more than one legal order in society” to be taken into consideration, they refer to the fact that “the concept of law is no longer exclusively reserved for state law, but expands to a variety of more or less formalized and institutionalized forms of normative ordering in society” (Boelens, Zwarteveen, & Roth, 2005, p. 6). In such a context, where law ceases to be a mere abstraction and assumes its actual social meaning and significance” (see Spiertz 2000, Benda-Beckmann, F. & von Benda-Beckmann, Keebet & Spiertz, J. 1998), there exists, the need not only for “a human-agency focus on social actors and their ... choices” (K. von Benda-Beckmann 1981 in Boelens, Zwarteveen, & Roth, 2005, p. 6), but also to opening up to legal pluralism and hybrid forms of normativity.

Customary law can be defined as the set of practices and norms that indigenous peoples and local communities accept as mandatory models of conduct, which are an intrinsic part of the social system in which they live, as well as the economic measures and activities they use for their life in society. Characterized by a number of customs collectively enforced and shared by a community or ethnic group (as opposed to the national laws established by the State), and whose application falls on its authority (OMPI, 2016).

Customary law is recognized by its legitimate, flexible and embedded nature. In some countries it is treated as a source of law; while, in others, its role is either limited to the exercise of the autonomy and self-determination of ethnic peoples and groups, or - conversely-, not even officially identified. Customary laws and practices defend human rights and other rights guaranteed in the *Magna Carta*, as well as establish the duties and responsibilities of community members. According to the 2008 constitution, the Ecuadorian state has the obligation to recognize and respect the diverse cultures, traditions and worldview of its peoples and nations, and to allow participation as to water projects to be carried out in their territory (Castillo, 2009).

Customary law in the Ecuadorian context can be regarded as a comprehensive concept, which may include customary laws and protocols as part of a compilation of instruments for the protection of natural resources, Indigenous people, and/or other people belonging to the different ancestral ethnicities. These groups are the principally concerned by its recognition, as their use of the vital liquid is not limited to use for profit (Castillo, 2009), having also a whole lot to do with their ancestral and spiritual worldview, and -thus-, social existence.

Boelens, Zwarteveen and Roth (2005) suggest, in this sense, that “water is not only a commodity ... but also a crucial resource in rural livelihoods, a fundamental source of cultural meaning, identity, and social identification” (Boelens, Zwarteveen, & Roth, 2005, p. 3). Thus, Gelles (2015), points out, water may become “a source of both conflict and cooperation”, and the “different dimensions of water must be viewed together [as] ... key elements of local social relationships in rural peasant communities (Gelles, P. 2015, p. 119). The inclusion of the normative diversity of Ecuador’s customary law ensures adherence to the norms regulating the use and access to natural resources (water), the local rights and obligations related to it, its ownership, the development of spiritual life, the maintenance of heritage and ancestral culture, respecting all practiced beliefs and rites (OEA, 2015).

The preservation of customary laws serves, thus, as a decisive factor for Ecuadorian Indigenous, *Montubio* and Afro-Ecuadorian ‘*comunidades, comunidades, pueblos* and nations’ (Constitucion de la Republica, 2008), by defending ways of direct democracy, and collective social participation to preserve the ancestral culture and rights that citizens have in relation to the embedded use and protection of natural resources.

As argued by Boelens, Zwarteveen and Roth (2005), undeniably, “the complex relationships between planned change and legal regulation, on the one hand, and actual human behavior and practices, on the other” can be clarified and made more approachable, if one is able to “cope with the historicity, the sociopolitical and sociocultural embeddedness of resource use and management practices” (Boelens, Zwarteveen, & Roth, 2005, p. 5). By means of “legally plural conditions”, therefore, it is possible to “provide a refreshing and necessary counterbalance to the general tendency in the world of policy making to be

prescriptive and normative [as well as] ..., to state what should be done rather than to understand what is at stake first” (Boelens, Zwarteveen, & Roth, 2005, p. 4).

This enriching experience within the normative diversity of customary law, as implied within the 2008 *Montecristi* constitution, ought to have translated in all those laws concerning the conservation of nature and its resources (Alguacil, 2007). In particular, within the LORHUyA (by virtue of the importance of water in terms of communities’ wellbeing), as customary laws are of paramount importance for the identity and subsistence of indigenous peoples, and the sustainability of local ecosystems.

Conversely, according to the fieldwork interviews collected in my sites of research, the new water law appears to have prescriptively implemented its technical provisions, without sufficient consideration of the diverse customary traditions of local water management, and the flexibility required, in particular, for those “populations typically located at the margins” of the state-determined, blue-print territorial water “divisions” (Martinez Novo, 2014, p. 114).

Ellos ni vienen, imponen sus leyes y luego nos dejan a nosotros los problemas para resolver [They don’t even come, they impose their laws and then they leave us with the problems to solve] (Personal interview with the president of the *Grupo de Mujeres* of Oyacoto, November, 2018).

En una comunidad el agua debe manejarse de acuerdo a nuestras costumbres, así siempre se ha hecho y nos resultó’. Por que’ tienen que venir a decirnos como manejar nuestra agua... ellos no nos dieron ni un centavo, y ahora nos quieren decir como hacer las cosas [In the community water has to be managed according to our customs, it was always done this way and it worked. Why do they have to come and tell us how to manage our water... they did not give us a cent, and now they want to tell us how to do things]. (Personal conversation with male Indigenous community member, December, 2019).

Those who advocated for the recognition of the various forms of knowledge inherent within customary laws (even beyond their own communities) during the works of the

Constituent Assembly of *Montecristi* -Manabi- (November 29th, 2007- October 25th, 2008), pressed vehemently for the legal insertion of the customary normative level within the new water legal framework, turning the claim for its recognition in a normative source of advocacy (OMPI, 2016) in defense of people's rights to self-determination, territory and the environmental resources within it.

Customary law, which also traditionally represents a fundamental tool for the resolution of conflicts both within and outside the community, within the LORHUyA, was however held captive by “a power ‘asymmetry’ that is making the creation of knowledge to base social change exclusive for those who possess power” (Gatti, 2018, p. 30), and, thus, remained carefully subordinated to the regular jurisdiction of the state.

An authentic recognition of Ecuador's diversity of knowledges, would conversely imply a lens of observation comprehensive of distinct levels of normative systems “interact[ing]t and... permeable”, “against simplistic conceptualizations of law and against the uncritical use of oppositions such as state *versus* customary and traditional *versus* modern” (Boelens, Zwarteveen, & Roth, 2005, p. 7).

Indeed, as Boelens, Zwarteveen, & Roth, 2005 argue, “understanding legally plural conditions may be the first step toward finding location-specific solutions to existing problems of scarcity, overexploitation, and redistribution” (Boelens, Zwarteveen, & Roth, 2005, p. 13). For this reason, the restrictive and technically frozen acknowledgement treatment of local customary traditions of water management on behalf of the central state within the final draft of the LORHUyA was disappointing for the majority of Ecuadorian communities (and, terribly unfit for most of their needs).

The inclusion of “the concept of plurinationalism”, in the 2008 constitution, had given birth to “a new state model that accommodates cultural diversity within the liberal state” (Merino, 2018, p. 773). Legal pluralism, which constitutes its basis, creates a space of coexistence, where state and customary law operate at the same time and cannot be understood separately; on the contrary, they are best understood as mutually constitutive.

In order to shed light on the implications of legal pluralism in terms of democratizing water making in Ecuador, and in order to “enabling indigenous nations to have actual decision making power within their territories, [the Ecuadorian] state [ought to have overcome] racialized discourses that conceive Indigenous peoples as threats to ‘nation development’. These discourses [in fact, translate] into legal provisions that allow the exploitation of indigenous territories on behalf of the ‘national interest’” (Merino, 2018, p. 788), becoming an obstacle to an authentic implementation of self-determination.

The importance of plurinationality and customary law in Ecuador has always been widely recognized (particularly in relation to water management), as it allows to mediate conflicts occasioned by the encounter of regular and local justice systems within the diverse cultural contexts of the country. However, conflicts often arise from the difficulty of applying certain laws in communities that have specific forms of normativity and behaviors, often inspired by water visions culturally irreconcilable with those centrally determined by the national State (Castillo, 2009).

And, although it is important to keep in mind that local normative systems are not “inherently more equitable” (Boelens, Zwarteveen & Roth, 2005, p. 13), acknowledging the subject position of Indigenous, *Montubio* and Afro-Ecuadorian peoples and, more in general, giving peasants’ populations the possibility to take part in the national water agenda, could

create “increased possibilities for new modes of governance” (Gatti, 2018, p. 6), and enhanced efficiency in its implementation.

Conversely, as argued by Guevara-Gil (2015), “the ‘inter-cultural approach’ which became “the new buzzword in [Ecuador’s] official discourse” (Guevara-Gil, 2015, p. 193) could not hide for a long time the deep cleavages between rhetoric and reality recorded since the LORHUyA’s implementation. As maintained by Escobar (2010), probably “the [necessary] re-founding [of *Buen Vivir*] would [should] entail a more substantial transformation of modern institutions in order to create multiple spaces for those alternative [water] worlds and knowledges that have remained invisible” (Escobar, 2010, p. 40).

I agree with Hoekema (2002), when he argues that “in a nation where cultural diversity is recognized, no world view can prevail over the other” (Hoekema, 2002, p. 189). Nevertheless, “sliding from description into ...[actual] legal policymaking” (Hoekema, 2002, p. 198), is not an easy step. Especially, when “recognition means empowering a community” (Hoekema, 2002, p. 197), and an empowered community may represent a menace to the *status quo* (Indigenous movements often tend to challenge the interest of privileged classes) (Hoekema, 2002, p. 197). This explains why, to put it in De Sousa Santos’ (2007) words, since the very beginning of the debate, those water spaces “have been actively produced as non-credible alternatives to what exist by dominant discourses” (De Sousa Santos, 2007 as cited in Escobar, 2010, p. 40), and often reduced to mere official SENAGUA rhetoric.

When considering the relationship between customary laws and practices and conventional laws, as well as when deciding appropriate ways of protecting traditional knowledge against its misuse and appropriation, it seems reasonable to argue that the attitude exhibited by the Ecuadorian state between the spirit of the 2008 *buen vivir* constitution and

the subsequent one, manifested in the new water law, presents substantial ambiguities. As highlighted by Gatti (2018), “there is still a dominant notion of development as synonymous with modernity and extractivism which reproduces patterns of colonial power structures and limits political agency or indigenous peoples” (Gatti, 2018, p. 30).

The Ecuadorian 2008 legislature intended to partially cover a “historical debt” (Accion Ecologica, 2015) in relation to the management of the natural resource and the sustainability of the environment. However, the new water law, revealed implementation problems since its very entry into force in 2014, particularly as to the articulation and operativity of the legal instruments necessary to apply the redistributive, and environmental sustainability measures needed to bring about the promises of good living and protection of Ecuadorian society and nature with no distinction.

As maintained by Zapatta (2017), although the law makes a lot of reference to the “integrated management of water resources”, this conception is not prescriptively endorsed. Articles 8 and 34, on ‘integrated water management’, apart from duplicating the exact same content, Zapatta contends, are an example of a limited approach to integrated water resources management, not only by placing the SAW as the sole “responsible for the integrated and integral management of water resources”, but also absolving the fundamental debate around why the water law “exclusively establishes two spatial notions in which [water] basin organisms can be formed” (Zapatta, 2017, p. 81). In an extremely “technocratic way”, Zapatta (2017) argues, the law establishes that “only the river basin can continue to be considered as a unit of management and planning of water resources” (Zapatta, 2017, p. 80), therefore “leaving out other spatial notions closer to communities, populations and organizations linked to water management” (Zapatta, 2017, p. 81).

During one of the meeting of the National Sectoral Citizens' Council for Water (CCSA), in the coastal town of Ayangue (Santa Elena), one of the most harshly debated issues was specifically the non-reconcilability within the local tradition of units for water management, and the provisions enforced by the *Reglamento* to the LORHUyA (see art. 25).

Hablado con la gente uno se da cuenta que las divisiones territoriales impuestas por la LORHUyA no estan funcionando, porque no tienen legitimidad. Representan un abuso en territorios que tienen tradiciones enraizadas de manejo consuetudinario de agua muy enraizadas y distintas como en Santa Elena [Talking to people one realizes that the LORHUyA- determined territorial división are not working, because they are not considered legitimate. They represent a contrivance for a territory with well rooted customary water management traditions that are very different como Santa Elena]. (Female representative of a local irrigation water board, speaking to an officer of the Subsecretaria Social y de Articulacion of the SENAGUA, in Ayangue, Santa Elena, Septiembre, 2019).

The LORHUyA, by “regulat[ing] in a law the composition of basin organizations, [even] detailing who may or may not be part of such organisms (Zapatta, 2017, p. 81), sacrifices the legitimacy of these water participatory bodies, and inevitably turns them into a constraint locally, and a void SENAGUA appendix in the eyes of communities.

Frankly, it is not particularly surprising that the role of the watershed water councils, was not granted higher importance within the new water law as arenas where citizens' social participation could have had greater weight in the definition of strategies and action plans to eradicate existing water problem, and/or to address local and operational issues (by strengthening local watershed committees in effective participation agencies for policy implementation). For, this would have led to an authentic recognition of customary experiences (Vinueza, 2014), and would have led to the obligation on the part of the SENAGUA of acting according to the needs of the territories they represent.

Not only the role of water citizens' participation bodies (including the one of the national participative body of watershed councils representatives) is deprived of actual deliberative prerogatives, but also -at the time of writing- (that is to say five years after the LORHUyA was implemented), in an outstanding display of legal incoherence and rhetorical void, the Intercultural and Plurinational Water Council -IPWC, representing and defending the rights of ethnic minorities and their territories, has not even been formed yet.

In its place a National Sectorial Council of Water (*Consejo Nacional Sectorial del Agua -CCSA*) was formed. This Council, due to its hybrid nature, functions in part based on the *Ley de Participación Ciudadana*, and partially according to the LORHUyA, and -thus-, ends up displaying neither the prerogatives of the first, nor those of the latter, and it is left without any of the enforceable powers, attributions, or budget, previewed for participative entities descending from either of the two legal bodies in question.

No estamos respaldados ni por la LORHUyA, ni por la Ley de Participación Ciudadana, somos un 'hibrido'. Con este pretexto las autoridades ni siquiera nos toman en cuenta [We don't have any back-up neither from the LORHUyA, nor from the citizens' participation law, we are a 'hybrid' body. With this pretext, authorities don't even consider us] (Quito, 2019 -interview with the National Coordinator of the CCSA, May, 2019-).

As previously illustrated, the new water law established that the formulation of the 'National Water Resources Plan', and the 'Integrated Water Resources Management Plans by River Basin' (article 30), and its execution (article 28), are the responsibility of the SENAGUA. Also, the contents that such planning should contemplate (article 29), are defined in strict detail. It is important to focus on the content of the last paragraph of article 28 of the law, which reads:

The existing authorizations for the use and exploitation of water must be compatible with what is established in the integrated water resources management plans by basin, otherwise, they must be reviewed in harmony with the National Water Resources

Plan, in accordance with the provisions of the regulations to this law (Asamblea Nacional del Ecuador, LORHUyA, 2014, p. 8 -personal translation-).

These provisions, as argued by Zapatta (2017), not only reflect a centralist and exclusive planning approach, they also “pose[s] a challenge to organizations that collectively manage water systems” (Zapatta, 2017, p. 82).

“The law attributes to the Sole Authority for Water (SENAGUA), as well as to the Water Regulation and Control Agency (ARCA), a marked discretionary power to issue secondary regulations - of a ‘procedural’ or ‘technical’ nature - related to water management” (Zapatta, 2017, p. 78). This originates an excess of regulatory norming aimed at ensuring the desired exclusive control of the state; a control, which, as argued by Zapatta, apparently, is not directed against those hoarding groups that have historically been controlling water in different territorial areas at the expense of others; but, -rather-, against the ‘inefficient’ community water systems. Thus, providing “a social and legal justification” for the “disdain and attempt of subordination of the organizations that collectively manage the water systems” (Zapatta, 2017, p. 78).

Similarly, Article 49 of the LORHUyA, dealing with “management autonomy and financial sufficiency”, establishes that the “organizations forming community systems of water management, drinking and irrigation water boards will maintain their administrative, financial, and management autonomy” (Asamblea Nacional del Ecuador, LORHUyA, 2014, p. 12 -personal translation-). As Zapatta (2017) suggests, however, this theoretical autonomy, is in praxis “denatured, stripped of all transcendent content, to become insubstantial formality or functional requirement to state logic” (p. 78, 85). Citizens’ participation is thus “reduced to declarative formality without any mandatory nature, to a mechanism of social

legitimization of state policy, or in the form of homologation as a responsibility that communities or organizations of users must share with the state” (p. 78, 85). In this sense, the author contends “the treatment of the law establishes a subordinate and conditioned relationship scheme from water user organizations to the logic of the state” (Zapatta, 2017, p.78, 85).

In spite of the formal recognition of “administrative, financial and management autonomy”, the law establishes a framework of limited autonomy, in a relationship subordinated to the state, for users’ organizations of collectively managed water systems. Often obliged “to comply with multiple requirements, conditions, improvement plans, etc., if they want to continue existing or conserve the water rights granted by the state” (Zapatta, 2017, p. 85).

I agree with Hyer (2015), when he asserts that “the ability for indigenous groups to exercise their rights is undermined, often by a specific grant of authority to the SAW” (Hyer, 2015, p. 91). Article 52, just to make an example, establishes that the lack of registration of “customary practices” within the ‘Public Water Registry’ will determine their very fate, and recognition (Asamblea Nacional del Ecuador, LORHUyA, 2014, p. 17 -personal translation-). While, Article 53 reads:

A customary practice may be invoked before the Sole Authority for Water and applied to third parties who are not part of the commune, community, people or nation, without prejudice to that the Sole Authority for Water recognizes the relevance of its application, and the third party involved expresses his/her consent (Asamblea Nacional del Ecuador, LORHUyA, 2014, p. 17 -personal translation-).

According to this article, the SENAGUA has again “the ability to trump the application of a customary right against a third party” (Hyer, 2015, p. 91). The fact that it is the Sole Authority for Water that recognizes the relevance of the application of a customary

practice, as well as the requirement that it is ‘the third party involved’ to express his/her consent, leaves little room for communities’ decision-making.

Another interesting thing to note about these provisions, as highlighted by Hyer (2015), is that “the IPWC is not even involved as part of the decision-making process here” (Hyer, 2015, p. 91). Not even as an advisory body, in a matter that has undeniably a lot to do with Indigenous customary laws and conflict resolution, according to “*Derecho Propio*”. Not to mention that, even when “differences between Indigenous groups or other recognized collectives cannot be resolved on their own, [the resolution] must adhere to the decisions of the Sole Authority for Water” (Hyer, 2015, p. 91).

Moreover, article 54 of the law recognizes that «community systems may manage services in an integrated manner” (Asamblea Nacional, LORHUyA, 2014, p.18 -personal translation), while it is widely recognized that the reality of a large part of the rural areas of the country is that the same organization is responsible for the management of water for both irrigation, and population consumption. Therefore, the provisions contained in the official regulations (fragmenting territorial management by mandating the creation of either drinking or irrigation water boards), are adversely affecting communities, causing the disruption of the community social system, and, therefore, entailing “a loss of social legitimization of the state policy” (Zapatta, 2017, p. 86).

The LORHUyA, to put it in Escobar’s (2010) words, appears to display an “essentialist reading” of the *sumak kawsay* concept. The invisibility of the history of organizations and the overlooking of the "built character of each space and community" (Escobar 2010, p. 43) are the effects of this simplistic reading (Spivak 1994, p. 75).

Finally, (just to highlight few of the most outstanding ambiguities), the reading of Article 72, stating that:

Participation in water conservation. The communes, communities, peoples and nations have the right that the State, through its institutions, articulates policies and programs for the conservation, protection and preservation of the water flowing through their lands and territories. The exercise of this right shall not prevail, nor it will undermine any of the attributions that correspond to the State over water (Asamblea Nacional del Ecuador, LORHUyA, 2014, p. 21 -personal translation-).

clearly shows that the right to which the law refers to the most, is not precisely the one of the Indigenous, *Montubio*, and Afro-Ecuadorian *comunas* and communities, but - rather- that of the state. As underlined by Alex Zapatta (2017), apparently “ignoring everything that has been discussed and constructed theoretically in Latin America around the notion of ‘legal pluralism’, which implies the recognition of customary law of peoples of ancestral origin as a legal system with its levels of autonomy” (Zapatta, 2017, p. 87). In the law, in fact, reference is made to ‘traditional forms’, ‘water practices’, or ‘own forms’ (art. 74), yet never explicitly to ‘Customary Law’ (Zapatta, 2017).

This, seems distant from the original provisions of the 2008 constitution, establishing instead that (art. 171):

The authorities of the Indigenous communities, peoples, and nations shall perform jurisdictional duties, on the basis of their ancestral traditions and their own system of law, within their own territories, with a guarantee for the participation of, and decision-making by, women. The authorities shall apply their own standards and procedures for the settlement of internal disputes, as long as they are not contrary to the Constitution and human rights enshrined in international instruments. The State shall guarantee that the decisions of Indigenous jurisdiction are observed by public institutions and authorities. These decisions shall be subject to monitoring of their constitutionality. The law shall establish the mechanisms for coordination and cooperation between indigenous jurisdiction and regular jurisdiction (Constitution of the Republic of Ecuador, 2008, Article 171, -Georgetown University Translation-). As noted by Hyers (2015), it is also noteworthy that “given the recognition of collective rights in various sections of the law, what is most interesting is the tempering of authority of these indigenous groups to participate in upholding those

rights when considered in context with other sections of the law” (Hyer, 2015, p. 90). The last paragraph of the above mentioned article 72, for example, as to the “participation in the conservation of water” on behalf of communities, establishes that “the exercising of this right shall not prevail nor suppose any lessening of the attributions regarding water that correspond to the state” (Hyer, 2015, p. 90). This provision may be easily manipulated “reducing community management of ancestral communities” (Zapatta, 2017, p. 87), to little more than a marketing tool. Since, as argued by (Hoekema, 2002, p. 188), the clause “local decisions must not contradict the constitution and the laws of the Republic”, which taken literally “would amount to wiping out any space for a distinct local legal jurisdiction” (Hoekema, 2002, p. 188).

This “legal juggling” (Zapatta, 2017) logic, is also revealed within the text of article 75 of the law, which “bypassing any reference to customary law, makes reference [merely] to “customary orders” (Zapatta, 2017, p. 87). Not to mention that, when in article 79, “the objectives for the preservation and conservation of water are set forth” (Hyer, 2015, p. 91), again “no mention of the IPWC is made” (Hyer, 2015, p. 91), in a matter that has manifestly a lot to do with indigenous peoples, and territorial self-determination.

The “little interest to recover and integrate-in elements that emerge from countless experiences that have occurred in Ecuador and throughout Latin America around planning of water resources and watershed management” (Zapatta, 2017, p. 79), is manifest throughout the articles of the new water law. As argued by many, to Indigenous *Montubio* and Afro-Ecuadorian organizations, it “corresponded [little more than] to be suppliers [and] validators of information” (Zapatta, 2017, p. 82, among others). However, and although “in a propaganda desire, [they] were recognized by the SENAGUA as ‘guardians of the water’ (since their communities are settled in almost all of the watersheds and zones of hydrological recharge) (Zapatta, 2017, p. 81), the LORHUyA overlooked the opportunity to work on the formulation of a national water resources plan that collected the accumulated planning experiences brought about by the different levels of decentralized autonomous governments,

prompting that “the experiences of a rich universe of social and community organizations spread throughout the country in relation to water management and water use was missed” (Zapatta, 2017, p. 82).

In spite of the official rhetoric, therefore, Ecuadorian irrigators have to operate within a technical regulatory framework in which the protection of their customary water rights and practices is weak, and in which the law implicitly brands them as inefficient. Irrigators have to deal with multiple authorities (SENAGUA, ARCA, EPA, the Ministry of Environment, GADs, etc.), and complex bureaucratic procedures. This makes it difficult for the majority to figure out who has the competence of what, and how/where to address their concerns.

Similarly, the provisions of the law appear to have a tendency to prosecute users for not respecting technical provisions, complicating the day to day realities of small irrigators, in particular, of those who do not have the literacy level, nor the financial means to follow the strict requirements mandated by the LORHUyA and its regulations. While the law rigorously details the obligations that organizations collectively managing water must comply with in order not to lose their legal status and their water rights; conversely, and “beyond general statements, neither the law - let alone its regulations generated by the SENAGUA or the ARCA - specify the responsibilities and obligations that the State would have [to contribute], at its different levels of government” (Zapatta, 2017, p. 79), in order to actually put communities in such a position to allow “the[IR] organizations of users of water... to become efficient” (Zapatta, 2017, p. 79).

To quote *verbatim* Zapatta’s words, in the LORHUyA:

The notion of the technical, a matter that remains under the monopoly of the State, has been sacralized in the Water Resources Law ..., the technical is a representation of an imaginary of a colonial matrix that raises the superiority of the knowledge of state officials over the popular, peasant and indigenous knowledge, the superiority of

engineering knowledge over that of traditional and ancestral practices, the need to ensure efficiency where it has allegedly been reigned from inefficiency; in short, guarantee the mastery of the modern over the traditional and archaic (Zapatta, 2017, p. 79).

In conclusion, the present preliminary comparative reflection, leads to agree with De Souza Santos (2010) when he argues that between the recognition of the constitutional *buen vivir* spirit, and the new water legal framework there exists a deep confrontation, and “this confrontation has a strong epistemological dimension” (De Sousa Santos, 2010, p. 122).

Different conceptions are clashing, producing ambiguities and confusion among subsistence farming irrigators and ethnic minorities: while for the 2008 constitution, the goal of *sumak kawsay* embraces progress as a multilayered holistic concept, as “the production of [good] life in the broadest sense that also includes mother earth and its life cycles”, as well as locally embedded and participatory philosophies of resource management. For the LORHUyA, clearly, “development is [still] done by the advancement of productive forces and [*buen vivir*] is measured by conventional economic indexes” (De Sousa Santos, 2010, p. 123). While the Ecuadorian state continues its official propaganda on interculturality, ancestral rights, and good living, the new water legal framework reveals a homogenizing, state-centralized, and controlled matter, that leaves little space to plurinationality, customary practices, and participation.

ii. Recognizing el Manejo Comunitario del Agua (SENAGUA Ministerial Agreement No. 2017-0031).

According to Boelens, Zwarteveen, and Roth (2004) “people experience law in daily life not primarily in its abstract, decontextualized, and delocalized form but rather in setting-

specific rules and norms” (Boelens, Zwarteveen, & Roth, 2005, p. 7). It is for this reason that, often, a “wide gap exists between intended outcomes, on the one hand, and actual practice” (Boelens, Zwarteveen, & Roth, 2005, p. 7).

An increased awareness of the lack of “assumed congruence... between technical and managerial designs and models, on the one hand, and users’ interpretations and perceptions, on the other (Boelens, Zwarteveen & Roth, 2005, p. 8), particularly when coupled with an authentic interest in “the role of irrigation in rural transformation” (Boelens, Zwarteveen, & Roth, 2005, p. 9) and rural communities *buen vivir*, may lead to new possibilities, opened-up by the acceptance of more than one legal order, to fight “ the power differences that are a serious constraint to human agency” (Boelens, Zwarteveen, & Roth, 2005, p. 14), in terms of choosing what is best for oneself.

Ecuador’s new water law (LORHUyA, 2014), since its implementation, has been adversely affecting rural communities, in terms of self-determination of their water management choices. As argued by Hendriks (2015), in fact, when a law is:

prescribing in technical language how water rights are to be granted (flow rate in liters per second or cubic meters per second) ... not reflect[ing] local realities... [displaying] excessive rigidity in the design of water distribution schedules ... [and] fail[ing] to take into account the diversity of local systems existing in the region (Hendriks, J., 2015, p. 178).

The repercussions can be easily anticipated and are hardly ever positive.

In Ecuador, as in many other Andean countries, “water management is an integral part of the geographical space where an indigenous people or community lives, reproduces and sustains its culture” (Hendriks, J., 2015, p. 178); as a consequence, the top-down, homogenizing spirit of LORHUyA was bound to contribute to the progressive erosion of

local community authority systems, escalating community conflict, and weakening the overall water management efficiency.

According to the new water legal framework, the SENAGUA, as the Sole Authority for Water, holds the responsibility to guarantee fair and equitable access to water in quality and quantity to all Ecuadorians, through public policies, strategies and plans that allow a comprehensive and integrated management of water resources, through its decentralized administration, (nine hydrographic demarcations), organized by watershed units (LORHUyA, 2014). However, watershed councils for the reasons highlighted above are not recognized as legitimate representative bodies within their territories, and, in most watersheds, they are not even created yet, or meeting on regular basis.

Desde que se conformo' el consejo de cuenca de la DH del Esmeraldas in 2017, solo nos reunimos una vez para conversar sobre el reglamento interno, que ni siquiera se llevo' a aprobar [Since the watershed council of the Esmeraldas' demarcation was formed in 2017 we only met once to talk about the internal regulation, that wasn't even approved]. (Personal conversation with an ex-president of AEJUR, September, 2018).

El estado Ecuatoriano fue avisado, desde la entrada en vigor de la ley de agua, Se le aviso' de eliminar algunas disposiciones restrictivas contenidas en algunos de sus articulos par que el manejo y las politicas del agua sean realmente participativas, transparentes e inclusivas de las minorias, de acuerdo al espiritu del *buen vivir*, pero el estado decidio' no hacer caso [The Ecuadorian state, since the very entry into force of the LORHUyA, had been warned to remove some of the restrictive provisions contained in some of its articles, in order to make water management and policy making more authentically participative, transparent and inclusive of minorities, in compliance with the spirit of *buen vivir*, yet, it chose not to pay attention] (Personal conversation with an ex-president of AEJUR, September, 2018).

Particularly in the case of irrigation water, where, as suggested by Hendriks (2015), “the notion of a system often goes far beyond the hydraulic facilities” (Hendriks, J., 2015, p. 178), the need for a series of reforms of the LORHUyA attenuating its rigidity, and allowing

for more local level decision-making, and parity in intercultural and gender participation, soon became an imperative.

When in 2017, Indigenous leader Humberto Cholango (president of the *Confederacion de Nacionalidades Indigenas del Ecuador -CONAIE-* till March, 2014) took office in the SENAGUA administration, as the new *Secretario del Agua* (Water Secretary), important efforts toward the recognition of this reality and its importance were attempted.

The LORHUyA was by 2017 already widely acknowledged as threatening Indigenous, *Montubio*, Afro-Ecuadorian self-determination and customary traditions, because of its centralizing control by the state, which started to generate protest and resistance (some of which led by Cholango in person). The new water law was accused to respond to Correa's increasing reliance on Chinese loans to construct hydroelectric plants that displaced Indigenous, *Montubio*, Afro-Ecuadorian and Mestizo *comunas*, communities, *pueblos* and nations, and were guaranteed by oil reserves at discounted rates that also negatively impacted indigenous territories. The law was seen by many as legitimizing and enabling the government's financial relationship with China (and later deals with Odebrecht of Brazil), to protect mining and agro-export activities, and menacing the plurinational authority of community on their territories.

In order to translate into reality the claim for redistribution, autonomy and self-determination of Indigenous, *Montubio*, and Afro-Ecuadorian '*Comunas, Communities*', and in order to allow peoples and nations of Ecuador "to exercise direct control over the [water] affairs which are important for the group", a certain amount of "self-legislation. ... [as well as] a localized form of exercising power" had to be recognized. The state had to guarantee arrangements allowing "for the local community to practice its own indigenous culture and

tradition”, in order to bring locally embedded *buen vivir* at its maximum (Gogoi, C., 2018, p. 382). This required a normative flexibility that could not have been possibly achieved within the state-centralized provisions of the LORHUyA.

After three years (2017) since the entry into office of the new water legal framework, an important legal reform was animatedly claimed. The first measure aimed at the strengthening of community water management, was promoted by the Cholango Administration by means of the Ministerial Agreement SENAGUA N. 2017-0031.

Against the traditional tendency of the Ecuadorian state “to interpret the social movement’s call for self-determination as a threat to sovereignty rather than a deepening of democratizations” (Gelles, 2015, p. 132), a tendency, that -as argued by Gelles (2015), is probably due to the fact that “ indigenous organizing often opposes not just state policies but the elite economic interests that they support” ” (Gelles, 2015, p. 132); Ministerial Agreement 2017-0031 was meant to inaugurate a new trend in water public policy, wherein a mechanism revolving around the exchange of water wisdoms among the diverse actors of a nation could be attempted.

Generally speaking, while national States have difficulties enforcing water laws locally, as Beccar, Boelens and Hoogendam (2002) note, instead, “the community has power over the individual and can constraint his or her behavior through negative incentives and sanctions, including fines, removal of water rights and [even] banishment form the community” ((Beccar, Bolens & Hoogendam, 2002 in Gelles, 2015, p. 130). In the case of Ecuador, this is particularly true, as the practices, knowledges and traditions of “the *comunas*, communities, pueblos, nations, community organizations, potable and/or sanitation, and irrigation and/or drainage water boards, concerning the management of water,

its preservation, use and exploitation”, founded on the principles of “equality, solidarity, participation, interculturality, sustainability and quality in the rendering of drinking, sanitation, irrigation and drainage water public services” (SENAGUA, Acuerdo Ministerial 0031-2017, p. 7/29 -personal translation-), have always played a fundamental role in water developments.

Community management is founded on principles of direct citizen participation in decision-making (Léon, 2015). Focused on reciprocity, the common good, and service to the community, which is conceived as a space of construction, from a lens that envisions the possibility of social and political practices for the benefit and the improvement of the quality of life of its members, and allows for their contribution toward a just society, where parity and equity prevail (Acosta, Basani, & Solís, 2019).

According to the LORHUyA, community organizations have “administrative, financial, and water management autonomy” (Asamblea Nacional, LORHUyA, 2014), and, among others, the following attributions:

To organize water management according to their reality, interests and cosmovision.
 To guarantee the quality, quantity and continuity and coverage of water services, keeping in mind the cultural reality.
 To exercise the Indigenous jurisdiction for the resolution of conflicts related to the use, exploitation and administration of water, in the case of pueblos and nationalities” (see Hicks, 2015, p. 223; LORHUyA, 2014).

Nevertheless, the focus on individual property inherent within the state’s law, is unfit for the majority of communities.

Water, in most rural areas of Ecuador, is, “a common property resource” (Gelles, 2015). And, -as underlined by Gelles (2015), “any attempts of national water laws to alienate the control of water form indigenous communities... challenge[S] the communal control...

as well as the[ir] cultural identity” (Gelles, P. 2015, p. 120), disrupting the social structure and the harmonious equilibrium within the community.

In order to circumscribe this negative trend recorded, increasingly, since the implementation of the LORHUyA and its regulations, the Ministerial Agreement N. 2017-0031, attempts to ratify and strengthen the community management of water, and of the services associated to it. As previously analysed in chapter II of this research, article 4 subsection h), article 6 Subsection II, as well as article 7 *ibid*, and article 35 *ibid*. literal c), of the LORHUyA establish that” water management is either public or community-run”, and that “no other form of individual or collective possession on water... will be recognized”. Additionally, it is provided that “water management and the rendering of public drinking and/or sewage water, and irrigation and/or drainage services, are exclusively public or communal...” (LORHUyA, 2014, art. 7).

Article 32 *ibid*., mandates that: “community management of water will be rendered by ‘*comunas*, communities, *pueblos*, nations water service users’ boards”. And, it envisions the “participation in the protection of water and in the administration, operation and maintenance of the infrastructure that will benefit the members of a water users’ which are not under the administration of the State”. Article 48, recognizes traditional and collective water management forms “... of the *comunas*, *comunidades*, *pueblos* and nations”, their collective rights (*derechos colectivos*) and the “financial, administrative, and internal management autonomy of the community water systems”, which will be respected and guaranteed in compliance with the Constitution and the law (LORHUyA, 2014, p. art 48).

Article 55 on “community systems and collective memory”, acknowledges that: “drinking water and irrigation water supply systems built by the organizations integrating

community management water systems are considered part of Ecuador's community cultural and ethnographic patrimony". And, what is most important, article 56 states that the SAW, and the GADs (Decentralized Autonomous Government levels), shall not only recognize, but also promote and support the community initiatives, and the alliances among entities of the sectors for the efficient rendering of the public services (LORHUyA, 2014, art. 55).

By virtue of article 73 it is established that: "*comunas*, comunidades, peoples and nations, have a right to participate in the community use, exploitation, and management of water flowing through their lands and territories... strengthening their identity, culture, traditions and rights", and it reiterates that, in order to do so, through their organizations' representatives, they shall "participate in the integrated planning and in the community management of water flowing through their lands and territories, as well as they will be part of the organizations that will be formed in the watersheds which their lands and territories belong to" (LORHUyA, 2014, art. 73).

Within a similar logic, article 74, on the conservation of water management practices, "guarantees the application of traditional forms of management and hydrological cycle management practiced by Indigenous, Afro-Ecuadorian and *Montubio comunas*, communities, peoples, and nations, and that their own forms, uses, and customs as to the internal parting and distribution of authorized water flows be respected" (LORHUyA, 2014, art. 74).

In spite of solemn declarations, however, the majority of these rights, to put it in Boelens' words (2005), had been leading what could be seen as little more than a "paper life" since the implementation of the law; additionally, the 'Sole General Disposition' of the Regulation to the LORHUyA providing that "the human groups accessing drinking and/or

sewage, and irrigation and/or drainage water services by means of organizations distinct from water boards, will be obliged to take the form of drinking or irrigation water boards (Reglamento to the LORHUyA, 2015,), really missed the opportunity of tapping into the rich tradition of customary water management of Ecuadorian communities.

Finally, by means of the *Acuerdo Ministerial* N. 1400 of September 30th, 2016, published in the Official Register, Special Issue N. 750 of November 7th, 2016, the SENAGUA strictly dictated the “Guidelines for the creation and legalization of water administrative boards”, to promote and dynamize the internal democracy, the resolution of conflicts, and the quest for agreements (SENAGUA, Ministerial Agreement 1400-2016), leaving very little space for autonomy and self-determination in water management.

The Ministerial Agreement 0031-2017, was now supposed to counteract in the face of this centralization of decision-making power in the hand of the national state, ratifying the community management of water, and opening up a dialogue, acknowledging the coexistence of the national water legal framework with diverse locally embedded, and culturally-infused water norms and practices.

Article 1 of the agreement not only ratifies that water management is brought about by potable and sanitation water administrative boards; public irrigation systems general users boards, or irrigation and drainage directories; comunas, communities, peoples and nations and their organizations; it also underlines that “any other form of community organization established in conformity with the law and the constitution” will be recognized. Additionally, the first article clearly establishes that these organizations shall “maintain their administrative, financial, and management autonomy”; and, in the final paragraph, it reiterates that community rendering of water services, shall be considered part of the

community management of water, “independently of the form in which it is organized, whom supply and administer these services”, and, independently of those whom “may be connected, or complementary to the objectives envisioned by water users associatedly, or collectively” (SENAGUA, Acuerdo Ministerial 0031-2017, p. 4-5 -personal translation).

In this sense, AM 0031-2017 guarantees the collective and community-wide exercise of the human right to water, as well as, the exercise of collective rights, the respect for own forms of community organization and the access, use and distribution of water of with quality for all. Thus, aligning the various objectives set by the central government in the ‘National Development Plan Toda Una Vida’ 2017 – 2021, where community water management receives great importance as a cross-sectoral policy. By posing a challenge to the state’s blue-print water strategy, the new recognition spirit underlying AM 2017-0031, established a renewed conversation towards more efficient, culturally-sensitive, and locally-fit water management solutions, thus, contributing to the sustainable development of the country (EPA, 2017).

As illustrated in the previous sections of the present research, in Ecuador multiple practices are derived from the territory: the experience and wisdoms of the community gained from indigenous, Afro-Ecuadorian, *Montubio*, and *Mestizo campesino comunas* and communities, which link culture and the environment as a transcendental part of their ethnic diversity. Therefore, in order to attempt a beneficial implementation of a new water legal framework, it is crucial to understand the different ways of managing water use in communities, through the participation of its citizens (Acosta, Basani, & Solís, 2019).

The Ministerial Agreement 0031, proposed by the Cholango Administration, was understood as a primary strategy giving long-term value to the community management

model. A tool for a renewed strategic planning for water management in rural communities, which offered the opportunity to establish plurally diverse lines of action through a coherent and participative agenda, expressing the needs and differences existing within the population (CNP, 2017).

Ahora temenos el Acuerdo 0031 sobre manejo comunitario, el estado respetará las formas y tradiciones comunitarias del agua [we now have the ministerial agreement 0031, the state will respect community water customs and traditions] (declaration of an indigenous coordinator of the Social Articulation Subsecretary of the SENAGUA at a CCSA meeting, El Pisque, *April, 2019*).

Article 2 of the Ministerial Agreement 2017-0031, after acknowledging the recognition of Indigenous, Afro-Ecuadorian, and *Montubio* comunas, communities, pueblos and nations, in their “distinct water management traditional and collective organization forms, specific of these entities, integrated by collective rights holders” (SENAGUA, Ministerial Agreement No.0031-2017, 2017 -personal translation-), it mandates that the officials/representatives of the SENAGUA ”at all levels and in all process of its organizational management, shall respect and strengthen these forms of organization, and will coordinate with these entities of the national strategic system of water, the Agency for Water Regulation and Control (ARCA), and the Public Water Enterprise (EPA), its accomplishment” (SENAGUA, Acuerdo Ministerial 2017-0031, p. 5 -personal translation-). Thus, ensuring the collective and community exercise of the human right to water, as well as the respect for the exercise of collective rights, for the community's own forms of organization, access, use and distribution of water (Secretaria Nacional del Agua, 2017).

Even more importantly, article 3 recognizes the rights of communities to “exercise their jurisdictional functions” and to “continue to apply the corresponding customary practices for the access, use and distribution of waters, which spring and flow through their

lands and territories”. It is important to note, nevertheless, that communities will still be required to count with the respective authorization for the use and exploitation granted by SENAGUA, and will have to abide the technical and normative parameters established for the service rendering, in conformity with the improvement planning in compliance with the law and its regulation (SENAGUA, Acuerdo Ministerial 0031-2017, p. 5 -personal translation).

Article 4 of the Agreement reiterates that “Indigenous, Afro-Ecuadorian and *Montubio* comunas, comunidades, pueblos y nacionalities, which constituted themselves in accordance with their own forms of organization, or that presently count with legal personhood, are not obliged to form a drinking and/or sewage, and irrigation and/or drainage water boards for the community rendering of these services”. As a consequence, those communities whom were recognized their legal status, or constituted themselves in accordance with their organization prior to the implementation of LORHUyA, shall continue to render the water community services which have they have been rendering through the existing organization, both in rural and urban areas”. While, water boards “which have been rendering drinking and sanitation, or irrigation and drainage water services, will maintain the names and internal representation systems, they had prior to the implementation of LORHUyA, without prejudice to adapt their statute according to the indications dictated by this Secretary” (SENAGUA, Acuerdo Ministerial 0031-2017, p. 5 -personal translation).

Another important provision regarding the compliance to technical norms issued by SENAGUA is provided in Article 6 of the Ministerial Agreement, that reads as follows:

Indigenous, Afro-Ecuadorian and *Montubio* comunas, communities, peoples and nations, and their organizations rendering drinking and sanitation, or irrigation and drainage water services, will have to apply throughout their management the principles of sustainability, and guarantee the rights, and observe the norms and

regulations that this Secretary [SENAGUA], or the Agency for Regulation and Control of Water [ARCA] will issue in function of their social and cultural characteristics (SENAGUA, *Acuerdo Ministerial* 0031-2017, p. 6 -personal translation).

Although compliance is previewed by virtue of the principle of equality of treatment of all citizens, reference is made to the “respect of their social and cultural characteristics” (p. 6).

The following Article 7 *ibid.* establishes, moreover, that Indigenous, Afro-Ecuadorian and *Montubio* organizations, holders of collective rights, and in charge of rendering water services, will be entitled to establish the preferred legal form they chose to adopt, unless they decided to replace the organization that has been customarily rendering these services, with the creation of a water administration board according to the guidelines on the creation and legalization of boards dictated by means of the Acuerdo Ministerial N. 1400 of September 30th, 2016 (SENAGUA, Acuerdo Ministerial 2017-0031, p. 6 -personal translation)..

The Ministerial Agreement, in this sense, appears to be promoting community organizations as the key for the implementation of the strategies (to be carried out within their self-determined, diverse, locally embedded logics), underlining their importance for the correct implementation of water management, acknowledging community authorities as the main competent water management body in rural areas (SENAGUA, 2018).

Under Ministerial Agreement 2 017-0031SENAGUA appeared to finally beginning to recognize community water management as a tool to empower communities, peoples and nations (Secretaria Nacional del Agua, 2017), and it seemed to be finally willing to take a first significative step toward allowing communities to self-define their organizational forms for the access, management and provision of water services.

In a rather contradictory way, however, the following article 8 of the Ministerial Agreement 2017-0031, states that it shall be “the Secretary of Water, and the local sub-secretaries, which will have the competence to grant recognition to the community authorities or directories rendering water community services; and, [it specifies] that these shall abide all regulations established in relation to this matter”, in compliance with the dispositions established in the constitution of the republic, the law and its regulations. This implies that -at least to a certain extent-, even under the renewed spirit of Ministerial Agreement 2017-0031 and under a SENAGUA administration led by a historical indigenous leader like Humberto Cholango, the administration of ‘Indigenous Justice’ and the local customary practices, still remained subordinated to the provisions of the national LORHUyA, as well as to all the other norms and guidelines issued by the SAW (SENAGUA, Acuerdo Ministerial 0031-2017, p. 6 -personal translation).

To this end, article 8 establishes that the *Subsecretario* in charge of each DH (Hidrographic Basin/*Demarcacion Hidrografica*) will receive and record the certified copies documenting the legal personhood, the approval of the statute, or the public record proving the existence of other forms of organization, as well as the public documents through which the directory of the organization was registered.

It can be argued, nonetheless, that by recognizing various forms of organization and management, the Ministerial Agreement 2017-0031 at least strives to define an economic and social structure that attempts to create and adequately manage the processes of local water governance, gradually imaging institutions that can simultaneously act in compliance with a national regulatory framework, but that also put on the table of discussion actions and practices carried out by actors who have different knowledges and competences in the

management of water, drawing from active citizen participation for their effective action (SENAGUA, 2018). It can thus be seen as a sample of an “ecology of knowledge” (De Sousa Santos, 2007), defined as: collective actions; socio-organizational power and community governance, transparent administration, innovation and ongoing improvement. As well as the implementation of actions for the wellbeing of the community that goes even beyond the mere provision of water (Basani, 2019).

Following the signing of the agreement, a whole process of socialization and training at the national level should have been established and articulated. Unfortunately, according to the interview material collected throughout fieldwork, this process was not successfully implemented. Research participants, male and female leaders of water boards, *comunas*, communities, peoples and Indigenous nations, *Montubio* and Afro-Ecuadorian people, reported that the training process expected lacked articulation and legitimacy,

Siempre estan los mismos, siempre asoman las mismas caras de siempre [they are always the same people, one sees always the same old faces] (*Montubio* Community leader personal interview December, 2019).

that it was not calibrated according to the level of literacy of the users, yo que no se usar la computadora, ni siquiera entendi lo que habia que hacer, era imposible para aquellos como yo que vienen de comunidades del campo [I cannot use the computer, I couldn't even understand what we were supposed to do, it was impossible to follow for those of us that come from peasant's communities” (female member of a drinking water board of the Amazonian Napo Province -personal interview Febrero, 2019);

and, that it manifested silenced voices of dissent:

como somos personas incomodas para la SENAGUA porque temenos el valor de enfrenarlos, ni siquiera nos enteramos de que iba a haber la posibilidad de una capacitacions [since we are ‘uncomfortable persons’ for the SENAGUA, as we have the courage to face them, we didn't even realize that there was going to be a possibility to attend the training-meeting]. (*Mestizo* irrigation water board male member and water activist, personal conversation, December, 2019).

And he added:

ademas, la mayoría no disponemos de los medios para acercarnos al sitio del encuentro [moreover, the majority of us, we don't even have the means [financial] to reach the place of meeting]. (*Mestizo* irrigation water board male member and water activist, personal conversation, December, 2019).

Revealing, thus, an important neglect on the part of the SENAGUA as to the control and oversight of the summoning mechanisms, which -coincidentally- tend to include only faithful servants in these encounters.

Ministerial Agreement 0031 Community water management was presented as a guide for the development of renewed, more locally fit public policies on water resources, envisioning a reconciliation between economic and social development, the protection of Ecuador's ecosystems, through achieving an authentic community participation in all development plans (Martínez & Villalejo, 2018). The approach underlying its community management proposal, aimed to lead toward the development of collaborative public policies on water, establishing channels of communication and coordination among the governing institutions to regulate, as suggested by Martínez, the sustainability of the environment, citizen participation, enthusing economic and social development and ecosystem sustainability (Martínez, 2017). Whether it will fulfill its objectives, however, is still to be seen.

iii. The cross-cutting axis of Interculturality and Gender (SENAGUA Ministerial Agreement No. 2017-00103).

The Ministerial Agreement 2017-00103 signed November 28th, 2017 represented a second attempt to improve the LORHUyA, by incorporating a cross-cutting gender approach and intercultural axis, in order to better respond to the needs of women, men and to the demands of diverse ethnic groups of Ecuador, for whom the blue-print approaches proposed

by the new water law were not suitable. By boosting energy in the participation processes related to water decision making, the new Ministerial Agreement 2012-0103 aimed at achieving a greater commitment of all citizens, and at improving the efficiency of the implementation, operation and maintenance of water services in a culturally-sensitive and gender respectful way, illustrating new efficient alternatives for the supply of water (Larrea & Greene, 2017). Beyond official rhetoric, in fact, these principles had not been neither sufficiently enforced by the LORHUYA, nor in the least promoted and articulated by the SENAGUA officials.

In this sense, the Ministerial Agreement No. 2017-00103 dealing with the cross-cutting issues of interculturality and gender was meant to establish a coordinated axis of policy, actions and measures aiming at favoring the parity of two of the most vulnerable/sensitive sectors of society as to the conditions of water access, use and management: ethnic minorities and women. At the same time the agreement also attempted to implement some cross-cutting strategies to identify and understand the differences implied by gender within water resource use and management in a traditionally patriarchal society such as Ecuador.

According to the spirit underlying the new gender and intercultural approach, all agencies and actors involved in the integrated management of water had to take into account intercultural and gender perspectives when trying to meet the needs of communities, supported by the political will to detect the barriers to water access, and overcome them, thus achieving the full participation of Indigenous, *Montubio* and Afro-Ecuadorian female citizens in economic, social and political water decision making.

Briefly, Ministerial Agreement 2017-00103, intended to promote measures for enhanced water equity (Munévar & Villaseñor, 2005). Intercultural transversality requires changes in public policy, organizational culture, social practices and must be based on mutual exchange and cooperation between people of different ethnicities, and implies a transformation in the forms of interaction with communities, with the aim to understanding and including their diverse experiences, opinions and perspectives of those who have been traditionally discriminated and left behind (CNP, 2017).

The main objective of this Agreement was, then, to integrate the gender perspective as progress, firmly rooting it within the [water] institutionality, binding it to the ideological principles of society (Munévar & Villaseñor, 2005).

The integration of this cross-cutting axis within national policy was meant to be used as an assessment tool of the impact of gender and ethnicity on water rights, with the aim of promoting the creation of new, and more effective strategies to analyze and understand positive and negative gender-based outcomes/repercussions. Introducing indicators and comparative criteria to reorient local/global actions of change, expanding the different gender-based mechanisms to ensure component analysis at all levels of water organization. If the purpose is to pay attention to water equity related issue, in fact, it is fundamental to have adequate training within gender awareness (CNP, 2017).

The issue of interculturality in the context of water management was another fundamental challenge the Ministerial Agreement intended to face, seeking to generate an attitude of respect toward the diverse socio-cultural groups, and to lead toward the elimination of discrimination, reaching the goal of equality of opportunities in terms of participation and decision-making (CPCCS, 2015). Eliminating discriminatory treatment

towards minority groups and female citizens within public policies and practices Ministerial Agreement 2017-0103 aimed at the implementation of parity and equal opportunities, as enshrined in the 2008 constitution (article 61 on “the rights to participation”). It marked the first step of a process of national understanding concerning the recognition and respect of national cultures and their traits, coupled with the objective of safeguarding and managing natural resources (Ayala, 2014).

In this sense, the cross-cultural and gender axis sought a way out of the harms of the inequalities and asymmetries that characterize today's society. A society based on an intercultural and gender-based cross-cutting axis is, in fact, a society where citizen participation is reborn a society developing the potential of the groups that each culture has, leaving aside existing social inequality in water access, its demand and management in a rational and equitable manner (CNP, 2009).

A cross-cutting axis for building mechanisms aimed at reaching the goal of a fully democratic and participatory society of *buen vivir*, within the decision-making responsibility of the state with respect to the development of the nation (CNP, 2017) in the path toward equality in access to water by all rural communities, without distinction of ethnicities or gender, enhancing values of respect for difference and for the environment.

In this regard, the SENAGUA established the creation of a cross-cutting axis for the management and conservation of water, whose main provisions, are illustrated here below.

Article 1 mandates the permanent and compulsory character -within the management and structure of the SENAGUA- to transversally apply the gender, intercultural and plurinational approach, within the frame of its planning, regulation, control and management of water resources competences.

The definition of gender approach, interculturality and plurinationality proposed in the Ministerial Agreement 2017-00103, in its article 2, reads as follows:

Gender approach: It consists in systematically collecting and reviewing information on gender differences and social relationships, in order to identify, understand and remedy gender-based or gender-originated inequities in water resource management.

Interculturality: it is the understanding of the particular social characteristics of *comunas*, communities, peoples and nations that the officials will have to consider and incorporate, as elements of the cultural diversity related to the wisdoms, customs, practices, norms and procedures in the management of water resources that they carry out.

Plurinationality: it is the recognition and the respect for the diversity of peoples and nations, each one of them with its organization, economic, judicial, cultural systems etc; which have to be considered in order to organize the compliance with the rights of no-discrimination, inclusion equity and diversity (Acuerdo Ministerial 00103-2017, p. 3 -personal translation-).

The importance of a gender approach in water management is a public policy that aims to contribute to the improvement in the management needs of women and traditionally discriminated minorities as to water (particularly irrigation water), increasing their participation and allowing the contribution of various stakeholders for the supply of drinking water, sanitation, irrigation and ecosystem conservation, so that all can have access to the natural resource equally (Ministerio del Ambiente, 2019).

The gender approach aimed, moreover, to detect and overcome (or, at least reduce), conflicts and rivalries between men and female stakeholders in water management. Thus, to reduce social and gender disparity in terms of equitable access and control over water resources is the objective, taking into account the benefits, costs and decision-making effort of all citizens and the diversity they represent (Ministerio del Ambiente, 2019).

The sustainable development of water resources is understood as a key factor for the eradication of poverty. In this regard, article 2 of the Ministerial Agreement 2017-0103 states in its third paragraph that the gender and interculturality axis is meant to enhance:

The understanding of the particular social characteristics of the *comunas*, communities, peoples and nations, which officials should consider and incorporate, as elements of cultural diversity related to wisdoms, customs, practices, norms and procedures, in the management of the water resources they perform (Acuerdo Ministerial 00103-2017, p. 3 -personal translation-).

Article 3 regulates the purpose for the intercultural and gender approach of the National Water Secretariat, aiming to achieve:

(a) Visibility in the internal policy and public policy framework on the approach to gender, interculturality and plurinationality; (b) To Promote institutional spaces for the achievement of the participation of women and persons belonging to *pueblos* and nations, and; c) to Eradicate discrimination and/or violence based on gender and cultural belonging, at the institutional level as well as in the provision of public services. (Acuerdo Ministerial 2017-00103, p. 4 -personal translation-).

In this context, the Agreement on interculturality and gender was seen as a tool to analyze the management of the water resource taking into account the practices, symbols, experiences and customs that an intercultural society establishes from its cultural diversity, for the benefit of direct and indirect policies of the state, seeking to achieve an active participation in the decision-making of these *pueblos* and nations, throughout the process of water resource management, ensuring that the plans, policies and programs be made for the benefit of society as a whole and not to increase the profits of few privileged holders.

Similarly, this *Acuerdo Ministerial* promotes women's participation in the management and management of the drinking water and sanitation management boards, among other forms of participation within the diverse groups of Ecuador, by establishing standards, policies and quotas to ensure parity and participation of women (SENAGUA, 2017). The intercultural and gender axis determined by the SENAGUA in its Agreement 2017-00103 represents a strategy to understand the concerns, needs and experiences of citizens belonging to the different ethnic groups (and genders) within the country. Also,

through this instrument, the needs and concerns of these sectors of citizenry shall possibly become an integral part of development programs that do not perpetuate inequality in water access, decision making, and management. Briefly, to achieve gender parity and interculturality.

The Ecuadorian state, with the aim of fulfilling the constituent mandates, and urgently addressing deferred invisibility issues, that for years had been ignored and forgotten, search for spaces for the exercise of citizens' participation, and the consolidation of democratic processes, with the aim of strengthening the institutionality of participatory bodies/councils, establishing parity approaches articulated toward the democratizing role of the state within a decentralized and territorial focus, through the application of this cross-cutting axes of gender equity, interculturality and the environment (Ministerio de Ambiente, 2019).

Article 4 establishes that the gender, intercultural and plurinational cross-cutting approach “will have to be applied to the design, planning, and implementation of the policies, plans, programs, projects and other instruments related to the integrated management of water” (Acuerdo Ministerial 2017-0103, p. 4 personal translation-).

While article 5 *ibid.* provides that the gender interculturality and plurinationality approach will have to be understood as a “theoretical-methodological applied strategy for the analysis of meanings, practices, symbols, representations and norms that society establishes starting from the biological, social and cultural difference, which allows to consider women and peoples with a diverse cultural identity as the direct and indirect benefiter of policy making throughout the process of water management” (Acuerdo Ministerial 00103-2017, p. 4 personal translation).

The SENAGUA administration of Humberto Cholango, presented this Acuerdo Ministerial as a political strategy that incorporated social approaches in water management. in compliance with the obligation of the state to guarantee the equitable treatment of women and men, and of different peoples and ethnic groups, as well as to respect the natural rights, among them the right to use and rationalization of water (CNP, 2017). Article 6 reads:

The water Social articulation Sub-Secretariat and the other Sub-Secretariats within their competences shall generate/create the technical instruments to:
 Build and establishing the gender and cultural diversity indicators to be applied for all administrative entities of the Secretary of Water;
 To impulse the sensibilization, information and training process to improve, consolidate/strengthen the technical capacities, of the officials in terms of gender, interculturality, plurinationality within water management;
 To promote the participation of women in the direct administration of drinking and sewage water, and irrigation and drainage water, and all other forms of organization of water administration of communes, communities, peoples and nations existing, or that will be created, establishing quotas to ensure parity of women participation (Acuerdo Administrativo 00103-2017, art. 6, p. 5 -personal translation-).

The emphasis on the relationships established between the state interventions and their different implications for men and women, is deepened, with the aim of enhancing citizen participation in the development of proposals for water management in all areas of the country, including rural ones (Ministry of the Environment, 2019).

Finally, and most importantly (after such an avalanche of declarations of intent, at least one practical measure is advanced), article 7, mandates that SENAGUA “generate information disaggregated by sex and cultural auto-identification, in order to describe and attend the necessity of the population according to criteria of gender, intercultural and plurinational equity (Acuerdo Ministerial, 00103-2017, p. 5 -personal translation-).

In conclusion, it can be argued that the Ministerial Agreement 2017-00103 was intended as a first effort toward the institutionalization of gender and interculturality

approaches, embodying them in programs, projects and processes of institutional integrated water plans. The National Water secretariat for the first time sought to comply with what was claimed constitutionally on this issue, and to recognize the contribution that women and men, peoples and nations can offer to the conservation and management of the water resource (Ministry of the Environment, 2019). However, even in this second case (the first one being Acuerdo Ministerial 2017-0031 analyzed in the previous paragraph), most of its provisions remained little more than simple declarations, as the development of the conceptual, methodological, and operational tools to implement the three cross-cutting approaches of gender, interculturality and plurinationality still have to see the light.

iv. Administrative simplification and *RUC Comunitario* (SENAGUA Ministerial Agreement. 2018-00194)

The Transitional Provision of the SENAGUA Ministerial Agreement 0031-2017, provided that:

Starting with the publication of this Agreement [signed in Quito on the 22nd august, 2017] in the Official Register, in coordination with the entities of the water strategic system, this Secretary, in coordination with the *Servicio de Rentas Internas* (Internal Revenue Service), the Labor Relations Ministry, and the Ecuadorian Institute of Social Security (IESS), will establish the administrative regime corresponding to the community management of water (SENAGUA, *Acuerdo Ministerial* 0031-2017, p. 6 -personal translation).

Mandating that an administratively simplified tax-paying regime for Community systems be established. And, therefore, instructing the SRI (Internal Revenue Service) to issue the guidelines for the optimization of the administrative procedures that community

water organizations had to comply with. One year later, The Ministerial Agreement 0194-2018 containing such guidelines, was approved (June, 25th 2018).

Since the implementation of LORHUyA in 2014, it had become increasingly manifest that administratively facilitating a systemic approach of water management would have allowed significant advantages, particularly for the most vulnerable and marginalized communities of Ecuador; thus, the Cholango Administration, within an inter-agency coordination between the SENAGUA, and the Internal Revenue Service -SRI- (*Servicio de Rentas Internas*), and in an attempt to curb the problems occasioned by the complexity of bureaucratic requirements implied by the provisions of the new water law for community management, proposed a third, important, Ministerial Agreement (00194-2018).

Ministerial Agreement 00194-2018 was meant to set the guidelines for the proper development of a Community water regime in Ecuador, by creating an administrative and tax framework according to the specificities of the sector (Secretaria Nacional del Agua, 2019), in compliance with the principles of efficiency, of article 66 n. 25 of the constitution, and with article 227 *ibid.* stating that public administration represents a “service to the community based on decentralization, participation and transparency”. In compliance with article 314 *ibid.* establishing that “the services rendered by the state shall meet principles of universality, and accessibility”; and, in compliance with article 114 n. 1 of the Statute of Judicial Administrative Regime of the Executive Function, providing that “the obstacles impeding, hindering, or delaying the full exercise of the rights of peoples will have to be removed (SENAGUA, Acuerdo Ministerial, 00194-2018, 2018, p. 1 -personal translation-).

In an attempt to optimize processes carried out by community water organizations in the Water Secretariat, simplifying them and making them more accessible to marginalized

rural communities where low literacy levels are frequent, and there exists little or no experience in technical or accounting procedures, according to article 4 of the Organic Administrative Code, published in the Official Register N. 31 of July 7th, 2017, which provides that administrative acts “shall apply the measures to facilitate the exercise of people’s rights”; and according to lit. a) of article 11 of the Executive Decree 149 of November 20th, 2013, published in the Supplement of the Official Register n. 146 of December 18th, 2013, which mandates that “all procedures be clear, simple, agile, rational, pertinent, useful, and easy to understand for the citizens, eliminating all unnecessary complexity” (SENAGUA, Acuerdo Ministerial, 00194-2018, 2018, p. 1, 2 -personal translation-).

Finally, in relation to article 48 of the LORHUyA, recognizing the collective and traditional forms of water management of “*comunidades, pueblos y naciones*” and that “collective rights shall be respected under the terms previewed within the constitution and the law”, recognizing “financial, administrative and management autonomy to community systems of drinking and irrigation water”; and in conformity with the Sole General Disposition of the Executive Decree 372 of April 19th, 2018 prohibiting “all requirement of certification, or Notarized declaration, except when explicitly prescribed in the law” (AM 2018-00194, p. 1-2 -personal translation), it was considered necessary and urgent to simplify all procedures required to the citizens before the SENAGUA.

In order to make them more “efficient”: several rules were simplified, particularly as to the bureaucratic steps required for the tax payment processes, and as to the optimizations of administrative procedures related to the organization of community water systems. Additionally, a specific “Community RUC” (*Registro Unico de Contribuyentes*) adapted to

the particular features of community organizations in charge of the managing the water resource was created.

Once the provisions binding the formation of water boards were left without effect (Secretaria Nacional del Agua, 2018), and the recognition of a broader diversity of organizational forms was enforced by means of the previously illustrated Ministerial Agreements 0031-2017, the “RUC Comunitario” allowed to simplify procedures, in order to level the disadvantage highlighted by Hendrix (2015), as follows: “most small farmers [whom] are poor and they would be at serious disadvantage if required to regularize their rights alongside those with greater economic power” (Hendriks, 2015, p. 172).

The Ministerial Agreement 0194 aimed at making it easier for taxpayers to fulfil their tax obligations and formal duties in compliance with the law, within a simplified regime. Following the publication of the coordinated resolution between SENAGUA and the SRI, the Community RUC was instituted (Agreement 0194-2018, 2018).

With respect to the process optimization, Article 1 on “the accreditation of ownership”, reads as follows:

The process of applying for authorization of use and/or exploitation of water carried out by the boards of drinking and/or sanitation water, and irrigation and/or drainage water, collectives, communes, communities, indigenous peoples and nations, Afro-Ecuadorian and *Montubio* peoples, *Cabildos* -community representatives-, and other forms of community water organization, shall be considered as a document proving the ownership or possession of the land [...] (SENAGUA AM, 00194-2018, p. 3 - personal translation-).

This implies that, in the case of an application for water authorization presented by community organizations, a simple declaration (in which the surface of land owned by each of the members or the organizations be recorded), signed by the legal representative of the

organization, and/or its secretary, will be sufficient, and shall replace the previous pre-requisite of presenting documents formally accrediting land propriety.

Land property titles are required when applying for water authorizations, according to the LORHUyA, and the lack of a formal documents of ownership in many rural context (undivided, collectively owned lands are typical in indigenous communities), had started to adversely affect the possibility for community regularization and, the obtention of water authorization on their behalf.

Aqui casi nadie tiene escrituras, son casi siempre pequenos lotes herencia de nuestros padres. La gente aquí en la comunidad no tiene tiempo que perder haciendo tramites, las tierras se dividen en base a acuerdos entre familias [here almost nobody has property titles it is almost always small plots inherited from our fathers. People here in the community do not have time to waste in bureaucratic administrative papers, land is divided according to agreements between families] (personal conversation with the president of an Indigenous and Mestizo community, Noviembre, 2019).

Article 2 ejusdem, regulates a further simplification of the LORHUyA's general water authorization procedure (quite bureaucratic, and time taking), helping the holder in terms of both the application process, and the taxing-procedure implied, taking moreover into account the need for sustainability:

In the process of requesting authorizations for the use of water carried out by the Drinking Water and Sanitation Boards and Irrigation and/or Drainage Boards, collectives, communes, communities, indigenous peoples and nations, Afro-Ecuadorian and *Montubio* peoples, *Cabildos* -community representatives-, and other forms of community water organizations, the simplified procedure will be used, in compliance with the fact that their activities are related to the satisfaction of human rights to water and production for food sovereignty (SENAGUA, AM 00194-2018, p. 3 -personal translation-).

Thus, by virtue of the Human Right to water and/or the use of water for food sovereignty, the “Simplified Procedure” for water authorization foreseen within the LORHUyA (SENAGUA, 2016, p. 168-9, art. 108, Procedimiento Simplificado, Regulation

to the LORHUyA -personal translation-), will be applied in the case of community organizations independently from the organizational form adopted (boards, etc). The *Procedimiento Simplificado*, allows to omit several formal requirements (e.g. the publication in the newspaper to socialize the application for water authorization), compared to the general procedure.

Additionally, Article 3 *ibid.*, on “the organization internal regulation (*Reglamento Interno*) provides that no approval on the part of SENAGUA will be necessary for the regulation. Also, in order to obtain the legal personhood, by virtue of the Acuerdo Ministerial 00194-2018, it will no longer be necessary for the SANAGUA to approve it, since it is recognized as an internal management tool of the organization (Secretaria Nacional del Agua, AM 00194-2018, p. 3, Art. 3 -personal translation-), an approval in relation to which the Single Authority for Water shall not have any discretion/veto power.

It needs to be noted, however, that article 5 *ibid.*, recalls that organizations that provide the integrated services of water supply for human consumption and/or sewage, and for irrigation and/or drainage, in order to provide such services, they must comply with the requirements established within the Regulations of the LORHUyA. Not to mention that the obtention of the legal personhood of community organizations, requires all the same meeting several parameters.

Examples of these requirements are: the technical and economic description of how the service is provided or operated “which will have to be developed in a specific chapter titled ‘integrated management model of the services’, where the internal agreements generated for the rendering of the services are explained (AM 00194-2018, p. 4 -personal translation-); the agreements decided by the board shall be recorded in ‘Minutes of Meeting’

in accordance with the service, or agreement concluded; also, the forms of organization must be recorded in minutes adopting “the correct way of providing the service”, and making the circumstances under which such a service is developed known (therefore, if there existed two boards or community organizations rendering water services separately, and they decided to render the service in an integrated manner both irrigation and drinking water services they should do so, stating it within an act/ act of the organization which records the decision, or within the act of reform of the internal statute).

With respect to the organizational forms adopted, this requirement is resolved within the definitions of the structure chosen for the organization in the statute. As to the infrastructure works to be developed, its budget and timeframes, it will be sufficient that the public official in charge or the resolution takes note of the approval of the technical studies presented for the obtention of water authorization, according to article 90, literal /subsection c) of the LORHUyA. And, finally, with respect to the economic impact of the service on the tariffs imposed to the users, the specification of how the funds collected for this scope will be administered will have to be also recorded (SENAGUA, 2018, Agreement 0194-2018, p. 5).

Based on the requisites analyzed above, it becomes manifest that the bureaucratic simplification that the Ministerial Agreement 00194-2018 is still insufficient. In fact, although (at least to a certain extent) the Ministerial Agreement contributes to reducing some of the technical and bureaucratic difficulties, without a proper training and accompaniment, it remains highly complex for rural community peoples to be able to comply with the tax-paying procedures previewed for community organization, without the help of a SENAGUA professional, and/or a Spanish speaking attorney.

According to the transcripts of a meeting of the national sectorial water council in the province of Santa Elena (Ayangue, September, 2019), specifically dealing with the socialization of the advantages of the new “Ruc Comunitario”, for instance, it turned out manifestly that community organizations, in order to be granted the prerogative of adopting the tax-paying simplified procedure must present the formal accounting record of their previous administrative exercise. This, implies that -at least during the first year- the complicated regular procedure required to all type of private entities needs to be followed by rural community organizations (the non-irrelevant difference, comparing to firms, is that firms most of the time can count with an accounting department and trained professionals in charge of the firm administration, while subsistence farmers cannot count on that kind of knowledge and training).

Donde esta' la simplificacion si para tener derecho a la simplificación tengo que tener todos los libros de la junta al día del año anterior. Sin pagar a un Contador, quien me administra los libros todo el primer año. Para las juntas pequeñas es imposible costearse un contador, y nosotros campesinos no sabemos de números [where is the simplification if, in order to get the simplification, I need to have all the book-keeping of the previous year. Without paying an accountant, who keeps the books of the water board during the first year. For small boards it is impossible to afford an accountant, and us farmers do not know much about numbers] (personal conversation with indigenous female subsistence-irrigator, December, 2019).

A budget, as well as a specific deadline are required for the organization purchases, and it must be included in the Statute of the organization, together with other requirements for providing the service supply of drinking and/or irrigation water supply. Finally, the economic impact that the water management organization or board will bring about must meet requisites of proper registration and must present -under tariff form- the cost of the service for the board, as well as the outcome expected from the provision of the services. compliance with the technical standards, and with the obligations dictated for each specific

service must be ensured. Within a similar logic, the last paragraph of article 5 -again- reiterates that all community organizations will have to comply with the technical norms and obligations established for each and every one of the services rendered (SENAGUA, Agreement 0194-2018, 2018 Article 5 p. 5 -personal translation-).

As to what concerns the replacement of public documents of WATER organizations (article 6 *ibid.*), in the event of loss or DESTRUCTION, Article 6 of the Ministerial Agreement provides that:

In the event that the documents or files of the organizations that collectively manage water cannot be found in the archives of the public institutions or, if they are missing, destroyed, damaged or mutilated and they are impossible to read, at the parties' request it will be arranged, and its incorporation into the register, archive or protocol where the original was to be located, in accordance with current regulations, will be recorded. A certified copy can be replaced by a regular copy accompanied by the declaration on oath of the petitioner (SENAGUA AM 00194-2018, p. 5 -personal translation-).

Policy change & Social Transformation

Briefly speaking, in spite of the optimization process, and the RUC Comunitario, of Ministerial Agreement 2018-00194 -aimed at providing legal and accounting benefits for community organizations i.e. in terms of record keeping, allowing the option to issue a single final invoice yearly (instead of monthly) in which the basic services rendered are consolidated, or keeping only one account book/ledger for all the services rendered as a tax record of the contributions (Secretaria National del Agua, 2019)-, obstacles continue to exist.

Undeniably, through regulations 0031, 00103 and 00194, the Cholango administration attempted to promote the foundations for the development of a community water regime in the country, strengthening its commitment to the historically neglected rural

sectors, providing them with the necessary conditions for inclusion in equity and recognizing their own dynamics in respect of their particularities (Secretaria National del Agua, 2019).

By means of these three Ministerial Agreements the Cholango Administration intended to protect these community organizations (there are about 10,000 organizations nowadays in the country that manage water communally, located throughout the national territory, rendering water services, non-profit, to all rural areas, providing this public service, and ensuring the well-being of the community), within a process promoting the integrated development and management of water, and optimizing the economic and social well-being of the country, in an equitable way, complying with the principle of good living and sustainability (Martínez & Villalejo, 2018).

Humberto Cholango and its colleagues indeed worked hard on the articulation of community management of water resources, by generating broader knowledge on community management and customary traditions, by creating the conditions to establish an authentic dialogue between local knowledges and practices and the state regulations. In spite of the efforts, however, the political will was still too weak, and various technical restrictions continued to exist.

Beyond the rhetoric of official declaration, the reform “on paper” was not coupled with the due training, and support required in order for communities to be able to meet the conditions prescribed within the LORHUyA, its regulations, and, in order to accompany them through the process required to become eligible to obtain the RUC Comunitario. According to interview material transcripts, the provisions contained in Acuerdos Ministeriales 0301-2017, 0031-2017, and 00194-2018, are -in fact- still lacking: financing,

training, focus on redistribution, and priority enforcing mechanisms; as well as, do not allow access to free, open information.

Es imposible acceder a la información, el Consejo de Cuenca ha solicitado varios documentos, hace meses. Prometen, prometen y nunca contestan [It is impossible to access information, the water board has requested various documents, it's been months. They promise, promis, and never answer], (Personal interview with a female member of the Consejo de Cuenca of the Amazonian Province of Napo, December, 2018.

“On October 9th, 2019 (after 2 years and 5 months since his appointment), President Lenín Moreno signed Executive Decree 889 accepting Humberto Cholango resignation (and, soon after appointed for the position former mining-friendly politician Marco Troya). As highlighted by the CONAIE, "Cholango's leave took place on the same day that the National Indigenous Nations' Confederation of Ecuador announced to maintain a great national mobilization against the government's economic measures, set out in Executive Decree 883, which included the elimination of the gasoline subsidy diesel" (El Universo, October 10th, 2019), impacting significantly the livelihood of farmers (since tractors are fueled by diesel), as well as a whole series of additional neoliberal-friendly provisions penalizing the Ecuadorian working class.

Unfortunately, what seemed to be the beginning of a sincere effort to implement a more pluralistic water management with the contribution of Ecuador's diverse communities, peoples and nations and diverse *Ecologias de Saberes* (De Sousa Santos, 2007), was abruptly interrupted by the resigning of Humberto Cholango.

The collaborative effort that seemed to exist between Humberto Cholango, his SENAGUA Administration, and the indigenous movement, was soon replaced by a political divide, surfaced between these two groups in the following months. It is noteworthy that only

two months and a half later, a Presidential Decree mandated the disappearance of the SENAGUA, transferring its functions to the Ministry of Environment (Febrero, 2020).

v. Conclusion

The propaedeutic legal text revision developed throughout the first two chapters of the present work, allowed to establish a preliminary comparative reflection on the discrepancies manifesting between the articles of the new water law, and the 2008 *buen vivir* constitutional spirit. Throughout the analysis, important concerns as to the potential repercussions of the new normative provisions' incongruences in the day-to-day realities of Ecuador's subsistence irrigators started to emerge.

The centralized, top-down vs the participative communitarian principles conflated in the LORHUyA which manifested throughout the analysis of the II chapter, as well as the implications of that conflation in community water self-governance were revised, more in depth, also in the diverse sections of this III chapter, directly dealing with the ambiguities inherent in the new water law, and the response that -in the first five years of the implementation of the LORHUyA- the National Secretariat of Water (SENAGUA) offered to these ambiguities, and to the the push-back of Ecuador's social movements claiming for legislative reforms.

The contradictory aspects of a water law that on the one hand promised and, on the other, undermined plurinationality, food sovereignty and community-based water management, soon started to play out at the local scale, adversely affecting, and -at times-, creating/deepening pre-existing conflicts within Ecuador's Indigenous, *Montubio*, Afro-

Ecuadorian and *Mestizo* peasants' communities, by perpetuating top-down, and technocratic controls, which subordinate the degree of local self-governance and sovereignty -instead-, implied by an authentic recognition of *sumak kawsay*.

After a brief introductory revision of the concept of customary law at play within the Ecuadorian context, and a preliminary reflection of the disjuncture which appears to be running between policy and practice implied by the provisions of the LORHUyA (with a preliminary to the way in which underlying ontologies intersect in water management legal frameworks both at the national and the local level, a topic which will be explored in the IV chapter of this research, presenting the Oyacoto case-study), the first paragraph of the III chapter of this research analyzed the interplay between the implementation of Ecuador's new water legal framework and local customary community-based irrigation practice, during the first five years since the implementation of the LORHUyA.

The contention highlighted between the homogenizing vision of water governance perspiring from the articles of LORHUyA - still rooted in a centralized, technical, and developmental recipe- and the legal pluralism -instead- required by community self-governance of water ensconced in the same document, soon started to provoke resistance on the part of Ecuadorian communities. Their claims and demands for reform found (at least to certain extent), an interlocutor in the indigenous leader Humberto Cholango, and its administration of the secretary of water -SENAGUA- (2017-2019). Cholango was the promoter of three important *Acuerdos Ministeriales* (ministerial agreements n. 2017-0031, n. 2017-0103, and n. 2018-00194), aimed at the recognition and strengthening of customary water management of water, which were revised in the second, third, and fourth paragraph of

this chapter. Finally, the v paragraph closed this chapter with some conclusive reflections integrated by those of co-participants emerged during fieldwork in my research sites.

The analysis of the norms of access, use, and management of water proposed by the new Ecuadorian water legal framework, clearly displayed a centrality of the state as the principal responsible for water administration and planning. This centrality soon became irreconcilable with the lens of interculturality, and direct citizens' participation implied by the plurinationally-inspired paradigm shift envisioned by the Ecuadorian Indigenous, *Montubio*, Afro-Ecuadorian and *Mestizo* communities, peoples and nations.

In this III chapter, I argued that in order for the *buen vivir* paradigm shift to be effective and continuous in time it is “necessary to reach a distinctive level of institutional capacity” (Reed, 2011, p. 525). To put it in Escobar' s (2010) words, in order to become the effective transformative tools claimed by Ecuador's rural populations, and play an important role in the recognition of Indigenous, *Montubio* and Afro-Ecuadorian communities' customary normative systems- the Ministerial Agreements of the Cholango Administration would probably have to “entail a more substantial transformation of modern [water] institutions in order to create multiple spaces for those alternative worlds and knowledges that have remained invisible,... that have been actively produced as non-credible alternatives to what exists by dominant discourses” (Escobar, 2010. p 39; De Sousa Santos, 2007 in Escobar, 2010 p. 39).

Although the Ministerial Agreements of the Cholango administration represented an important step (as the coming up chapter on the Oyacoto case study will show); however, “reform is not just a matter of changing laws” (Gelles, P. 2015, p. 132). As maintained by

Hoekema (2002), unfortunately, “having constitutionally supported rights and some political leverage do[oes] not necessarily change a lot on the ground” (Hoekema, 2002, p. 185).

The contrasting underlying ontologies intersecting in the new water management legal framework both at the national and the local level, and a lack of political will to apply the existing norms because of national (but also local) power dynamics of different actors (utilizing different narratives from the LORHUYA in order to advance their interests); clearly demonstrated that significant action plans still need to be created and implemented, in which state’s water institutions interact effectively with the local population, listening to their needs and experiences around water.

The ability to negotiate the tensions existing between differing normative levels and water cosmovisions appears -instead- to be constrained by a LORHUYA, which does not reflect the plurality of water worlds present in the country. “The dysfunctionalities generated by the impacts of the current legislative framework for the management of water, imposing locally “legal provisions [that] are effectively unenforceable within user organizations” (Hendriks, J., 2015, p. 180), as they refuse to incorporate “collective rights for water use systems” (Hendriks, J., 2015, p. 180) are causing the LORHUYA’s provisions on plurinationality and participation to “largely lead a paper life” (Boelens, Zwarteveen, & Roth, 2005, p. 17).

CHAPTER IV

The Oyacoto case study: Navigating the LORHUyA within the dynamics of diverse normative levels. A menace to the ancestral social fabric, or a contribution to overcome traditional power-imbalances?

This chapter contributes to elucidate the community impacts of the implementation of the LORHUyA, highlighting the disconnect between policy as written vs implemented in a peri-urban, self-defined Indigenous and Mestizo *Comuna*, facing great challenges to maintain its water resources ancestral identity. Addressing the challenges to implementing community-based water planning through centralized national policy, it allows to give an honest look at the mixed effects of state determined *buen vivir* policy as it relates to water, and it offers insights into the ways that gender mediates local water planning and activism.

The case of the *Comuna* of Oyacoto, one of the four *Comunas Ancestrales* of the rural parish of Calderon (Quito, Pichincha, Ecuador), is presented and discussed. The neglect of the ancestral water rituals of the *curanderos* (medicine men) of the neighboring *Comuna* of San Miguel Del Comun, and the struggles that the exploitation of the Umayacu-Chusalongo Andean water sources for irrigation originated within the community, are explored through a vivid narrative of the inherent tensions, as well as transformative/ potential of Ecuador's *Ley Organica de Recursos Hidricos Usos y Aprovechamiento* (LORHUyA, 2014), to either intensify situations of conflict around water, or to construct counterhegemonic spaces of resistance (to both local and national power unbalances and top down imposed developments); as well as to become an integral part of the dynamic *Comuna* water management traditions, actualizing the community's social fabric, and, -thus-, contributing to

the agency and empowerment of the populations involved.

The first paragraph presents the background of research and introduce the definition of *Comuna Ancestral* according to the Ecuadorian 2008 Constitution. The second and third paragraphs explore the conceptual and methodological framework used for the Oyacoto case-study and examine the research questions investigated. Then, the fourth paragraph offers four ethnographic vignettes highlighting the tensions inherent within the modernizing water management discourse rooted in the LORHUyA, which manifest in transformations to local ancestral water use and customary management conditions, at times being resisted, while other times being leveraged to open up to new possibilities and hybrid forms, enhancing community wellbeing around water by actualizing customary water traditions beyond stiff dichotomies. Finally, the last paragraph (5th) offers a preliminary reflection on the broader impact of the new water law on traditional values, practices, and community customary water systems.

i. Introduction

Based on the results of over three years of field work (2016-19), this research, foregrounds the underlying tensions between the “technical”/modernizing vision of water management promoted by Ecuador’s recently implemented national water law -*Ley de Recursos Hidricos Usos y Aprovechamiento* (LORHUyA, 2014)-, and the customary water management traditions held by the inhabitants of the *Kitus* descendants and *Mestizo* Comunas of the rural parish of Calderon (Quito, Pichincha, Ecuador).

Comunas, according to the 2008 Constitution of the Republic of Ecuador, are legally

recognized as holders of collective rights (i.e. art. 57, 60, see also COOTAD art. 99), and they can be defined as:

human settlements that identify as descendants of the ‘*Kitus*’ who maintain their own cultural and identity trait ... [i.e. the collective ownership of their territories], because of their remote origin, they have been given the character of ‘*ancestrales*’...and for the first time in the *Magna Carta* they are granted the category of holders of collective rights” (Andrade, 2016, p. 15).

Comunas Ancestrales are those that despite their peri-urban location keep intact the cultural, social and spiritual traits traditional of the Andean worldview, as well as a strong rural vocation and relationship to their territory,

the forms of organization of power, the exercise of democracy; collective activities such as *minga*; processes for the transfer of land ownership; for the entry or exit of its members; Traditions such as: the yumbadas, the rucus, the pingables, and principles of life such as: llakirina "do not add, do no harm", loves shua "not stealing", loves llulla "not to lie", loves muka... Traits that show that to this day they maintain a community life and in close harmonious relationship with their territories” (Andrade, 2016, p. 19).

The case of the *Comuna Ancestral* of Oyacoto, thus, offers a valuable example of the challenges to maintain land and water resources, as well as traditional rural and ethnic identity, that more broadly Ecuador’s Indigenous communities nowadays face.

In spite of the official interculturally participative, and plurinationally redistributive state-rhetoric, in fact, the contradictions brought about by a historical condition of marginalization of Ecuador’s Indigenous populations, and the consequent undervaluing of their traditions (Altman, 2019, Boelens & Doornbos, 2001, p. 351), added to the developmental/post-developmental ontological tensions which started to manifest already within the 2008 *Montecristi* Constitution, and which -as highlighted by various authors- (Altmann, 2019, Zapatta, 2017, Boelens, 2015, among others), deepened since the

implementation of the LORHUyA, continue to represent an obstacle for the attainment of communities' *buen vivir*, and for their right to maintain their traditional values and water practices.

I argue that these ontological incongruencies around water developments, have - however, paradoxically inherent in themselves the potential to push toward the actualization of a dynamic integration of water identities, from which more efficient, and culturally-adapt water spaces may emerge, thus opening a “creative and innovative” conversation between “plural normative levels” (Boelens & Doornbos, 2001).

Although the ethnographic research brought to light a complex situation of conflict between water national and local normative levels since the implementation of Ecuador's new water legal framework (LORHUyA, 2014); particularly, as a consequence of the absolute state-controlled, homogenizing philosophy underlying its technical regulations and secondary bylaws (i.e, *Reglamento*, 2015; *Instructivo* 2016-1400). Nevertheless, the resistance ignited by this prescriptive, national imposition of water policies -typically favoring the powerful, and failing to tap into the rich tradition of Ecuador's ancestral water worldviews and legal diversity- (see Zapatta, 2017; Boelens & Doornbos, 2001, among others), has implied an intensification of water “hybridity” in numerous Indigenous, *Montubio*, Afro-Ecuadorian, and *Mestizo* subsistence-farming communities, whose very survival depends on the access to irrigation water, and whose very identity -as Boelens and Doornbos (2001) suggest, is often defined around customary water management traditions, “irrigation management norms are the backbone of community systems” (Van der Ploeg, 1998 as cited in Boelens & Doornbos, 2001, p. 343).

As I will try to show throughout this article, in the *Comuna* of Oyacoto, the

LORHUyA not only displayed potentially disruptive tendencies for ancestral customary practices (and, thus, for community identity) around water, it has also provided a valuable tool for overcoming traditional gender-based power imbalances within the *Comuna* life. The peculiarity of this aspect, makes of Oyacoto an interesting case study; which, on the one hand, confirms the traditional critique foregrounded by political ecologists with respect to the negative impact of rigid, top-down, state-centralized water legal frameworks (see i.e. Antonio Gaybor, 2008, 2011, Edgar Isch, Boelens & Peña, 2012; Alex Zapatta, 2017) on the wellbeing of rural communities (and/or communities with an ancestral, rural vocation); while, on the other, it allows to move beyond it, opening the path toward a less dichotomous analysis, rigidly contrasting national vs local normative levels (Boelens & Doornbos, 2001, p. 352).

ii. *Theoretical Frame*

Underlying ontologies intersect in water management legal frameworks both at the national and the local level. In what way and to what extent is, however, not easy to predict. As highlighted by Hooker, laws, regulations, “statutes, legal reports, or court decisions, are not sufficient to get a good grasp on the reality of plural legal orders, because the totality of the legal process is not contained in the official record” (Hooker as cited in Von Benda-Beckmann, F., & Benda-Beckmann, K., 2017, p. 72). And, as Boelens & Doornbos (2001) assert, “understanding users’ rationality and local expressions of water rights in *Campesino* and indigenous communities is of crucial importance if we want to comprehend their claim for water rights and perhaps support local empowerment processes in common property

water control systems” (Boelens & Doornbos, 2001, p. 343).

It can be argued, thus, that it is in field practice that “water rights ... are created, consolidated, and transformed from abstract sociolegal categories into local procedures” (Boelens & Doornbos, 2001, p. 343). So that, if -on the one hand-, it is undeniable that water management involves unequal power relations (see i.e. Boelens; Zwarteveen; Hoogesteger; Maria Lane; among others); it is not clear -on the other-, how these unequal power relations, and diverse legal frameworks’ underlying ontologies will manifest in daily water practices at the community level. Therefore, it is at this level of analysis that the researcher’s attention should be focused, in order to offer an authentic contribution to the achievement of communities’ water *buen vivir*.

I maintain that to probe LORHUyA’S underlying conceptualizations by integrating the legal text-analysis through an interpretive communication-based lens (Ethnography of Communication as per Hymes 1962, 1967, and 1972, 1974), which allows to connect the content of the articles to the broader historically and culturally infused context of power imbalances existing in Ecuadorian marginalized ‘waterworlds’.

This broadened lens of analysis enables to illuminate the inherent points of tension, without, however, neglecting the potential for connections. By establishing a conversation between the national water normative level, and the day-to-day Indigenous communities’ perceptions, and customary water management praxis beyond their apparent irreconcilability. This work hopes to facilitate the local implementation of Ecuador’s new water legal framework, and to represent a contribution to guide its reform in order to reduce the tensions that are possibly retaining (or even adversely affecting), the attainment of community *buen vivir*, and of the irrigation water development objectives that are central to it.

In Boelens and Doornbos (2001) words, “the struggle to create and defend water rights cannot be summarized as a simple dichotomy between peasant and indigenous norms versus state law, or local equity versus outside injustice” (Boelens & Doornbos, 2001, p. 352). I posit that, as a consequence, by avoiding the stiff binary dichotomies deriving from a merely technical legal text review of the LORHUyA, and its bylaws; which -most of the times-, “ends up limiting itself to a mere observation of the contradictions between national vs local... normative levels” (Boelens & Doornbos, 2001, p. 352), this research might, therefore, contribute to the path opened towards new hybrid normative possibilities of pluralism.

Hooker contends that fieldwork-based lenses, make it possible to consider... “the official record as only a part of a broader bundle [of data] derived from observation, interviews, archival work” (Hooker in Von Benda-Beckmann, F., & Benda-Beckmann, K., 2017, p. 72). Interdisciplinary endeavors may, in fact, bring to light innovative water development alternatives for the most vulnerable, and often silenced, voices of Ecuador’s communities.

Without underestimating the importance of the existence of a comprehensive and coherent national water legal framework, and without denying the power, influence and transformative potential that national state water laws have on local identities; but, simultaneously, without neglecting the transformative potential of community agency, and the actualization possibilities inherent within it, it is possible to embrace the creation of a synergy of hybrid water “*Ecologia de Saberes*” (de Sousa Santos, 2012). The building of this synergy may prevent -on the one hand-, the menace of the disruption of customary water management traditions, and the consequent collapse of local water identities; while -on the

other hand-, may allow to translate national water legal frameworks into culturally-fit water policies, more responsive to the dynamic needs of the plurality of normative and institutional orders that exist within Indigenous, *Montubio*, Afro-descendants and *Mestizo* Communities (Von Benda-Beckmann, F., & Benda-Beckmann, K., 2017, p. 72).

Article's Structure

After giving a little background information on Oyacoto, and describing the methodology of the present research, I briefly explore the local traditional water management practices of the *Comuna*, and illustrate the tensions with San Miguel Del Comun (a neighbouring *Comuna* of the Calderon Parish), ignited by the water authorization to exploit the Umayacu water source for food-sovereignty irrigation granted by the *Secretaria Nacional del Agua* -SENAGUA-, to Oyacotenos (a friction strongly related to the inobservance of article 92 of the LORHUyA (p. 20), which previews an inventory and a series of provisions for the special protection of “ancestral waters use areas”, never implemented by the SAW).

Through a series of vignettes, I will then try to highlight the disruptive impact on the *Comuna's* customary water management traditions implied by the new state-determined water legal framework, while simultaneously illustrating how the self-identified *Kitus* women of the local *Grupo de Mujeres* of Oyacoto managed to actualize their customary and men-dominated water-management culture, by resisting it through the tools inherent within the LORHUyA. I do so through the words of the women of the *Comuna* interviewed, describing how they were able, by means of the new national water legal framework, to redress traditional gender-based power inequities, and overcome -at least to a certain extent- the traditional male-favoring water status quo of the *Comuna*.

I conclude by showing how the reform brought about by Ministerial Agreements n.

2017-0031, n. 2017-0103, and n. 2018-0194 signed during the SENAGUA administration of Indigenous leader Humberto Cholango, opened-up new possibilities to rebuilt community around water, through a deeper acknowledgement and recognition of the local customary traditions of water management.

The discussion on the Oyacoto case-study, demonstrates how looking beyond traditional binaries, and acknowledging the agency-potential of communities in terms of resistance in defense of their water practices and social participation strategies, broadens the possibilities of positively reconciling water management traditions and diverse underlying ontologies (i.e. modern vs customary). No matter how we look at it, in fact, the outcomes of a law are the result of those who implement them locally. This is particularly true in Ecuador, where many forms of normative systems are to be found, and where -therefore- “the way official rights are enforced, and their effectiveness, will vary according the situation and context” (Stavenhagen and Iturralde, 1990; Weay, 1993 as cited in Boelens & Doornbos, 2001, p. 345). As a consequence, “the creative building of bridges and alliances across difference” (Zwarteveen & Boelens, 2014, p. 143), can inform beneficial choices.

Being constantly re-framed “amidst conflicting normative frameworks” (Boelens & Doornbos, 2001, p. 343), “the ideology of official law [hardly ever].....materialize[s] in practice in the way its authors had presumed” (see Benda-Beckmann, F. & von Benda-Beckmann, Keebet & Spiertz, J., 1998,, p. 61-64; Correas 1994, p. 70-71; Stavenhagen and Iturralde, 1990; Weay, 1993; as cited in Boelens & Doornbos, 2001, p. 345). This insight, when inserted within “a more general debate over the abilities of water legal framework to promote rural development objectives”; might translate into a useful input for answering the important question if the LORHUyA represents (or not), a contribution to official *buen vivir*

policy goals of redistributive, participative, culturally-plural efforts; or -conversely-, whether it tends to "lock these efforts into a stiff armor", and risks to end up slowly "asphyxiating" the rich and diverse, autoctonous, self-determined visions of *buen vivir* (Zapatta, 2017; Boelens & Doornbos, 2001, p. 345; Hoekema, 2002, among others); for, in the end, it will depend less on the text, and more on the political will to implement it.

iii. The Oyacoto research project

National water laws "influence [local] power relations either reproduce[ing] or transform[ing] prevailing societal relationships" (Van der Ploeg, 1998 as cited in Boelens & Doornbos, 2001, p. 343). However, as we will try to demonstrate throughout this case-study, the "effective control over the development and application of their own norms for managing their system" is "also affected by the [local] organizational system" (Boelens 2000, 67-68 in Boelens & Doornbos, 2001, p. 344). Many "analyses of customary law, ... under evaluat[e] communities' agency to actualize their 'dynamic water traditions'" (Boelens & Doornbos, 2001, p.351), fixing "customary law as a still life of ancestral customs,... and in the currents idealizing the harmony of Andean life and community systems" (Boelens & Doornbos, 2001, p.351).

Background of Case Study

On April 28, 2016, the Executive Director of one of the first international NGO's operating in Ecuador expressed, during a personal conversation, the need to develop a research project in a community where conflict among locals was obstructing the implementation of an irrigation water project. Following that conversation, a communicative-

action-based (Habermas, 1981) exploratory project started to take form, designed by researcher Martina Nebbiai, in partnership with the *Comuna* of Oyacoto (Ecuador).

This multi-phase research project took-off with a pilot study, consisting in a community-based effort to examine of the controversies which originated in the Ecuadorian self-defined Indigenous (*Kitu Kara*), and *Mestizo Comuna* of Oyacoto (Calderon, Pichincha); where “unable communication” (Habermas, 1981), seemed to be menacing the profitable exploitation of one of the NGO’s, recently implemented water system (2014); which, instead, should have boosted the economy and improved the *buen vivir* (wellbeing) of Oyacotenos.

The pilot study was meant to assess the influences of poor participatory communicative action and to explore the community stakeholders’ power unbalance, probing the causes of the tensions that seemed to have been originated by the implementation of the new water infrastructure. In order to analyze the implications of the development of the new irrigation system for local customary water use, and evaluate the outcome of the project implemented by the international NGO within the frame of *buen vivir* policy (Constitucion de la Republica del Ecuador, 2008), and, more specifically, within the new *Ley de Recursos Hidricos, Usos y Aprovechamiento del Agua* (LORHUyA, Asamblea Nacional de la Republica del Ecuador, 2014) through the eyes of the community, an EOC lens of analysis was integrated.

The harsh conflicts arisen in the community right after the implementation of the new irrigation water system (2014), and its *de facto* scarce functioning, due mostly to what appeared to be the incapability of reaching an agreement among community residents as to the use of the water-source, the turn-taking required for an even-distribution of the scarce water-supply to all the community, and the repeated attempts to sabotage the water-pumping

system (both by comunards of the higher part of the *Comuna*, as well as by some members of the neighboring *Comuna* of San Miguel -Calderon, Pichincha-, whose residents never agreed to the authorization granted by the SENAGUA of the Umayacu water source in the first place), represented a valuable example of a broader difficulty inherent in the implementation of the LORHUyA, which was adversely affecting the achievement of *buen vivir* goals for Ecuadorian *campesino*' communities, with its rigid, one-fits-all provisions.

The expected result of this research project was the identification of undetected, possibly competing conceptualizations that represented an obstacle to productive outcomes for the *Comuna* of Oyacoto in terms of water management, accompanied by significant power unbalances (both at the local: gender-based, and national: state vs customary level) among stakeholders, which -unless acknowledged and equilibrated- would keep representing a barrier to the achievement of water *buen vivir* objectives for the community.

My primary interest in the community internal divisions which, according to the Executive Director of the NGO, manifested concomitantly with the local women's group mobilization for the construction of the water project infrastructure (2010) and, later on, inexplicably worsened around the implementation of the new irrigation water system of Umayacu (2014), consisted in gathering information that could significantly improve the NGO planning activities, as well as inform decisions by local Oyacoto leaders.

Later on, as the field work and acquaintance with the community deepened, and after completing my PhD coursework at UNM as a community and regional planning student-researcher, I realized that this preliminary research activity, could become the beginning of a doctoral project, hopefully bringing about further benefits for the Oyacoto community, by integrating the exploratory research endeavor with a participatory redesign of the irrigation

water system (2017), around which to start re-building the community harmony, by then disrupted by the contended Umayacu infrastructure, as well as by the provisions of the new water legal framework.

In collaboration with “*Vinculacion con la Comunidad*” (Departamento de Ingenieria Popular, Universidad Central del Ecuador), of the University I work for as an Instructor, I was able to promote a plan of action research which would have hopefully contributed to the quest of a long-term solution to the Oyacoto water conflict: both relieving the water scarcity problem detected during the pilot-phase of research (through the expansion of the Umayacu water system, by means of a second water source -*el Ojo de Chusalongo*- susceptible of sustainable exploitation by the *Comuna* of Oyacoto); and, accompanying the empowerment, and the strengthening of conflict-mediation capacity of the research co-participants, both internally, and externally, with the SENAGUA representatives). Furthermore, I was hoping that this case study would illuminate the myopic perspective of the Secretaria del Agua - SENAGUA-, as to the importance of developing a plurinational sensitivity for the effective local implementation of water legal frameworks.

In occasion of previous fieldwork experiences in Indigenous, *Montubio*, and Afro-Ecuadorian Communities of Ecuador, I had -in fact-, had a chance of getting acquainted with the SENAGUA’s extreme rigidity, and lack of intercultural sensitivity, when it came to irrigation water-norms implementation in communities with an ancestral tradition of customary water management. The specific research questions that guided this second, more in-depth phase, of the Oyacoto case study were:

RQ1: How does the new water law (LORHUyA, 2014), underlying discourse touches ground in the self-defined Indigenous and *Mestizo* Comuna of Oyacoto?

RQ2: Where have the national water management norms encountered resistance; and, where are they instead readily embraced, and leveraged into local *buen vivir* favorable outcomes?

RQ3: What can the inclusion of local perspectives add to our understanding of the LORHUyA in terms of community *buen vivir* around water?

Overall Methodology

This study was conducted through a community-based participatory action research process in which Oyacoto residents (irrigation water beneficiaries, and non-beneficiaries), and other stakeholders involved were enlisted to provide ongoing input, and oversight regarding the entire process. Although I did not reside in the *Comuna*, I attended regularly *Grupo de Mujeres*'s, and *Comuna* meetings, accompanied Oyacotenos during *Mingas*, SENAGUA's technical inspections and mediation meetings over a long period of time. This, allowed to probe through the eyes of the community the perception of the new water legal framework within the population involved.

In Oyacoto, fifteen (20) key informants, nine (9) were self-defined indigenous residents, three (3) were local non-indigenous natives, and three (3) were foreigners belonging to NGO'S, and five (5) were representatives of SENAGUA (total 20).

Data collection methods and sampling strategy

The research activities took place within the geographical boundaries of the *Comunas* of Oyacoto and San Miguel in the rural parish of Calderon (Pichincha -Ecuador-). This phase of research was conducted within a participatory framework, in which the women and men with stakes in the community (members of the Umayacu water board -*Junta de riego de Umayacu*-, of the women group -*grupo de mujeres*-, of both the Catholic and Evangelic

church groups, Indigenous (self-defined) medicine men *-curanderos-* of San Miguel utilizing the Umayacu (water source) for rituals, residents, as well as non-residents with economic interests in the community (i.e. migrants), NGO's representatives, and SENAGUA's officials, were sought to help shape and guide the research inquiry. The research was conducted through community-based participatory practices, specifically, in order to ensure the research was addressing the local problem through the lens of the community.

The sampling strategy utilized during the ongoing exploratory phase was a snowball sampling process in which the researcher selected individuals based on their subject position, as well as a referral process. The sampling frame included research participants (male and female) whom the researcher knew directly, and others whom were selected either randomly or based on recommendations from community contacts. Any sensitive information being provided did not include any personal identifiable information in order to protect the privacy of community member's, or SENAGUA's officials, participating in the research project.

Study participants included the following:

- Community members who reside in the village of Oyacoto (10 years minimum).
- Community youth (over the age of 18).
- Community elders (until the age of 70).
- Both male and female community members.
- Community members who served in political positions in Oyacoto (i.e. *Cabildo de la Comuna, Juntas de Riego de Umayacu-Chusalongo, Grupo de Mujeres*, etc).
- NGO's representatives.
- Community members who are from Oyacoto but live outside the community.

- State officials (SENAGUA, *Ministerio de Ambiente, Ministerio de Agricultura*).

I sought to answer the research question through observation, participant observation, and conducting semi-structured interviews, in which community members provided their personal perspectives on questions aimed at understanding local specificities, and at uncovering water conceptualizations and worldviews. The information collected was categorized into patterns and themes i.e. plurinational and customary use of water; knowledge of the existing water legal framework, community leadership and participation, power differentials within the community, local *buen vivir*, through review of the data. In order to determine the individual, economic, political and community wide impacts of the recently implemented water system, this research sought to provide the community individual and group perspectives, concerns and solutions around water that the community leadership could utilize to take decisions aimed at improving the quality of life (*buen vivir*) of its residents.

Each data collection method was chosen to provide important insight regarding community water contexts, thoughts and perspectives regarding current local strengths and problems, assets and barriers to water problem solution. Demographic information was collected to ensure that a broad range of perspectives be included in the planning phase, as well to compare and analyze the responses from various subject positions, such as gender, age, status in the community and a variety of other factors. A category for unknown variables was included to provide room to explore issue areas that arise out of the responses from interviewees. Co-participants were also encouraged to talk freely and elaborate on their experiences. All the interviews were transcribed and analyzed in later stage.

Research Protocol

The assessment protocol included the pilot study exploratory planning phase (Phase 1: April 2016- December 2016), in which field observations, mapping, unstructured and semi-structured interviews, oral life histories collection, and participant observations of Hosts-NGO's/SENAGUA state official meetings and *Comuna* meetings, as well as focus groups were utilized, in order to re-assess Oyacoto community needs both in terms of irrigation water, and conflict mediation.

Specific historic data were gathered through informal and semi-structured interviews with key informants in the sites of research, such as the community president, secretary, treasurer, and the eldest community members. More general historic and demographic data were collected through literature review. Additionally, observation and participant observation of informal meeting with Oyacoto families, meetings with official representatives, and analysis of the technical evaluations about the irrigation system, and the production strategies of the community, provided by SENAGUA and the NGO involved also constituted important sources of information for this research.

Phase 2 (January, 2017-March 2019), started with the “*vinculacion con la comunidad*” project of irrigation infrastructure re-design, brought about by two undergraduate students of the Faculty of Engineering of Central University of Ecuador (UCE), and lead by the writer. During this phase, Ethnographies of Communication (Hymes'1972-1974) within the boundaries of the Comuna of Oyacoto were performed, by tracking and identifying conflicting communicational codes between the conceptualization of “Water Use/Management” and “well-being” (*buen vivir*) of locals, the Engineering students, the international NGO's practitioners, and SENAGUA State officials, throughout the

redesign study of the Oyacoto's irrigation system, I attempted to capture through Hymes' EOC how community members valued the irrigation water infrastructure in terms of *Buen Vivir* and local self-rule.

Phase 3 (March 2019- June 2019) Based on the information derived from Phases 1 and 2, and in accordance with the IRB Protocol approved by the University of New Mexico, I attempted to capture if/how the new irrigation water management system implemented in Oyacoto (*Juntas de Riego*), in accordance with the LORHUyA regulations, positively/adversely impacted the social-fabric and empowerment possibilities of the diverse members of the Oyacoto community. More State vs Customary water management focused data was collected, and its results and implications discussed with community members for applied water development community-based practice (i.e. the accompaniment of the Community on the part of the student-researcher, throughout the Chusalongo water source authorization process with SENAGUA).

With in mind the relevance of the development of a more interculturally sensitive water legal framework, through which water planners and water policy makers could help address the plurinational and participatory issues emerging in the specific contextual water cases, in the last phase, I attempted more broadly to make claims about how efforts toward the implementation of legal pluralism (taking more seriously into account the rich tradition of Ecuador's local customary water management and diverse water-normative levels) might contribute to potentially addressing the issue of poor outcomes in terms of *buen vivir* (Wellbeing) of Indigenous, *Montubio*, and Afro-Ecuadorian small irrigators' communities and *Ancestral Comunas* (i.e. impacts of Acuerdos Ministeriales 2017-0031, 2017-0103, 2018-00194 as to *Gestion Comunitaria*).

While intermediate community report at the end of each phase, served as a “member check” on the validity of my findings and analysis. At the end of Phase 3 (June 2019) a final report was provided to community residents, together with the re-engineering study of the Oyacoto irrigation water system, developed by the Universidad Central’s students.

Site Description

A few minutes away from the rural parish of Calderon (Pichincha, Ecuador) by bus, Oyacoto is a peri-urban self-defined Indigenous and *Mestizo Comuna*. In 2010, impulsed by an NGO, few community female members established and became members of the Association of Women of Oyacoto (*Grupo de Mujeres*). The birth of this local women’s group coincided with the quest for a new irrigation water system/infrastructure (the Umayacu water source), which was finally built, implemented and started its operation in 2014. Community members submitted to the Secretariat of Water (SENAGUA) the *Estatuto de la Junta de Riego* (Irrigation Water Board Statute) formalizing both the women’s association, and the irrigation water system in accordance to the requirements of new water law (LORHUYA, 2014).



A panoramic view of Oyacoto (Calderon, Pichincha -Ecuador)

Population: 1,750 inhabitants (350 families).

Extension: 223,34 Ha.

Climate: Windy and very dry.

Temperature: between 15 and 24 ° C.

Precipitation: three months/year only.

Commonly referred to as the Olla de oro (Pot of Gold) (an ancient Ecuadorian legend narrates that there was gold hidden in the mountains), Oyacoto is 6,912 feet above sea level.

The village is located at Km 19 on historic Panamericana Norte, the principal arterial road, 3 km north-east of the center of the rural parish of Calderón (Quito, Pichincha, Ecuador). Most of the streets are unpaved and in need of repair. Street signage is not present. The homes are a mix of *bloque* (concrete) buildings, abruptly contrasted by luxurious uninhabited mansions that were built with the *remesas* (remittances) of Oyacotenos migrants residing in Spain. Physically Oyacoto is divided into 8 sectors. The lots are positioned in a west-east pattern, stretching from the Panamericana highway toward the inland. “Sector 1” is the closest to the Panamericana Norte and is the one that is “most” endowed with infrastructure and basic services. Advancing towards the center this feature is gradually lost until reaching “Sector 8” that lacks all services.

Potable water, electricity, telephone, garbage collection, and sewerage services are available to a very limited extent. According to residents, these services work irregularly, poorly and serve only “Sector 1” (personal conversation with NGO representative, December 26th, 2016). The drinking water they receive is scarce and expensive. The great majority of residents does not have access to the sewage system because of bad planning -the house pipe does not fit into the sewer that passes through the main road- (personal conversation with

NGO representative, December 26th, 2016).



Personal photo

Environmentally the region is extremely dry, with large areas eroded by strong winds. Deforestation is severe, because the little forest that existed was used for construction and for firewood (Personal conversation with adult male peasant December 21st, 2016).

Hay vientos Fuertes y las calles estan pura tierra, hay mucho polvo y los guaguas se enferman [there are strong winds and the streets are all dirt, there is a lot of dust and our kids get sick] (adult female resident, personal conversation December 21st, 2018)

Report of Findings

The following section discusses the results of the activities conducted under phase 2 and 3 of research. After providing a little background on the *Comuna* customary water management tradition, it attempts a preliminary assessment of the impacts of the new water legal framework within it in terms of water access, participation and plurinationality/interculturality. It then discusses the steps required -in consultation with the co-participants of this project-, in order to achieve local, self-determined, water *buen vivir* goals.

Identity. The latest census reports indicate that Oyacoto had a population of 1750

(INEC, Censo Poblacion 2010). The population is diverse with varying races and ethnicities.

The majority is composed of self-defined *Kitus* Indigenous descendants, and *Mestizos*.

Somos descendientes *Kitus*. En nuestra Comuna vive gente muy amigable (aunque recelosos con los de afuera). Los mayores aun hablan Kichwa y el resto de la población habla Espanol. Un razgo importante de nuestra identidad es nuestra medicina. Los Curanderos utilizan el agua y las plantas medicinales we sembramos en nuestras chacras. para el susto, y el mal aire. Tratamos las enfermedades con las limpias y el Cuy. [We are *Kitus* descendants, and in our *Comuna* live very friendly people (although distrustful with outsiders). The elders still speak Kichwa and the rest of the population speaks Spanish. An important element of our identity is our own medicine. *Curanderos* (Medicine Men) use water and medicinal plants that we grow in our *chacras* (small plots of land near their homes), to cure “*susto*” (fear), and “*mal aire*” (bad air). We cure diseases with the *limpias* with the *Cuy* (guinea-pig). (San Miguel self-defined Indigenous member, 28th December, 2018).

Hay mucha ignorancia sobre nuestra identidad, sobre todo entre nuestros jovenes [There is much ignorance of our identity, especially among the youngest residents] (Women’s Group ex-President, meeting 28th December, 2018).

Organizational structure. The *Comuna* leadership consists of a non-paid elected

Presidente, and a Community Board (Vice president, Secretary, Treasurer). The *Comuna* of Oyacoto has a limited infrastructure (*casa communal*), and funds (*cuotas comunales*) to improve community.

Table 2: Organizational Structure before and after the LORHUyA, personal elaboration.



Participants were asked to identify problems in the *Comuna*. Participants identified perceived problems and needs that are currently not being met particularly in terms of water, as well as their perspectives on why the problems exist. The problems were categorized into six major themes: water scarcity, customary water use, water management/conflict (past and present), water failing infrastructure -Umayacu-, knowledge of the new water legal framework (underlying challenges/opportunities), development options -Chusalongo-.

Economic Development. Participants noted economic water-related issues as one of the primary problems in the community. They indicated that, because of water scarcity, there was a lack of job opportunities. Participants indicated their youth are leaving the community for better economic opportunities elsewhere, since agriculture does not offer a means of subsistence anymore. Although the development of agricultural potential of the region could be a “gold pot” for their well-being and community harmony.

Aqui crece de todo! [Here everything grows!] (personal conversation with a member of the *Grupo de Mujeres* January, 2019).

Some of the other very few local employers in the area include:

- Ecuadorian State (Public school teachers), Healthcare Center.
- A local private (Catholic) day care center.
- Service industry, i.e. Chicken Asadero, and the Oyacoto Gas Station along *Panamericana Norte* Highway.

La mayoría van a Quito para trabajar como jardineros, albaniles, o empleadas domesticas [Most residents, however, commute to Quito to work as gardeners, construction workers, or domestic workers] (female especially on irregular basis) (male resident of the *Comuna*, January 6th, 2019).

Although the above-mentioned positions provide a source of income for some families in Oyacoto, a large portion of residents live at poverty levels (Censo Economico, 2010).

La migracion de nuestra gente es importante. La mayoria se Oyacotenos fueron a Espana, y unos pocos a Estados Unidos. Sabemos que se estan llendo por la falta de trabajo [The migration of our people is important in the Community. The majority of Oyacotenos migrated to Spain and a small amount to the United States. We know that these people are leaving because of the lack of work] (Elder male resident, December 21st, 2018).

Economic development, related to irrigation water, has been a challenge for Oyacoto's residents. According to their perception Oyacoto is an fertile agricultural region. However, its territory is irregular and around the whole *Comuna* there are slopes ranging from 30% to 80%. The soil is sandy, with periods of higher humidity only in the first months of the year.

Cuando la tierra esta humeda la mayoria de las familias nos dedicamos a la produccion de maiz y, tambien, aunque menos, un poquito de frejol, mani, arvejas, alfalfa, tomate, pimiento, solo cuando hay agua pero [when there is enough moisture in the soil most families are dedicated to the production of *maiz* (corn) and, to a lesser extent, beans, peanuts, peas, alfalfa, tomatoes, peppers, only when there is water though] (Oyacoto farmer and occasional gardener commuting to Quito, January 6th, 2019).

Residents dedicated to subsistence farming sow the land manually, without machinery. In general families in Oyacoto are also dedicated to the breeding of small animals like guinea-pigs, chickens, goats, rabbits, among others. But, as one peasant commented:

Da pena ver toda la cosecha seca por la falta de agua [It is painful to see all the production withered by the lack of water] (Elder male resident January 6th, 2017). En este sector todo tipo de fruta se podria producir, como chirimoya, aguacates, guavas, limon, naranja, mandarina. Podiamos criar nuestros animalitos y alimentar nuestras familias. Podriamos hacer Milagros en nuestra comunidad si solo tuviéramos agua [in the area all kinds of fruits could be produced, such as cherimoya, avocados, guavas, lemons, oranges, tangerines etc. We could breed our animals and support our

families. We could do miracles in our community if we only had water (Adult male resident, husband of one the women of *Grupo de Mujeres*, January 6th, 2019).

Services. Participants complained about the critical unavailability of basic services for community members (water among them).

As to health services, there is a medical clinic of the Seguro Social Campesino (Peasants Social Security) that has been operating since 1993 and currently serves 14% of the population, but it is only for *Afiliados* (Affiliates).

Una vez por semana de 9:00 de la mañana a 2:00 de la tarde y no mas de 8 a 10 personas son atendidas [one day per week from 9:00 AM to 2:00 PM, and no more than 8 to 10 people get to be attended] (Elder woman, January 15th, 2019). Las enfermedades mas comunes entre los niños son parásitos, por el agua, tos seca, diarrea, y enfermedades de los ojos por la calidad del agua, y por el polvo (hay problemas de alergias al polvo, infecciones de los pulmones, sinusitis y gripe), y la gente debe viajar lejos para ser atendida por el médico [The most common diseases in children are water-caused *parasitosis*, whooping cough, diarrhea, eye diseases mostly caused by the quality of water, and the dust (there are frequent problems with allergies to dust, sinusitis, lung infections and flu), and people need to travel long distance to get medical attention] (Elder woman, January 15th, 2019).

Failing infrastructure. Participants referred to roads, signage and water infrastructure as failing. The Umayacu water system is in need of repair and maintenance. Many residents noted that the water crisis is not yet resolved and continues to be the main source of conflict among stakeholders within the *Comuna*.

According to Oyacotenos, the Umayacu system's main problem is water theft, ultimately caused by water shortage.

Es que el agua es muy poquita, todos necesitan en Oyacoto, pero no alcanza. Y, la gente ya no es solidaria, algunos solo piensan en ellos [The water (flow) is very little, everybody needs it in Oyacoto, but it is not enough. People are not solidaric anymore, they just think for themselves]. (personal conversation with a male member of the community, December 2018).

The majority of Oyacoteno affirmed, that a new “ojo de agua” (note that the term *ojo de agua*, used to indicate a water source, literally ‘eye of water’ meaningfully reflects the relationship with nature as a living creature, typical of Andean Indigenous cosmovision), they could have a sufficient water supply.

Hay ese otro ojo de agua que nos ayudaría mucho, ahí habría agua suficiente para todos, y la gente dejaría de pelear [there’s another water source that could help us a lot, there would be enough water for everybody, and people would stop fighting] (personal interview with female member of the community, December, 2018).

According to the interviews, the water planning was initiated by the NGO with scarce (if any) attempt to include local customary norms and knowledge in the design of the new irrigation system.

Ellos no saben, y nunca se preocuparon por preguntar como se manejaba el agua aquí antes. El agua es de la comunidad y se maneja desde la Comuna [they don’t know and they never bothered asking how water was managed here. The water belongs to the community and it has to be managed by the *Comuna*]. (personal conversation with the President of the Comuna of Oyacoto, January, 2019).

The NGO “never discussed, negotiated, or defined the project’s basic criteria with the future users, such as rights and obligations, criteria for access to the system, organizational structures, and technical designs” (cf. Boelens, 2001; Hunt, 1989 as cited in Boelens & Doornbos, 2001, p. 347). This is manifest in the way Oyacoto’s “zones were arbitrarily included or excluded from the irrigation project area (Boelens & Doornbos, 2001, p. 347).

Tenemos poca agua. Es cara, y no se puede usar para la cosecha. En el Grupo de Mujeres hablamos muchas veces del hecho que somos pobres y que además de la comida, la ropa y los remedios, ¡debemos hasta comprar el agua! Por que’ no podemos aprovechar de Umayacu y Chusalongo para nuestras tierras [We have very little water. It is very expensive, and we cannot use for our crops. At the *Grupo de Mujeres* we often talk about the fact that we are poor and that besides food, clothes and medications, we even have to buy the water too! Why can’t we take advantage of the *Umayacu* and *Chusalongo* (Water-Slope) for our own land] (Adult female *Grupo de Mujeres*, January 15th, 2019).

Tocamos el tema del agua con los líderes de la Comuna varias veces. Claro que estaban interesados, y buscaron ellos mismos la ayuda de un Ingeniero por medio de varias instituciones, pero dijeron que no habían conseguido a nadie quien quisiera ayudar. Entonces empezamos a buscar particularmente a un profesional. Pero pedían mucha plata, y nuestra comunidad no se lo podía permitir [We raised the water issue to the leaders of the *Comuna* various times. Of course, they were interested, and they went themselves to look for the support of some hydraulic Engineer by means of public institutions, but they said they did not obtain any help. Then we looked for a private professional. But they charge a lot of money, this was unaffordable for our Community] (Adult female ex-President of *Grupo de Mujeres*, January 15th, 2019). El Economista hace lo que quiere, nadie le dice nada. Como el es el único que puede hacer los escritos y no hay quien le pueda remplazar coge el agua solo para ‘el y sus ayudantes. Son tres familias que cogen toda el agua’ [The Economista does what he wants, nobody tells him anything. As he is the one that can do the writings, there is no one that can replace him, and he takes the water all for himself and his helpers]. (personal conversation with woman of the *Grupo de Mujeres*, December 2018).

Answering Research Questions

In order to try to answer the specific research questions, I provide herebelow four vignettes containing community-based narratives, which offer meaningful examples of the worldview clashes related to water management commonly taking place in the Ecuadorian Andes.

The different ideas about water development and water authorization management perspiring from the vignettes, separating the perceptions of the community from those of the State Water Secretary (SENAGUA), provided the context for addressing our concerns about the irreconcilability between a necessarily homogenizing (at least to a certain extent) national water ontology, and a local, culturally infused, customary water tradition (which, surprisingly for us, demonstrated, instead, to be able to positively merge and, sometimes, actively become part of a successful self-determined cultural actualization of local water worlds).

Emic accounts of the struggle of the *Grupo de Mujeres* of Oyacoto, against the gender biased power unbalances of the *junta de riego* de Umayacu led by, and benefitting

women, (while menacing the traditional authority of men in the Ecuadorian study context), allow to demonstrate how LORHUyA may become a potential instrument for leveling the power differences and actualizing community identity with an eye of concern for the most vulnerable. To this end, the impact of the Ministerial Agreements N. 2017-0031, N. 2017-0103, as well as N. 2018-0194, with the inherent possibility they opened to reconcile diverse normative levels, reconstructing community around water, were underlined.

The findings derived from the community-based endeavor, and their implications for recalibrating the repercussions of Ecuador's new water legal framework on community development, and wellbeing will also be illustrated by means of the *Vignettes* here below.

iv. Vignettes of Research

VIGNETTE 1. Ancestral water rituals & state-determined water authorization: The curanderos of San Miguel.

The Sole Authority for Water (presently the National Secretariat of Water - SENAGUA-), as established in the Constitution of the Republic and in the Organic Law of Water Resources, Uses and Exploitation of Water (LORHUyA, 2014), proposes the integrated management of water resources under criteria of economic “efficiency, effectiveness”. It also embraces “participation” and acknowledges the importance of local historical traditions of community-based cooperation, mutual help, and solidarity (i.e. *Minga*, the collective and collaborative work of communities for the conservation, use and consumption of water).

Reality, however, is different. Not only because legal codes encounter and connect with local realities and normative systems, transforming according to the specificities of the context they interrelate with. But, also, because norms often lead little more than a “paper life” (Boelens & Doornbos, 2001).

The analysis of the official SENAGUA narratives in relation to the Oyacoto struggle against the neighboring community of San Miguel, did not mention at any point the ancestral water rituals performed by the *Curanderos* (medicine men) with the waters of the Umayacu source; and yet, article 92 of the LORHUyA on the “Inventory of Sacred Places and Protection of Water Cultural and Sacred Practices” specifically deals with ancestral use of water, providing for its integrity and permanence as follows,

The Sole Authority for Water (SENAGUA) will guarantee integrity and permanence of the places where traditionally communes, communities, peoples and nations practice cultural and sacred water rituals .

The Sole Authority for water (SENAGUA) together with the communes, communities, peoples and nations will carry out and keep a properly updated national, participatory and comprehensive inventory of water sacred places and rituals (Asamblea Nacional, LORHUyA, 2014, p.20-21 -personal translation-).

entitling organizations of ‘*Comunas, Communities, Pueblos and Nacionalidades*’ in whose lands or territories these waters are found, to receive the support of national programs and projects and of Autonomous Decentralized Governments (GADs), in compliance with the Constitution and its own right, for the administration and conservation of water sacred places. Nevertheless, in practice, as the Oyacoto case study demonstrates, not the least attention was directed on the part of SENAGUA to the existence of such rituals when granting the Umayaco water use authorization.

As a matter of fact, at the time of writing of the present article (June 2019), no “Water Sacred Places and Rituals Inventory” has even been created yet.

This “omission” is particularly noteworthy for an assessment of the impact of LORHUyA on plurinationality. The absolute lack of compliance with the norm (art. 92), clearly manifesting from the interviews, as well as from the revision of SENAGUA’s and FEPP’s documents and Minutes of Meeting on the specific case, reveals that neither the NGO’s, nor the Single Authority for Water’s representatives in charge of the irrigation infrastructure building, or technical visits required to grant the irrigation water authorization to the *Comuna* of OYACOTO-, had ever considered (nor seriously taken into account) the ritual ancestral use of water perpetrated locally. This neglect explained -the otherwise inexplicable- aversion toward the Umayacu irrigation system on behalf of their neighbors of San Miguel, and the consequent acts of sabotaging suffered by the infrastructure (which ended up holding back its functioning for quite a while), as well as it exemplifies the superficiality with which these indigenous water knowledges and practices are regarded to by the Ecuadorian State, beyond official rhetoric.

SENAGUA, which “shall guarantee the integrity and permanency of the places in which communes, communities, peoples and nationalities practice rites, cultural and sacred values of water” (Hyer, 2015, p. 92), purposely or not, neglected the local cultural importance of the ritual. SENAGUA officials never bothered inquiring about its potential setbacks on the system implementation during the technical visit (prerequisite for obtaining the water authorization), in a location famous for its *Curanderos*, and endowed with water cultural knowledge.

According to the interviews collected, in fact, the solution to the harsh conflict that emerged between the two *Comunas* sharing the Umayacu water source, in the face of the absolute neglect on the part of the water authorities, had to be found internally through traditional modes of conflict resolution, in accordance with the traditional principles of Indigenous Justice, which focuses more on the re-establishing of harmony, rather than on the application of a fixed norm (Hoekema, 2002). At the end of the process it was decided to build a *Pileta* (water fountain), so that the neighbors of the *Comuna* of San Miguel could keep using the water for ancestral rituals.

Nos rompían las tuberías, nos taponaban el flujo de la cisterna. Así que nos acercamos para conversar con ellos. Nos dijeron que ya no podían usar el agua para las limpieas. Con la comunidad decidimos que era mejor ceder un poquito del agua - aunque los de SENAGUA nos dijeron que nos pertenecía toda a nosotros, y que ellos no tenía derecho-... Construimos una pileta al lado de la cisterna donde podían seguir haciendo los rituales, y el conflicto terminó' [they broke the pipelines, they clogged the flow of the cistern. So we decided to talk to them. They told us that they could not use the water for the *limpieas* (medicine men rituals) anymore. With the community we decided that it was better to give them a little water -although the SENAGUA officials told us that water belonged to us, that they did not have any right on it... We built a water fountain on the side of the cistern where they could continue to do their rituals, and the conflict was over (personal conversation with the President of the Junta de Umayacu, January 2019).

Para nosotros el *Buen Vivir* es armonía. Para vivir bien es importante ir de acuerdo con todos y ayudarnos mutuamente [To us *Buen Vivir* is harmony. In order to live well it is important to get along with everyone, helping us mutually] (personal conversation with the President of the Comuna de Oyacoto, December 2018).

While SENAGUA considered that “Oyacoto had obtained the formal authorization and [thus], legally, it was solely the members of the junta of Umayacu who could use its waters”; and, simplistically attributed the conflict surged to a lack of civic sense, and to the backwardness of the community:

Faltan de sentido cívico, en la Comunidad falta educación [They lack civic sense, they lack education in the Community] (personal interview with a SENAGUA representative, Quito, December, 2018).

No SENAGUA document whatsoever mentioned the possibility of the intercultural tension, nor realized how the neglect of this sacred ritual use of water for locals could have become a problem. Various of the self-defined *Kitus* inhabitants of San Miguel interviewed, instead, referred to this omission on the part of SENAGUA as “a lack of respect for their identity” (personal interview with *Curandero* of San Miguel, January 2017).

Evidently, the fact that the *Comuna* of Oyacoto was formally the adjudicate of the water authorization was sufficient for the SENAGUA’s representatives (and for the NGO’s before them), revealing a de facto hegemonic and interculturally insensitive approach. This lack of intercultural sensibility is also clearly reflected in the system of newspapers publications and cartels, previewed by article 126 of the LORHUyA and in the *Reglamento*, as the selected means for communicating the potential opposition to a specific water authorization process (the newspaper publication, theoretically, informs the public and gives third parties the possibility of objecting to the water authorization process, and/or present alternatives).

Now, if one considers the oral tradition typical of indigenous communities, and the fact that -often- they cannot afford to buy newspapers, it is -culturally speaking-, an extremely unfit diffusion tool.

The interrogation also provided information on the ways the new water authorization regulation is being applied (top-down). In addition, it puts to the foreground that the application of the water law in real life does not appear to represent a priority concern for the Water Authority.

The water law and its regulations, that are very specific and even invasive in terms of requirements, when it comes to the application, do not offer much help in the monitoring and

enforcement of the requirements to be applied and respected. Apparently, community members are totally left alone, dealing with complicated and sometimes indecipherable rules and Western bureaucratic methods.

Ellos ni vienen, imponen sus leyes y luego nos dejan a nosotros los problemas para resolver [They don't even come, they impose their laws and then they leave us with the problems to solve] (personal interview with the President of the Grupo de Mujeres December 2018).

Underlying ontological differences between the law applied by SENAGUA officials and the local indigenous customary normative systems, started to manifest. A clash between the modern rational ideas of technical efficiency (based on a concept of water as a good, and rational individualized beings in pursuit of their personal interest), imposed by SENAGUA, with its inherent misconceptions and misinformation of the superiority embodied in particular ways of modern knowledge vs the community customary or ancestral water discourses, (and -as a consequence- a concept of *Buen Vivir* not always reconcilable), appeared to be at play, within the same struggle to improve water conditions for Oyacoto.

LORHUyA's rigid technicalities (see, i.e. *Instructivo para la conformacion de Juntas de Riego* 2016-1400), instead of accompanying participatively the development of embedded organizational alternatives for the new irrigation system, and facilitating its integration with the pre-existing customary system of irrigation (Boelens & Doornbos, 2001, p. 346), the SENAGUA imposed a modernizing and technical vision of development, which did not tap into the diverse concept of "efficiency" held by the *Comuna Ancestrales* and, more in general, Indigenous communities (going beyond the technical, and embracing social efficiency).

The external infrastructural intervention in Oyacoto, brought to light “the existence at the background of the confrontation (Boelens & Doornbos, 2001, p. 347)] of [a legally] unrecognized community customary water normative system, with [its distinct] logic and rules” (Boelens & Doornbos, 2001, p.346). Although it would be ingenuous not to acknowledge that conflicts and problems related to water use and distribution existed even before the building of the new infrastructure, and prior to the requisites of the new water legal framework, it seems reasonable to affirm that LORHUyA’S blue print/modernizing regulations, adversely affected the wellbeing of the community, disrupting ancestral and customary ways of water use of the local populations.

VIGNETTE 2. The Junta de Agua of Umayacu: The Disruption of Traditional Communal Authority.

As research advanced, I started to question the truthfulness of the political will of Ecuadorian authorities to implement the new paradigm of *Buen Vivir*. Had the plurinational and participative “Citizens’ Revolution” been just mere electoral rhetoric?

According to the 2008 Montecristi Constitution, state policy regarding water should be able to promote sustainable development and ‘good living’ in a national, regional and local scenario. But, were the profound social, political, and cultural transformation embodied in the new water legal framework on the right path toward the building of a new economy based on equity, equality, interculturality, plurinationality and justice? (SENAGUA, *Instructivo para la conformación de juntas de agua de riego y drenaje*, 2016, p. 3).

According to article 12 of 2008 Constitution: “The human right to water is fundamental and inalienable; and, article 13 states that “People and communities have the right to access safely and permanently to healthy, sufficient and nutritious foods; preferably

produced locally and according to their diverse identities and cultural traditions” (Asamblea Nacional, Constitución de la República del Ecuador, 2008).

The question that was puzzling my *Sukak Kawsay*-focused mind was: -Is the new water legal framework actually privileging and protecting the human being before the market, guaranteeing the right to access water for all, in a self-determined way? Is it controlling that the country's economic elites do not become "water lords", ensuring respect for the constitutional, participative and jurisdictional democratic rights of *Buen Vivir*? (SENAGUA, 2016 -Instructivo-, p. 3-4).

The effective fulfillment of these rights implies a real participation of citizenship in all its diversity (LORHUYA, 2014). It needs to formalize, legitimize and legalize on parity basis the complex scenario of users and members that integrate diverse community, public and associative systems to the integral management of this vital resource. In open opposition to these precepts LORHUYA'S article 45 maintains that the “Rendering of water community services will be exclusively through drinking and sewage water boards, and irrigation water boards”. These will have to “be inscribed in the public register of water in compliance with what is established in the law” (LORHUYA, 2014, p. -personal translation-).

As argued by Alex Zapatta (2017), this being “contrary to what is defined in article 318 of the Constitution, for the law gives the possibility that social organizations linked to the collective management of water may be intervened by the State”. While, the regulation to the LORHUYA goes even further, developing and expanding “the possibilities of intervention to organizations that collectively manage water systems” should they fail to comply with the improvement plans”, or should they violate “technical regulations” (Zapatta, 2017, p. 78).

While, as in most Andean indigenous rural communities and *Comunas Ancestrales*, water rights in Oyacoto are “family-based and grounded in common property of the system and the water source (Benda-Beckmann et al. 1998; Bruns and Meinzen-Dick, 2000), and ”entail the right to share in using water, the right to use the irrigation infrastructure, and the right to take part in assemblies, speaking and voting in system-management decision making” (Schlager and Ostrom, 1992; Yoder & Martin, 1998 as cited in Boelens & Doornbos, 2001, p. 347), often relying on dynamic principles of seasonal distribution, crop type, and communal solidarity, SENAGUA’s regulations appear to be based on technical, homogenizing provisions, on stiff conflict resolution norms, instead of “social control among irrigating neighbors”, where, “if any disagreements or quarrels occasionally arise, they are resolved at collective meetings, where the community leaders handle conflicts and facilitate solutions” (Boelens & Doornbos, 2001, p. 347).

In Oyacoto, where families have “a number of small, scattered plots” (Boelens & Doornbos, 2001, p. 347), it is local customary rules that establish whether and how rights can be inherited, sold, and exchanged, provided this is approved by the users’ organization (Boelens & Doornbos, 2001, p. 347). In Oyacoto, as in most Ecuadorian small irrigators’ *Comunas* and Communities, water distribution criteria, whether “by a rotation schedule indicating the time allotted to each user to irrigate” (Boelens & Doornbos, 2001, p. 347), or “the rule of thumb that distributes water proportionally to the right holders’ landholding” (Boelens & Doornbos, 2001, p. 347), are “decisions taken collectively during community meetings” (Boelens & Doornbos, 2001, p. 347), not State-determined in an often irreconcilable fashion.

The SENAGUA applies a contrasting water knowledge whose manifestations within the narratives that emerged from informants' responses to questions regarding the Umayacu statute's wording, instead of reflecting the *Comuna*'s water management reality, traditions, and needs, was perceived as reflecting passively the SENAGUA's blue-print, bureaucratic water management vision both in the structure of the association, the rules members must follow, and the sanctions foreseen for lack of compliance. If, according to respondents, the statute certainly facilitated Oyacoto's entrance into the technical irrigation world, nevertheless it neglected the principles upon which the *Ancestral Comuna* system is sustained, occasioning a disruption of the traditional fabric of social relations revolving around water.

“Antes se manejaba todo a través de la *Comuna*, pero a nosotras las mujeres no nos daban el agua. A veces nos daban, a veces no nos daban. Así que con las compañeras decidimos buscar la forma de tener agua para nosotras. Con la SENAGUA les obligaron a darnos, y como eramos jovencitas y mujeres a los dirigentes de la Comuna no les gusto', empezó la pelea y se perdió bastante la armonía en la comunidad” [Before everything was managed through the *Comuna*, but to us women they did not give water. Sometimes they did, sometimes they didn't. So, with the female companions we decided to find the way of having water for ourselves. The SENAGUA obliged them to give us water, and since we were young and women the men of the directive, they did not like it, the fight started and the harmony within the community was lost]. (personal interview with the President of the Grupo de Mujeres, December 2018).

The Estatuto of the Umayacu Water Users' Board, that should have been made (theoretically), thinking of its directives and members, of local water users, dedicated to promote and boost internal democracy, the solution of their conflicts, and the search for agreements cognizant of culturally embedded norms (SENAGUA, 2016, -Instructivo- p. 4). Instead of accomplishing these functions and objectives (the necessary strengthening, regularization, formalization and legalization processes of these organizations), according to

local customary norms; in practice, appear in open opposition with Article 96 of the 2008 Constitution, which establishes that “all forms of organization ... are recognized, as expression of popular sovereignty to develop processes of self-determination and influence public decisions and policies and social control of all levels of government, as well as public entities and of the private ones that provide public services” (Asamblea Nacional, LORHUyA, 2014, personal translation).

When it comes down to reality, unfortunately, SENAGUA’s regulations seem to exhibit a very different focus, prescriptive and top down: disrupting the tradition of community-run water management, that Indigenous, Montubio, Afro-Ecuadorian communities as well as pluriethnic *Ancestral Comunas* have been using for centuries. As questioned by Zapatta (2017), “how is it possible that its efficiency be based on [mere] technical criteria, instead of the embedded criteria used fairly successfully by the community for centuries to keep the social fabric intact” (Zapatta, 2017, p. 78).

Article 18 subsection i) establishes the exclusive powers of the SAW to grant legal status to the water administrative drinking and irrigation water boards. This provision represents a real menace, adversely affecting traditional local authority structure, as the Oyacoto case study demonstrates.

Interviews as well as the observation of community vs SENAGUA mediation meetings confirmed this instinctive preoccupation of mine. They revealed, in fact, an evident distinction between “two different ways of normative reasoning” (Boelens & Doornbos, 2001, p. 347): with a “government giver of water rights” vs the “dynamics of rural communities [WHICH] ... do not fit with the rigidity of technological designs” (Boelens &

Doornbos, 2001, p. 347). Originating a tension that, instead of enhancing the community *buen vivir*, was potentially socially disruptive.

The negotiation of water rights in the Umayacu irrigation water board system of Oyacoto, illuminated a disjuncture between the customary water management traditions and the newly LORHUYA-introduced system, contraposing the authority of the *Comuna* of Oyacoto (which, among other aspects of community life, traditionally managed water), to the SENAGUA-determined water authority of the *Junta de Riego*.

Los hombres de la Comuna no querían reconocernos el derecho de administrar el agua, pero nos quejamos con la SENAGUA y nos dieron razón, porque ahora se administra el agua por medio de la junta, y nosotras formamos la junta” [The men of the Comuna did not want to recognize to us the right to administer the water, but we complained to the SENAGUA and they gave us the right, because now water is administered through the water board, and we founded the water board” (Interview with member of the Grupo de Mujeres, and the Junta de Riego de Umayaco, December, 2018).

While a long process of conflict and mutual accusation had started within the members of the *Comuna*, since the beginning of the Umayacu irrigation project (even, reaching violent peaks), no one at SENAGUA had ever bothered inquiring the causes of this sudden conflict. A conflict which, once more, was quickly and Colonially dismissed as a series of “acts of sabotage perpetrated by villagers”, caused by “underdevelopment and lack of education” (Boelens & Doornbos, 2001, p.348).

When asked about Umayacu water struggle the CAC responsible (Centro de Atención Ciudadana -SENAGUA), elaborated on Oyacoteno lifestyle as follows:

un conflicto interno entre miembros de la Comuna, quienes no saben respetar los turnos de uso de agua, y sabotean la infraestructura por problemas personales entre ellos. [An ‘Internal conflict among comunards’, whom cannot respect water turns, and sabotage the infrastructure for personal issues] (personal conversation with SENAGUA representative, December, 2018).

The conflicting narratives collected from Oyacotenos vs SENAGUA's officials, serve as a focal point around which to analyze how clashing discourses around nationally vs locally desired forms of development (and water worldviews) are articulated within a community.

En una comunidad el agua debe manejarse con nuestras costumbres, así siempre se ha hecho y nos resultó'. Por que' tienen que venir a decirnos como manejar nuestra agua. Nosotros construimos todo, ellos no nos dieron ni un centavo, y ahora nos quieren decir como hacer las cosas [In the community water has to be managed with our customs, it has always been done this way and it worked. Why do they have to come and tell us how to manage our water. We built everything, they did not give us a cent, and now they want to tell us how to do things]. (Personal conversation with community member, December, 2018).

El manejo del agua en la mayoría de las comunidades no es eficiente, se despilfarra el recurso, y los dirigentes de las comunidades utilizan el agua para chantajear a los miembros de la comuna que no los apoyan políticamente. Como se rebelan, les quitan el agua, y no la distribuyen equitativamente, respetando el derecho humano al agua previsto en nuestra Constitución [The management of water in the majority of communities is not efficient, a lot of the resource is wasted, and the directives of the communities use water to blackmail the members of the *Comuna* that do not support them politically. If they rebel, they take the water away from them, and they do not distribute it with equity respecting human right to water enshrined in our Constitution] (personal conversation with SENAGUA representative, December, 2018).

Locally contested ways of knowing as to irrigation water and competing *buen vivir* discourses were evidently at play between locals, and SENAGUA officials involved in water management in Oyacoto. Competing *buen vivir* discourses that, not allowed to hybridize, establishing a conversation between each other, could only lead to conflict and detrimental outcomes for water management and for the wellbeing of the community.

VIGNETTE 3. Redressing gender-based power imbalances in community customary water management: El Grupo de Mujeres de Oyacoto.

The local stakeholders' needs and positioning, that emerged from the interviews, cannot be represented as a "simple" dichotomy" contraposing an unfit state-determined

water boards system, and a harmonious, locally embedded, customary system (Boelens & Doornbos, 2001, p. 350).

Autoctonous community institutions are not immutable. They dynamically “shift over time” (Marcinek & Hunt, 2019, p. 13). Encounters between national and community-based water ontologies do not always result in a state of asphyxiating tension, they can -at times-, illuminate the path toward self-determined power realignments, and identity actualizations.

It is important to acknowledge that tradition -often- “serves as a means of legitimizing certain forms [of power relations] to the expense of others” (Brosius, 1999, p.177). Water is, in fact, not unaware of class, race, ethnicity, or gender. Water management arrangements can reinforce (or, conversely, redress), unjust power relations/equilibriums. In patriarchal societies such as Ecuador, where gendered waters tend to reduce women’s access to the vital liquid, water is used by the powerful to reproduce its power, both nationally as well as at the local community-level (Spain 1992 in Choudhury & Chauhan, R. 2015, p. 5).

As in most Andean rural communities, women in the *Comuna* of Oyacoto had traditionally been excluded from water decision making (although deeply involved in land and water use for the subsistence of their families). The NGO- fostered Umayacu water project was impulsed by the Grupo de Mujeres of Oyacoto (whom, later on, and in accordance to LORHUyA, legally became the sole administrators of the *junta*). This represented a serious menace to the previously undiscussed authority of male Oyacotenos, and the power structure of the *Comuna* (men had historically been in charge of managing the water supply within the *Comuna*, in accordance with traditional *Comuna* authority). In a region where “women must stay home”, the *junta* association was, therefore, not welcome.

Harsh fights started in Oyacoto because of the project “[my husband and the *directiva* of the *Comuna*] didn’t want it” (personal conversation with female member of the water board and one of the funders of the Grupo de Mujeres, September, 2018).

It seemed obvious to everyone in the *Comuna* that enhanced water control would have fostered an increase in the social capital of Oyacoto’s women (Marcinek & Hunt, 2015), even beyond water related issues. The Statute format (designed by the SENAGUA) specifically featured mandatory steps to be taken in order to foment a parity approach to be respected between men and women (AM 2017-0103), leading to a consequent rise of Oyacoto women’s awareness of their rights.

Nuestros esposos no querían que nos metamos en esto del agua, no era cosa de mujeres decían. Hasta nos pegaban cuando pasábamos tiempo fuera de la casa para hacer Minga. Así que nos pusimos de acuerdo que si el marido quería pegar a una de nosotras, las demás compañeras corrian a la casa para defenderle [Our husbands did not want us to start this water thing, it was not a matter for women, they said. They even beat us when we spent time outside of the house to work on the *Minga*. So that we decided that if somebody’s husband tried to beat one of us, all the other companions would run to the house to defend her] (personal conversation with the president of the Grupo de Mujeres, Enero, 2019).

Those aspects of LORHUyA that appeared to have deprived the *Comuna* of its traditional voice in terms of water (fragmenting the *Comuna* power structure), were now kindling a considerable power shift to the advantage of women (traditionally subaltern in community life decision making), leaving in their hands a strategic, customarily men-managed strategic resource, such as irrigation water.

Women turned to the SENAGUA state’s offices as men were attempting to deny them access to the water based on the *Comuna* customary water management traditions. As Boelens and Doornbos (2001) suggest, the women group of Oyacoto was “using official laws

to obtain formal recognition” (Boelens & Doornbos, 2001, p. 350) for water management, and, simultaneously redressing unjust power relations within the community.

Diverse stakeholders’ groups within the community, “appealing to different normative systems”, demanded “to obtain recognition of their rights” (Boelens & Doornbos, 2001, p. 351). The *Curanderos* of San Miguel demanded respect for Umayacu ancestral water rights. Meanwhile, women, were “attempt[ing] to get official legal backing”, striving “to legitimize their claims by appealing to state institutions” (Boelens & Doornbos, 2001, p. 351), in order “to make a place for an innovated bundle of rights” (Boelens & Doornbos, 2001, p. 352), against men’s privilege.

Article 62 of LORHUyA (p. 16) states that:

Article 62.- Women and human right to water. Any water policy should incorporate the gender perspective so that concrete measures are established to address the specific needs of women in the exercise of the human right to water. Similarly, measures will be taken to achieve formal and material equality between women and men, especially as to participation in community activities on water access, water management and the strengthening of women as ‘actors for change’ (Asamblea Nacional, LORHUyA, 2014, p. 16 - Personal translation-).

Maria (name changed), one of our respondent self-identified *Kitus* native of Oyacoto, no kids, works in her small plot, and in Quito as a cleaning lady. She stresses in her interview that she practically manages alone the entire household and crops. She explains in detail, how she got divorced because of her activism in the *Grupo de Mujeres*. Her husband abandoned her. Though, she financially supported her family, the role of decision-making lied in her husband’s hand. In agriculture work, after her divorce. she needed to compromise with other male irrigators, and especially with male water users it was not easy. In her interview she said that women play a very important role in the community. Not only in the family for the upbringing of children, but also to support the family financially, but no one recognizes the

additional difficulty “es mucho mas duro para una mujer, esta’ bien que el Estado nos apoye” [it’s much harder for a woman, it is right for the State to help us], “sino nunca nos permitiran de salir adelante y ser dueñas de nuestras decisions”- [otherwise they will never let us progress and be the bosses of our own decisions]. “Eso no significa olvidarnos de nuestra identidad, sino acabar con la injusticia con la que nos tratan los hombres, y por fin tener los mismos derechos [this does not mean to forget our identity, but to get over with the injustice with which men treat us, and finally have the same rights] (personal conversation with one of the funders of the Grupo de Mujeres January 2019).

Alba (name changed), another respondent, has talked about her family. Single mom of an adopted child given to her ‘as a present’ from an even humbler mom “me lo regalaron porque no lo podian tener, ni alimentar” [he was given to me as a present, because they could not support, nor feed him]. Alba is stigmatized within the community for not having a husband, and because she works outside of the house. This research co-participant throughout her interview has expressed her pride for her identity, but also her fear, and a sense of rebellion against men traditional privileges. While talking about her lack of decision-making power at home and also in the field space, fighting for the water necessary to grow her small crops. This challenge traditional notions of power. Water spaces in rural communities have become highly gendered limiting water access to women, according to the respondent, who also described how all the *Comuna* decisions were governed by men. “A cada vez que trato de tomar la palabra en una reunion de la Comuna, encuentran una forma de hacerme callar, diciendo que digo tonterias. Si la SENAGUA no los obliga, nunca compartirán el agua con nosotras las mujeres” [Whenever I try to speak in the *Comuna* meetings they find a way to silence me, saying that I speak nonsense. What else can we do?

If the SENAGUA doesn't make them, they will never share the water with us the women] (personal conversation with a member of the junta de Umayaco, and member of the *Grupo de Mujeres*, December, 2018).

The LORHUyA was used, in both cases, as a tool “to sustain [local] claims” (Stavenhagen and Iturralde, 1990; Weay, 1993 as cited in Boelens & Doornbos, 2001, p. 345): the *Grupo de Mujeres* striving to legitimize their water authority in the face of the male privilege within the community in terms of water power; and, the *Directiva* of the *Comuna* of Oyacoto legitimizing , by means of the LORHUya, its authority outwardly in the face of the neighboring *Comuna* of San Miguel for the authorization of the Umayacu water source (although this meant, to tread on the ancestral and spiritual uses of water part of their shared customary water cosmovision); while -simultaneously-, defending their privilege inwardly against the *junta de riego* formed according to the rules of LORHUyA, resisting the new national water legal framework, based on their customary water management traditions where water was controlled, among other functions, by the Comunal authorities (Boelens & Doornbos, 2001, p. 345).

This seems to corroborate what Benda-Beckmann et al. contend (1989), that “stakeholders select strategically out of other sociolegal systems the norms, rules, and procedures that may legitimate and strengthen their particular claims” (Benda-Beckmann et al. 1989 as cited in Boelens & Doornbos, 2001, p. 345).

The LORHUyA seems to have contributed to the removal of gender-based obstacles preventing women of Oyacoto from participating in local water decisions. This actualization of water management traditions (favoring women in terms of power redressing), was not disrupting; in turn, it supported efforts to maintain traditional unity, preserving cultural

resources of solidarity and equity as the basis of the *Sumak Kawsay* of the *Comuna*. Additionally, women decided to continue to act ‘comunally’ and share water with all Oyacotenos. Traditional identity values of harmony and reciprocity prevailed, while a self-determined confrontation of unjust existing water conditions, and gender structures was taking place.

A new transformative instrument of women empowerment was thus provided by the LORHUyA. The tension created by the encounter between the national normative level and the customary one, led to the unmaking of the historical male exclusivity of the Oyacoto irrigation waters decision making (Tsing, 2005, p. 6).

This reinforces the idea that, transformations brought about by the LORHUyA and its regulations, do not necessarily represent an “instrument of domination’ as contested by a critical positioning; they may either “open up major opportunities for consolidating and reinforcing the status quo”, or -conversely- “empowering alternative stakeholders” (Menchu, 1998; also see Boelens 2001; Van der Ploeg, 1998 as cited in Boelens & Doornbos, 2001, p. 345). The case of the Oyacoto’s women group clearly demonstrates how a process of negotiation between distinct normative levels can at times represent “a force for resistance and... advocacy”. Carrying within it “the capacity to generate and innovate, organized collective action, and, identity, and self-esteem” (Stavenhagen and Iturralde, 1990; Weay, 1993 as cited in Boelens & Doornbos, 2001, p. 345), for historically silenced groups.

VIGNETTE 4. Rebuilding community around water: The Chusalongo system.

By means of the national normative level, the women group of Oyacoto managed to overcome the *Comuna* internal gender-based power struggle. SENAGUA ratified their exclusive right to manage the water of the Umayacu source, and the *junta de riego* (irrigation

water board) officially became the sole authority as to the Umayacu water decision making, distribution etc.

However, a new complex dynamic of internal water hoarding, infrastructural sabotaging, and lack of water-turning observation started shortly after the inauguration of the irrigation system (numbering at the time 120 irrigator families), which prevented beneficial outcomes to be obtained from the recently inaugurated water infrastructure. The exploitation of the Umayacu water remained, thus, *de facto* impossible for the majority.

El Economista se lleva toda el agua. El quien no hizo nada, nos quito' casi enseguida. Después de tanto trabajo, al mes ya no tenia el agua, mientras que 'el y sus compinches riegan libremente con manguera [The Economista takes all the water, he didn't do anything and he took it away falmost right away. After so much work, from the first month water was already taken away from me, while him and his accomplices water freely with a hose -while the Umayaco water system, was meant for drip irrigation -] (personal interview with a female member of the water board, January, 2019).

On the one hand, as in most rural Communities and *Comunas* within the country, SENAGUA did not have in Oyacoto the power, the capacities and the means to enforce locally its decisions; therefore, it manifested a passive attitude in the face of local protests against water hoarding on the part of an outsider, the "Economista", whom had bought land in Oyacoto and, by virtue of his privileged position and prestige, had quickly managed to become President of the Umayacu water board, and was diverting the Umayacu water to his benefit, and that of his local supporters.

Hasta' cambio' las tuberias de distribucion [he even modified the distribution pipelines] (personal interview with a member of the Grupo de Mujeres, January, 2017).

The management of the *junta de riego* de Umayacu, since the very beginning, challenged locals with all its strict western technical knowledge-based regulations (see i.e.

Reglamento to the LORHUyA, and the ARCA requirements). The requisites of the new law required a level of literacy to interpret the law that was unachievable for the families of Oyacoto, left without any accompaniment offered by the SENAGUA (in spite of the various articles of the LORHUyA stating -instead- that training and accompaniment should be granted), thus translating into tedious impediments for local day-to-day water use and management.

'*El Economista*', in this sense, turned out to be the only person capable of managing the bureaucratic processes required by the provisions of the national law. His administrative and Spanish literacy skills put him in a position of power compared to the comunards of Oyacoto (most of the *Kichwa* mother-tongue, and with very low levels of literacy). His western knowledge suited the modernizing philosophy of the new water legal framework: he spoke the same language of SENAGUA, and -therefore-, he ended up manipulating, and being the sole privileged by the functioning of the system.

Again, the lack of intercultural sensibility within the law's regulations, was making SENAGUA deaf with respect to ancestral communities' water management dynamics, and their customary oral traditions, and language diversity. A deafness that obliged the *junta* to depend on an outsider figure, igniting further conflict within the *Comuna* (insider/outsider issues, which added to the pre-existing gender-based one, kindled by the creation of the *junta de riego*, fragmenting the customary community water authority, and endangering men's privilege).

El no es de aqui, no es parte de la *Comuna* [He is not from here, he is not part of the Community]. Nosotras quisimos botarlo a fuera, pero no sabíamos como hacer los tramites de la junta. Estabamos obligadas a aguantar, porque ninguna de nosotras podía hacer los escritos que la SENAGUA nos exige. [We wanted to kick him out, but we didn't know how to do the bureaucratic staff for the board. We were obliged

to endure, because none of us could do the writings the SENAGUA requires] (personal conversation with a member of the Grupo de Mujeres, December 2018).

The requirements inherent in the law and its regulations obliged Oyacotenos to undergo outsiders' ruling. The possibility of intervention and water authorization withdrawal should the junta fail to meet the bureaucratic requirements (LORHUyA, article 52), made it extremely complicated for untrained community members to manage administrative processes according to the strict SENAGUA's requisites. Not to mention that, as a form of resisting the *Economista's* hoarding, many partners of the *junta* had stopped paying the water fees (since they did not get any water). Thus, offering further opportunity and pretexts to take personal ownership of the Umayacu water, for the *Economista* in the face of the SAW (SENAGUA), which ended up legitimizing the hoarding.

Los usuarios no estan al dia con cuotas, por eso les corte' el agua [Users are not updated in their payments, that's why I cut the water] (personal interview with the *Economista*, December 2018).

So, the situation in Oyacoto, when the conflict mediation accompaniment on my behalf started, was as follows:

1) The irrigation system wasn't working for most of the Oyacoto population, in spite of all the sacrifice, and hard work invested.

2) The difficulty brought about by a fragmented authority within the *Comuna* was disrupting local social relations and weakening the enforcement of traditional norms of harmonious conduct within the community (solidarity, reciprocity, collective decision making).

3) All the bureaucratic procedures, implied by the SENAGUA's technical water regulations, and the very administrative hitus that the *junta de riego* required represented a serious problem of vulnerability vs powerful outsiders for the *Comuna*.

4) Finally, the inherent water scarcity of the Umayacu irrigation system (only 5 liters/second), undoubtedly added to the multilayered culturally infused problems, and normative level incongruences within the *Comuna*.

After various months of community-based meetings with the local population, it was decided that the first step would have to be finding more water availability for the *Comuna*: the Chusalongo water source, according to research co-participants, could be the beginning of the answer for Oyacoto.

Esa aguita nos serviría mucho, siempre sonamos con poderla usar para nuestras *chacras*. Con mas agua estaríamos felices [that water -interviewee uses a diminutive *-ita*, appearing to be expressing an affectionate relationship to water- would serve us a lot, we always dreamt of being able to use it for our small plots. With more water we would be happy] (personal interview with a female member of the community, November 2018).

In order to complement with the input of a second water source the Oyacoto irrigation system, it would have been necessary to have the SENAGUA withdraw the authorization from the local GAD of the rural parish of Calderon, and, afterwards, would have required the submission of a new '*solicitud de agua*' (water authorization request) to the SAW, with all the time-lengthy, tedious requirements implied, in order to form a new *junta de agua de riego* (AM 2016-1400).

Nunca encontraran el dinero para contruir la infraestructura no es rentable para pocos comuneros, y nunca seran capaces the manejarla [They will never find the money to build the infrastructure, it is not rentable for few comunards, and they will never be able to manage it] (personal interview with a CAC SENAGUA representative, December, 2019).

Nunca llegaran a ponerse de acuerdo, en esa Comuna pelean por todo. La ultima vez que fui a Oyacoto, casi se pegan. Es un relajo! [They will never come to an agreement in that community they fight over everything. The last time I went there they almost got physical. It is a mess!] (personal conversation with the SENAGUA's attorney in charge of the authorization withdrawal and, eventually, re-assignment, December 2018).

According to the SENAGUA regulations a new irrigation board would have had to be formed to get the authorization for the second water source (Chusalongo). As a consequence, once more, Oyacoto's irrigators would have had to undergo a new division in terms of their water rights (see *Instructivo*, 2016). The risk, of "building two separate systems in a single irrigation zone, [with] separate scheduling, different flow rates, and different administrations and obligations" (Boelens & Doornbos, 2001, p. 349), was to turn the ditch already dug within the authority system of the *Comuna* by the creation of the Umayacu Junta de Riego, into a deep flow of discord, eroding even more the unity, and the customary law-based social system of the community (Boelens & Doornbos, 2001, p. 349).

For those acquainted to traditional community life, it is evident that water access, management, distributions and use principles cannot be standardized, as required by the SENAGUA, for "they are produce[d] in response to different social relationships and contexts" (Boelens & Doornbos, 2001, p. 349), embedded in the community history, identity and reality. Facilitation in Oyacoto was, therefore, hoping to participatively find culturally fit alternatives for future management and distribution of the irrigation water (Boelens & Doornbos, 2001, p. 350).

At the beginning of 2017 I was able to design, submit, and get the approval for a project of Community-Engagement, with the help of the *Departamento de Ingenieria Popular*, of Universidad Central del Ecuador (DIP-UCE), where I have been working as an

instructor for various years now. The engineering project focused on redesigning the irrigation water system, including the exploitation of the second water source of Chusalongo, as well as the restructuring of the Umayacu infrastructure. Almost two years of weekly community-based participatory activities integrated the participant observation carried out from the very beginning of research and accompanied the technical redesign-project developed by two engineering students.

During facilitation, it was puzzling to me to see how the articles and guidelines of the new water law dismissed so superficially the principles of collective harmony and reciprocity guiding the *Comuna*'s customary water management system (particularly considering the huge input that community organizations have historically contributed, alleviating the responsibilities of the Ecuadorian State's water management function).

It appeared reasonable that, according to the redistributive philosophy enshrined in the new LORHUyA (mirroring the 2008 Constitution *Buen Vivir* objectives), irrigation water should have had to be shared on equal basis within the *Comuna Ancestral* (not hoarded by a few fortunate ones), and customary water management traditions be respected.

First of all, the Umayacu water source was too little to provide sufficiently for all Oyacotenos -all involved in subsistence agricultural activities-, with its 5 liters per/second flow. Then, the discomfort that a split of authority would cause, occasioned by the formation of different *juntas de agua* within a community that had traditionally managed water collectively through the *Directiva* of the *Comuna*, wasn't that hard to predict (even an ignorant in terms of water exploitation as myself could envision that).

Additionally, while community meetings were discussing different strategies for implementing the future Umayacu-Chusalongo irrigation system, the diverse proposals

participatorily gathered from the members of the *Comuna* (Boelens & Doornbos, 2001, p. 350), were inevitably constrained by the SENAGUA mandate to administer each source independently and through the creating of separate irrigation systems and boards.

The *Comuna*'s leadership, as well as the members of *Grupo de Mujeres* coincided in favoring combining the two flows of the Umayacu and Chusalongo waters within a single system. In order to bury old conflicts, they agreed that all members of the community would have to take part in the new irrigation water infrastructure building, and afterwards in its management, forming a single water organization.

After a long process of conflict facilitation, the leaders of the *Comuna*, gradually started to acknowledge the effort and good work of the *Grupo de Mujeres*, and community harmony started to rebuild around water decision-making. However, a way of reuniting all Oyacotenos, getting them to benefit from, and to participate in the water management of the new irrigation system had to be recovered. Even if the majority of the members of the *Comuna* considered it greatly complicated and confuse to organize water distribution and user-managed administration for two different water boards (ART.52 LORHUyA/ Instructivo 2016-1400) (Boelens & Doornbos, 2001, p. 350), at the time, the provisions of the LORHUyA did not leave much of a choice.

The Umayacu experience had left many inhabitants disappointed, since -in spite of the commitment, and exhausting loads of physical work devoted to the first irrigation system building, the water hoarding, and the tacit legitimizing attitude of the SENAGUA in the face of the injustice, had betrayed their trust.

Nevertheless, only about 10 out of a total of 120 families eligible to benefit from the redesign of the irrigation water system, were against the re-junction, and the integrated

management of the two sources (coincidentally, it was mainly the families who were still receiving water from the Umayacu system, who manifested against this possibility).

Although, in general, Oyacotenos all lacked confidence that they would ever get the water, they were willing to give it a try, and go for the new Chusalongo system, if the water could be managed again, as a united *Comuna*.

New possibilities for Ecuadorian irrigators communities opened-up by means of the *Acuerdo Ministerial* n. 2017-0031 on '*Gestion Comunitaria del Agua*', the '*Eje transversal Intercultural y de Genero*' n. 2017-00103, and the *Acuerdo Ministerial* n. 2018-00194, which were all approved during the SENAGUA Administration of *Kayambi* Indigenous leader Humberto Cholango (2017-2019). These reforming provisions finally represented a turning point for the *Comuna* of Oyacoto.

Community members negotiated and agreed a final solution in a General Assembly:

- A combined system would be created (the 120 original families of the *junta* de Umayacu, according to the amount of labor offered for the construction of the first irrigation system, would pay a discounted fee to join in).
- A single organization would manage the two water sources (Umayaco and Chusalongo) controlled by the *Directiva de la Comuna*, according to Indigenous customary water traditions.
- Additionally, with a notable reconfiguration of the customary normative system of the *Comuna*, Oyacotenos would have started to recognize equal rights of voice and vote to women (before the voting system envisioned only the vote of the "*jefe de hogar*" -head of the house-, typically, the man), and equal *Minga* hours value for their work -not "half" as it used to be- (Boelens & Doornbos, 2001, p. 351).

In accordance to the new possibilities opened by the Legal Pluralism-inspired *Acuerdos Ministeriales* of the Cholango Administration of the SENAGUA (2017-2019), strengthening a more plurinationally participative '*Gestion Comunitaria del Agua*', Oyacoto could finally opt for a unified water management system with two different water sources, but distributed according to a single distribution system, managed by the members of the *Comuna* as a whole (Boelens & Doornbos, 2001, p. 351).

Plural normative level and hybrid rights

The long legal battle with SENAGUA, for the Chusalongo water authorization developed together with the community of Oyacoto, and all the mediation process had espoused me to a sub-discourse related to water present within the regulation of LORHUyA, a discourse clearly prioritizing a particular national top-down stance toward the lifestyle choices considered appropriate and, thus, imposed to everyone by the SENAGUA as a universal recipe for efficiency.

The new hybrid management possibility envisioned during the mediation process (somehow establishing a conversation between local customary and state normative levels), - it is important to underline-, became possible only by means of Ministerial Agreements n. 2017-0031, n. 2017-00103, and n. 2018-00194. These, deepened the recognition of customary water management traditions and practices, thus allowing the possibility of their self-determined actualization (e.g. through women power redressing), and brought about a bureaucratic simplification (at least to a certain extent), to make it easier for *Comunas* and Communities customarily employing oral traditions, to manage water in a more culturally-sensitive and fit way. A water repartition and management based on collective unity, and

reciprocity criteria, could now be re-attempted; and, irrigation water management could finally be recovered by Oyacotenos from the hands of outsiders.

While accompanying the population of Oyacoto through their fight for re-constructing community around water, working collectively in *Mingas* in order to prepare for the SENAGUA inspections, and -simultaneously- personally following the legal battle for the water authorization in SENAGUA (still ongoing), I had the chance of witnessing a tendency on behalf of Oyacotenos “to appealing both to official rights as well as to their ancestral rights, two normative systems that are often in conflict or simply refuse to recognize each other” (Boelens & Doornbos, 2001, p. 351).

Oyacotenos demonstrated that “the often-mentioned contrast between official and ancestral [customary] rights is not always a valid or exclusive basis for analyzing water normative” (Boelens & Doornbos, 2001, p. 343) [encounters/clashes]. The factor “bonding irrigators together and driving their collective action” (Boelens & Doornbos, 2001, p. 343) was, as the following paragraph will emphasize, recovering their auto-determination.

v. *Conclusion*

The purpose of this work was to gain input from community members, regarding the needs, issues and problems in the *Comuna Ancestral* of Oyocoto, associated with community development efforts related to the implementation of the new irrigation water system. However, the need to monitor -more broadly-, the impact of the implementation of the new LORHUyA requirements, as well as its repercussions for the local customary water management traditions, soon became imperative.

The preliminary steps of community fieldwork, focused on gaining input on potential solutions to initially identified problems (i.e. the conflict associated with water scarcity, which persisted despite the new Umayacu irrigation water infrastructure). These were already revealing of inherent intercultural barriers, and power unbalance manifesting among local stakeholders, and SENAGUA state officials; which, translated in the evident neglect of the importance attributed to the ancestral water uses and practices of the Umayacu water source for the local self-identified *Kitus* population (Vignette 1); and, resulted in the disruption of the traditional social fabric of the *Comuna* of Oyacoto, due to the LORHUyA-descending imposition to constitute a '*junta de riego*' (Irrigation Water Users' Board), which, on the one hand, fragmented the local *Comuna*'s authority (Vignette 2); but, on the other, allowed to challenge the pre-existing gender-based privileges as to water access, and decision-making within the community (Vignette 3). The last stages of research witnessed how the Ministerial Agreement enhancing customary water management, instead, contributed to the mediation of the conflict (Vignette 4), and the rebuilding of community unity around water.

The data obtained through the first round of fieldwork observation and interviews, justified the urgency to find, more broadly, an answer to the following Research Questions:

RQ1: How does new water law (LORHUyA, 2014) underlying discourse, touches ground in the self-identified Indigenous and *Mestizo Comuna* of Oyacoto?

RQ2: Where have national water management norms encountered resistance, and where are they, instead, readily embraced, and leveraged into local *buen vivir* enhancing outcomes?

RQ3: What can the inclusion of local perspectives add to our understanding of the LORHUyA in terms of community *buen vivir* around water?

The starting point of this research, maintained that a deeper understanding of the way water legal frameworks translates in rural realities, impacting their *buen vivir*, represents the first step towards the implementation of a culturally fit and effectively beneficial implementation. Keeping in mind that the “struggle for water is simultaneously a struggle for power” (Boelens & Doornbos, 2001, p. 352), and that the political ecological analysis of water object of this case-study in the Ecuadorian self-identified Indigenous and *Mestizo Comuna* of Oyacoto (Calderon, Pichincha), would disclose, not only how power differentials both at the national and local level might impact the outcomes of the LORHUyA for the implementation of developmental water projects (at times, in a way that is different from the expected one); but, also put to the foreground the different manifestation of ontological “tensions” vs “encounters,” among diverse water normative levels, and the underlying vision of *Buen Vivir* inherent within them.

Four vignettes were chosen to exemplify how some of the provisions of the new water legal framework are touching ground locally, impacting local social and customary water management environments. The narratives revealed some of Oyacoto’s water-related power dynamics, that from 2014 to 2019 (first five years of the LORHUyA’s implementation), affected the communal traditional water practices, realities and wellbeing.

The vignettes allowed to re-examine the encounters/tensions between local ideas, values and practices about water management, and compare them with those promoted by the National Secretariat of Water -SENAGUA-, representing a valuable example of how the nationally and locally intertwined manifestations of irrigation-water developments are comprehended, negotiated and, at times, metabolized vs resisted to by local stakeholders (Marcinek, A.A. and Hunt, C.A., 2019, p. 14).

First, we focused on how the top-down, modernizing water management discourse rooted in LORHUyA circulated and was received by the self-identified Indigenous and *Mestizo Comunas Ancestral* of the rural parish of Calderon (Oyacoto, and San Miguel), manifesting in state-determined transformations to local ancestral water use and management conditions (Vignette 1), clearly revealing the rhetorical void in which the provisions of article 92 “on sacred and spiritual use of water” ended up falling in daily praxis. Second, we analyzed how the mandate to form *juntas*, implicit in the *Instructivo* to LORHUyA 2016-1400, and article 52 of the law, affected the *Comuna*’s authority and social unity (Vignette 2). Then, we analyzed how -unexpectedly-, the national normative level, became a potential tool for redressing traditional power unbalances (Vignette 3); and, finally (Vignette 4), how the possibility offered by *Acuerdos Ministeriales* 2017-0031, 2017-00103, and 2018-00194 strengthening community water customary traditions allowed, at least to a certain extent, to rebuild community unity around water, by actualizing Oyacoto’s ancestral customary water traditions, in acknowledgement of Oyacoto’s identity and own social functioning norms, but -also-, beyond binaries.

The vignettes additionally provided, examples of interweaving national vs local *Buen Vivir* discourses within the context of water management. Such examples illuminated not only the possible intersections between different normative levels (state vs local), but also showed how inseparable these are, suggesting that -if the aim is to attain rural *buen vivir*- national policies ought to take into consideration the whole normative picture of the water scene, and its emic understandings. The analysis of the Oyacoto case study’s interview material demonstrates, in fact, how *Buen Vivir* discourse flows back and forth, via water management normative levels, between the national and the local scale.

This preliminary monitoring of Ecuador's new water law repercussions in small irrigators' communities, associating ethnography of communication (EOC), and participatory action research methods to the legal text analysis, provided a scent of how, on the one hand, LORHUyA introduced competing discourses; while, on the other, it provided a channel to yield culturally infused alternatives, about new ways to negotiate and implement water legal frameworks and rights. The political ecology of water in Oyacoto, thus, allowed to reconcile the contributions potentially offered by both the national, and the local customary water discourses and traditions from the eyes of the populations directly involved.

By analyzing transcripts and field notes, it became evincible where national water discourses and regulations encountered resistance due to diverse understandings of water management (i.e. water as an exploitable resource vs water a social-gluе), but also where they may leverage into locally empowering and beneficial outputs (i.e. addressing gender-based power inequality); thus, providing evidence not only of how dynamic identity shifts are possible (local culture is alive and constantly transforming), but also how opening a conversation between the different normative levels involved, can lead toward more fit, culturally-infused outcomes for local *Buen Vivir*.

Interview material revealed, conflicting perspectives: the SENAGUA homogenizing discourse that keeps prioritizing the technical/rational experience, vs the competing emic discourses that prioritize, instead, local solidarity and reciprocity-based collective determinations, examples of an ongoing tension between the contrasting philosophies underlying water management. So, while on the one hand, this article adds to the tradition of previous political ecologies of water, acknowledging that Ecuador's new water legal framework is far from devoid of negative social consequences, particularly for communities'

customary traditions and practices, due to stiff (power driven) delegitimizing tendencies between the national and the local normative levels that still persist despite the “plurinational rhetoric” (e.g. Duffy, 2008; Fletcher & Neves, 2012; Hunt, 2011); on the other hand, it puts to the foreground that, “understanding emicly, and re-calibrating the influence that these encounters among diverse [water cosmovisions] may have a beneficial impact on local social [and water] well-being” (Marcinek & Hunt, 2019, p, 14).

The incongruencies observed, if understood and taken into serious account, are susceptible to translate into a meaningful contribution, welcoming a new hybrid path, which neither under evaluate the importance of the existence of a coherent national legal framework on water (in order to guarantee a just level playing field), nor neglects, or minuscule the relevance of local emic understandings, and the legitimacy of pre-existing customary water rights, thus allowing the required flexibility when it comes to local implementation.

It clearly confirmed that “water rights and distribution rules are often formulated not just through prescribed legal and technical designs, but on the run and during a process of confrontation, as different groups or institutions with conflicting interests vie with each other” (Boelens & Doornbos, 2001, p. 349), and that, undoubtedly, a lot has still to be done in order to allow more just and sustainable water options for Ecuador’s ‘*Comunas, Communities, Pueblos and Nations*’, struggling to maintain their autonomy and self-determination. However, it also appeared that the *Acuerdos Administrativos* 2017-0031, 2017-00103, and 2018-00194, represented a positive step in direction of the recognition of Ecuador’s legal pluralism around water; which, by its very nature, is based on inevitable *rendez-vous* and confrontations between “different ontologies, epistemologies, identities, value systems, and discourses” (Marcinek, A.A. and Hunt, C.A., 2019, p. 4).

As Boelens and Doornbos (2001) contend “water rights” should be considered “as a societal relationship among social actors” (Boelens & Doornbos, 2001, p. 352); particularly, as Ecuador’s water “receivers’ are highly heterogeneous in their [identities, customary water rights, and] ‘acceptance’ of official rights” (Stavenhagen and Iturralde, 1990; Weay, 1993 as cited in Boelens & Doornbos, 2001, p. 345); thus, as the Oyacoto case study suggests, the law’s outcome in daily practice can offer quite interesting surprises.

The “resistance” to the LORHUyA perceived within the communities in our research sites is -in fact-, not due to “a resistance to change in itself” (Boelens & Doornbos, 2001, p. 352), but rather, to the strive “to maintain their autonomy..., conserving their own existing irrigation norms” (Boelens & Doornbos, 2001, p. 352), or -sometimes-, changing them according to self-determined identity reconfigurations.

CHAPTER V

Discussion: Implications, Limitations and Future Research on the LORHUyA

i. Discussion of Results

This study contributes to the fields of political ecology, water justice, community and regional planning, combining different branches of social sciences in an interdisciplinary endeavor, opening up a multilayered discussion regarding the capability of the Ecuadorian state to advance its *buen vivir* participative and plurinational agenda in relation to water management.

As the implementation of the 2008 constitutional principles of *buen vivir* continues to “contrast (s) with the advances of Ecuador’s public policy”. The exploration of the new water law (LORHUyA, 2014), represented an interesting case to analyze the reasons for “the distance existing” between what *buen vivir* promises, and what the Ecuadorian government is actually doing; whether it reflects a mere “difference in the rhythm of the transformation process”, or whether “the project, the orientation and the direction of the changes is a different one” (Ospina in Villalba, 2011 p. 14).

Undeniably, the implementation of *buen vivir* has been facing quite a few obstacles in the last decade, both theoretically and practically. The relationship between civil society and the state is becoming increasingly tense; as, in most cases the national state “is assuming the leadership in the promotion of *buen vivir*, ending up controlling the entire

process to the expense of a real, free participation of citizens' organizations" (Gudynas, 2011 p. 15), and plurinational groups.

As highlighted in the introduction to this work, it is on this aspect of appropriation of *buen vivir* on behalf of the national state that the analysis of the LORHUyA is focused. Since it might end up mining the basis of not only a sustainable, integrated and interculturality fit water governance, but also the basis for the very viability and sustainability of the new paradigm, implying -as argued by Gudynas (2011)-, the *de facto* "dissolution of the arenas of collective construction" (Gudynas, 2011 p. 15) that constitute its very essence.

Limited research existed as to the understanding of the implications of Ecuador's new water legal framework for Indigenous, *Montubio*, Afro-Ecuadorian and *Mestizo* communities. Using approaches from political ecology and discourse analysis (the ethnography of communication -EOC-), in order to fill this gap, this study monitored the first five years of implementation of the water law (2014-2019), exploring how the LORHUyA is translating into the day-to-day realities of small irrigators and their customary water management systems.

The research questions that guided my study aimed to probe the impact of the policy implementation choices of the Sole Authority for Water (*Secretaria Nacional del Agua* - SENAGUA-) and to contrast them with the participative, plurinational, redistributive, and environmentally sustainable paradigm-shift of the 2008 constitution.

This research disclosed the different manifestations of ontological "tensions" vs "encounters" among diverse water normative levels, and the underlying vision of *buen vivir* inherent within them. To better appreciate the contributions of this study, I here-below revisit each chapter in order to excavate the research questions in terms of the practical implications

this dissertation provides, offering a preliminary systematization of the reflections that emerged from fieldwork and interview narratives. Few conclusive thoughts on the limitations and future research is also provided in the final section.

Chapter Overview

The accounts shared in this study, and the data themes emerged, expanded on overarching political ecology theory and incorporated the experiences of subsistence irrigators (their cultural enactments of plurinationality and participation as water users), and SENAGUA officials. The co-participant utterances were analysed and used to raise consciousness regarding the marginalization within Ecuador's new water legal framework of their knowledge, and customary water traditions in spite of the official rhetoric.

Chapter 1. This introductory chapter offered a brief review of the implications of *buen vivir*, particularly, as to what relates to the rights of nature, plurinationality, and citizen's participation, in order to introduce the context surrounding the new water legal framework.

Ecuador's self-definition as a multi-national unitary state in its constitution created one of the most relevant political phenomena in contemporary Latin America, establishing a new form of state, recognizing the demands of recognition, participation and environmental protection of the Indigenous, Afro-Ecuadorian and *Montubio* movements as part of a socialist and revolutionary Ecuador (Cruz, 2013).

The 2008 *Montecristi* Constitution is regarded as one of the most advanced and complete in terms of nature and water rights, and its insistence on the importance of collective and ancestral water management, linked to the strive for auto determination of

Ecuador's indigenous/social movements, implied a transformation of both the socio-economic, and the political, as well as the socio-cultural sphere (GEE, 2013).

As highlighted, various sections of the *magna carta* specifically recognize important environmental principles and link them to *buen vivir* objectives. This insistence on environmental protection, intertwined with Ecuador's participative and intercultural re-birth, as well as the focus established on the rights to direct democratic participation as a tool for ensuring equity for citizens with no restrictions, are decidedly marked within the constitution of *revolucion ciudadana*.

The normative focus on the protection of nature is unprecedented for a legal text. The constitution of Ecuador extends legal personhood to non-human entities as is the case of nature and all the resources within it (among which water). Ecuador can, in this sense, be considered as a pioneer, enshrining the rights of mother earth in its highest value and hierarchical norm (Pinto, Cerneiro, Augusto, & Maluf, 2018), reserving the state "the right to administer, regulate, monitor and manage strategic sectors", yet specifically establishing that to be done "in accordance with the principles of environmental sustainability, precaution, prevention and efficiency" (Constitution of the Republic of Ecuador, 2008, Georgetown University translation). This represents an important step forward in the protection of water sustainability, subordinating water policymaking to the wellbeing of society as a whole.

Within environmental protection, the 2008 Constitution grants undoubtedly special attention to water. The State ensures its inhabitants access to water not only as a simple constitutional declaratory statement, but -rather- as a whole livelihood process, giving it full recognition as a means to allow economic, social and cultural development (Judgment No. 0006-10-SEE-CC, 2010). There exists, moreover, a focus on mutual learning and exchange

among cultures (GEE, 2013) that is evident throughout the chapters of the 2008 constitution, and represents a fundamental part of its *buen vivir* objectives and unprecedented post-developmental paradigm shift.

This chapter argued that the 2008 constitution conceives a new scenario of intercultural thinking under construction, toward a future of sustainable development and better management of natural resources (Larrea & Greene, 2017). It establishes a new responsibility of the state not only to respect, but also to enforce the principles of a *sumak kawsay*, built around the community, and around an economic paradigm which is incompatible with a capitalist model that commodifies everything, including nature (CDH, 2017).

After briefly introducing the concept of *buen vivir*, and how it intertwines with those of plurinationality and self-determination (underlying their importance when it comes to the rights of nature), I analyzed the context surrounding Ecuador's new water legal framework. I presented the fundamental constitutional rights and obligations of the Ecuadorian state in relation to water treatment. Then, I presented more in-depth the idea of water-struggles as a tool for plurinational recognition and self-determination of Ecuador's Indigenous, *Montubio*, Afro-Ecuadorian, and *Mestizo* small irrigators' communities, with a particular nod to customary rights, and the importance of legal pluralism for the achievement of an authentic paradigm shift illuminated by the concepts of *sumk kawsay* and the respect for the *pachamama*.

I agree with Hyer (2015) when he states that, according to the 2008 *magna carta*, "not only may the indigenous peoples of Ecuador claim these[nature's] rights, but also the entire populace may call upon the government to live up to its obligation to respect and

protect nature” (Hyer, 2015, p. 77). The fundamental relation that communities have with nature turns, in this sense, into a fundamental tool for the protection and sustainable conservation of the environmental resources present in their territories. The state must not only guarantee that indigenous jurisdiction decisions be observed but must also facilitate coordination between the Indigenous and regular jurisdictions, respecting their diverse cosmovision. The explicit constitutional emphasis on interculturality, appears therefore to have simultaneously deepened normative texts prominence on the protection of nature (Antúnez & Díaz, 2017).

Similarly, the importance of citizens’ participation for water justice was highlighted, as a means to voice the rights to an auto-determined development for the subsistence-farming populations of rural Ecuador. The 2008 constitution attempts, for the first time, to achieve an authentic recognition of citizens’ empowerment as to their water decision making capabilities, through an emphasis on customary community management, for the benefit of the people and not with the aim of increasing wealth for the wealthiest (Martínez Moroso, 2017), by establishing unprecedented provisions as to communities’ agency in environmental national policies and direct democratic decision making.

The underlying object of this section was to illuminate the importance of a change in traditional blue-print water exploitation and management choices, incentivizing locally fit, and culturally infused citizen participation as an important tool for preserving the sustainability of the resource, its redistribution, and the enhancement of water justice. Water justice, in fact, not only has to be embedded socially, its management and conservation need to be linked to territorial development, and to the protection and the specificity of ecosystems (De Miguel & Tavares, 2015). More importantly, it has to be culturally infused and self-

determined, brought about by the populations directly involved in the fight against local historical privileges.

Throughout the chapter, I argued that, the insertion of the concept of *sumak kawsay* with its inherent respect for the participation rights of the plurinational peoples and nations of Ecuador within the current constitution, marked a ‘before and after’ in terms of natural resources and their management for the benefit of society, and the quality of life of citizens. Throughout Ecuador's constitutional history (with more than 20 constitutional texts), it is the first time that a legislative tenor has been adopted that agglomerates approaches from indigenous peoples, and proposes the fundamentals of their cosmovision as the core axis for the wellbeing of the entire Ecuadorian society (Cortez, 2011), the preservation of their living environment, and “hydrosocial territories” (Boelens, Hoogesteger, Swyngedouw, Vos, & Wester, 2016).

Chapter 2. This section was meant to learn through a revision of the text of the LORHUyA the extent to which the Ecuadorian state has successfully advanced normatively its plurinational and citizens’ participation agenda in the context of water, recognizing and understanding contradictions within the new water legal framework that make it difficult to implement a redistributive, plurinational and participative water policy.

The new water law was meant to break a historic scenario of confrontation between the national and the community level of water management, offering a collaborative framework of integrated action between the social organizations and the institutions that regulate water resources. The Ecuadorian state was supposed to endorse processes of water territorialization both within community actors and within public actors involved in water management, to guarantee a just and efficient access, use, and management of the resource,

ensuring political participation and cultural integration, by creating the social actions and policies necessary for the inclusion of the diverse stakeholders involved (Coloma, 2018).

I explored Ecuador's LORHUyA (and main regulations), with an eye on the potential repercussions on Indigenous, *Montubio*, Afro-Ecuadorian and *Mestizo* small irrigators, and their collective struggles for the achievement of a self-determined, participatory, and equitable water redistribution and decision making. A brief introduction on the claims for a renewed recognition of the diverse water management traditions characterizing Ecuador's rural communities, was thus followed by a description of the main contents and scope of the new 2014 water law, introducing the titles and sections of the *Ley Organica de Recursos Hidricos, Usos y Aprovechamiento* (LORHUYA, 2014), dealing specifically with the topics interest of the present research.

As the LORHUYA was officially only available in original language (Spanish), I personally translated the *verbatim* text of the main articles of the law in order to build the basis on which to develop the main analytical points of this revision: the contention present within the new water legal framework between the redistributive vs extractive tendencies simultaneously poking out within the articles of the law (paragraph ii), the state's promises of a water plurinational agenda vs the homogenizing constraints imposed to customary water normative systems by the technocratic provisions of the national legal framework (paragraph iii); and, finally, the tensions manifesting between a state centralized vs an integrated and participatory vision of water management (paragraph iv).

In spite of the ample covering of the topics linked to water ancestral traditions and water customary community management (art. 71,72,73), the norming of water ritual and sacred places (art. 93), the provisions regarding own or customary law, as well as the

ratification by LORHUYA of the rights to participation and of the citizenry within the official water bodies and institutions (art. 68, 72, 82) (Secretaria del Agua -SENAGUA-, 2016); paradoxically, the issues of customary law recognition and the direct participation of society in water issues result undermined by the provisions of the law itself.

A deeper look at the content of the LORHUYA, showed that -within its very articles- are hiding provisions sufficient to *de facto* paralyze many of the constitutionally mandated rights. What seems to be an “homogenizing perspective”, appears repeatedly within the subsections of the new water law. An “exclusionary view of policy building” (p. 86), as Zapatta (2017) calls it, is perpetuated by the Ecuadorian state, in spite of its plurinational official rhetoric (Zapatta, 2017, p. 86).

Although the provisions analyzed within the articles of the law, undeniably showed that community-based customary norms and participative traditions within the management of the water resource are not taken lightly by the new water legal framework (on the contrary they are widely regulated by the LORHUYA). However, the articulation of this recognition, and the functioning of these participatory collective systems seemed bound to be closely monitored (and even intervened) by the SAW and its Agency for Regulation and Control (ARCA), by means of excessive bureaucracy requirements, and rigid, state-determined regulations.

Article 32, for example, establishes that community water management can be rendered only by means of *juntas de agua* (water boards); and, article 35 on the “principles of integrated water management” (subsection e), provides that social participation will have to be brought about exclusively “in the arenas established within the law and its regulations” (Asamblea Nacional del Ecuador, LORHUYA, 2014, p. 13 -personal translation-), thus,

neglecting the broader possibilities opened by customary Indigenous, *Montubio*, Afro-Ecuadorian, and *Mestizo* water management traditions.

This top-down stiffness, ultimately, risks to hinder the participative contribution of the most vulnerable, silencing their voices and preventing the opinion of communities and collectives to reaching the ears of the state authorities; in one word, preventing to address the problems, needs and priorities of their territory, and obstructing an authentic, plurinationally-sensitive and integrated management of water.

According to the analysis of the legal text, it appeared that citizens' participation needs to be complemented ensuring a more active role besides the traditional contribution in the construction, operation and maintenance of water facilities (CNP, 2017). Additionally, it is also necessary to establish mechanisms of coordination between the SAW and the participative bodies created under the LORHUyA (water basin councils and water boards), so that the measures incorporated in the respective 'Development and Management Plans' can be representative of the needs of the populations involved, and can be implemented efficiently, protecting both the rights of nature and the rights of Ecuadorian citizens with no distinction. Apart from various vague declarations of principles, instead, no tools or processes are identified within the LORHUyA, which may allow an authentic articulation and protection of water rights.

The traditional strategy of the state to throw all the responsibility for the maintenance of water infrastructure and preservation of sources on the communities "with nothing in return" (personal interview with the coordinator of Pueblos *Montubios* del Daule-Peripa, February, 2019), seemed to represent another serious challenge for the beneficial implementation of the plurinationally-integrated and participative water governance

Ecuadorians wished for. Unless this climate of diffidence is mended, the promise of the state to bring forward a plurinational and participative water agenda (formulating and generating public policies oriented to promote public-communitarian partnerships, and to strengthen the participative self-determination of communities around water) previewed by article 83, will remain unheard.

The legal environment created by the LORHUyA in which Ecuadorian communities have to operate is complex, characterized by superposing normative levels, and possibly conflicting ideas of legitimacy held by local participative bodies and the state. Although many of LORHUyA's articles mirror the *buen vivir/sumak kawsay*-infused constitutional mandate, they clearly restrict its spirit, by either establishing a legal mandate, and right-after contradicting it within another article/s of the same law, or its bylaws. Or, by not establishing clear sanctions, and only vaguely defining violations (so that it is merely left to the interpretation of the public officer in charge, whether to properly discipline them, or whether to simply overlook the application of sanctions), providing a great example of what Alex Zapatta (2017) calls "*malabarismo legal*" (legal juggling) (p. 83).

This, as Zapatta (2017) insists, was (and still is) very disappointing for the majority of Ecuadorians, and for all those who believed in "the extraordinary re-foundational political moment" (Zapatta, 2017, p. 84) in which this law came to light, and whom saw how a fundamental opportunity of redressing one of Ecuador's historical problems of social injustice had been "missed by the legislator" (Zapatta, 2017, p. 84).

Chapter 3. The propaedeutic legal text revision developed throughout the first two chapters of the present work, allowed to establish a preliminary comparative reflection on the discrepancies manifesting between the articles of the new water law, and the 2008 *buen vivir*

constitutional spirit. Also, throughout the analysis, important concerns as to the potential repercussions of the new normative provisions' incongruences in the day-to-day realities of Ecuador's subsistence irrigators repeatedly emerged.

The centralized, top-down vs the integrated and participative water management principles conflated in the LORHUyA, as well as the implications of that conflation in community water self-governance, were revised more in depth in the diverse sections of this III chapter. I explored the ambiguities inherent in the new water law, and the response that - in the first five years of the implementation of the LORHUyA- the National Secretariat of Water (SENAGUA) offered to these ambiguities, and to the push-back of Ecuador's social movements claiming for legislative reforms.

The contradictory aspects of a water law that on the one hand promised and, on the other, undermined plurinationality, food sovereignty and community-based water management, soon started to play out at the local scale. At times adversely affecting, by creating/deepening pre-existing conflicts within Ecuador's Indigenous, *Montubio*, Afro-Ecuadorian and *Mestizo Campesinos'* communities, through the perpetuation of top-down, and technocratic controls, which subordinate the degree of local self-governance and sovereignty, which is -instead-, implied by an authentic recognition of *sumak kawsay*.

The disjuncture which appeared to be running between policy and practice implied by the provisions of the LORHUyA allowed a preliminary reflection on the way in which underlying ontologies intersect in water management legal frameworks both at the national and the local level (a topic further explored in the fourth chapter of this research, presenting the primary case-study). The interplay between the implementation of Ecuador's new water legal framework and local customary community-based irrigation practice, during the first

five years since the implementation of the LORHUyA, revealed that the contention highlighted between the homogenizing vision of water governance perspiring from the articles of LORHUyA - still rooted in a centralized, technocratic, and developmental recipe- and the legal pluralism -instead- required by community self-governance of water enconced in the same document, soon started to provoke resistance on the part of Ecuadorian rural communities.

Their claims and demands for reform found (at least to certain extent), an interlocutor in Indigenous leader Humberto Cholango, and its administration of the secretary of water - SENAGUA- (2017-2019). As illustrated, Cholango was the promoter of three important *Acuerdos Ministeriales* (ministerial agreements n. 2017-0031, n. 2017-00103, and n. 2018-00194), aiming at the recognition and strengthening of customary management of water, which were revised throughout the second, third, and fourth paragraph of this chapter. The excessive centrality of the state as the principal responsible for water administration and planning, in fact, soon became irreconcilable with the lens of interculturality, and direct citizens' participation implied by the plurinationally-inspired paradigm shift advocated by the Ecuadorian Indigenous, *Montubio*, Afro-Ecuadorian and *Mestizo* communities, peoples and nations.

Although the Ministerial Agreements of the Cholango administration represented an important step in the right direction; however, to put it in Escobar's (2010) words, in order to become the effective transformative tools claimed by Ecuador's rural populations, and in order to play an important role in the recognition of Indigenous, *Montubio* and Afro-Ecuadorian communities' customary normative systems- the Ministerial Agreements 2017-0031, 2017-00103, and 2018-00194 would probably have had to "entail a more substantial

transformation of modern [water] institutions in order to create multiple spaces for those alternative worlds and knowledges that have remained invisible” (Escobar, 2010. p 39), that “have been actively produced as non-credible alternatives to what exists by dominant discourses” (De Sousa Santos, 2007 in Escobar, 2010 p. 39).

As Hoekema (2002) maintains “having constitutionally supported rights and some political leverage do[oes] not necessarily change a lot on the ground” (Hoekema, 2002, p. 185). And, the *Acuerdos Ministeriales* promoted by the Cholango national administration of SENAGUA, remained little more than declarative, demonstrating that significant action plans still need to be created and implemented, in which state’s water institutions interact effectively with the local population, listening to their needs and experiences around water. And, more importantly, clearly highlighting the limits of law/policy change, which is a necessary but insufficient arena, if the goal is social justice and transformation.

In sum, the ability to negotiate the tensions existing between differing normative levels and water cosmovisions in community daily practice appeared to be constrained by a LORHUyA, which did/does not reflect the plurality of water worlds present in the country. “The dysfunctionalities generated by the impacts of the current legislative framework for the management of water”, imposing locally “legal provisions [that] are effectively unenforceable within user organizations” (Hendriks, J., 2015, p. 180) -as they refuse to incorporate “collective rights for water use systems” (Hendriks, J., 2015, p. 180)-, are causing the LORHUyA’s provisions on plurinationality and participation to “largely lead a paper life” (Boelens, Zwartveen, & Roth, 2005, p. 17).

Chapter 4. The case-study selected primarily for this dissertation contributed to answer my Research Questions. The purpose of this work was to gain input from community

members, regarding the needs, issues and problems in the self-identified Indigenous and *Mestizo* Comuna of Oyocoto, associated with community development efforts related to the implementation of the new irrigation water system. However, the need to monitor -more broadly-, the impact of the implementation of the new LORHUyA requirements, as well as its repercussions for the local customary water management traditions, soon became imperative.

The preliminary steps of community fieldwork, focused on gaining input on potential solutions to initially identified problems (i.e. the conflict associated with water scarcity, which persisted despite the new Umayacu irrigation water infrastructure). These were already revealing of inherent intercultural barriers, and power unbalance manifesting among local stakeholders, and between them and the SENAGUA state officials; which, translated in the evident neglect of the importance attributed to the ancestral water uses of the Umayacu water source for the local *Kitus* descendants population (Vignette 1); and, resulted in the disruption of the traditional social fabric of the *Comuna* of Oyacoto, due to the LORHUyA-descending imposition to constitute a '*junta de riego*' (irrigation water users' board).

The Oyacoto case-study, however, also allowed to witness how while on the one hand the LORHUyA provisions fragmented the local *Comuna*'s authority (Vignette 2); paradoxically, on the other, they allowed to challenge the pre-existing gender-based privileges as to water access, and decision-making within the *Comuna* (Vignette 3). The last stages of research additionally explored how the Ministerial Agreements enhancing customary water management, instead, contributed to the mediation of the conflict (Vignette 4), and the rebuilding of Community unity around water.

The data obtained through the first round of community fieldwork observation and interviews, justified the urgency to find, more broadly, an answer to the following Research Questions:

RQ1: How does the new water law (LORHUyA, 2014) underlying discourse, touches ground in the self-identified Indigenous and *Mestizo* Comuna of Oyacoto?

RQ2: Where have national water management norms encountered resistance, and where are they, instead, readily embraced, and leveraged into local *buen vivir* enhancing outcomes?

RQ3: What can the inclusion of local perspectives add to our understanding of the LORHUyA in terms of community *buen vivir* around water?

The starting point of this research, maintained that a deeper understanding of the way national water legal frameworks translates into day-to-day small irrigators' realities (impacting them), represents the first step towards a culturally fit and effectively beneficial implementation of *buen vivir*.

Keeping in mind that the “struggle for water is simultaneously a struggle for power” (Boelens & Doornbos, 2001, p. 352), the political ecological analysis of water object of this case-study in the Ecuadorian Indigenous and *Mestizo Comuna Ancestral* of Oyacoto of the rural parish of Calderon (Quito, Pichincha, Ecuador), disclosed not only how power differentials both at the national and local level might impact the outcomes of the LORHUyA for the implementation of developmental water projects (at times, in a way that is different from the expected one); but, also put to the foreground the different manifestation of ontological “tensions” vs “encounters,” among diverse water normative levels, and the

underlying vision of *buen vivir* simultaneously inherent within them, and in constant interaction.

Four vignettes were chosen to exemplify how some of the provisions of the new water legal framework are touching ground locally, impacting local social and customary water management environments. The community-based narrative revealed some of Oyacoto's water-related power dynamics, that from 2014 to 2019 (first five years of the LORHUyA's implementation), affected the communal social water realities and wellbeing.

The vignettes allowed to re-examine the encounters/tensions between local ideas and practices about water management, and compare them with those promoted by the National Secretariat of Water -SENAGUA-, representing a valuable example of how the nationally and locally intertwined manifestations of irrigation-water developments are comprehended, negotiated and, at times, metabolized vs resisted to by local stakeholders (Marcinek, A.A. and Hunt, C.A., 2019, p. 14).

First, we focused on how the top-down, modernizing water management discourse rooted in LORHUyA circulated and was received by the Ancestral Indigenous and *Mestizo* Comunas of the rural parish of Calderon (Oyacoto, and San Miguel), manifesting in state-determined transformations to local ancestral water use and management conditions (Vignette 1), clearly revealing the rhetorical void in which the provisions of article 92 "on sacred and spiritual use of water" ended-up falling in daily praxis. Second, we analyzed how the mandate to form *Juntas*, implicit in the *Instructivo* to LORHUyA 2016-1400, and article 52 of the law, affected the *Comuna's* authority and social unity (Vignette 2). Then, we analyzed how -unexpectedly-, the national normative level, became a potential tool for redressing traditional power unbalances locally (Vignette 3); and, finally (Vignette 4), how

the possibility offered by *Acuerdos Ministeriales* 2017-0031, 2017-00103, and 2018-00194 strengthening community water customary traditions allowed, at least to a certain extent, to rebuild community around water, by actualizing Oyacoto's customary water traditions, in acknowledgement of Oyacoto's identity and own social functioning norms beyond binaries.

The vignettes additionally provided, examples of interweaving national vs local *buen vivir* discourses within the context of water management. Such examples illuminated not only the possible intersections between different normative levels (State vs local), but also showed how inseparable these are, suggesting that -if the aim is to attain rural *buen vivir*- national policies ought to take into consideration the whole normative picture of the water scene, and its emic understandings. The analysis of the Oyacoto case study's interview material demonstrates, in fact, how *buen vivir* discourse flows back and forth, via water management normative levels, between the national and the local scale.

This preliminary monitoring of Ecuador's new water law repercussions in *Campeño*'s communities, associating discourse analysis methods (ethnography of communication) to action research, and legal text probing, provided a scent of how, on the one hand, LORHUyA introduced competing discourses; while, on the other, it provided a channel to yield culturally infused alternatives, about new ways to negotiate and implement water legal frameworks and rights. This integrated political ecology of water in Oyacoto, thus, allowed to reconcile the contributions potentially offered by both the national, and the local customary water discourses and traditions from the eyes of the populations directly involved.

By analyzing transcripts and field notes, it became evincible where national water discourses and regulations encountered resistance due to diverse understandings of water

management (i.e. water as an exploitable resource vs water a social-glue), but also where they may leverage into locally empowering and beneficial outputs (i.e. addressing gender-based power inequality); thus, providing evidence not only of how dynamic identity shifts are possible (local culture is alive and constantly transforming), but also how opening a conversation between the different normative levels involved, can lead toward more fit, culturally-infused outcomes for local *buen vivir*.

Interview material revealed, conflicting perspectives: the SENAGUA homogenizing discourse that keeps prioritizing the technical/rational experience, vs the competing emic discourses that prioritize, instead, local solidarity and reciprocity-based collective determinations, examples of an ongoing tension between the contrasting philosophies underlying water management, a tension that, if put into a conversation, can open up innovative paths.

So, while on the one hand, this study added to the tradition of previous political ecologies of water, acknowledging that Ecuador's new water legal framework is far from devoid of negative social consequences, particularly for subsistence-agriculture communities, due to the stiff (power driven), delegitimizing tendencies present within the the national normative level that still persist *vis a' vis* the local customary ones, in spite of the "plurinational rhetoric" (e.g. Duffy, 2008; Fletcher & Neves, 2012; Hunt, 2011); on the other hand, it puts to the foreground how, "understanding emicly, and re-calibrating the influence ... [of] the encounters among diverse [water cosmovisions at play], may have a beneficial impact on local social well-being" (Marcinek & Hunt, 2019, p, 14).

Practical Implications

This dissertation elucidates the community impacts of the implementation of the LORHUyA, highlighting the disconnect between policy as written vs implemented in a peri-urban self-defined Indigenous and Mestizo *Comuna*, facing great challenges to maintain its water resources and ancestral identity. Addressing the challenges to implementing community-based water planning through centralized national policy, it allows to give an honest look at the mixed effects of state determined *buen vivir* policy as it relates to water, and important insights into the ways that gender mediates local water planning and activism.

The incongruencies observed, both within the articles of the LORHUyA, as well as during fieldwork, if understood and taken into serious account, are susceptible to translate into a meaningful contribution, welcoming a new hybrid path, which neither under evaluate the importance of the existence of a coherent national legal framework on water (in order to guarantee a just level playing field), nor neglects, or minuscule the relevance of local emic understandings, and the legitimacy of pre-existing customary water rights, thus allowing the required flexibility when it comes to local implementation.

This work clearly confirmed that “water rights and distribution rules are often formulated not just through prescribed legal and technical designs, but on the run and during a process of confrontation, as different groups or institutions with conflicting interests vie with each other” (Boelens & Doornbos, 2001, p. 349), and that, undoubtedly, a lot has still to be done in order to allow more just and sustainable water options for Ecuador’s ‘*Comunas*, Communities, Pueblos and Nations’, struggling to maintain their autonomy and self-determination.

Undoubtedly, the steps taken by means of the *Acuerdos Ministeriales* 2017-0031, 2017-00103, and 2018-00194, represented a positive step in direction of the recognition of Ecuador's legal pluralism around water; which, by its very nature, is based on inevitable *rendez-vous* and confrontations between "different ontologies, epistemologies, identities, value systems, and discourses" (Marcinek, A.A. and Hunt, C.A., 2019, p. 4). However, as Boelens and Doornbos (2001) contend "water rights" should be considered "as a societal relationship among social actors" (Boelens & Doornbos, 2001, p. 352); particularly, as Ecuador's Indigenous, *Montubios*, Afro-Ecuadorian, and *Mestizo* water "receivers" are highly heterogeneous in their [identities, customary water rights, and] 'acceptance' of official rights" (Stavenhagen and Iturralde, 1990; Weay, 1993 as cited in Boelens & Doornbos, 2001, p. 345); thus making- as the Oyacoto case study suggests, the law's outcome in daily practice extremely difficult to predict.

Another practical implication of this study, is to remind how important it is in water development community practice to keep in mind that, the "resistance" to the LORHUyA perceived within the communities in our research sites is -in fact-, not due to "a resistance to change in itself" (Boelens & Doornbos, 2001, p. 352), but rather, to the strive "to maintain their autonomy..., conserving their own existing irrigation norms" (Boelens & Doornbos, 2001, p. 352), or -sometimes-, changing them according to self-determined identity reconfigurations.

In Boelens and Doornbos (2001) words, in Oyacoto the construction of a new water irrigation system, "interwove with the local sociocultural, political, and physical condition [of the community]" (Boelens & Doornbos, 2001, p. 352), leading to the actualization of a complex water normative system, both "grounded in the specific norms and capacities of its

creators and based on [community] collective power”(Boelens & Doornbos, 2001, p. 352), as well as, on “the introduction of elements of nonlocal normative systems” (Boelens & Doornbos, 2001, p. 352), such as the recently implemented national water law.

Evidently, it is in field practice that “water rights ... are created, consolidated, and transformed from abstract sociolegal categories into local procedures” (Boelens & Doornbos, 2001, p. 343). So that, if -on the one hand-, it is undeniable that water by its very nature involves unequal power relations (see i.e. Boelens; Zwarteveen; Hoogesteger; Maria Lane; among others); it is not clear -on the other-, how these unequal power relations, and diverse legal frameworks’ underlying ontologies will manifest in daily water practices at the community level. Therefore, it is at this particular level of analysis that the researcher’s attention should be focused, in order to offer an authentic contribution to the achievement of communities’ water *buen vivir*.

ii. Conclusion, limitations and future research

According to interview material in my sites of research, the perception is that there still is a wide gap between Ecuador’s plurinational recognition of cultural rights, epistemic diversity, and community-control outlined *buen vivir*, and actually existing practices of policy implementation. Little is being done to address the persisting structural power inequalities and colonial knowledge superiority bias (the Ecuadorian state appears to maintain a non-redistributive myopic view of water management, and an exclusionary view of water policy making). The results of this research, however, challenge the limits of a social science perspective that expects marginalized communities to either resist or reproduce

social hierarchies and systems of domination, pointing instead to a much more complex reworking of social formations in the era of *buen vivir*. It is hoped -therefore-, that, as the implementation of the LORHUyA gradually advances, the persistent rigidity and technocratic biases at odds with the stated goals of the *sumak kawsay* paradigm shift, will be overcome, and further attention and political will to embrace the contribution of the populations involved will be increasingly ensured, and authentic plurinational citizenry involvement (not limited to the rhetoric of officially framed participation), will be guaranteed when it comes to decisions related to water development in Indigenous, *Montubio*, Afro-Ecuadorian and *Mestizo* Communities.

It is hoped that, in association with a deeper attention to the “dynamic” nature of customary rights, and the underlying “power relations” defining “the control over decision making on water” (Boelens & Doornbos, 2001, p. 343); and, recognizing the “legitimate power to set norms and authorize claims in peasant and indigenous irrigation systems” (Stavenhagen and Iturralde, 1990; Weay, 1993 as cited in Boelens & Doornbos, 2001, p. 345), enhanced outcomes as to sustainable environmental policy-making will be achieved.

The present research argues that the challenges this endeavor presents should not be left solely in the hands of the state, they need to be accompanied by the bestowal of Ecuador’s ‘*comunas*, communities, pueblos and nations’, in order to be leveraged into new legally plural opportunities, both for improving local agency, as well as for catalyzing rural communities’ *buen vivir* and environmental justice according to their own, auto-determined view.

Accompaniment (not mere discourses), needs to be ensured to communities, “in order to establish viable political approaches for self-representation, [contributing to] prepare

indigenous communities to be able to participate” (Reed, 2011, p. 525). It is necessary for the state to allow free access to information, to develop a financial strategy to carry out the actions proposed by community organizations, to improve summoning processes and the legitimacy of participatory bodies, to implement actions aimed at properly managing water in such a way that fairness and parity among all citizens may prime (Martínez & Villalejo, 2018), by eliminating all obstacles that affect the proper functioning and obstruct plurinational management of water, thus strengthening communities’ self-determined paths toward *buen vivir*.

Limitations and self-reflection

My interest in action research and community development led me to choose a participatory method that, it is hoped, will build the capacity of community members to conduct their own research or data gathering activity in the future. It is hoped that this study will contribute to a deeper look into the lives of marginalized subsistence irrigators of Ecuador, serving as a resource for understanding. Water authorities, for example, may reach a better comprehension of the water needs of Ecuador’s rural communities, the Sole Authority for Water’s officials may gain additional intercultural sensibility when it comes to processes of water authorization in plurinational communities, reforms to LORHUyA and its bylaws can be implemented accordingly. There are, however, a few limitations to be acknowledged. The limitations of the current research study are both contextual and linked to the researcher’s positionality.

Although I had access to comparative settings, due to the distance and remoteness of the locations, and an often hard to reconcile work schedule, interaction with additional communities was limited and only for short periods of time (2-3 days on monthly basis). I

was thus unable to produce as much comparative data representing the diverse communities of Ecuador, as I had wished.

Also, it is important not to overlook the fact that -who I am-, had an influence on research, particularly in the final phase. Although I strove to foster trust, genuine relationships and respect across difference, and continuously engaged in a process of reflexivity at every step of the research process about how my background could affect the investigation, the findings considered, and the conclusions framing, it was simply not possible to void power relations, this might have implied missing aspects relevant to the community, as my social location impacted what I could, and what I could not see (and, therefore, my conclusions).

Moreover, my positionality was not static (it never is), it evolved greatly throughout research, together with my understanding of my influence on the outcome of interaction with co-participants. My positions of authority vis-a'-vis the co-participants started as the one of a student-researcher; then, turned into the one of faculty member with specific connections to the engineering department redesigning the irrigation system in Oyacoto; and, finally (in the last phase of research) it became the one of a national coordinator of *Consejo Sectorial del Agua* and watershed councils. It was not possible to avoid that these roles interfered with my relationship with community members and SENAGUA authorities, determining the willingness of specific individuals to co-participate in the study. It was not always easy to determine who participants were talking to, and how this impacted their perceptions and truthfulness, thus limiting the reliability of their responses.

Future Research

The empowering or disempowering encounters resulting from the implementation of the Ecuadorian new water legal framework, as well as the challenges it implies, undoubtedly deserve further attention. The development, in the near future, of comparative endeavors in other Indigenous, *Montubio*, Afro-Ecuadorian, and *Mestizo* subsistence farming communities of Ecuador would represent an important contribution, as these may leverage into new relevant opportunities for improving -locally-, LORHUyA'S understanding and effective implementation and -nationally, for policy reforms catalyzing the objectives of rural communities' *buen vivir*.

AFTERWARD

To the Indigenous, *Montubio*, Afro-Ecuadorian, and *Mestizo* women and men who struggle for water justice and juggle the ups and down of life in a *campesino* community, loving their territory and the water that runs through it: your resilience and passion is a great source of inspiration. I am honored to know each one of you, and I am deeply touched that you allowed me to share the stories of your communities. Thank'you so much!

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APPENDIX -A-: IRB Consent form**i. Bosquejo de Consentimiento Informado Oral para Entrevistas de Investigación**

Soy Martina Nebbiai, estudiante de posgrado de Estudios Latinoamericanos en la Universidad de Nuevo México. Me gustaría invitarle a participar en este estudio del impacto del nuevo marco legal ecuatoriano del agua sobre el *Buen Vivir* de las comunidades campesinas del Ecuador. En particular, el propósito de este estudio es comprender si, y de qué manera, los principios del *Buen Vivir* de participación ciudadana en la toma de decisiones y políticas sobre el agua, de redistribución del agua, de fortalecimiento de las tradiciones comunitaria de manejo del agua, y de plurinacionalidad fueron impactadas por la nueva ley.

Me gustaría que usted participe en este estudio considerando su experiencia profesional en tema de agua [en el caso de Autoridades, Instituciones] / considerando su experiencia como usuario de agua para riego y como habitante de (nombre de la comunidad) [para entrevistas de campo en las Comunidades]. Si usted decide formar parte de este estudio, será uno/a de las 50 personas entrevistadas sobre acceso/uso/calidad/escasez/redistribución/justicia/conocimiento del nuevo marco legal, y participación en tema de agua.

Su participación en este estudio es totalmente voluntaria y consiste en una entrevista individual y personal de 20-25 preguntas semi-estructuradas, que durara alrededor de 60

minutos. La entrevista será estrictamente confidencial y se tomarán notas manualmente para asegurar completa precisión a la hora de reportar y representar su experiencia personal.

Yo, Martina Nebbiai, seré la única persona a poder acceder a las transcripciones de su entrevista, que serán anónimas (ningún identificativo personal será levantado, a menos que usted no desee lo contrario). Una vez recibido su consentimiento a participar voluntariamente en este estudio, podremos empezar la entrevista en un lugar reservado de su elección, o bien, agendar un encuentro para otro momento en el lugar de su elección, lo que le vaya mejor a usted.

Todas las preguntas se relacionan a su experiencia en calidad de usuario/profesional del agua. Por consiguiente, los temas discutidos a lo largo de la entrevista no prevén ningún riesgo directo emocional o físico. Sin embargo, si en algún momento usted se siente incómodo/a con cualquiera de las preguntas, puede parar la entrevista.

El estudio es voluntario, y Usted debe saber que no tiene obligación alguna de contestar las preguntas contenidas en la entrevista. Puede escoger de interrumpirla en cualquier momento. No existe costo ni recompensa económica tangible por su participación voluntaria en este estudio. Sin embargo, aprecio y agradezco sinceramente su tiempo y disponibilidad.

Si en algún momento usted tiene preguntas, sugerencias, dudas o reclamos, siéntase libre de contactarme a través de mi dirección de correo electrónico de la Universidad de Nuevo México, mnebbiamangani@unm.edu. Si por alguna razón no se siente cómodo/a contactándome a través del sistema electrónico de la Universidad, usted puede hacer uso de mi correo electrónico personal, martinanebbiai@hotmail.com, o llamarme a mi número celular personal, 0993913710. Adicionalmente usted puede contactar directamente a la

Oficina de IRB de la Universidad de Nuevo México de lunes a viernes (08:00 am – 5:00 pm)
al +001 (505) 277-2644 o vía correo electrónico a IRBMainCampus@unm.edu

APPENDIX -B-: Interview Instrument

i. Protocol de entrevista I -EN LA COMUNIDAD (nativo, o residente durante min. 10 anos)-

El siguiente protocolo de entrevista se basa en los estudios de Lindlof and Taylor (2011), y Kvale (1996).

Sesión informativa: Esta entrevista se centra en el impacto del nuevo marco legal del agua ecuatoriano, examinado a través del enfoque de *Buen Vivir* de las comunidades campesinas.

No se registrará su nombre durante la entrevista, y cualquier otro identificativo será removido inmediatamente después del levantamiento de datos. Esta entrevista es voluntaria, y usted puede retirarse en cualquier momento, durante, o después del proceso de entrevista. Esta entrevista durara' aproximadamente 60 minutos.

1. Cuénteme una anécdota sobre un caso particular en su Comunidad que realmente le hizo pensar que están viviendo en un contexto de injusticia hídrica.

2. Para alguien que no vive en su Comunidad ¿cuales serían algunos de los desafíos que contaría con respecto al acceso, uso, calidad, o distribución del agua?

3. Para alguien que no vive en nuestro medio ¿cuales diría que son algunos de los aspectos positivos de la vida en su Comunidad campesina?

4. En una a tres palabras ¿cómo describiría su vida de usuario de agua para el riego?

5. Cuando los demás se enteran que usted es un activista hídrico: a. ¿Como se enteran? ¿Como reaccionan? ¿Como reacciona usted a la reacción de ellos? [Profundización Posible: 1: tiene algún artefacto personal (i.e. fotos de encuentros, certificados de adhesión a organizaciones, etc.) en su casa/oficina de trabajo? ¿Por qué? ¿Por qué no?] [Profundización Posible2: ¿Como le hizo sentir este ejemplo específico de evento? ¿Cuáles emociones ha evocado?

6. Usted tiene alguna red o grupo de personas que comparten los mismos retos/desafíos que usted tiene en tema de agua? De ser así, Como se han organizado para enfrentarse a esos retos/desafíos?

7. Como definiría usted su cultura/identidad del agua en su Comunidad basado en todo lo que me acaba de contar? [Profundización Posible 1: Donde se ubica usted en el manejo de esta cultura del agua?]

8. Como definiría usted el Sistema de agua ideal [para el *Buen Vivir* de su comunidad]? Como cree usted que el Estado/la Autoridad Única del Agua (SENAGUA) define la cultura/sistema ideal del agua?

9. Como define usted el *Buen Vivir* para su Comunidad? ¿Como cree usted que el Estado, la Autoridad Única del Agua (SENAGUA) define el *Buen Vivir*? [Para las Comunidades?]

10. Como fueron impactadas sus rutinas diarias por efecto de la nueva ley/nuevo Proyecto de agua?: su trabajo, sus horarios, etc.

11. Lo que ustedes comían o preparaban para las comidas ha cambiado y de qué manera, que pasos, si fuera el caso, tuvieron que tomar para solventar sus necesidades básicas, i.e. consumo humano, cocinar, bañarse, agua para el riego etc.,

12. (impacto financiero), i.e. tuvo que comprar agua, etc.,
13. Tuvo/tiene que desplazarse hacia una fuente de agua, que' tan lejos, o cavar pozos, etc.
14. (impactos de largo plazo), i.e., salud. Hubo/Hay impactos en la agricultura o las actividades ganaderas, etc.,
15. Preguntas acerca de sus pensamientos con respecto al liderazgo y la forma como manejaron la cuestión/protesta alrededor del agua. i.e., la cuestión de agua cambio sus perspectivas sobre las habilidades de los líderes,
16. (impactos comunitarios), i.e. cierre de escuelas, o oficinas públicas. Capacidad de las actividades comerciales/negocios de permanecer abiertos,
17. (impactos sociales), i.e. las relaciones y las redes sociales se afectaron a raíz de la nueva ley/el nuevo proyecto hídrico? ¿Cómo?
18. Preguntas con respecto a su actual preparación en el caso de que la Autoridad Única del Agua (SENAGUA, MAE) siga fallando en su capacidad/voluntad de corregir la injusticia que existe en el acceso, distribución, uso del agua para el riego en/entre estas comunidades.
19. Diversos actores que usted percibe como involucrados.
20. Preocupaciones acerca de la propiedad de los predios (*Desalojos forzosos*).
21. Percepción con respecto a si (y cómo) pudieran los distintos interesados contribuir a la redistribución del agua y al *Buen Vivir* de la Comunidad.
22. Conocimiento/información con respecto al nuevo marco legal del agua/al enfoque del Gobierno en tema de agua, i.e.- cómo funciona el Sistema (i.e., conocimiento/información acerca del sistema de consejos participativos del agua,

conocimiento/información con respecto al sistema de manejo consuetudinario del agua, prerrogativas de la Comunidad, conocimiento del sistema de tarifas y del *Fondo de Agua*).

- Línea de tiempo, ¿cómo empezó? Cómo solían manejar el agua antes (manejo consuetudinario). ¿Cómo es ahora?
- Enfoque acerca de los esfuerzos de socialización del nuevo marco legal. ¿Fue llevado a cabo por parte de la SENAGUA? ¿Por parte de otras instituciones? ¿Cómo? ¿Considera usted que esto fue adecuado?
- Reconsiderar el Sistema de agua/la ley de agua (propuestas de reforma requeridas).

23. Hay algo más que le gustaría compartir que yo no le haya preguntado, y que podría ayudar a explicar a los demás su experiencia con respecto a la ley de agua, acceso, uso, distribución o cultura del agua de/para su Comunidad?

Sesión Recapitulativa: Como investigadora y amiga de muchos campesinos, me siento preocupada con respecto al bienestar de las comunidades rurales. Espero poder usar la información/narrativa de las experiencias que usted proporcione' para compartir perspectivas y percepciones de su experiencia con autoridades, y formuladores de políticas del agua, y espero que eso pueda aportar a nuevas conversaciones, y dirigirá la atención hacia los desafíos y los recursos disponibles para los líderes/líderesas, y los residentes de las comunidades campesinas del Ecuador como usted. Le agradezco mucho por participar en esta entrevista.

Por favor, no dude en hacer preguntas en este momento, o a futuro -me puede contactar a la dirección de correo electrónico mnebbiamangani@unm.edu. Una vez más, toda la información proporcionada y las preguntas serán totalmente confidenciales. Le agradezco sinceramente por su tiempo.

ii. Protocolo de entrevista II -EN LAS INSTITUCIONES DEL AGUA (min. 5 años)-

El siguiente protocolo de entrevista se basa en los estudios de Lindlof and Taylor (2011), y Kvale (1996).

Sesión informativa: Esta entrevista se centra en el impacto del nuevo marco legal del agua ecuatoriano, examinado a través del enfoque de *Buen Vivir* de las comunidades campesinas.

No se registrará su nombre durante la entrevista, y cualquier otro identificativo será removido inmediatamente después del levantamiento de datos. Esta entrevista es voluntaria, y usted puede retirarse en cualquier momento, durante, o después del proceso de entrevista. Esta entrevista durará aproximadamente 60 minutos.

1. Durante cuanto tiempo ha estado trabajando en el área profesional del agua/la Institución del Agua/ en el Consejo del Agua?
2. Para alguien que no vive en el mundo de la profesión del agua, que le diría usted son algunos de los aspectos positivos/negativos de trabajar en una institución que se ocupa de cuestiones de agua?
3. En una a tres palabras ¿cómo describiría usted su vida como profesional del agua?

4. (CONOCIMIENTO/INFORMACION SOBRE EL NUEVO MARCO LEGAL DEL AGUA/DEL ENFOQUE DEL GOBIERNO) i.e., Como funciona el sistema? (¿i.e.- Línea de tiempo, ¿cómo empezó? ¿Como solían manejar el agua antes? ¿Como es ahora?).

5. Como definiría usted la cultura/identidad del agua de su institución en base a todo lo que me acaba de contar? [Profundización Posible 1: Donde se ubica usted en el manejo de esta cultura del agua?]

6. Como definiría usted el sistema/la cultura ideal del agua? Como cree usted que el Estado/la Autoridad Única del Agua (SENAGUA-MAE)/la institución para la que trabaja define el sistema/la cultura ideal del agua?

7. Como definiría usted el Buen Vivir del agua para las comunidades ecuatorianas? Como cree usted que el Estado/la Autoridad Única del Agua (SENAGUA)/su institución define el *Buen Vivir* del agua?

8. Como se impactó su rutina de trabajo del día a día a raíz de la nueva ley de agua/contexto del agua? Su trabajo, sus horarios, etc.

9. Hubo cambios en la manera en la que usted y su institución trabajan/debaten temas de agua? ¿En qué forma? Que pasos/medidas, de ser así, tuvo usted que tomar para satisfacer los nuevos requerimientos en el nuevo contexto legal/de trabajo?

10. (impactos económicos), i.e. ¿Que opine usted del nuevo Sistema tarifario del agua? ¿Funciona? ¿Está totalmente implementado? ¿Cambiaría algo?

11. Que sabe (y como lo supo) de posibles desafíos que el nuevo marco legal del agua está produciendo para las comunidades campesinas? Tuvo la oportunidad/posibilidad de viajar a comunidades? ¿De hablar con la gente? Alguna otra Fuente de evaluacion/informacion?

12. (IMPACTO EN LA PARTICIPACION) ¿Qué opina usted del nuevo Sistema de consejos participativos del agua (nivel nacional, nivel de demarcación hidrográfica, nivel de planificación local)? ¿Se está implementando? ¿Por qué no? ¿Qué pasos/medidas, de ser así, tomaría usted para implementarlo correctamente? O lo abrogaría/remplazaría?

13. Existen otras cuestiones sobre participación que le gustaria modificar en la presente ley?

14. (IMPACTO COMUNITARIO) Que' opine usted del nuevo énfasis sobre *Gestión Comunitaria del Agua* (manejo consuetudinario del agua)? ¿Se esta' implementando? ¿Por qué no? ¿Qué pasos/medidas, en caso, tomaría usted para implementarlo correctamente? O más bien lo abrogaría/remplazaría? ¿Funciona?

15. (impactos sociales), i.e.- En su opinión la [nueva] ley del agua ha afectado las relaciones y las redes sociales en las comunidades? ¿De qué' forma? (i.e., desplazando el núcleo/la Fuente de autoridad, las relaciones de género, la autonomía de las comunidades a la hora de tomar decisiones sobre como manejan el agua, etc.),

16. (REDISTRIBUCION DEL AGUA) ¿Para alguien que no trabaja en su institución, que' le diría usted sobre algunos de los desafíos con respecto a la redistribución del agua?

17. Diversos actores que usted percibe están involucrados en la responsabilidad de redistribución del agua. Percepción si (y, como), pudieran las diversas partes interesadas aportar a la redistribución del agua y al *Buen Vivir* de las comunidades ecuatorianas. ¿Qué pasos/medidas, en caso, habría que tomar?

18. Cuénteme una anécdota acerca de un caso particular en su vida profesional, si hubo alguno, que le hizo pensar que está viviendo en un contexto de injusticia hídrica.

19. Preocupaciones con respecto a la propiedad de los predios (*Desalojos forzosos*) provocadas por los megaproyectos multipropósito y su contribución al *Buen Vivir* del agua.

20. Cuáles son sus pensamientos con respecto al liderazgo de la institución del Agua y la forma con la que manejan temas de agua/protestas, i.e., la cuestión/protesta en tema de agua cambio' su perspectiva acerca de las habilidades de los líderes.

21. Preguntas sobre la fusión entre SENAGUA y el Ministerio de Ambiente (MAE). Su institución está preparada/la actitud de su institución en el caso de que la Autoridad Única del Agua (SENAGUA-MAE) continúe a fallar en corregir la injusticia hídrica.

22. Cuando sus colegas se enteran que usted opina de esta forma sobre las decisiones de los líderes en los que concierne el nuevo marco legal del agua/contexto del agua: a. ¿Como se enteran? b. ¿Como reaccionan? c. Como reacciona usted a su reacción?

[Profundización Posible 1: Tiene usted algún artefacto personal (i.e. fotos de inspecciones de agua, títulos o certificados de cursos, etc.) en su caso/oficina? ¿Por qué o Por qué no?]

[Profundización Posible 2: Como le hizo sentir el evento del ejemplo? ¿Qué emociones evoco?]

23. Tiene usted alguna red o grupo de colegas que comparten su visión sobre el agua. De ser así, como se organizaron para alcanzarla/ir en esa dirección en el ámbito del nuevo marco legal del agua?

24. reconsiderar el Sistema de agua/ley de agua (propuestas de reforma requeridas).

25. Hay algo más que le gustaria compartir que yo no le haya preguntado, y que podría ayudar a explicar a los demás su experiencia con respecto a la ley de agua, acceso, uso, distribución o cultura del agua?

Sesión Recapitulativa: Como investigadora académica en el área de desarrollo comunitario, me siento preocupada con respecto al bienestar de las comunidades. Espero poder usar la información/narrativa de las experiencias que usted proporciono' para compartir perspectivas y percepciones de su experiencia con formuladores de políticas del agua, y espero que eso pueda aportar a nuevas conversaciones, y dirigirá la atención hacia los desafíos y los recursos disponibles para las comunidades campesinas del Ecuador, y para los representantes de las instituciones del agua como usted. Le agradezco mucho por participar en esta entrevista. Por favor, no dude en hacer preguntas en este momento, o a futuro -me puede contactar a la dirección de correo electrónico mnebbiamangani@unm.edu. Una vez más, toda la información proporcionada y las preguntas serán totalmente confidenciales. Le agradezco sinceramente por su tiempo.

REFERENCES

- AA. VV. (1985). Anexo II: Primer Congreso de Movimientos Indios de Sudamérica. En: AA.VV. Del indigenismo a las organizaciones indígenas. Colección Ethnos, Quito, pp. 161-177.
- Abdel-Fattah, M. A. (2015). Grounded theory and action research as pillars for interpretive information systems research: A comparative study. *Egyptian Informatics Journal*, 16(3), 309–327. <https://doi.org/10.1016/j.eij.2015.07.002>
- Acero López, A. E., Ramirez Cajiao, M. C., Peralta Mejia, M., Payán Durán, L. F., & Espinosa Díaz, E. E. (2018). Participatory Design and Technologies for Sustainable Development: an Approach from Action Research. *Systemic Practice and Action Research*, 32(2), 167–191. <https://doi.org/10.1007/s11213-018-9459-6>.
- Acosta, A. (2010). El Buen Vivir en el camino del post-desarrollo. Una lectura desde la Constitución de Montecristi. Policy paper 9, Fundación Friedrich Ebert, FES-ILDIS, Quito.
- Acosta Maldonado, M. E., Basani, M., & Solís, H. (2019). Prácticas y saberes en la gestión comunitaria del agua para consumo humano y saneamiento en las zonas rurales de Ecuador. Quito: Banco Interamericano de Desarrollo. <http://dx.doi.org/10.18235/0002022>
- Acosta, A., Martínez, E. (Comp.). (2009). El buen vivir. Una vía para el desarrollo. Editorial Universidad Bolivariana, Santiago.
- Acción Ecológica. (2015). Análisis de la ley de aguas. Llamada ley orgánica de recursos hídricos y aprovechamiento del agua. ALERTA VERDE- Boletín de Acción Ecológica, 175, 1-37.
- Asociación Ecuatoriana de Juntas de Riego (AEJUR) (2018, December). Personal conversation with ex-director.

- Aguirre, Z. (2019). *Diversidad étnica y cultural del Ecuador*. Retrieved from Monografías.com: <https://www.monografias.com/trabajos91/diversidad-etnica-y-cultural-del-ecuador/diversidad-etnica-y-cultural-del-ecuador.shtml>
- Aldeán Cruz, C. R. (2016). Nuevos escenarios de Justicia de Paz: el rol de las juntas administradoras de agua potable. Universidad Católica de Loja. Corpus ID: 164228001
- Alguacil Gómez, J. (2007). Nuevos movimientos sociales: nuevas perspectivas, nuevas experiencias, nuevos desafíos. *Polis- Revista Latinoamericana*, 17, 1-33.
- Allen, W.J. (2000) Working Together for Environmental Management: The Role of Information Sharing and Collaborative Learning. PhD Thesis, Massey University, Auckland, NZ. https://mro.massey.ac.nz/bitstream/handle/10179/3879/02_whole.pdf
- Altmann, P. (2019). Los pueblos indígenas en el buen vivir global, un concepto como herramienta de inclusión de los excluidos. *Revista Iberoamericana de Estudios de Desarrollo/Iberoamerican Journal of Development Studies*, 8(1), 6-28. https://doi.org/10.26754/ojs_ried/ijds.334
- Andrade Figueroa, G J. (2016). Las comunas ancestrales de Quito: retos y desafíos en la planificación urbanística. Quito: Universidad Andina Simón Bolívar, Sede Ecuador; Corporación Editora Nacional, 2016. 65 p. Serie Magíster, No. 209. Accessed at <http://repositorio.uasb.edu.ec/bitstream/10644/5933/1/SM209-Andrade-Las%20comunas.pdf>
- Antúnez, A., & Díaz, E. (2017). El pluralismo jurídico y los derechos a la Pachamama. *Advocatus*, 221-257. <https://doi.org/10.18041/0124-0102/advocatus.29.1668>
- Arroyo, M. J. (2013). La Educación Intercultural: un camino hacia la inclusión educativa. *Revista de Educación Inclusiva*, 144-159.
- Arrojo, P. (2016). Los retos éticos de la nueva cultura del agua. *Revista de la Universidad Bolivariana*, 4, 1-6.
- Arroyo, A., Boelens, R. (2013). Aguas Robadas, despojo hidrico y movilizacion social. Quito: Instituto de Estudios Peruanos (IEP).

- Asamblea Nacional de la Republica del Ecuador. (2008). Constitución de la República del Ecuador 2008. Registro Oficial 449 (Ultima modificación: 13-jul-2011).
- Asamblea Nacional de la Republica del Ecuador. (2009). Ley Orgánica de Participación Ciudadana y Control Social. Registro Oficial Suplemento 22 (Ultima modificación: 24-nov.-2014).
- Asamblea Nacional de la Republica del Ecuador. (2014). Ley orgánica de recursos hídricos usos y aprovechamiento del agua. Registro Oficial Suplemento 305 de 06-ago.-2014.
- Asamblea Nacional del Ecuador, LORHUyA, 2014 -personal translation- accessed at <http://www.competencias.gob.ec/wp-content/uploads/2017/06/01NOR2014-LORHUyA.pdf>
- Asociacion Ecuatoriana de Juntas de Riego del Ecuador (AEJUR) (2018, December 15th). Personal interview with the ex-president.
- Ayala Mora, E. (2011). La interculturalidad: el camino para el Ecuador. Universidad Andina Simón Bolívar / Seguro Social Campesino / Confederación Nacional de Organizaciones Campesinas, Indígenas y Negras (FENOCIN). Quito-Ecuador: Ediciones La Tierra.
- Ayala Mora, E. (2014). La interculturalidad: el camino para el Ecuador. *Revista de la Universidad del Azuay*, 9-58.
- Ayre, M. L., Wallis, P. J., & Daniell, K. A. (2018). Learning from collaborative research on sustainably managing fresh water: implications for ethical research–practice engagement. *Ecology and Society*, 23(1). <https://doi.org/10.5751/es-09822-230106>
- Barabas, A. M. (2014). Multiculturalismo, pluralismo cultural y interculturalidad en el contexto de América Latina: la presencia de los pueblos originarios. *Revista de Sociología Configurações*, 11-24.
- Basani, M. (Diciembre 11 de 2019). Practicas y saberes de la gestion comunitaria del agua en Ecuador. *Volamos a la fuente*: <https://blogs.iadb.org/agua/es/>

- Biernacki, P., & Waldorf, D. (1981). Snowball Sampling: Problems and Techniques of Chain Referral Sampling. *Sociological Methods & Research*, 10, 141-163.
<https://doi.org/10.1177/004912418101000205>
- Bebbington, A. (2012). Underground political ecologies: The second annual lecture of the Cultural and Political Ecology Specialty Group of the Association of American Geographers. *Geoforum*, 43(6), 1152-1162.
<https://doi.org/10.1016/j.geoforum.2012.05.011>
- Beccar, L., Boelens R., & Hoogendam, P. (2002). Water rights, and collective action in community irrigation' (also in Spanish). In: Boelens & Hoogendam (eds.) *Water rights and Empowerment*, 1-21. Assen: Van Gorcum.
- Becker, M. (2011). Indigenous Movements from Oppressed Nationalities to an Ethno-Nationalist Discourse. En: Hunefeldt, C., Zamosc, L. *Ethnicity from Various Angles and through Varied Lenses. Yesterday's today in Latin America*. Brighton, Sussex.
- Benda Beckmann, F. & von Benda-Beckmann, Keebet & Spiertz, J.. (1998). Equity and legal pluralism: taking customary law into account in natural resource policies. In R. Boelens and G. Davis (eds.). *Searching for equity: conceptions of justice and equity in peasant irrigation*, 57-69. Assen: Van Gorcum.
- Bernard, H.R, Wutich, A.Y., & Ryan, G. (2016). *Analyzing Qualitative Data: Systematic Approaches*. 2nd edition. Thousand Oaks, CA: Sage Publications, Inc.
- Bernard, H.R. (2011). *Research Methods in Anthropology: Qualitative and Quantitative Approaches*. 5th ed. Plymouth: Alta Mira Press.
- Beverly, J. (1989). The Margin at the Center: On Testimonio (Testimonial Narrative). *MFS Modern Fiction Studies*, 35(1), 11-28.
- Blommaert, J. (2009). Ethnography and democracy: Hymes' political theory of language. *Text and Talk*, 29(3), 257-276.
- Boelens, R. (2015). *Water, power and identity: The cultural politics of water in the Andes*. New York: Earthscan from Routledge.

- Boelens, R. (2015). Water Justice in Latin America: The politics of difference, equality, and Indifference. *Inaugural lecture*.
http://www.cedla.uva.nl/20_research/pdf/Boelens/R.Boelens-Water_Justice_in_Latin_America-The_Politics_of_Difference_Equality_and_Indifference.pdf
- Boelens, R. (2017). Personal conversation held with the author, during the Integrated Water Management Master's Degree Seminar. MGIRH, Facultad de Ciencias Agrícolas, Universidad Central del Ecuador. Fall 2017. Quito: Ecuador.
- Boelens, R., Doornbos, B. (2001). The battlefield of Water Rights: Rule making amidst conflicting normative frameworks in the Ecuadorian highlands. *Human Organization: Journal of the Society for Applied Anthropology*, 60(4), 343-355.
- Boelens, R. Getches, D., & Guevara-Gil, A. (2010). Out of the Mainstream: Water rights, politics and identity. New York, NY: Earthscan.
- Boelens, R. (2009). Anuario de estudios americanos. 66(2) junio-diciembre, 23-55. Sevilla: Espana. ISSN:02105810
- Boelens, R., Hoogesteger, J. Baud, M. (2015). Water reform governmentality in Ecuador: Neoliberalism, centralization, and the restraining of polycentric authority and community rule-making. *Geoforum* 64, 281-291.
<https://doi.org/10.1016/j.geoforum.2013.07.005>
- Boelens, R., Hoogesteger, J., Swyngedouw, E., Vos, J., & Wester, P. (2016). Hydrosocial territories: A political ecology perspective, *Water International*, 41(1), 1-14.
<https://doi.org/10.1080/02508060.2016.1134898>
- Boelens, R. A, Roth, D., & Zwartveen, M. (2004). Pluralismo legal, derechos locales y gestión del agua: entre el reconocimiento analítico y la estrategia política'. In: *Los pueblos indígenas y el agua: desafíos del siglo XXI*, Francisco Peña (ed.), 161-197. WALIR, Colegio San Luis, IMTA. Colombia/México: Obranegra Editores.
- Boelens, R. A, Zwartveen, M., & Roth, D. (2005). Legal complexity in the analysis of water rights and water resources management. In *Liquid relations. Contested water rights*

- and legal complexity/ Boelens, R., Zwartveen, M., & Roth, D. New Brunswick, NJ: Rutgers University Press.
- Bohn, C. (2014). Inclusión y exclusión monetaria. *Revista Mad*, 31, 1-28.
[https:// 10.5354/0718-0527.2014.32956](https://doi.org/10.5354/0718-0527.2014.32956)
- Borja, R. (2016). Grupo nacional de trabajo "La participación ciudadana en Ecuador". Corporación participación ciudadana.
- Bouguerra, M. (2005). *Las batallas del agua: por un bien común de la humanidad*. Madrid: Editorial Popular.
- Bresser-Pereira, L. C. (2017). La nueva teoría desarrollista: una síntesis. *Economía UNAM*, 14(40), 48-66. http://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S1665-952X2017000100048&lng=es&tlng=es.
- Bretón, V. (2003). Desarrollo rural y etnicidad en las tierras altas de Ecuador. En: Bretón, V., García, F. Estado, etnicidad y movimientos sociales en América Latina. Ecuador en crisis. Barcelona: Icaria Editorial.
- Brosius, J. P. (1999). Analyses and interventions: Anthropological engagements with environmentalism. *Current Anthropology*, 40(3), 277-309. 10.1086/200019
- Bruns B. R., & Meinzen-Dick, R.S. (2000). Negotiating Water Rights. New Delhi: International Food Policy Research Institute and Vistaar Publications.
- Bryant, R. L. (1997). Beyond the Impasse : The power of political ecology in the third world environmental research. *Area*. 29(1), 5-19. Doi: 10.1111/j.1475-4762.1997.tb00003.x
- Budds, J. (2008). Whose scarcity? The hydrosocial cycle and the changing waterscape of La Ligua river basin, Chile. In *Contentious Geographies: Environmental Knowledge, Meaning, Scale*, 59–78. Ashgate Publishing Ltd.
- CAMAREN. (2017). *VII Encuentro Nacional del Foro de los Recursos Hidricos*. Quito: Graphius.

- CAMAREN. (2019, December, 5th). Personal Conversation with the coordinator, Quito.
- Camdessus, M., & Badre, B. (2006). *Agua para todos*. México: Fondo de Cultura Económica.
- Campos, I. S., Alves, F. M., Dinis, J., Truninger, M., Vizinho, A., & Penha-Lopes, G. (2016). Climate adaptation, transitions, and socially innovative action-research approaches. *Ecology and Society*, 21(1). <https://doi.org/10.5751/es-08059-210113>
- CDH. (2017). *El buen vivir y su tutela jurídica en la jurisprudencia de la Corte Constitucional Ecuatoriana*. Quito: Pontificia Universidad Católica del Ecuador.
- Carpio Benalcazar, J. P. (2015). Los nuevos paradigmas de desarrollo en América Latina. el sumak kawasay. Alicante: Universidad de Alicante.
- Castillo Gallardo, M. (2009). Pueblos indígenas y derecho consuetudinario un debate sobre las teorías del multiculturalismo. *Nueva Antropología*, 22(71), 13-29.
- CEDA. (2009). *Derechos y Ambientes. Información y análisis de políticas y herramientas para promover el Desarrollo Sostenible*. Quito: Centro Ecuatoriano de Derecho Ambiental.
- CEPAL. (2018). *Acceso a la información, la participación y la justicia en asuntos ambientales en América Latina y el Caribe: hacia el logro de la Agenda 2030 para el Desarrollo Sostenible*. Santiago de Chile: Comisión Económica para América Latina y el Caribe.
- Chambers, R. (2008) "PRA, PLA and Pluralism: Practice and Theory", in The Sage Handbook of Action Research: Participative Inquiry and Practice. Reason, P. and H. Bradbury (eds). Sage, 297–318.
- Chevalier, J.M. & Buckles, D.J. (2013) *Participatory Action Research: Theory and Methods for Engaged Inquiry*, Routledge UK. ISBN 978-0415540315
- Choudhury, A., & Chauhan, R. (2015). Exploring inormality and gender a case study of Ahmedabad and olkata. CEPT: University Ahmedabad. December 15.

Cohen, D., & Crabtree, B. (2006, July). *Qualitative research guidelines project*. Retrieved from <http://www.qualres.org/HomeRefl-3703.html>

Coloma Caza, C. D. (2018). Gestión comunitaria del riego en la construcción del territorio hidrosocial: caso de estudio en el directorio de aguas de la acequia Razochupa – Chaguarpungo, cantón Cayambe, provincia de Pichincha, Ecuador. Repositorio Digital FLACSO Ecuador -Tesis Sistema FLACSO. Sede Ecuador, Estudios Socioambientales. <http://hdl.handle.net/10469/15240>.

Comisión Nacional del Agua (CONAGUA). (2010). Los consejos de cuenca. presente y futuro. Gerencia de Consejos de Cuenca, México.

Conaghan, C.M. (2011). Ecuador: Rafael Correa and the citizens' revolution, In Levitsky, Steven, Roberts, Kenneth M. (eds.), *The Resurgence of the Latin American Left*, 260-282. Baltimore: Johns Hopkins University Press.

Confederación de Nacionalidades Indígenas del Ecuador (CONAIE). (1989). Las nacionalidades indígenas en el Ecuador. Nuestro Proceso organizativo. Tincui/Conaie, Quito: Abya-Yala.

Confederación de Nacionalidades Indígenas del Ecuador (CONAIE). (1994). Proyecto Político de la Conaie. Conaie, Quito.

Confederación de Nacionalidades Indígenas del Ecuador (CONAIE). (2013). Proyecto político para la construcción del Estado Plurinacional e Intercultural. Propuesta desde la visión de la Conaie 2012. Conaie, Fundación Pachamama, Quito.

Consejo de Desarrollo de las Nacionalidades y Pueblos del Ecuador (CODENPE). (2012). *Legislación para el Fortalecimiento de las Nacionalidades y Pueblos Indígenas del Ecuador*. Quito: Consejo de Desarrollo de las Nacionalidades y Pueblos del Ecuador.

Consejo Nacional de Planificación (CNP). (2009). Plan Nacional para el Buen Vivir 2009-2013. Construyendo un Estado Plurinacional e Intercultural. Quito: Secretaría Nacional de Planificación y Desarrollo-SENPLADES, 2009.

- Consejo Nacional de Planificación (CNP). (2017). Plan Nacional de Desarrollo 2017-2021. Elaboración del Plan Nacional de Desarrollo 2017-2021- Toda una Vida. Quito: Secretaría Nacional de Planificación y Desarrollo-SENPLADES, 2017.
- Consejo de Participación Ciudadana y Control Social (CPCCS). (2015). Guía y Herramientas para la Transversalización de la Interculturalidad. Boletines de Prensa (2008-2015), CPCCS 2008 - 2015.
- Córdova, C.F. (2013). *La gestión del agua en el Ecuador y el rol de las empresas como usuarios del recurso*. Cuenca: Universidad de Azuay.
- Cortez, D. (2011). La construcción social del buen vivir (sumak kawsay) en el Ecuador. Genealogía del iseño y gestión política de la vida . *Revista Aportes Andinos*, 28, 1-23.
- Cubillo-Guevara, A., Hidalgo-Capitán, A. (2015). El sumak kawsay genuino como fenómeno social amazónico ecuatoriano. OBETS. *Revista de Ciencias Sociales*, 10(2):301-333.
- Cruz, E. (2013). Estado plurinacional, interculturalidad y autonomía indígena: Una reflexión sobre los casos de Bolivia y Ecuador. *Revista VIA IURIS*, 55-71.
- Declaration of Nyeleni, (2007). 27th February, Sélingué, Mali accessed at <https://nyeleni.org/spip.php?article290>
- De Miguel, C., & Tavares, M. (2015). *El desafío de la sostenibilidad ambiental en América Latina y el Caribe*. Santiago de Chile: Naciones Unidas.
- Denzin, N. K., & Lincoln, Y. S. (2011). *The SAGE Handbook of Qualitative Research*. Thousand Oaks, CA: Sage Publications, Inc.
- De Sousa Santos, B. (2006). *La Sociología de las Ausencias y la Sociología de las Emergencias: para una ecología de sabers. Renovar la teoría crítica y reinventar la emancipación social (encuentros en Buenos Aires)*. Agosto. ISBN 987-1183-57-7.
- De Sousa Santos, B. (2007a) *The Rise of the Global Left*, London: Zed Books.

De Sousa Santos, B. (2011a). El milenio Huerfano. Ensayos para una nueva cultura política. *Sociologia Historica* 2/2013, 465-471. Madrid/Bogotá: Trotta/Ilsa.

De Sousa Santos, B. (2010b). Refundación del Estado en América Latina. Perspectivas desde una epistemología del Sur. Lima: Instituto Nacional de Derecho y Sociedad.

Doornbos, B. (2001). The battlefield of Water Rights: Rule making amidst conflicting normative frameworks in the Ecuadorian highlands. *Human Organization*: Winter 2001. *Journal of the Society for Applied Anthropology*, 60(4), 343-355.

Duffy, R. (2008). Neoliberalising Nature: Global Networks and Ecotourism Development in Madagascar. *Journal of Sustainable Tourism*, 16(3), 327–344.

El Universo, (October 10th, 2019). *Cholango renuncio a la secretaria del agua*.
<https://www.eluniverso.com/noticias/2019/10/10/nota/7554839/cholango-renuncio-secretaria-agua>

Economic Commission for Latin America and the Caribbean (ECLAC). (2018 McLean, and others). Economic Survey of the Caribbean 2018. *Studies and Perspectives Series—ECLAC Subregional Headquarters for the Caribbean*, No. 77 (LC/TS.2019/9; LC/CAR/TS.2018/5), Santiago, Economic Commission for Latin America and the Caribbean (ECLAC), 2019.

Ellis, C., Adams, T. E., & Bochner, A. P. (2011). Autoethnography: An Overview [40 paragraphs]. *Forum Qualitative Sozialforschung / Forum: Qualitative Social Research*, 12(1), Art. 10, <http://nbn-resolving.de/urn:nbn:de:0114-fqs1101108>.

England, K. V. L. (1994). Getting Personal: Reflexivity, Positionality, and Feminist Research*. *The Professional Geographer*, 46(1), 80–89.
<https://doi.org/10.1111/j.0033-0124.1994.00080.x>

Emerson, R., Fretz, R., & Shaw, L. (2011). *Writing Ethnographic Fieldnotes*. Chicago, ILL: University of Chicago Press.

Empresa Pública del Agua (EPA). (2017). Plan Estratégico Empresarial 2017-2021.
<http://www.empresaagua.gob.ec/wp-content/uploads/downloads/2018/02/PEE-2017-2021-EPA-EP-VF-smallPDF.pdf>

- Escobar, A. (1999). After Nature: Steps to an Antiessentialist Political Ecology. *Current Anthropology*, 40(1), 1-30.
- Escobar, A. (2010). Latin America at a crossroads: Alternative modernizations, post-liberalism, or post-development? *Cultural Studies*, 24(1), 1-65.
<http://dx.doi.org/10.1080/09502380903424208>
- Escobar, A. (2011). Encountering development: The making and unmaking of the third world (Princeton Studies in Culture/Power/History). NJ: Princeton University Press.
- Fletcher, R., & Neves, K. (2012). Contradictions in tourism: The promise and pitfalls of ecotourism as a manifold capitalist fix. *Environment and Society: Advances in Research*, 3, 60-77.
- Foros.Ecuador.ec. (13 de Febrero, 2016). *Poderes del Estado Ecuatoriano y sus Funciones*. Accessed at <http://www.forosecuador.ec/forum/ecuador/educación-y-ciencia/33900-poderes-del-estado-ecuatoriano-y-sus-funciones>.
- Forsyth, T. (2003). Critical Political Ecology: The politics of environmental science. London: Routledge.
- Fueres Flores, M., Morán Salazar, C., Hill, D., Altamirano, M. I., Aguinaga, M., & Torre, T de la, Carrión Sarzosa, N., Pillajo, A., Movimiento de Mujeres de El Oro, Flores Chamba, J. (2013). Soberanía alimentaria y mujeres. *Instituto de Estudios Ecuatorianos*, 45-64.
- Galárraga, R. H. (26 de Marzo de 2004). *Estado y Gestión de los Recursos Hídricos en el Ecuador*. HidroRed. <http://tierra.rediris.es/hidrored/basededatos/docu1.html>
- Gaybor, A. (2008). El despojo del agua y la necesidad de una transformación urgente. V Encuentro Nacional del Foro de los Recursos Hídricos- Consorcio de Capacitación para el Manejo de los Recursos Naturales Renovables (CAMAREN).
<http://www.camaren.org/el-despojo-del-agua-y-la-necesidad-de-una-transformacion-urgente/>

- Gaybor, A., (2011). Acumulacion en el campo y despojo del agua en el Ecuador. In Boelens, R. Cremers, I., Zarteveen, M. (Eds). Justicia Hidrica. IEP, Lima, 195-208.
- Gatti, M. (2018). Indigenous Environmental Autonomy and the issue of Extractivist Development - A Comparative Case Study of Bolivia and Sweden. Thesis. May 24th, 2018, Department of Political Science, LUND University. STV12
- Gavilanes Rodríguez, M. C. (2017). Estado y ONG en Ecuador durante el período 2007-2014. Universidad Andina Simón Bolívar, Sede Ecuador. Área de Estudios Sociales y Globales. Repositorio Institucional del Organismo de la Comunidad Andina, CAN. Tesis Maestría. <http://hdl.handle.net/10644/5574>
- GEE. (11 de Abril de 2013). *Ecuador: País Plurinacional e Intercultural*. Obtenido de Nacionalidades y Pueblos del Ecuador: <http://gruposetnicosecu.blogspot.com/2013/04/ecuador-pais-plurinacional-e.html>
- Geertz, Clifford. (1973) *The interpretation of cultures: Selected Essays*. New York: Basic Books.
- Gelles, P. (2015). Cultural Identity and Indigenous Water Rights in the Andean Highlands In Boelens R., Getches D., & Guevara-Gil A. (Eds.). *Out of the Mainstream: Water Rights, Politics and Identity*. London: Earthscan, 119-144
- Gentes, I. (2002). Derecho de agua y derecho indígena. hacia un reconocimiento estructural de la gestión indígena del agua en las legislaciones nacionales de los países andinos. *Rivista de derecho administrativo economico*, 1, 81-111.
- Georgetown University Political Database of the Americas. (2011). Republic of Ecuador Constitution of 2008. <http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>
- Gobierno de la República del Ecuador (2015). Decreto ejecutivo 650. *Reglamento a la Ley Orgánica de Recursos Hídricos, Usos y Aprovechamiento del Agua*.
- Gobierno de la República del Ecuador (2015). Decreto ejecutivo 740. *Reforma al Reglamento a la Ley Orgánica de Recursos Hídricos, Usos y Aprovechamiento del Agua*.

- Gogoi, C. (2018). The Voice of the Marginalised: Demands for Autonomy among the Tribes of North East India, with special reference to Assam. *International Journal of Marketing and Technology* 8(3). <http://www.ijmra.us>.
- González Casanova, P. (1969). *Sociología de la explotación*. México: Siglo Veintiuno Editores.
- Gonaghan, C. (2010). Ecuador: Rafael Correa and the citizens' revolution. In Levitsky, S., and Roberts, K. *The resurgence of the Latin American left*. 260-282. Baltimore: The Johns Hopkins University Press.
- González Casanova, P. (2006). Colonialismo interno [una redefinición]. En: Boron, A., Amadeo, J., González, S. *La teoría marxista hoy. Problemas y perspectivas*. Buenos Aires: CLACSO.
- Grijalva, A. (2008). El Estado Plurinacional e Intercultural en la Constitución Ecuatoriana del 2008. *Ecuador Debate*, 49-62.
- Guardiola, J., & Garcia-Quero, F. (2014). Buen Vivir (living well) in Ecuador: Community and environmental satisfaction without household material prosperity? *Ecological Economics*, 107, 177-184.
- Gudynas, E., & Acosta, A. (2011). La renovacion de la critica al desarrollo y el buen vivir como alternative. *Utopia y Praxis Latinoamericana Revista Internacional de Filosofia Latinoamericana y Teoria Social*, 16(53), 71-83. ISSN 1315-5216.
- Gudynas, E. (2011). Buen Vivir: Today's tomorrow. *Development*, 54(4), 441-447. Society for International Development. Available at 1011-6370/11 www.sidint.net/development/
- Guerrero, A. (1991). *La semántica de la dominación: el concertaje de indios*. Quito: Libri Mundi
- Guevara-Gil, A. (2015). Water Rights and Conflicts in an Inter-Andean Watershed: The Achamayo River Valley, Junin, Peru. In Boelens R., Getches D., & Guevara-Gil A.

- (Eds.). *Out of the Mainstream: Water Rights, Politics and Identity*. London: Earthscan, 183-196.
- Habermas, J. (1981). *The theory of communicative action: Reason and the rationalization of society*, Vol. 1. Boston, Mass: Beacon Press.
- Habermas, J. (1981). *The theory of communicative action: Lifeworld and system, a critique of functionalist reason*. Vol. 2. Boston, Mass: Beacon Press.
- Heller, P. (2001). Moving the state: the politics of democratic decentralization in Kerala, South Africa, and Porto Alegre. *Politics and Society* 29(1), 131–163.
<https://doi.org/10.1177/0032329201029001006>
- Hendriks, J. (2015). Water Laws, Collective Rights and System Diversity in the Andean Countries. In Boelens R., Getches D., & Guevara-Gil A. *Out of the Mainstream: Water Rights, Politics and Identity*. London: Earthscan. 165-182.
- Herrera-Franco, G., Alvarado-Macancela, N., Gavín-Quinchuela, T., & Carrión-Mero, P. (2018). Participatory socio-ecological system: Manglaralto-Santa Elena, Ecuador. *Geology, Ecology, and Landscapes*, 2(4), 303–310.
<https://doi.org/10.1080/24749508.2018.1481632>
- Herriott, R. E., & Firestone, W. A. (1983). Multisite Qualitative Policy Research: Optimizing Description and Generalizability. *Educational Researcher*, 12(2), 14–19.
- Hicks, G.A. (2015). Acequias of the South-Western US in Tension with State Water Laws. In Boelens R., Getches D., & Guevara-Gil A. *Out of the Mainstream: Water Rights, Politics and Identity*. London: Earthscan. 223-234.
- Hidalgo, A. L., Guillén, A., & Deleg, N. (2014). *Sumak Kawsay Yuyay. Antología del pensamiento indigenista ecuatoriano sobre Sumak Kawsay*. Cuenca: Centro de Investigación en Migraciones.
- Hidalgo F, & Laforge M (2011). *Tierra Urgente*. Primera edición SIPAE. Quito: Ecuador.

- Hoekema, A. (2002). A new beginning of law among Indigenous Peoples: Some Observations from anthropology of law. In Feldbrugge, R. J. M. *The law's beginnings*, 181-216. Leiden: Brill Academic Publishers.
- Hoogesteger, J, Boelens, R. Baud, M. (2016). Territorial pluralism : water users' multiscale struggles against state ordering in Ecuador's highlands. *Water International*, 41(1), 91-106 [http:// 10.1080/0208060.2016.1130910](http://10.1080/0208060.2016.1130910)
- Hsiung, P. (2010, August). Reflexivity: A Process of Reflection. Retrieved from <http://www.utoronto.ca/~pchsiung/LAL/reflexivity>
- Human Rights Council (HRC). (2017). Letter of the Plurinational State of Bolivia dated 20 September 2017. Framework of Item 6 entitled Universal Periodic Review, 25th meeting- 36th session. https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/HRBodies/UPR/UPR_28_Troikas.doc&action=default&DefaultItemOpen=1
- Hunt, C. (2011) Passport to Development? Local Perceptions of the Outcomes of Post-Socialist Tourism Policy and Growth in Nicaragua, *Tourism Planning & Development*, 8:3, 265-279, [http://: 10.1080/21568316.2011.591155](http://10.1080/21568316.2011.591155)
- Huspek, M. (2000). Oppositional codes: The case of the penitentiary of New Mexico. *Journal of Applied Communication Research*, 28, 144- 163. <https://doi.org/10.1080/00909880009365560>
- Hyer, T. J. (2015). Considering Ecuador's new water law through the lens of indigenous rights under international law. *Willamette Environmental Law Journal* Fall, 63. Available at SSRN: <https://ssrn.com/abstract=2710885>
- Hymes, D. H. (1962). The ethnography of speaking. In Gladwin, T. G., & Sturtevant, W. C. *Anthropology and human behavior*. Washington, DC: Anthropological Society of Washington.
- Hymes, D. H. (1967). Models of the interaction of language and social setting. In *Journal of social issues*. Vol. XXIII (2), 8-28. <https://doi.org/10.1111/j.1540-4560.1967.tb00572.x>

- Hymes, D. (1972). Models of the interaction of language and social life. In Gumpertz J. J., & Hymes D. *Directions in sociolinguistics: The ethnography of communication*. Oxford: Basil Blackwell.
- Hymes, D. (1974). *Foundations in sociolinguistics: An ethnographic approach*. Philadelphia, PA: University of Pennsylvania Press.
- Instituto Nacional de Estadística y censos (INEC). (2013). Encuesta de superficie y producción agropecuaria continua (ESPAC)- 2013. <https://www.ecuadorencifras.gob.ec/encuesta-de-superficie-y-produccion-agropecuaria-continua-espac-2013/>
- Instituto Nacional de Estadística y censos (INEC). (2017). Encuesta de superficie y producción agropecuaria continua (ESPAC)- 2017. https://www.ecuadorencifras.gob.ec/documentos/web-inec/Estadisticas_agropecuarias/espac/espac_2017/
- Inuca, B.. (2017). Genealogía de alli kawsay/sumak kawsay (vida buena/vida hermosa) de las organizaciones kichwas del Ecuador desde mediados del siglo XX. *Latin American and Caribbean Ethnic Studies*, 12(2): 155–176. <https://doi.org/10.1080/17442222.2017.1325101>
- Isch Lôpez, E., Boelens, R. A., & Peña, F. (2012). Agua, injusticia y conflictos. (Agua y sociedad: Justicia Hídrica). Cusco: Centro Bartolomé de las Casas (CBC) & Instituto de Estudios Peruanos (IEP).
- Jaguaribe, H., Ferrer, A., Wionczek, M. S., & Dos Santos, T. (2017). La dependencia político- económica de América Latina. Colección Clásicos Recuperados. Buenos Aires: CLACSO.
- Jameson, K.P. (2011). The Indigenous Movement in Ecuador: The Struggle for a Plurinational State. *Latin American Perspectives*, 38(1), 63–73. <https://doi.org/10.1177/0094582X10384210>
- Karlsson, B. (2018). After political ecology: New directions in anthropology of the environment. *Anthropology Today*, 34(2), 22-24. <https://doi.org/10.1111/1467-8322.12422>

- Kárpava, A., & Moya, R. (2016). Paz Intercultural y Sumak Kawsay. ¿Un encuentro con el origen? *Revista de Paz y Conflictos*, 9, 47-72.
- Kindon, S., Pain, R., and Kesby, M. (2007) (Eds.). *Participatory Action Research Approaches and Methods Connecting people, participation and place*. London and New York: Routledge.
- King, L., MacKenzie, L., & Tadaki, M. (December, 2017). On the problems and politics of environmental governance by scientists. *43* (2), 388-390. In Jessica O'Reilly, *The Technocratic Antarctic*. New York: Cornell University Press.
- Kowii, A. (2011). El sumak kawsay. *Revista Aportes Andinos*, 28, 1-5.
- Kvale, S. (1996). *Interviews: An Introduction to Qualitative Research Interviewing*. Thousand Oaks, CA: Sage Publications, Inc.
- Lane, M. (2000). Environmentally Responsible Behavior -Does it really matter what we believe? *Planning Forum* 6, 33-39.
- Lane, M. (2011). Water, technology, and the courtroom: Negotiating reclamation policy in territorial New Mexico. *Journal of Historical Geography*, 37, 300–311. 10.1016/j.jhg.2011.01.004.
- Larrea, A. (2011). El Buen Vivir como contrahegemonía en la Constitución Ecuatoriana. *Utopía y Praxis Latinoamericana* 16(53), abril-junio, 59-70. Universidad del Zulia Maracaibo, Venezuela.
- Larrea, C., & Greene, N. (2017). Buen vivir como alternativa al desarrollo: una construcción interdisciplinaria y participativa. Documento de Trabajo, Quito: Universidad Andina Simón Bolívar. <http://hdl.handle.net/10644/5964>
- Leiva, F. (2008). Toward a Critique of Latin American. *Latin American Politics and Society* Winter 50(4), 1-25. <https://doi.org/10.1111/j.1548-2456.2008.00028.x>

- León, M. (2015). *Del discurso a la medición: Propuesta metodológica para medir el Buen Vivir en Ecuador*. Quito: Instituto Nacional de Estadística y Censos (INEC).
- Lincoln, Y. S., & Guba, E. G. (1985). *Naturalistic Inquiry*. Beverly Hills, CA: Sage Publications, Inc.
- Linton, J., & Budds, J. (2014). The hydro-social cycle: Defining and mobilizing a relational-dialectical approach to water. *Geoforum*, 57, 170-180.
<https://doi.org/10.1016/j.geoforum.2013.10.008>
- López, V. (2008). *Agua, energía y políticas públicas en la Amazonía ecuatoriana*. Quito: Facultad Latinoamericana de Ciencias Sociales.
- Macas, L. (2010). El Sumak Kawsay. *Revista Yachaykuna Saberes*, 13-39.
- Macías, L. (2012). El constitucionalismo ambiental en la nueva Constitución de Ecuador. Un reto a la tradición constitucional. *Iuris Dictio*, 151-168. <https://doi.org/10.18272/iu.v12i14.704>
- Malterud, K. (2001). Qualitative research: Standards, challenges and guidelines. *The Lancet*, 358(9280) 483-488. [http://doi.org/10.1016/S0140-6736\(01\)05627-6](http://doi.org/10.1016/S0140-6736(01)05627-6)
- Marcinek, A.A., & Hunt, C.A. (2015). Social Capital, Ecotourism, and Empowerment in Shiripuno, Ecuador. *International Journal of Tourism Anthropology*, 4(4), 327-342.
- Marcinek, A.A. and Hunt, C.A. (2019). Friction in the forest: a confluence of structural and discursive political ecologies of tourism in the Ecuadorian amazon. *Journal of sustainable Tourism*. <http://doi.org/10.1080/09669582.2018.1560450>
- Marshall, C. & Rossman, G. (2016). *Designing Qualitative Research*. 6th Edition, Thousand Oaks, CA: Sage Publications, Inc.
- Martín, L., & Bautista, J. (2015). *Análisis, prevención y resolución de conflictos por el agua en América Latina y el Caribe*. Santiago de Chile: CEPAL.

- Martínez Moscoso, A. (2017). El derecho al agua en el Ecuador: un análisis desde la ciencia política y el derecho público. Cuenca: Editorial Dirección de Publicaciones de la Facultad de Jurisprudencia, Ciencias Políticas y Sociales- Universidad de Cuenca, Ecuador.
- Martinez Novo C. (2014). Managing Diversity in POst-Neoliberal Ecuador. *The Journal of Latin American and Caribbean Anthropology*, 19(1),103–125.
<https://doi.org/10.1111/jlca.12062>.
- Martínez Valle, L. (1998). Comunidades y tierra en el Ecuador (Debate agrario). *Ecuador Debate*. Deuda externa en nuevos contextos, 45, 173-188.
- Martínez, Y., & Villalejo, V. M. (2018). La gestión integrada de los recursos hídricos: una necesidad de estos tiempos. *Ingeniería Hidráulica y Ambiental*, 39(1), 58-72.
- Masala, R., & Monni, S. (2017). The social inclusion of Indigenous peoples in Ecuador before and during the Revolucion Ciudadana. SEEDS Working Paper Series 10/2017 December. <http://www.sustainability-seeds.org/papers/RePec/srt/wpaper/1017.pdf>
- McNiff, J., 2014. Writing And Doing Action Research. London: SAGE Publications.
- Menchu, R., & Burgos-Debray, E. (2009). I, Rigoberta Menchu: An Indian Woman in Guatemala. London: Verso.
- Merino, R. (Diciembre, 2008). The Limits of Contractual Autonomy in the Capitalism of the Global Market (Los Límites de la Autonomía Contractual en el Capitalismo del Mercado Global). *Revista Jurídica del Perú*, Tomo 94, Diciembre 2008.
<https://ssrn.com/abstract=1697307>.
- Merino, R. (2018). Reimagining the Nation-State: Indigenous Peoples and the Making of Plurinationalism in Latin America. *International Legal Theory. Leiden Journal of international Law*, 31, 773-792 10.1017/S0922156518000389
- Mero Figuero, M., Ramírez Carguacundo, B., Espinoza Pérez, P. (2018). Análisis de los planes del buen vivir y sus efectos sobre la informalidad, el subempleo y pobreza en Ecuador. *ESPACIOS*, 39(32), 5.

- Ministerio del Ambiente . (2019). *Género, Interculturalidad y Ambiente*. Obtenido de Gobierno de la República del Ecuador: <http://www.ambiente.gob.ec/genero-interculturalidad-y-ambiente/nero-interculturalidad-y-ambiente/>
- Morales, L. (2014). Algunos criterios sobre la ley orgánica de recursos hídricos, usos y aprovechamiento del agua. *El marco legal y la Ley del Agua.*, 453-462.
- Morosevi, C. (2011). *La participación ciudadana en el procedimiento de evaluación de impacto ambiental y las reformas introducidas a la Ley ° 20.417*. Revista de Derechode la Pontificia Universidad Católica de Valparaíso, 281-323.
<http://dx.doi.org/10.4067/S0718-68512011000100008>
- Munévar, D. I., & Villaseñor, M. L. (2005). Transversalidad de Género. Una Estrategia para el Uso Político Educativo de sus Saberes. *Revista de Estudios de Género. La Ventana*, 21, 44-68.
- Narváez, I. (2017). *Pueblos indígenas: El sentido de la esperanza. Los derechos colectivos en el estado neoconstitucional*. Quito: Universidad Andina Simón Bolívar / Ediciones Legales.
- Núñez, W. (2018). *El derecho fundamental al agua dentro del marco del servicio público de agua potable en el Ecuador*. Quito: Universidad Andina Simón Bolívar.
- Organización de los Estados Americanos (OEA). (2015). *Pueblos indígenas, comunidades afrodescendientes y recursos naturales: protección de derechos humanos en el contexto de actividades de extracción, explotación y desarrollo*. San José: Comisión Interamericana de Derechos Humanos.
- Organización Mundial de la Propiedad Intelectual (OMPI). (2016). *El derecho consuetudinario y los conocimientos tradicionales*. Ginebra: Organización Mundial de la Propiedad Intelectual.
- ONU. (1992). *Conferencia de las Naciones Unidas sobre el Medio Ambiente y el Desarrollo*. Río de Janeiro: Organización de Naciones Unidas.

- ONU. (2006). Guía de recursos para la transversalización del enfoque de género en la gestión del agua. New York: Programa de las Naciones Unidas para el Desarrollo.
- ONU. (2007). La Declaración de las Naciones Unidas sobre los Derechos de los Pueblos Indígenas. New York: Organización de Naciones Unidas.
- ONU. (2010). *Promover el desarrollo, salvar el planeta*. New York: Organización de Naciones Unidas.
- ONU. (2011). El derecho al agua. Ginebra: Organización de Naciones Unidas .
- ONU. (2012). *Conferencia de desarrollo sostenible Río+20*. Brazil: Organización de Naciones Unidas.
- ONU. (24 de Noviembre de 2014). *Agua y desarrollo sostenible*. Obtenido de Decenio Internacional para la acción "El agua fuente de vida" 2005-2015:
https://www.un.org/spanish/waterforlifedecade/water_and_sustainable_development.shtml
- Ortiz, B. (2013). Participación ciudadana en la transformación del manejo del agua en Puerto Rico. *Revista Puertorriqueña de Psicología*, 24, 1-16.
- Ospina, P.(2011). Corporativismo, Estado y revolucin ciudadana. El Ecuador de Rafael Correa. In Christian Bsches , Olaf Kaltmeier , Sebastian Thies (eds.). *Culturas Politicas en la Region Andina*. Publicaciones del Instituto Ibero-Americano Fundación Patrimonio Cultural Prusiano Vol. 145. Iberoamericana, Vervuert. Madrid: Spain: ADLAF.
- Palazuelos, A., & Villarreal, M. d. (2013). *Ecuador. El Proyecto De Desarrollo De La Revolucion Ciudadana*. Quito: Universidad Central del Ecuador.
- Peet, R. and Hartwick, E. (2015). Nonconventional critical theories. Poststructuralism, Postcolonialism, and Postdevelopmentism. *Theories of Development: Contentions, arguments, alternatives* 3rd ed. Guildford Press, 229- 238.

- Peet, R., Robbins, P., & Watts, M. (2010). *Global Political Ecology*. London/New York: Routledge.
- Peet, R., & Watts, M. (1996). *Liberation ecologies: Environment, development, social movements*. London/New York: Routledge.
- Perez, J. (2019). Personal interview with the coordinator of *Pueblos Montubios del Daule-Peripa*, February, 2019.
- Perevochtchikova, M. (2013). La evaluación del impacto ambiental y la importancia de los indicadores ambientales. *Gestión y política pública*, 22, 283-313.
- Pérez, L., & Cardoso, R. (2014). Construcción del Buen Vivir o Sumak Kawsay en Ecuador: una alternativa al paradigma de desarrollo occidental. *Contribuciones desde Coatepec*, 49-66.
- Pinto, I., Cerneiro, P., Augusto, S., & Maluf, F. (2018). La naturaleza como sujeto de derechos: análisis bioético de las Constituciones de Ecuador y Bolivia. *Revista Latinoamericana de Bioética.*, 155-171.
- Planos, E. (2007). Agua, el ambiente y el cambio climático. *Sexto diálogo interamericano sobre la gestión del Agua*, 50-62. Obtenido de Sexto diálogo interamericano sobre la gestión del Agua. Guatemala Agosto de 2007.
- Porras, N. (11 de septiembre de 2017). *Identidades étnicas y nacionalidades*. Obtenido de Sociedad y Cultura.
<http://nicoleporrasmsociedadycultura.blogspot.com/2017/09/45-identidades-etnicas-y-nacionalidades.html>
- Presidencia de la Republica del Ecuador. (2008) Presidential Decree 05-1088, 2008. Quito: Ecuador.
- Proaño, M. (2020). Tras 42 años, Ecuador cuenta con nueva Ley de Recursos Hídricos. *iagua- web del sector del agua (iagua.es)*.
<https://www.iagua.es/noticias/ecuador/iaguatv/14/08/24/tras-42-anos-ecuador-cuenta-con-nueva-ley-de-recursos-hidricos>.

- Rahman, Md. A. (2008) "Some Trends in the Praxis of Participatory Action Research", in P. Reason and H. Bradbury (eds) *The SAGE Handbook of Action Research*. Sage, London, pp. 49–62.
- RAMSAR. (2010). *Manual 9. Manejo de cuencas hidrográficas: Integración de la conservación y del uso racional de los humedales en el manejo de las cuencas hidrográficas*. Suiza: RAMSAR.
- Reason, P. and Bradbury, H. (2008) (eds) *The Sage Handbook of Action Research: Participative Inquiry and Practice*. Sage, CA. ISBN 978-1412920292
- Red de Organizaciones Sociales Comunitarias en la Gestión del Agua del Ecuador (ROSCGAE). (January, 21st 2019). Personal conversation with President.
- Reed, P. 2011. REDD+ and the Indigenous Question: A Case Study from Ecuador. *Forests*, 23390(2):525-549. <https://doi.org/10.3390/f2020525>
- Regaledo, L. (8 de Octubre de 2015). *Ciudadanía intercultural*. Obtenido de El Diario: <http://www.eldiario.ec/noticias-manabi-ecuador/369904-ciudadania-intercultural/>
- Robbins, P. (2004). *Political Ecology: A critical introduction*. Malden, MA: Wiley-Blackwell.
- Robbins, P. (2012). *Political Ecology: A critical introduction*. Second Edition. Malden, MA: Wiley-Blackwell.
- Rocheleau, D. (2015). A situated view of feminist political ecology from my networks, roots and territories. In Harcourt W., & Nelson I., L. *Practising feminist Political Ecologies: Moving beyond the 'Green Economy'*. London: Zed Books.
- Rodas, A. (11 de Junio de 2015). *Participación Ciudadana. Rol del Estado en la Constitución de 2008*. Obtenido de Derecho Ecuador. com: <https://www.derechoecuador.com/participacion-ciudadana-rol-del-estado-en-la-constitucion-de-2008>.

- Rodriguez Salazar, A. (2016). Teoría y práctica del buen vivir: orígenes, debates conceptuales y conflictos sociales. El caso de Ecuador. Tesis doctorales-HEGOA-TD-Ciencias Sociales y Jurídicas -Repositorio Institucional de la Universidad del País Vasco - Euskal Herriko Unibertsitatea. Sede Espana.
<http://hdl.handle.net/10810/19017>.
- Saldívar, A. (2013). Gobernanza multidimensional del agua: la Directiva Marco del Agua europea. Dificultades de su aplicación. *Economía Informa*, 381, México.
[https://doi.org/10.1016/S0185-0849\(13\)71329-X](https://doi.org/10.1016/S0185-0849(13)71329-X)
- Santandreu, A. (2007). *Instrumentos y estrategias para promover la participación ciudadana y de la sociedad civil en la gestión ambiental*. Montevideo: SNAP.
- Sarango, L. (2016). El Estado plurinacional y la sociedad intercultural. Una visión desde el Ecuador. *Direito y Praxis*, 636-658. Sentencia N.o 0006-10-SEE-CC, Caso N.o 000S-09-EE (Corte Constitucional 25 de Marzo de 2010).
- Schreurs, E., Koop, S. & van Leeuwen, K. (2018). Application of the City Blueprint Approach to assess the challenges of water management and governance in Quito (Ecuador). *Environ Dev Sustain* 20, 509–525. <https://doi.org/10.1007/s10668-017-9916-x>
- Schlager, E. & Ostrom, E. (1992) Property Rights Regimes and Natural Resources: A Conceptual Analysis. *Land Economics*, 68, 249-262.
- Secretaría Nacional del Agua de la República del Ecuador (SENAGUA). (2016). Estrategia nacional de calidad del agua. <http://rpa.senagua.gob.ec/index.php/datos-de-calidad-de-agua/35-calidad-del-agua/117-estrategia-nacional-de-calidad-del-agua-enca>
- Secretaría Nacional del Agua de la República del Ecuador (SENAGUA). (2017). Acuerdo No.0031-2017. Quito: Registro Oficial 62.
- Secretaría Nacional del Agua de la República del Ecuador (SENAGUA). (2018). Acuerdo 0194-2018. Quito: Registro Oficial 394.
- Secretaría Nacional del Agua de la República del Ecuador (SENAGUA). (Agosto, 2019). Organizaciones del agua en Ecuador cuentan con RUC comunitarios para agilizar sus

trámites tributarios. <https://www.agua.gob.ec/organizaciones-del-agua-en-ecuador-cuentan-con-ruc-comunitario-para-agilizar-sus-tramites-tributarios/>

Secretaría Nacional del Agua de la República del Ecuador (SENAGUA). (Diciembre, 2017). Guía Gestión Comunitaria del Agua, Subsecretaría Social y de Articulación del Recurso Hídrico, <https://www.agua.gob.ec/wp-content/uploads/2018/01/Gestion-comunitaria-2018.pdf>

Secretaría Nacional del Agua de la República del Ecuador (SENAGUA). (2017). Acuerdo 2017-0103. Quito: Secretaría del Agua.

Secretaría Nacional del Agua de la República del Ecuador (SENAGUA). (2018). Secretaría del Agua desarrolla capacitación en más de 180 juntas. Obtenido de Secretaría Nacional del Agua: <https://www.agua.gob.ec/secretaria-del-agua-desarrolla-capacitacion-en-mas-de-180-juntas-de-agua-en-azuay-y-canar/>

Secretaría Nacional del Agua de la República del Ecuador (SENAGUA). (2017). Acuerdo No.0031-2017. Quito: Registro Oficial.

Secretaría Nacional del Agua de la República del Ecuador (SENAGUA). (Diciembre, 2017). Guía Gestión Comunitaria del Agua, Subsecretaría Social y de Articulación del Recurso Hídrico, <https://www.agua.gob.ec/wp-content/uploads/2018/01/Gestion-comunitaria-2018.pdf>

Secretaría Nacional del Agua de la República del Ecuador (SENAGUA). (2017). Acuerdo 2017-0103. Quito: Secretaría del Agua.

Secretaría Nacional del Agua de la República del Ecuador (SENAGUA). (2018). Informe de Rendición de Cuentas 2017.

https://aplicaciones.senagua.gob.ec/reslotaip2017/rendcuent/DH%20NAPO/FASE%203/INFORME%20FINAL_RENDICI%C3%93N%20DE%20CUENTAS%20DHN%202017%20vf.pdf

Secretaría Nacional del Agua de la República del Ecuador (SENAGUA). (2018). Acuerdo 0194-2018. Quito: Registro Oficial 394.

- Secretaría Nacional del Agua de la República del Ecuador (SENAGUA). (Agosto, 2019). Organizaciones del agua en Ecuador cuentan con RUC comunitarios para agilizar sus trámites tributarios. <https://www.agua.gob.ec/organizaciones-del-agua-en-ecuador-cuentan-con-ruc-comunitario-para-agilizar-sus-tramites-tributarios/>
- Secretaría Nacional de Planificación y Desarrollo (SNCPD). (2012). *La Participación Ciudadana*. Quito: Ecuador.
- Simulação de Geopolítica do Ifes (SiGi) .(2017). Conselho de Direitos Humanos de 2017, quinta edição. <https://cdhcomite2017.wixsite.com/cdh2017vsigi>.
- Spain, D. (1993) Gendered spaces and women's status. *Sociological Theory*. 11(2)137-151. *American Sociological Association*. 10.2307/202139 <https://www.jstor.org/stable/202139>
- Spivak, G. C. (1994). Can the Subaltern Speak? En: Williams, P., Chrisman, L. *Colonial Discourse and Post-Colonial Theory*. New York: Columbia University Press.
- Sprain, L., Boromisza-Habashi, D. (2013). The ethnographer of communication at the table: building cultural competence, designing strategic action. In *Journal of Applied Communication Research*, 41(2), 181-187. <https://doi.org/10.1080/00909882.2013.782418>
- Stavenhagen, R., & Iturralde, D. A. (1990). *Entre la ley y la costumbre: El derecho consuetudinario indígena en América Latina*. México: Instituto Indigenista Interamericano.
- Tamayo, E., & Serrano, H. (14 de Febrero de 2008). *Socialismo del siglo XXI: Superar la lógica capitalista*. Obtenido de América Latina en movimiento : <https://www.alainet.org/es/active/22188>
- Tituaña, C. (2014). *La Contaminación Lumínica en la zona de la Mariscal Sucre de la ciudad de Quito y su falta de normativa jurídica*. Quito: Universidad Central del Ecuador.
- Tsing, A.L. (2005). *Friction: An ethnography of global connection*. Princeton, NJ: Princeton University Press.

- Verdugo, B. E. (2014). *Naturaleza jurídica de las tarifas por el derecho humanos al agua y su relación con el derecho tributario en el ecuador*. Cuenca: Universidad de Cuenca.
- Villacís, E. R. (2018, March 17). *Ecuador: Plurinacional e Intercultural* . Obtenido de Ahora news. El periódico de nuestra Comunidad: <http://ahoranews.net/ecuador-plurinacional-e-intercultural/>
- Villalba, U. (2011a). Ecuador: Analisis de la Cooperacion Vasca. Aportes dobre Desarrollo Humano Local, equidad de genero y participacion social. HEGOA. UPV-EHU, Bilbao.
- Villalba, U. (2011b). New approaches and spaces for participation in development planning in Ecuador and Guatemala. Paper presented at the 13th EADI-DSA General conference, York.
- Villalba, U. (2013) Buen Vivir vs Development: a paradigm shift in the Andes? *Third World Quarterly*. 34(8), 1427–1442. <http://dx.doi.org/10.1080/01436597.2013.831594>
- Vinueza, H. (2014). Para qué sirven los consejos de cuenca. El marco legal y la Ley de Agua, 463-473.
- Vivanco, L. R. (2014). La participación en la formulación de los palnes de desarrollo y ordenamiento territorial. Cuenca: Universidad de Cuenca.
- Von Benda-Beckmann, F., & Benda-Beckmann, K. 2017. Legal Pluralism and Legal Anthropology. In Gary F. Bell (Ed.). *Pluralism, Transnationalism, and Culture in Asian Law : A Book in Honour of M.B. Hooker*. 70-89. ISEAS - Yusof Ishak Institute. ProQuest Ebook Central, <https://ebookcentral.proquest.com/lib/unm/detail.action?docID=5110510>. Created from UNM on 2019-08-19 12:10:31.
- Walsh, C. (2008). *Interculturalidad y Plurinacionalidad. Elementos para el debate constituyente*. Quito: Universidad Andina Simón Bolívar.

- Walsh, C. (2010). Development as Buen Vivir: Institutional arrangements and (de)colonial entanglements. *Development*, 53(1), 15–21. <https://doi.org/10.1057/dev.2009.93>
- Walsh, C., & García Salazar, J. (2015). Memoria colectiva, escritura y Estado. Prácticas pedagógicas de existencia afroecuatoriana. *Cuadernos de Literatura*, 38(19), 79-98. <http://10.11144/Javeriana.cl19-38.mcee>
- Walsh, C. (2015). (W)riting Collective Memory (De)spite State: Decolonial Practices of Existence in Ecuador. En Jerome Branche (edit). *Black Writing and the State in Latin America*. Vanderbilt University Press, 2015. ISBN 978-0-8265-2062-3 (cloth)ISBN 978-0-8265-2063-0 (paperback), ISBN 978-0-8265-2064-7 (ebook).
- Walsh, C. (2015). Life and Nature Otherwise. Challenges from the Abya-Yalean Andes. En F. Luisetti, J. Pickles y W. Kaiser (edits). *The Anomie of the Earth. Autonomous and Indigenous Politics of Nature and Society*. Durham, NC: Duke University.
- World Bank. (2000). Ecuador Poverty and Wealth. 2000 World Development Indicators [CD-ROM].
- Yacoub, C., Duarte, B., & Boelens, R. (2015). Agua y ecología política: El extractivismo en la agroexportación, la minería y a hidroeléctricas en Latinoamérica. Quito, Ecuador: Abya-Yala.
- Yin, R. K. (2017). Case study research: Design and methods. 6th ed. Thousand Oaks, CA: Sage Publications, Inc.
- Zapatta, A. (2017). Construcciones discursivas en la nueva legislación de aguas en el Ecuador. *Anthropologica/año xxxv* (38), 69-93
<https://doi.org/10.18800/anthropologica.201701.003>
- Zapatta, A. (2018). Personal interview with Alex Zapatta, ex-Subsecretario de Riego y Drenaje SENAGUA, 75, 1-37.
- Zambrano, C. (2014). *Hacia una Ley de Aguas transformadora*. Quito: CAMAREN.

Zwarteveen, M., & Boelens, R. (2010). *Justicia Hídrica. Acumulación, Conflicto y Acción Social*. México: ICCO.

Zwarteveen, M. Z., & Boelens, R. (2014). Defining, researching and struggling for water justice: some conceptual building blocks for research and action. *Water International*, 39(2), 143–158. <https://doi.org/10.1080/02508060.2014.891168>.