

# Reversing gender degradation by protecting the environment: A critical appraisal of environmental constitutionalism in Latin America\*

## Inverter a degradação de gênero protegendo o meio ambiente: uma avaliação crítica do constitucionalismo ambiental na América Latina

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### Resumo

O objetivo deste artigo é destacar a interdependência entre a degradação constitucional, de gênero e ambiental. Defende que a degradação de gênero e do ambiente se baseia em um quadro de exploração semelhante que aproveita os extratos mais vulneráveis da nossa sociedade, nomeadamente os recursos naturais e as mulheres. O contexto latino-americano proporciona uma experiência única em termos de combinar a luta ecológica contra o extrativismo e a luta contra a discriminação de gênero. No plano constitucional, a necessidade de profunda renovação cultural encontra uma possível resposta nas constituições ambientalmente conscientes. Partindo da premissa de que a degradação ambiental e a degradação de gênero são consequências de um mesmo sistema defeituoso, o trabalho propõe examinar o constitucionalismo ambiental como uma possível forma de combinar as lutas das mulheres, a cosmovisão dos povos indígenas e ambientalismo ecocêntrico. Através da ideia de "pertencer" e "cuidar", a cosmovisão dos povos indígenas fornece uma alternativa ao sistema capitalista e explorador. Sua luta pelo reconhecimento dos direitos à natureza, direitos coletivos sobre a terra, autogoverno e consentimento

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\* This article is the result of a collaborative effort between the authors. However, it should be noted that Ludovica Bargellini wrote paragraphs 2 and 4, while Giorgia Pane authored paragraphs 3 and 5.

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prévio está especialmente próxima das batalhas feministas pela igualdade. A necessidade de uma transformação constitucional proporciona um terreno fértil para explorar esses novos paradigmas e sua eficácia na reversão do padrão de subordinação e discriminação.

**Palavras-chave:** constitucionalismo ambiental; ecofeminismo; América Latina; degradação de gênero; Povos Indígenas.

## Abstract

The aim of this paper is to highlight the interdependence of constitutional, gender and environmental degradation. It argues that gender and environmental degradation are based on a similar exploitative framework which takes advantage of vulnerable categories in our societies, namely natural resources and women. The Latin American context provides a unique experience in terms of combining the ecological fight against extractivism and the one against gender discrimination. At the constitutional level, the need for profound cultural renovation finds a possible answer in environmentally-conscious constitutions. Moving from the premise that environmental degradation and gender degradation are consequences of the same faulty system, the paper proposes to examine environmental constitutionalism as a possible way to combine women's fights, indigenous peoples' cosmovision and ecocentric environmentalism. Through the idea of "belonging to" and "caring for", indigenous peoples' cosmovision provides an alternative to the capitalistic, exploitative system. Their fight for the recognition of rights to nature, collective rights over land, to self-government and previous consent is especially close to feminist battles for equality. The need for a constitutional transformation provides a fertile ground to explore these new paradigms and their efficacy in reversing the pattern of subordination and discrimination.

**Keywords:** environmental constitutionalism; ecofeminism; Latin America; gender degradation; Indigenous Peoples.

## Introduction

The aim of this paper is to highlight the interdependence of constitutional, gender and environmental degradation. Particularly, it argues that gender and environmental degradation are based on a similar exploitative framework which takes advantage of vulnerable categories in our societies, namely natural resources and women. While extractivist and capitalistic economies have their roots in the exploitation of natural resources, patriarchal and capitalistic societies are based on the exploitation of women. The nexus between extractivist destructive approaches in the environment and widespread gender discrimination forces us to reconsider new development paradigms which place productivity and environmental justice at the same level of economic, social and gender equality.

The Latin American context provides a unique experience in terms of combining the ecological fight against extractivism and the one against gender discrimination. At the constitutional level, the need for profound cultural renovation finds a possible answer in environmentally-conscious constitutions. Among these juridical phenomena, we choose to explore environmental constitutionalism, which recognises the constitutional status of the environment and the need for its special protection, not as a “commodity” of mankind<sup>3</sup> but for its own, intrinsic value. Its growth on a global level can be linked to its flexibility (May and Daly, 2017). Sitting at the crossroad between environmental protection and human rights, this approach can be effectively used to protect both local and global concerns. Environmental constitutionalism is gathering momentum particularly in Latin America, where it has taken a specific form, inspired by the concept of interculturality (es. Bolivia, Ecuador, Argentina). This is motivated by several factors, one of them being the peculiar, multicultural (*rectius*, intercultural) nature of these countries, in which there is a strong presence of Indigenous Peoples.

Moving from the premise that environmental degradation and gender degradation are consequences of the same faulty system, the paper proposes to examine environmental constitutionalism as a possible way to combine women’s fights, Indigenous Peoples’ cosmovision and ecocentric environmentalism. Through the idea of “belonging to” and “caring for”, Indigenous Peoples’ cosmovision provides an alternative to the capitalistic, exploitative system. Their fight for the recognition of rights to nature, collective rights over land, to self-government and previous consent is especially close to feminist battles for equality. The need for a constitutional transformation provides a fertile ground to explore these new paradigms and their efficacy in reversing the pattern of subordination and discrimination.

Our research questions on the matter are the following: What does an eco-feminist approach bring to Latin American constitutional processes? Is environmental constitutionalism – inspired by ecocentrism and aimed at fighting against the capitalist anthropocentric system – really a viable alternative? Does it really break exploitation patterns in the way envisioned by eco-feminist theory? Or is it a way of “satisfying” a part of the population, without actual change?

After a brief introduction on the principles surrounding ecofeminism, in part II, we will explore the elements of environmental constitutionalism, trying to apply an ecofeminist lens to their analysis. We will verify if and how women have helped shape these constitutions and if, at least in theory, these constitutions can provide a more eco-conscious and feminist approach to the environment.

Then, in part III, we will examine more closely the experience in Latin America, by looking at the fights of Indigenous feminist activists and by analysing the impact Indigenous Peoples’ have on the cultural framework in which these constitutions are born.

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<sup>3</sup> The term is here purposely used in the masculine form to highlight the patriarchal privilege underlying the extractivist capitalist logic.

Lastly, part IV will be dedicated to verifying our premises. We will look critically at these constitutions and their context in order to evaluate them. Conclusively, we will try to answer our research questions.

## Methodology and Epistemology

Our methodology premises lay in the document analysis research method: we examined secondary sources such as academic articles, manuals, journals regarding both ecofeminism and environmental constitutionalism, for then moving to primary sources, namely the Ecuadorian and Bolivian constitutions. The aim was to evaluate the presence and the effectiveness of the ecofeminist approaches to these (environmental) constitutions. Our attention subsequently turned to the stances of resistance and ecofeminist movements carried out by Indigenous women in Latin America. They were particularly significant to our analysis as they combine decolonial and anti-capitalist standpoints with critiques against the patriarchal practices and norms of their communities. In doing that, they are showing us that an alternative, feminist and eco-conscious way of living can be put into practice as another viable solution to capitalist and anthropocentric paradigms.

A necessary premise concerning our epistemological approach is needed. We argue that the feminist, anti-capitalist and cosmogonic activism of Indigenous women in Latin America is a virtuous example which opposes the brutal capitalist “development” (Villalba, 2013).

Our intent is to question the “anthropocentric” standards upon which the ideas of progress and modernization are based.

The Indigenous fight carried out against the barbaric, white, supremacist, capitalist-extractivist and machista “*terricide*” is an exemplary practice of resistance and a form of collective care for Mother Earth, women and Indigenous Peoples (Tapias Torrado, 2022). As a strikingly barbaric example, the violence exerted on Indigenous Peoples and women’s bodies through *chineo* is the most tangible example of overpowering, abuse and racism. The Indigenous ecocentric cosmogony, which, for example, has been partially translated into environmental constitutionalism in Ecuador and Bolivia, can have healing and regenerative effects if applied to the rest of the world, so as to inform practices that are effectively eco-sustainable and respectful of social justice, ecological cycles and women’ empowerment.

In light of this, the shift in our legal and development paradigms should also pass through a shift in our linguistic and epistemological approach. Although we do not necessarily agree with the syllogism of femininity as maternity and fertility, it encapsulates how disruption and violation of nature by the extractive and capitalist system is parallel and complementary to the violence and exploitation Indigenous women are subjected to. By personifying Nature, it’s possible to let her stand at the same level of humans. The latter become just a speck of the whole. Living together in harmony, complementarity, reciprocity and solidarity, human and non-human beings, within the same natural space can be achieved if all ecological cycles are respected and lived accordingly, as an efficient way of contrasting the extractive and destructive development of the Western world.

That is the reason why, as an example, we will refer to Nature in a feminine way.

## Environmental constitutionalism under an ecofeminist perspective

Environmental constitutionalism refers to the incorporation of environmental protection into a country's constitution as a fundamental principle and duty. This approach seeks to give environmental protection legal and institutional standing and create a legal framework for environmental issues' governance. Environmental constitutionalism aims to establish the basic right to a healthy environment<sup>4</sup> and ensure the government's accountability for protecting it. It has gained traction globally as a response to the increasing environmental degradation and the failure of traditional environmental governance mechanisms. This approach can influence policies, regulations, and judicial decisions and provide a platform for public participation in environmental decision-making.

Environmental constitutionalism is a broad and diffused phenomenon. It encompasses the use of both substantial and procedural rights, as well as individual and collective duties. It spreads all across the continents and has specific characteristics which depend on numerous factors (legal tradition, culture, geography, among others). Analysing environmental constitutionalism in general is outside the scope of this paper. What is relevant to our analysis is how environmental constitutionalism can interact with feminist stances and whether ecocentric approaches to constitutional environmental issues can provide for a stronger protection of both the environment and women's rights.

From the last decades of the twentieth century onwards, scientists started to embrace the idea of the end of the Holocene era and the beginning of a new one characterised by the predominant and lasting human influence. The Anthropocene, suggested by Paul J. Crutzen and Eugene Stoermer in the 2000s, was initially conceived to introduce the start of a new geological era and has subsequently become a cultural concept as well (Crutzen and Stoermer, 2013). While the concept is not universally accepted, there is consensus about how unsustainable and harmful human activities have negative repercussions on nature, ecological balance as well as on the enjoyment of human rights and fundamental freedoms. In taking the concept further, it's Donna Haraway's work that moves for weaving relations among humans and non-humans, with an inter-species approach to "making kin" (Haraway, 2016). In an appeal to feminists, Haraway urges: «If there is to be multispecies ecojustice, which can also embrace diverse human people, it is high time that feminists exercise leadership in imagination, theory, and action to unravel the ties of both genealogy and kin, and kin and species» (Haraway, 2016).

Ecofeminism allows for opening perspectives of mutual care. Taking from Tapias Torrado's paper on Indigenous women's responses to abuses caused by massive extractive projects in Colombia, the manifestation of collective action lies in the tangible act of *braiding*.

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<sup>4</sup> About half of the world's constitutions recognise some form of right to a quality environment (May and Daly, 2017). Beyond the national level, several regional and international instruments have now recognised the right to a healthy environment. It is worth mentioning the Resolution 48/13 and 48/14 of the Human Rights Council (2021), and Resolution A/76/L.75 of the UN General Assembly (2022).

«The *braid of action* – a unique ‘weapon of the weak’ for Indigenous Peoples – combines four crucial factors (*strands*). Three emerge from the internal capacity of the movement: transforming the power in the territory into mobilization; effective leadership by Indigenous women; and using human rights framings. The fourth is a reaction to an external factor: a grave human rights abuse – usually severe repression – involving a business. These four strands interwoven in a tough braid of action are capable of *harnessing* a strong mobilization power, achieving *success* (i.e., a favourable change in business behaviour) over materially powerful forces» (Tapias Torrado, 2022).

To this we add the consideration of the link existing with an intrinsically patriarchal approach to “development”. The white male-dominated capitalist system based on exploitation of women and consideration of Nature as merely an object offering humankind natural resources, rather than a subject herself, has proven its fallacy. The present paragraph aims at putting the basis for challenging and replacing this approach. Only then, after shedding the old foundations, an open analysis of the ecocentric framework offered by Indigenous Peoples can be brought forward.

In this lies the need for the adoption of an ecofeminist perspective.

The term ecofeminism was first coined in 1974 by French feminist Françoise d’Eaubonne and then grew during the 1980s and 1990s from anti-nuclear, environmental, and lesbian-feminist movements. Albeit criticised by many feminists, ecofeminism is an umbrella concept which encompasses a variety of different approaches, from socialist to radical and cultural ecofeminism, with the intent to underline the connection between Nature and women (d’Eaubonne, 1974). As Warren highlights, such an approach gives us a lens to connect both the domination of nature and the exploitation of women (Warren, 1996). By combining an ecofeminist perspective to environmental constitutionalism, it is possible to shed light upon environmental and gender injustices.

The question that arises is whether environmental constitutionalism can embody the principles of ecofeminism. An ecofeminist environmental constitutionalism should be thought of as encompassing the feminist tenet of equality between genders, together with a commitment to the environment. This means also that their provisions should address a revaluing of non-patriarchal or nonlinear structures, and a view of the world that respects ecological processes, holistic connections, and the merits of intuition and collaboration. A truly ecofeminist constitution will contain in itself a formulation of norms which tackles the unjust dominance of man over women and nature. It takes into account concepts of care and balance.

The Indigenous perspective is a precious aid in this re-evaluation. Concepts of respect and care towards nature are enshrined in a cosmivision which believes that if nature is thriving also humankind is. The role of a feminist point of view is deemed necessary in order to put these principles to the test.

Against this framework, the experience of environmental constitutionalism is brought forward and analysed in those intercultural systems with a strong presence of Indigenous Peoples.

## The Latin-American experience

Among environmentally-conscious constitutions, Latin-American constitutions have a unique format, which is inspired by the concept of “interculturality” and which favours the recognition of the rights of Nature. Specifically, the constitutions of Ecuador and Bolivia have introduced an ecocentric approach by identifying an entity called “Pacha Mama”, which roughly represents “Mother Nature”, and have recognised that she has rights. The latter are not merely declaratory but fully enforceable before a court of law. In this sense, the people can claim their violation in the name of Pacha Mama, by acting as “guardians” of Nature.

This circumstance is motivated by several factors, one of them being the peculiar, multicultural (*rectius*, intercultural) nature of these countries, in which there is a strong presence of Indigenous Peoples, whose cosmovision has a major impact on the cultural background.

It is through this lens that we can envisage new paradigms of reflection, one of them being the Indigenous philosophy of *buen vivir*: a cosmogonic vision that criticises the very concept of “development” because it breaks ecological cycles (Villalba, 2013; Huanacuni Mamani, 2010). According to Gudynas, the criticism of development stems from several points: the reaction to the negative effects linked to its pursuit of economic growth, the self-centred conception of the individual well-being in the capitalist market system, and the anthropocentric view of Nature (Gudynas, 2011).

According to *buen vivir* human beings can live well only if immersed in the environment that surrounds them, fully respecting it. This philosophy allows for a more eco-conscious approach to Nature and its resources, fostering a relationship which is based on the concept of “care”.

The Constitutions of Ecuador (2008) and Bolivia (2009) fully adopt the concept of *buen vivir*.<sup>5</sup> As mentioned above, far from being a merely declaratory intent, these constitutional provisions are indeed fully enforceable and provide for an effective shift in adjudications. Starting from the Inter-American System, the regional mechanism for the protection of human rights, we find several cases<sup>6</sup> recognising the collective and communal nature. At the local level, particularly relevant is the *Los Cedros* case (Constitutional Court of Ecuador, 10 November 2021, case n. 1149-19-JP/20), in which the Constitutional Court of Ecuador applied the principles enshrined in the Constitution – and elaborated from Indigenous Peoples’ cosmovision – in order to affirm that mining permits issued by the State violated three different sets of rights: a) the Rights of Nature or Pacha Mama (Article 10, Article 71) corresponding to the rights of the Los Cedros forest; b) the right to water (Article 12, Article 313) and the right to a healthy environment (Article 14); and c) the right of local communities to prior consultation (Article 61.4, Article 398).

<sup>5</sup> Ecuador uses the term “Good Living” known in Kichwa (Quechua) as *Sumak Kawsay*; Bolivia uses the term “Living Well,” whose official translation from the Aymara is *Suma Qamaña*.

<sup>6</sup> Among which: IACHR., *Resolución sobre el procedimiento de solución amistosa sobre la situación de los derechos humanos de un sector de la población nicaragüense de origen Miskito*, OEA/Ser.L/V/II.62, doc 26 (May 16, 1984); IACtHR, *Caso de la Comunidad Mayagna (Sumo) Awas Tingni v. Nicaragua, Fondo, Reparaciones y Costas*, 31 August 2001, Serie C, No 79, [146].

This last set of rights leads us to a reflection on another relevant point: the right to free, prior and informed consent (FPIC). This right is recognised to Indigenous Peoples' first and foremost by the United Nations Declaration on the Rights of Indigenous Peoples. FPIC allows Indigenous Peoples to provide or withhold/withdraw consent, at any point, regarding projects impacting their territories. It also allows Indigenous Peoples to engage in negotiations to shape the design, implementation, monitoring, and evaluation of projects. This is strictly linked to the right to self-determination recognised by the same declaration.

What we can infer from these elements is the exquisitely unique role that Indigenous Peoples play in shaping the constitutional form of some States in Latin America. But what is the role for women in this process?

Indigenous women are a crucial part of Indigenous Peoples' movements: they stand up against the patriarchal structures outside and within their own communities, to the point that they «are now considered the key agents for preserving and reproducing the community and what leaders identify as its culture» (Rousseau, 2011). Indeed, gender inequality is widespread within the Indigenous communities as well. In translating the words of Alma López, Quiché woman, ex-council member of the City of Quetzaltenango, Heranadez Castillo reflects on the loss of complementarity in modern Mayan culture: «[the] complementarity between men and women, and between men and men and women and women [...] currently doesn't exist, and to state the contrary is to turn a blind eye to the oppression that Indigenous women suffer. The complementarity is now only part of history» (Hernández Castillo, 2010). However, many Indigenous women are now leaders and have conquered, not without costs, their just space within their communities and activist movements. This is also representative of a shift *inside* the communities, an «alternative perspective on women's rights, which reclaims Indigenous cosmovisions or Indigenous epistemologies as spaces of resistance» (Hernández Castillo, 2010).

Indigenous women's resistance is a virtuous example of bringing together both environmental and gender-equality<sup>7</sup> stances as they mobilise for the protection of Indigenous self-determination and norms. Through collective practices they protest for affirming collective rights. They have negotiated and put forward new epistemologies and other-wise<sup>8</sup> perspectives in contrast to the hyper-individualised, modernised and predatory concepts and theoretical frameworks of the Western world(s). In this sense, the notion of gender equality is emblematic as it is seen as a form of complementarity between humans, which are parts of a whole, and nature.

The concept of *community* well summarises the experience that these women put forward: «community [refers to] a life where people are intimately linked with their surroundings, under conditions of respect and equality, where nobody is superior to

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<sup>7</sup> It is more proper to talk about gender equality rather than feminist stances since within the Indigenous communities there is not a shared consensus on whether defining themselves as feminists. Some Indigenous women groups revendicate their feminist roots and fights while others believe feminism is associated with urban middle-class white women (Hernández Castillo, 2010). For example, the Federación Nacional de Mujeres Campesinas de Bolivia Bartolina, also called Las Bartolinas, explicitly positioned themselves as not feminists (Rousseau, 2011).

<sup>8</sup> We purposely use otherwise to distance ourselves from the Western and "developed" perspectives but also to highlight the wisdom underlying Indigenous cosmovision.



anybody» (Hernández Castillo, 2010). Furthermore, they reclaim the concept of «*equilibrium* [which] means to watch over the life and permanence of all beings in space and in nature. The destruction of some species affects the rest of beings. The rational use of material resources leads us toward balance and rectitude in our lives» (Hernández Castillo, 2010).<sup>9</sup>

Several are the cases that show how environmental demands intersect with the fight against gender degradation and towards gender equality. For the purpose of this paper, one of the most significant ones is the case of the Mapuche women.

In 2021, thousands of Mapuche women marched against the “*terricide*” perpetrated by the colonial, patriarchal and capitalist system in Argentina. Specifically, they protested against a particular form of abuse named “*chineo*”,<sup>10</sup> a so-called “cultural practice” according to which non-Indigenous, often white, men rape twelve-year-old Mapuche girls as soon as they have their first menstruation (Concha Bell, 2023). The Mapuche underline the connection between their bodies and the territory, and explicitly affirm that the predatory attacks against one are strictly interconnected with attacks against the other. The Constitution of Argentina recognises the legitimate ownership of the Mapuche of the lands on which their ancestors were born (Article 75, co. 17). Nevertheless, lands which are not formally recognised as theirs are the object of predatory attacks by multinational corporations and the attempts of the Mapuche at settling are met with violence and repression. The racist practice of the *chineo* is but the example of what is a deeply-rooted discrimination and violation of human rights of the Mapuche people, and especially of the Mapuche women. The “Basta de Chineo” manifest, carried on by brave activists like Moira Millán, claims the word *chineo* as a “political category” to redeem the origin of this colonial crime that accounts for how their territorial bodies have been racialized and their lives devalued.<sup>11</sup> They state that they are going to continue using it *until impunity is eradicated*.

These struggles are also relevant in showing the relation existing between the violence women suffer because they are activists and the one they suffer because in fighting they challenge the patriarchal roles attributed to gender and the expectation of subservience. Tran and Hanaček talk about how “extractive violence is gendered” and how «WEDs [women environmental defenders, ed] face retaliation because mobilizing defies gender expectations of docility (lack of retaliation) and sacrifice (absorption of extractive consequences)» (Tran and Hanaček, 2023; Sinclair, 2021; Sandvik, 2018). And even when governments concede to environmental claims, women are usually left out.

In Ecuador one of Latin America's most powerful Indigenous movements has formed around the Confederation of Indigenous Nationalities of Ecuador (CONAIE). This confederation has united Indigenous Peoples across regions and classes, forged alliances with other social movements, and staged mass mobilisations that have forced the government to address its demands. The participation of Indigenous Peoples in constitutional processes can

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<sup>9</sup> Here, she is quoting the First Summit on Indigenous Women in the Americas (Cumbre de Mujeres Indígenas de América 2003).

<sup>10</sup> “*Chineo*” is a racist term coined by the first Spanish colonizers to refer to Indigenous women, which they assimilated to “*chinas*” – Chinese – due to their physical features.

<sup>11</sup> From the Manifest: «Utilizamos la palabra *chineo* como categoría política para redimir el origen de este crimen colonial que da cuenta de cómo se han racializado nuestros cuerpos territorios y devaluado nuestras vidas. Vamos a seguir utilizándola hasta erradicar la impunidad».

be traced to some of the Constitutions in Latin America. However, there's little data analysing how *Indigenous women* participate. Indeed, little traces can be found in Bolivia and, partially, in Chile.

In Bolivia, Indigenous movements revolve around three main organisations: the Confederación de Pueblos Indígenas de Bolivia (CIDOB), formed in 1982 and representing thirty-four Indigenous Peoples of Bolivia; the Consejo Nacional de Ayllus y Markas del Qullasuyu (CONAMAQ), founded in 1987 and representing Aymaras and Quechuas living in the highlands; and the Confederación Sindical Unida de Trabajadores Campesinos de Bolivia (CSUTCB) (Rousseau, 2011).

The Indigenous movements of Bolivia all united within the Pacto de Unidad, so as to create a united front during the Constituent Assembly. Many were Indigenous women and Indigenous women's organisations which participated in the Assembly and brought many Indigenous and feminist claims (Rousseau, 2011).

In Chile, during the Chilean Constitutional Convention, the Mapuche became part of the constituent assembly led by Elisa Loncon, Indigenous activist elected as a representative of the Mapuche people.

Between 15 and 16 May 2021 an election for representatives of the new Chilean Constituent Assembly was held. Seventeen seats were reserved for Chilean Indigenous Peoples (among which seven seats for Mapuche, two for Aymara, and one each for the Diaguita, Quechua, Atacameño, Colla, Chango, Rapa Nui, Kawésqar, and Yaghan Peoples) (Silva and Aylwin, 2022). Albeit the constitutional proposal was rejected with a referendum in October 2022, the strong presence of Indigenous women is emblematic and in particular that of Elisa Loncon who was elected then as President of the Assembly, being the first person of Mapuche descent to serve as leader of a legislative body in Chile's history. The draft of this constitution is particularly interesting as in Chapter III there is an express recognition of Nature's rights and the protection of her natural resources (Draft Chilean Constitution 2021, Articles 127 to 150). Many gender stances were brought on the Constituent table and found space in the constitutional draft.

It is indeed disappointing that the draft was rejected, as so many of its more environmentally-conscious and gender-improving demands were left out, but it is a useful example to show how the presence of Indigenous women can have a real and strong impact on how constitutions are forged. As we have argued until now, participation is the key element of the fight against environmental and gender degradation.

The Latin-American experience offers the possibility to extrapolate these concepts and make them real and tangible. In a way or the other, the presence and fight of Indigenous Peoples has an inescapable impact on how environmental constitutionalism is shaped in Latin America. It must be taken into account as we delve deeper in some of these constitutions and verify whether, apart from being environmentally-conscious, they also provide for a tool against gender degradation.

## Looking at the Latin-American constitutions through an ecofeminist lens: what results?

After exploring the processes and bases of the Latin-American experience in relation to Indigenous Peoples' influence on environmental constitutionalism, this paragraph is devoted to a reading of the constitutions under an ecofeminist point of view.

The analysis, therefore, is not merely aimed at an assessment of "care for the environment" but aims at showing that some of the principles behind the ecofeminist perspective have been incorporated. Therefore, ecofeminism is the lens we use in our analysis.

The aspect to emphasise is not only the presence of the environment in constitutions but the relationship there is between and with the surrounding environment. This is well evident in Latin American constitutions, such as Ecuador, where through the intercultural input and the presence of the original Indigenous Peoples the text is permeated with provisions of ecocentric characteristic. We choose to focus on two constitutions: Ecuador and Bolivia. These two provide for the best examples of recognition of interculturalism and integration with principles coherent with the ones examined until now and are therefore the best constructed to verify whether those principles are indeed influential.

### (a) An ecofeminist reading of the Constitutions of Ecuador and Bolivia

From a purely quantitative point of view, it is very striking how the Constitutions examined make express mention – multiple times – of Indigenous native Peoples. The Bolivian Constitution mentions Indigenous Peoples one hundred and thirty times, and it recognizes the plural nature of the Bolivian people. The Ecuadorian Constitution mentions the environment, Indigenous Peoples' and *buen vivir* about two hundred times.

The concept of *buen vivir* is reprised also by the Bolivian Constitution. Article 8 formally institutionalised the concept by affirming that the State adopts and promotes the following as ethical principles of the plural society, as accompanied by their traditional Indigenous correspondents: ama qhilla, ama llulla, ama suwa (do not be lazy, do not be a liar or a thief), suma qamaña (live well),<sup>12</sup> ñandereko (live harmoniously), teko kavi (good life), ivi maraei (land without evil) and qhapaj ñan (noble path or life).<sup>13</sup>

In affirming that the State is based on values of equality, inclusion and respect,<sup>14</sup> the Bolivian Constitution affirms that everyone, in particular women, have the right not to suffer

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<sup>12</sup> On the two terms for *buen vivir*: Albó, 2009; Medina, 2011; Macas, 2010.

<sup>13</sup> Constitution of Bolivia, Article 8, co I: «El Estado asume y promueve como principios ético-morales de la sociedad plural: ama qhilla, ama llulla, ama suwa (no seas flojo, no seas mentiroso ni seas ladrón), suma qamaña (vivir bien), ñandereko (vida armoniosa), teko kavi (vida buena), ivi maraei (tierra sin mal) y qhapaj ñan (camino o vida noble)».

<sup>14</sup> *ibid*, co II: «El Estado se sustenta en los valores de unidad, igualdad, inclusión, dignidad, libertad, solidaridad, reciprocidad, respeto, complementariedad, armonía, transparencia, equilibrio, igualdad de oportunidades, equidad social y de género en la participación, bienestar común, responsabilidad, justicia social, distribución y redistribución de los productos y bienes sociales, para vivir bien».

physical, sexual or psychological violence, in the family as well as in society.<sup>15</sup> On the same line, Article 45 enshrines explicitly the right to safe maternity, individuated as an “intercultural right”.<sup>16</sup> Reference to equality between men and women is also made in relation to the exercise of their sexual rights,<sup>17</sup> education and technical learning,<sup>18</sup> and eradication of gender-based discrimination in the access and ownership of land.<sup>19</sup>

In relation to the latter, Article 395 affirms that the public lands shall be given to rural native Indigenous Peoples and intercultural Indigenous communities which *do not possess them or have insufficient land*.<sup>20</sup> This promotes a collaborative and communal approach to property and ownership. The article also mentions the need to carry out those endowments respecting the right of women to access distribution and redistribution of land, without discrimination based on civil status or marital union. This point seems to tackle also the issue of gender equality *inside* the Indigenous communities. The same point is made by the Constitution of Ecuador.

Article 171, in recognising the jurisdictional competence of Indigenous Peoples, makes reference to ancestral traditions and native law, all the while stating that participation and decision of women should be guaranteed.<sup>21</sup>

More generally, the Ecuadorian Constitution is an even bolder example of adoption of principles in line with ecofeminist values.

It mentions an environment «sano y ecológicamente equilibrado» (Art. 14), and the need to pursue an “integral development” (“desarrollo holístico”, Art. 27). The same article mentions the necessity for gender equality and solidarity. Article 57, entirely devoted to the rights of Indigenous Peoples, contains a long list (twenty-one commas), which underlines that the application of these collective rights should develop inside a framework of non-discrimination between men and women. It affirms the right of *belonging to ancestral lands*, in this way recognising the Indigenous approach to the territory, as well as rights of ownership in the framework of classic property rights.<sup>22</sup> The two concepts are not perceived as opposing one another but call for harmonic implementation and systemic interpretation.

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<sup>15</sup> Constitution of Bolivia, Article 15 co II: «Todas las personas, en particular las mujeres, tienen derecho a no sufrir violencia física, sexual o psicológica, tanto en la familia como en la sociedad».

<sup>16</sup> Constitution of Bolivia, Article 45 co V: «Las mujeres tienen derecho a la maternidad segura, con una visión y práctica intercultural; gozarán de especial asistencia y protección del Estado durante el embarazo, parto y en los periodos prenatal y posnatal».

<sup>17</sup> Constitution of Bolivia, Article 66: «Se garantiza a las mujeres y a los hombres el ejercicio de sus derechos sexuales y sus derechos reproductivos».

<sup>18</sup> Constitution of Bolivia, Article 78, co IV: «El Estado garantiza la educación vocacional y la enseñanza técnica humanística, para hombres y mujeres, relacionada con la vida, el trabajo y el desarrollo productivo».

<sup>19</sup> Constitution of Bolivia, Article 402, co II: «Promover políticas dirigidas a eliminar todas las formas de discriminación contra las mujeres en el acceso, tenencia y herencia de la tierra».

<sup>20</sup> Constitution of Bolivia, Article 395, co I: «Las tierras fiscales serán dotadas a indígena originario campesinos, comunidades interculturales originarias, afrobolivianos y comunidades campesinas que no las posean o las posean insuficientemente, de acuerdo con una política estatal que atienda a las realidades ecológicas y geográficas, así como a las necesidades poblacionales, sociales, culturales y económicas. La dotación se realizará de acuerdo con las políticas de desarrollo rural sustentable y la titularidad de las mujeres al acceso, distribución y redistribución de la tierra, sin discriminación por estado civil o unión conyugal».

<sup>21</sup> Constitution of Ecuador, Article 171, co I: «Las autoridades de las comunidades, pueblos y nacionalidades indígenas ejercerán funciones jurisdiccionales, con base en sus tradiciones ancestrales y su derecho propio, dentro de su ámbito territorial, con garantía de participación y decisión de las mujeres [...]».

<sup>22</sup> Constitution of Ecuador, Article 57, co I no 1: «Mantener, desarrollar y fortalecer libremente su identidad, *sentido de pertenencia*, tradiciones ancestrales y formas de organización social»; and no. 4-6: «4. Conservar la *propiedad imprescriptible* de

Article 57 also reinforces the concept of free, prior and informed consent as affirmed in the UN Declaration on the Rights of Indigenous Peoples. It affirms the need to involve Indigenous communities in the decision-making part of project approval, in a way that fosters participation for plans that have an environmental impact on their lands, and with the aim of sharing benefits and profits.<sup>23</sup> It's worth noting that no mention here is made of the need to specifically foster Indigenous women's participation, despite the fact that big projects have great economic impacts on local communities and actively implement the stereotypical and patriarchal division of roles (Muñoz and Villarreal, 2019; Gómez Zepeda, 2023).

On the point of preservation of Nature, Article 72 is also worth mentioning, as it states that Nature has the right to be restored and that 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.<sup>24</sup> In this way, Nature's restoration is seen as a duty owed to Nature herself, not only to people.

Again, participation is also promoted in plans regarding conservation of biodiversity, relying on the specific knowledge of Indigenous Peoples in coexisting with Nature and preserving ecosystems. The State recognises Indigenous Peoples' rights to uphold, protect and develop collective knowledge; their science, technologies and ancestral wisdom; the genetic resources that contain biological diversity and agricultural biodiversity; their medicine and traditional medical practices, with the inclusion of the right to restore, promote, and protect ritual and holy places, as well as plants, animals, minerals and ecosystems in their territories; and knowledge about the resources and properties of fauna and flora.<sup>25</sup> Article 57 also affirms that all forms of appropriation of their knowledge, innovations, and practices are forbidden.

Similarly to the Bolivian Constitution, the Ecuadorian Constitution recognizes in Article 43 the rights of pregnant women to not be discriminated against in labour, education and social fields, to have free healthcare services and a wholly comprehensive approach to ensure rights during and after pregnancy, including postpartum, and facilities for recovery and breast-feeding.<sup>26</sup> Article 66 also mirrors the same Article in the Bolivian Constitution, by

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sus tierras comunitarias, que serán inalienables, inembargables e indivisibles [...] 5. Mantener la posesión de las tierras y territorios ancestrales y obtener su adjudicación gratuita. 6. Participar en el uso, usufructo, administración y conservación de los recursos naturales renovables que se hallen en sus tierras».

<sup>23</sup> Constitution of Ecuador, Article 57 co I no 7: «La consulta previa, libre e informada, dentro de un plazo razonable, sobre planes y programas de prospección, explotación y comercialización de recursos no renovables que se encuentren en sus tierras y que puedan afectarles ambiental o culturalmente; participar en los beneficios que esos proyectos reporten y recibir indemnizaciones por los perjuicios sociales, culturales y ambientales que les causen. La consulta que deban realizar las autoridades competentes será obligatoria y oportuna. Si no se obtuviese el consentimiento de la comunidad consultada, se procederá conforme a la Constitución y la ley».

<sup>24</sup> Constitution of Ecuador, Article 72 co I: «La naturaleza tiene derecho a la restauración. Esta restauración será independiente de la obligación que tienen el Estado y las personas naturales o jurídicas de indemnizar a los individuos y colectivos que dependen de los sistemas naturales afectados».

<sup>25</sup> Constitution of Ecuador, Article 57 co I no 12: «Mantener, proteger y desarrollar los conocimientos colectivos; sus ciencias, tecnologías y saberes ancestrales; los recursos genéticos que contienen la diversidad biológica y la agrobiodiversidad; sus medicinas y prácticas de medicina tradicional, con inclusión del derecho a recuperar, promover y proteger los lugares rituales y sagrados, así como plantas, animales, minerales y ecosistemas dentro de sus territorios; y el conocimiento de los recursos y propiedades de la fauna y la flora».

<sup>26</sup> Constitution of Ecuador, Article 43: «El Estado garantizará a las mujeres embarazadas y en periodo de lactancia los derechos a: 1. No ser discriminadas por su embarazo en los ámbitos educativo, social y laboral. 2. La gratuidad de los servicios de salud materna. 3. La protección prioritaria y cuidado de su salud integral y de su vida durante el embarazo, parto y posparto. 4. Disponer de las facilidades necesarias para su recuperación después del embarazo y durante el periodo de lactancia».

guaranteeing a life without violence in the public and private sectors. According to this article, the State must adopt all the measures needed to prevent, eliminate, and punish all forms of violence, especially violence against women, children and adolescents, elderly persons, persons with disabilities and against all persons at a disadvantage or in a vulnerable situation; identical measures shall be taken against violence, slavery, and sexual exploitation.<sup>27</sup>

Article 71 promotes the respect of the elements of nature “which form part of an ecosystem”,<sup>28</sup> in this way implementing the balance and cohesion among all the parts that compose Nature (Pacha Mama).

A reflection can be made on the preambles as well.

As stated above, the Bolivian Constitution explicitly mentions Indigenous people in its text. It is interesting to note that a reference is made not only to Indigenous Peoples’ rights and freedoms but also to Indigenous cultures and values. The preamble of the Constitution affirms the plural composition of the Bolivian people, by recognising the “struggles of the past” and “the anti-colonial Indigenous uprising”.<sup>29</sup>

In the preamble of the Ecuadorian Constitution, in the spirit of mutual recognition and acknowledgement of the country’s multiculturalism, tributes are paid to nature, Pacha Mama, “of which we are part and which is vital to our existence”.<sup>30</sup> In light of the Indigenous cosmology of complementarity, the Preamble mentions *buen vivir* as the apparatus on which the values and principles of the new Constitution stands: a new form of public coexistence, in diversity and in harmony with nature, to achieve the good way of living, the *sumak kawsay*.<sup>31</sup>

## **(b) Putting the Constitutions to the test: lights and shadows of environmental constitutionalism in Latin America**

The reflections explored until now provide for some conclusive thoughts on the issues at hand. The question remains: do these constitutions have real effects on the role of women in these countries? In other words: are they a useful tool or just a nice rhetoric device?

In order to answer this question, it is useful to take into account the recent case law of the constitutional courts and tribunals of the countries that have adopted environmentally-conscious constitutions.

The Constitution of Ecuador provides a great example of interaction between cultural models and is full of provisions which put the accent on Indigenous Peoples, their relation to

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<sup>27</sup> Constitution of Ecuador, Article 66, co III, lett b): «Una vida libre de violencia en el ámbito público y privado. El Estado adoptará las medidas necesarias para prevenir, eliminar y sancionar toda forma de violencia, en especial la ejercida contra las mujeres, niñas, niños y adolescentes, personas adultas mayores, personas con discapacidad y contra toda persona en situación de desventaja o vulnerabilidad; idénticas medidas se tomarán contra la violencia, la esclavitud y la explotación sexual».

<sup>28</sup> Constitution of Ecuador, Article 71, co III: «El Estado incentivaré a las personas naturales y jurídicas, y a los colectivos, para que protejan la naturaleza, y promoverá el respeto a todos los elementos que forman un ecosistema».

<sup>29</sup> From the Preamble of the Constitution of Bolivia: «El pueblo boliviano, de composición plural, desde la profundidad de la historia, inspirado en las luchas del pasado, en la sublevación indígena anticolonial, en la independencia, en las luchas populares de liberación, en las marchas indígenas, sociales y sindicales, en las guerras del agua y de octubre, en las luchas por la tierra y territorio, y con la memoria de nuestros mártires, construimos un nuevo Estado».

<sup>30</sup> From the Preamble of the Constitution of Ecuador: «[...] celebrando a la naturaleza, la Pacha Mama, de la que somos parte y que es vital para nuestra existencia [...]».

<sup>31</sup> From the Preamble of the Constitution of Ecuador: «Decidimos construir una nueva forma de convivencia ciudadana, en diversidad y armonía con la naturaleza, para alcanzar el buen vivir, el *sumak kawsay* [...]».

nature and the feminine concept of Pacha Mama. As mentioned above, both Articles 57 and 171 which refer to Indigenous Peoples mention the need for non-discrimination and promote the equality between men and women. But is this reflected in the practical application of the norms?

The *Los Cedros* case is worth mentioning. In this case, the Constitutional Court of Ecuador recognised a violation of the rights of nature – among others – due to the granting of environmental permits and mining concessions to a State-owned company without the previous consultation of the local communities. What is relevant in this case, apart from its positive conclusions, is the language used by the judges. Indeed, the points to be made are at least two.

First of all, and from a more superficial and broad point of view, the entire judgement is written with the representation of two genders. Words are declined both as masculine and feminine, made apparent by the original language of the judgement – Spanish. For example, par. 34, in referring to the necessity of giving effective application to the rights of nature, states: «Preocupa mucho a esta Corte que los derechos de la naturaleza, a los cuales la Constitución otorga expreso reconocimiento y garantías, no sean oportuna [*sic*] y adecuadamente considerados por algunos jueces, juezas, otras autoridades públicas y particulares». It's worth noting the use of both the declinations for the word "judge". The same happens at par. 41, 234, 337. While this might seem irrelevant, it can be highlighted as the basis for our second, deeper, reflection.

Indeed, while the use of the language shows a fertile ground, looking at the content of the decision and the words employed can bring us to the conclusion that a shift is happening at the legal level as well. After affirming that nature's rights and interculturality are "constitutional values" enshrined in the above-mentioned articles and in the Preamble, the Court affirms that these are not merely rhetorical devices but foster a "new relationship with nature" ("*una nueva forma de convivencia ciudadana, en diversidad y armonía con la naturaleza*") (*Los Cedros*, 23ff). The entire judgement is permeated by the awareness of the necessity of applying new legal paradigms, ones which favour nature and the balance of ecological cycles (*Los Cedros*, 40). In this way, the Court expressly applies a different way to interact with nature, by requesting true consultation with local communities and a high threshold to evaluate whether a project can be initiated (*Los Cedros*, 62). The words of the Constitution are given practical meaning and juridical impact.

Doubts arise whether the same could be said for the Bolivian Constitution. Despite the formulation of its articles and the commendable provisions on environmental protection, the Bolivian Constitution adopts a point of view which is further from the ecocentric one and reprises elements of anthropocentrism.<sup>32</sup> Mother Earth – or Pacha Mama – is not mentioned in the dispositive part of the Constitution – only in the Preamble. The rights of nature are enshrined in laws,<sup>33</sup> which surely offer positive reflections but which some authors deem to

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<sup>32</sup> For example, Article 306, which places the "highest value" on human beings, and Article 355, which encourages industrialisation and exploitation of natural resources as priorities of the State.

<sup>33</sup> Law no 071 of December 21, 2010 "Mother Earth Rights Law" (*Ley de Derechos de la Madre Tierra*), which establishes specific rights to which Mother Earth is entitled; and Law no 300 of October 15, 2012, "Framework Law of Mother Earth and Integral

be contradictory in several points and are not the result of the process of consultation they were supposed to be (Muñoz, 2023).<sup>34</sup> They are also at risk of being deemed inapplicable, and no relevant litigation has been brought forward on the matter at the moment we are writing.

Nevertheless, what these constitutions have shown is the employment of a new vocabulary, not sterile in itself but imbued with practical consequences. The use of different words represents the adoption of different concepts, both new and tremendously old. In particular, the *Los Cedros* case demonstrates that this vocabulary has an impact on the very structure of the judgement and the legal paradigms explored. While these environmentally-conscious constitutions are not devoid of critical aspects, they also offer a challenge to the patriarchal model characterised by its predatory and rapacious approaches to the “other”, to what is perceived as “weak” – like women and nature.

The reflection on the – scarce – participation of Indigenous women to the constituent assembly that resulted in the analysed constitutions provides us with another criticism. It is still not enough to declare and use a new vocabulary. Even though they are evolutionary, it is imperative to reflect on the fact that participation in judgments and courts is not enough (as supported by Art. 171 of the Constitution of Ecuador), it is necessary to implement participation in decision-making processes. We’re still behind on this... but not far.

In summary, the true strength of these constitutions lies in the possibility for an evolutive interpretation. Even though the Bolivian Constitution has lacunae, this should not be seen as a failure of the same. The way in which these constitutions are written offers the chance for the interpreter and the practitioner to go forward, to implement those principles and values which are aligned with theories of ecofeminist print.

## Conclusion

Conclusively, it is possible to affirm that environmental constitutionalism as represented by some of the constitutions in Latin America may have a positive impact on the possibility of challenging the patriarchal imprint on the traditional legal paradigms. This is facilitated by the recognition of the intercultural reality of these countries, and by the impact of Indigenous Peoples’ cosmogonies, which are woven inside their traditions. The adoption of environmentally-conscious constitutions recognising rights to nature and characterised by a respect-based approach to it provides fertile ground for future possibilities. As previously stated, this does not come without its criticisms, but the foundations are put in place, and the way ahead is well-lit.

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Development for Living Well” (Ley Marco de la Madre Tierra y Desarrollo Integral para Vivir Bien), which seeks to put into operation the rights of Mother Earth set out in the former law, in the context of Integral Development (Desarrollo Integral) for Living Well (Vivir Bien).

<sup>34</sup> «Mother Earth Law and Mother Earth Framework Law emerged from the new constitution’s Indigenous-derived concept of Living Well, which entails living in complementarity, harmony and equilibrium with Mother Earth. Both laws were supposed to be the result of a negotiation process between the government and the “Unity Pact,” a coalition of Bolivian peasant-Indigenous organizations of Bolivia. After nine months and many meetings, both parties agreed on the final version of a draft law. This draft law distinctively kept an ecocentric orientation since it established that whenever there was a conflict of interests, the protection of Mother Earth should prevail. It was also established that the Bolivian economy had to shift away from fossil fuels and focus on new friendlier-to-earth sources. This draft law, although already agreed upon, ended up not being approved, nor adopted, by the government, since it went against many of their future extractive and commercial projects».



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*Submetido: 21/03/2024*

*Aceito: 18/02/2025*