The Indigenization of Nature

Understanding the Legal Recognition of Nature's Right in Ecuador and New Zealand from a Cultural Heritage Perspective

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Fig. 1 Graphic illustration from Matt Chinworth.
(Source from:
https://www.motherjones.com/environment/2019/07/
a-new-wave-of-environmentalists-want-to-give-Nature-legal-rights/)

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1. Introduction

1.1 Research Background

Today, world leaders and politicians are urged to implement and internalize sustainable solutions to prevent the increase in climate change and environmental degradation, including the depletion of natural resources and the destruction of biodiversity and ecosystems (www.unenvironment.org; Robinson 2012, 181; Winarno 2017; 82). In addition, the environmental crisis does not only threaten the natural world, it also threatens the human right to a healthy environment (Monnier 2012, 97; Kauffman and Martin 2017, 2-3; Winarno 2017, 81). The environmental concerns affect the management and preservation of our cultural and natural landscapes (Wood and Handley 2010, 45). A relatively new solution to address these problems is the internalization of a new "form of ecological governance" (www.news.aag.org), the Rights of Nature, that acknowledges Nature as a living entity with legal rights (www.harmonywithNatureun.org).

The notion to grant Nature legal rights was first proposed by Christopher Stone, an American law professor, in his essay "Should Trees Have Standing: Toward Legal Rights for Natural Objects" (Stone 1972). His work was an important inspiration for the development of the Rights of Nature ideology (Hillebrecht and Berror 2017, 34). The Community Environmental Legal Defense Fund (CELDF), established in Mercersburg Pennsylvania and considered to be the initiators of the Rights of Nature movement, used Stone's arguments to justify Nature's right (www.celdf.org). In 2006, CELFD helped the Pennsylvania community of Tamaque Borough to legalize Nature's right to fight against the toxic water being dumped on the surrounding farmlands (www.shareable.net). Ever since, the CELFD has been involved in the transmission and expansion of the Rights of Nature movement around the world (www.celdf.org).

Proponents of the movement argue that the legal recognition of Nature's right can offer a "*new path toward sustainable development*," (www.globallandscapesforum.org) that safeguards the planet as well as the people living and relying on it, including future generations (www.therightsofNature.org). The key approach is to change and repair the human-Nature relationship; to shift the dominant role of humans over Nature and create a relationship of mutual respect (www.earthlawcenter.org). This means that Nature can no longer be treated as property under the law. In addition, a rights-based approach to Nature creates new forms of landscape protection where the interaction between human beings and their environment is redefined (Menatti 2017, 641).

Furthermore, the Rights of Nature ideology is nothing new to the cultural traditions of indigenous peoples around the world. In fact, their relationship with Nature is often defined as "*a belief that the earth is a living being with rights and the conviction that it is the responsibility of indigenous peoples to protect the earth from over-exploitation*" (Doolittle 2010, 286). In general, the cultural traditions and beliefs of indigenous peoples often reflect a deep respect for Nature and carry

profound ecological knowledge passed down through generations that offer insightful information on the complex workings of the natural world (Magallanes-Blanco 2015, 202).

Therefore, it is not surprising that the Rights of Nature movement is linked to the traditions of indigenous peoples. In fact, Dr. Michelle Maloney, co-founder of the Australian Earth Laws Alliance and spokesperson for the legalization of the Rights of Nature in Australia, argues that the movement is not only about western society challenging the western legal system but "*inspired and led by indigenous traditions of earth-centred law and culture*" (www.theguardian.com). Other online news websites and non-profit organizations have reported that the Rights of Nature is a direct codification of indigenous cultures and that the legalization of Nature's right would expand the collective rights of indigenous peoples (www.celdf.org; www.theguardian.com; www.intercontinetlcry.org; www.aclrc.com; www.earthlawcenter.org; www.bioneers.org; www.motherjones.com).

Today, the Rights of Nature are legally recognised in Bolivia, New Zealand, Ecuador, India, Pennsylvania and Ohio (www.globallandscapesforum.org). Although the Rights of Nature ideology is spread across several nations, their legalization and implementation of Nature's right differs. Each state and country has a unique approach in how they define Nature, who should represent Nature and to what extent indigenous peoples are involved in the legalization process (Kauffman and Martin 2018, 43). Therefore, it remains questionable to what extent the Rights of Nature is an integrated, united movement, since different countries and states adopt different approaches to the idea of granting Nature rights. However, various non-governmental organizations websites explicitly talk about "*the Rights of Nature movement*" that connects groups of people, activists, environmentalists and politicians from around the world who fight for Nature's right (www.celfd.org; www.therightofNature.org; www.openglobalright.org; www.earthday.org; www.resilience.org; www.movementrights.org; www.gaiafoundation.org).

Overall, the Rights of Nature can be viewed as a new paradigm shift that raises many questions and challenges. Critics have argued that the Rights of Nature can be a cover for other human interests and fear that speaking for Nature can be a re-implementation of anthropocentric governance (Youatt 2017, 40). For example, John Livingston, Canadian philosopher, states in an interview with Derrick Jensen, an American eco-philosopher and radical environmentalist, "*We hear a lot of talk about 'extending' rights to Nature. How imperialistic. To extend or bestow or recognize rights to Nature would be, in effect, to domesticate all of Nature – to subsume it into the political apparatus*" (Jensen 2004, 62). On the contrary, other scholars have pointed out that the Rights of Nature is a positive development that "*moves the practice of rights to a new frontier*" (Youatt 2017, 39) and helps to merge the western legal system with indigenous cultural traditions in order to create effective solutions for the environmental crisis (www.resilience.org).

As shown above, there are different perspectives to the study of the Rights of Nature movement. Proponents claim that the rights-based approach will create sustainable solutions for environmental degradation as well as expand the cultural heritage and rights of indigenous peoples.

However, there lacks sufficient evidence and transparency to what extent these claims are accurate and in what specific ways the Rights of Nature influences landscape protection. One of the reasons for this lack, is that the movement is still in its infancy and relatively new to the political arena. The goal of this thesis is to investigate these claims from a cultural heritage perspective in order to develop greater understanding and clarity on the Rights of Nature 'promise.'

1.2 Research Aims and Questions

Research on the Rights of Nature topic largely focuses on the legal aspects and complications that occur during the legalization of Nature's right (Kauffman and Martin 2017; Kauffman and Martin 2018; Pecharroman 2018; Rodrigues 2014; Ruhs and Jones 2016; Youatt 2017; Shelton 2015). On the contrary, the aim of this study is to offer a cultural heritage perspective to the Rights of Nature challenge. The thesis investigates the interrelation between the Rights of Nature, landscape protection and heritage studies. In turn, the interrelation can uncover to what extent the Rights of Nature truly expands the cultural heritage and rights of indigenous peoples as well as promotes environmental protection. In order to systematically approach this interrelation, I will use the parallel cases of Ecuador and New Zealand. Thus, the main question to be addressed in this research is:

In what ways does the legal recognition of the Nature's right in Ecuador and New Zealand relate to the critical subject of landscape protection in heritage studies and in particular to the cultural heritage and rights of indigenous peoples?

In order to answer my main question, I have divided my thesis in multiple sub-questions. These sub-questions are:

- What are the origins, developments and characteristics of the so called Rights of Nature movement?
- How does the Rights of Nature relate to landscape protection in heritage studies and how do western and indigenous cultural heritage traditions fit into this context?
- What are important social and political developments in Ecuador and New Zealand that relate to the political mobilization and rights of indigenous peoples?
- To what extent does the legal recognition of Nature's right in Ecuador and New Zealand reflect the indigenous peoples' heritage values?
- What are the countries environmental and social outcomes of their legalization of Nature's right?
- What are the countries differences and similarities in their legal recognition of Nature's right?
- What are the key contributions that Ecuador and New Zealand make to landscape protection and in particular, to the cultural heritage and rights of indigenous Peoples?

- What knowledge can be added to the Rights of Nature objective that can further expand the cultural heritage and rights of Indigenous peoples as well as advance the understanding of landscape protection in relation to environmental degradation?

I.3 Research Methodology

The previous section shows that the aim of this thesis is to use a cultural heritage perspective to the Rights of Nature challenge. The research focuses on the parallel cases of Ecuador and New Zealand. However, a clear methodology is needed to offer a systematic approach to answer the research questions and create new understanding on the Rights of Nature topic.

The thesis uses a literature review as the methodology through which the analysis occurs. In general, a literature review represents a method of research that offers a "*comprehensive overview*" (Denney and Tewksbury 2012, 218) of a chosen topic. In the overview, the collected data is summarized and synthesised in order to give new interpretations of the data or combine old viewpoints with new insights. Overall, the literature review systematically evaluates the data to form unique thoughts and perspectives on the selected subject. The research process "*involves activities such as identifying, recording, understanding, meaning-making, and transmitting information*" (Onwuegbuzie and Frels 2016, 49) in relation to the chosen body of primary and secondary sources (Denney and Tewksbury 2012, 228).

The justification for using a literature review as the methodology for this research is twofold. First, the Rights of Nature is a new development within the social and political arena. This means that the current body of literature on the movement is growing but still limited and narrow. For this reason, a literature review can provide further understanding as well as identify gaps in the previous limited research. In addition, the cultural heritage framework offers a wide range of existing data on landscape protection and cultural heritage issues that can in turn be connected to the Rights of Nature topic. As a result, the combined data offers various theories, knowledge and viewpoints that can be pooled together to be summarised and synthesised in order to create a comprehensive overview on the Rights of Nature topic in relations to cultural heritage studies.

Second, Ecuador and New Zealand are well-suited case studies for using the methodology of a literature review because the large amount of existing data on the countries' social, political and cultural structures offers insightful information on the workings of their legal system as well as how indigenous people are represented and included in relation to landscape protection. The specific choice for Ecuador and New Zealand is because both legally recognize the Rights of Nature, their population consists of indigenous peoples who are the original inhabitants of the land and they had long-standing relationships with European colonial powers that still have an indirect impact on their political, social and cultural structures. However, the countries differ in how they systematically

approach the Rights of Nature. In 2008, Ecuador recognizes the Rights of Nature in its constitution[1]. Whereas, New Zealand does not legalize rights to all of Nature, but only to specific ecosystems: in 2014, the forest Te Urewera in the Te Urewera Act and in 2017, The Whanganui River in the Te Awa Tupua Act[2]. In addition, the countries vary in their social, political and cultural make-up as well as their geographical location. For this reason, Ecuador and New Zealand are valuable case studies because the analysis of the data can reveal their similarities and differences as well as patterns and distinctions. In turn, these insights offer new perspectives to what extent the Rights of Nature interconnects with cultural heritage studies, and in particular to the cultural heritage and rights of indigenous peoples.

In addition, due to the limited timeframe and the geographical distance, I was not able to visit the countries to conduct interviews, surveys and questionnaires which could have enlarged my methodology. At one point, I did contact two well-known representatives of the Rights of Nature movement, one in Ecuador, Natalia Greene, and one in New Zealand, Dr. Jacinta Ruru, by email[3] to ask for an interview but they never responded. Nonetheless, the focus for this research is to conduct a critical analysis of the existing data, using the methodology of a literature review, to position myself in the debate surrounding the Rights of Nature movement using a cultural heritage perspective in order to create better clarity and understanding.

The literature study consists of a myriad of sources, both primary and secondary, which are summarized and synthesised across the theoretical, analytical and discussion part. As previously stated, the Rights of Nature is a new movement with a limited amount of past academic research. Therefore, the collected sources on the visibility of the Rights of Nature, for a big part, include online news websites, non-governmental and governmental organization websites, such as environmental reports. The development, legal aspect and the philosophical underpinnings of the Rights of Nature as well as the interconnections between the human rights and indigenous rights and landscape protection in relation to cultural heritage studies are all collected from academic journals, books, historical and legal documents. These sources discuss the legal and moral principles, heritage practices and traditions. In the analytical part, the body of information on Ecuador and New Zealand consist of legal documents, scholarly journals, books, governmental and non-governmental websites, media news websites and YouTube videos. The sources contain information on the countries' legal implementation of their Nature's right as well as how the implementation relates to their cultural, political and social structures, with special attention to the heritage values and rights of indigenous peoples. In the

1 "Ecuador rewrote its Constitution in 2007-2008 and it was ratified by referendum by the people of Ecuador in September 2008" (www.therightsofNature.org).
2 "Although New Zealand has not formally adopted the Rights of Nature into statutory or constitutional law, the nation has acknowledged the inherent rights of Nature by granting legal personhood to selected lands and rivers" (www.earthlawcenter.org).
3 Emails are included in appendix 1.

discussion part, all the previous collected data is synthesised, however, the "ground breaking"[4] work of Jennifer Nedelsky, professor of law and political science at the University of Toronto, is included in order to combine the data with her work to create additional understanding and a unique perspective to the overall research topic.

In case of the online news websites and non-governmental organizations websites, I am aware that these collected sources are mainly promoting the Rights of Nature without critical consideration. Most of these sources create a biased perspective and only focus on the beneficial characteristics of the Rights of Nature. I tried to keep a critical eye to these sources and focused on the information that could be linked to the cultural heritage framework in order to find missing gaps and new viewpoints. Also, as a student in Heritage Studies, I have little academic experience in how to analyse political issues from a legal context. The sources that did offer objective and neutral inquiry into the Rights of Nature where academic journals, books and legal documents that had a legal focus and applied legal concepts and terminologies. Therefore, the research challenged me to carefully investigate these sources and detect useful elements that could be linked to the cultural heritage framework. Also, the data only consists of English language sources. Unfortunately, due to my Spanish language limitation, I was not able to generate Spanish language scholarly articles, news websites and non-governmental organizations websites, as well as YouTube videos from Ecuador which could have added new additions and perspectives to my research.

Last but not least, how I analyse my data is by creating a link between the legal dimension and cultural dimension in order to give new interpretation of the existing data and connect dominant viewpoints with new insights and perspectives. The thesis analyses the data with a focus on finding new patterns of understanding, meaning-making, identifying and transmitting information in order to create clarity and better understanding on the Rights of Nature challenge in relation to heritage studies.

I.4 Research Structure

The thesis is divided into five chapters which are spread across the theoretical, analytical and discussion part. The first chapter presents the introduction where the research question and the sub-questions are proposed. The sub-questions are divided among the various chapters.

Chapter 2, the theoretical framework, focuses on the first two sub-questions. These sub-questions are: *What are the origins, developments and characteristics of the so called Rights of Nature movement? And how does the Rights of Nature relate to landscape protection in heritage studies and how do western and indigenous cultural heritage traditions fit into this context?* The

4 Jennifer Nedelsky's scholarly work "Law's Relations: A Relational Theory of Self, Autonomy, and Law" (Nedelsky 2011) is considered "ground breaking application of relational to legal and political theory"(www.global.oup.com).

chapter is divided into three parts. In order to truly grasp the origins and emergence of the Rights of Nature ideology, the first part, "What Came Before," looks into the human rights and indigenous rights development. These developments point out how the very idea of rights have historically undergone an outward expansion, extending rights to previously marginalized and eventually embracing the idea to give rights to non-human entities. In addition, understanding the differences between human rights and indigenous rights is important for the analytical and discussion chapters that explore how the rights of indigenous peoples in Ecuador and New Zealand are represented and to what extent their Rights of Nature expands indigenous peoples' rights. The second part, "Rights of Nature," focuses exclusively on the key developments and characteristics of the Rights of Nature movement. The work of Christopher Stone and the principles of Earth Jurisprudence, established by Thomas Berry and Cormac Cullinan, are explored since these are considered to be the theoretical framework from which the Rights of Nature movement emerged. This part shows that the Rights of Nature comes from a western construct and part of the anthropocentrism versus eco-centrism debate. The third part, "Heritage and Nature," looks at how landscape protection relates to indigenous and western cultural heritage traditions and to what extent these heritage values are represented in the theoretical characteristics of the Rights of Nature. The interrelation shows that the Rights of Nature both carries indigenous and western heritage values, however, this remains critical and open to challenge.

Chapter 3, the analytical framework, focuses on the case studies of Ecuador and New Zealand. This chapter answers the following sub-questions: *What are important social and political developments in Ecuador and New Zealand that relate to the political mobilization and rights of indigenous peoples? To what extent does the legal recognition of Nature's right in Ecuador and New Zealand reflect the indigenous peoples' heritage values? And what are the countries environmental and social outcomes of their legalization of Nature's right?* The chapter is divided into Ecuador and New Zealand, where each country is divided into five parts. The first part, "Background," summarises the countries' social and political background, within the context of the indigenous peoples' struggle for their rights. In addition, the countries' environmental situation will be briefly mentioned in order to connect the information to the last part, which looks at the environmental and social outcomes of the countries' legal recognition of Nature's right. The second part, "The indigenous peoples' cultural traditions," analyses the countries' specific ideologies of the indigenous peoples, with focus on human-Nature approach. The third part, "the implementation process," looks at how the Rights of Nature were included in the legal system, with a focus to what extent indigenous peoples where included. The fourth part focuses on the how Nature is legally recognised, and to what extent the legal terms express indigenous peoples' heritage values. The last part looks at the environmental and social outcomes of the countries' legal recognition of Nature's right.

Chapter 4, the discussion part, focuses on the last three sub-questions which are: *What are the countries differences and similarities in their legal recognition of Nature's right? What are the key*

contributions that Ecuador and New Zealand make to landscape protection and in particular, to the cultural heritage and rights of indigenous Peoples? And what knowledge can be added to the Rights of Nature objective that can further expand the cultural heritage and rights of Indigenous peoples and advance the understanding of landscape protection in relation to environmental degradation?
The chapter is divided into two parts. The first part examines the countries' "Similarities and Difference," in order to connect the findings to the second part, "Connecting the Dots," to expose the countries' key contributions to landscape protection and to the cultural heritage and rights of indigenous peoples. Last but not least, I offer an alternative in how to best move forward in understanding the Rights of Nature, by using the work of Jennifer Nedelsky. I will connect her work to my research and show how the shift to constructive relationships in law can help in the challenges of the Rights of Nature. I will argue that Rights of Nature cannot truly expand indigenous cultural traditions as long as the dominant western construct of rights remains in place. We need a language of law that brings to light the patterns of relationship rather than hides it in structures of hierarchies, boundaries and competing interests.

The last chapter is the conclusion. In this part, all the sub-questions are briefly restated in order to finally answer my main research question. In addition, the chapter explains to what extent the goals of the thesis have been reached and to what extent the research questions have been answered. The methodology is briefly evaluated by pointing out the achievements and limitations. Last but not least, the conclusion gives a final take away and generates new questions for future research.

I.5 The Ambitions and Limitations

The Rights of Nature is a complex topic that centres around the legal recognition of Nature's right. The research focus is to integrate the legal component with a cultural heritage framework in order to create better understanding and clarity. The goal is to find answers to what extent the Rights of Nature improves landscape protection as well as expands the cultural heritage and rights of indigenous peoples. Hopefully the answers can bring about new insights in the workings of the Rights of Nature, provide possible solutions for further improvement and create new research questions for future research. The overall ambition is to contribute to an increase awareness in what ways the consequences of implementing the Rights of Nature affects and influences cultural traditions as well as the human-Nature relationship in relation to landscape protection.

With most academic research, there are limitations present. One limitation of this research is that Ecuador and New Zealand still lack sufficient amount of legal cases that have challenged the rights of Nature. It would have greatly enhanced my research if various legal actions in Ecuador and New Zealand were pursued to safeguard Nature's right because this could have shown how opposing parties interacted, how they culturally defined and represented Nature, as well as how the court resolved the dispute in favour for Nature. Another limitation, as previously stated, is that I do not have

sufficient academic knowledge in legal theory and concepts. This created a challenge in summarising and analysing legal articles, books and documents. At the same time, combining the legal context with heritage studies was a worthwhile undertaking which improved my academic learning and helped me to find unique perspectives.

I.6 Terminology

In the academic field of cultural heritage studies, various terminologies are used to characterize cultures, including groups of people. This thesis explores and analyses the differences between indigenous and western cultural heritage values. As a result, the terms *indigenous* and *western* are placed in opposition to create transparency in relation to my research topic. At the same time, I am aware that the use of these terminologies can create black-and-white thinking. However, in this research, pointing out the core differences between indigenous and western worldviews can be helpful in achieving a clear framework for answering my research questions. This study wants to understand the main differences but in no way wants to indicate and generalize that all indigenous peoples' cultures share the same worldviews, likewise for western cultures. The theoretical chapter mainly outlines dominant notions about indigenous and western cultural traditions. In contrast, the analytical chapter focuses on the specific indigenous cultures of Ecuador and New Zealand in order to avoid intermixing them with more general, one-dimensional concepts of indigenous peoples' cultures around the world.

2. Theoretical Framework

2.1 What came before

2.1.1 Human Rights

The Rights of Nature can be defined as "*the latest round of an outward expansion of rights,*" (Youatt 2017, 39) where Nature in "*all its life forms has the right to exist, persist, maintain and regenerate its vital cycles*" (www.therightsofNature.org). This new form of ecological governance regards Nature as a living being. It is within this framework that Nature, in a sense, becomes part of the human sphere of rights. Therefore, understanding "what came before" the emergence of the Rights of Nature, requires us to look into the development and expansion of the concept of human rights. The next section briefly looks at the historical evolution of the human rights concept, however, the section does not investigate and highlight the detailed aspects of the human rights development. There exist various perspectives and arguments in what specific ways, and to what specific extent, the human rights emerged over the course of history. However, the main objective of this section is to give a brief overview of key episodes in the human rights development to show that the human rights paradigm has indeed expanded and is still evolving. To clarify the expansion of the concept of human right, in 2018, the European Parliament's Subcommittee on Human Rights organised a workshop to discuss the human rights expansion. Remarks were made about the development of the human rights paradigm. Pier Antonio Panzeri, chair of the Subcommittee on Human Rights, noted that "*the concept of human rights has greatly evolved over the last decades and has expanded in different forms, with new rights holders and new dimensions of rights being identified alongside the existing ones*" (Bonacquisti *et al.* 2018, 1-5). The next paragraph will look into the first form of the human rights concept.

The first form of the human rights concept can be traced to the late 17th and 18th century, known as the Age of Enlightenment (Monod 2013, 61). The period is characterized by the emergence of reason, where new political ideologies were formed (Ferrone 2015, 14). These ideologies reflected the need for liberal forms of governance and the need for individual freedom and equality (Israel 2011, 384). These new ideologies emerged as a reaction to the French and British monarchies who exercised absolute control and undermined the equality and individual freedom of their citizens (Israel 2011, 926). A key figure in the Enlightenment period and contributor to the liberal thought is John Lock, an English philosopher and political theorist (Schouls 1992). John Locke did not explicitly use the term 'human rights' but he did explain that every human being is by Nature free and has equal rights. He argued that all men had the inalienable right to "*life, liberty and property*" (Laslett 1983) and that it is the main objective of the governmental state to provide and safeguard these rights for its citizens (Schouls 1992, 53). His writings had a profound influence on the formations of the American Declaration of Independence and the Declaration of the Rights of Man and Citizen (Carlisle 2005, 969). These documents were drafted using the principles of the Enlightenment to attack the monarchical regimes and demand a right-based liberal democracy (Carlisle 2005, 967).

The adoption of the Enlightenment principles in the declarations are regarded as the first conceptions of human rights, however, at the same time, these principles seemed to exclusively

address the white, male property-owner (Maier 1999, 875) because they were the only ones allowed to vote in order to contribute to the so-called "democracy." In a sense, the white male property-owner symbolised the "*rights of men*"[5] as well as "*all men*", in the declarations, who, among them, were "*created equal*" and had "*certain unalienable rights, that among these are life, liberty and the pursuit of happiness*"[6]. These new philosophical principles shaped the social, political and cultural structures of Western society and justified the social order where the rights to property were used to exercise control in the name of equal rights (Koggel 2006, 60-61). Although the Enlightenment principles can be seen as the starting point for the formation of an early conception of human rights, the outcome created social exclusion. The period of intellectual growth is also the period of the Age of Empires, where the notions of advancement, development and reason were used to justify colonialism. As a result, the early forms of human rights principles were a political and social mechanism to control other nations and groups of people that created violent social exclusion, where slaves, colonized peoples, indigenous populations, women, and the impoverished were all denied the 'gift' of human rights (Jensen 2016, 70).

In the twentieth century, the ties turned and the concept of human rights took new forms and dimensions. Different social groups started to demand legal recognition of their rights (Cmiel 2004, 117). In Western Europe and North America, woman gained the right to vote and the labour unions brought about change to safeguard their social and economic rights. In addition, the civil rights movement emerged, where African Americans fought to end racial exclusion, segregation and discrimination (Cmiel 2004, 119). However, only after the UN General Assembly adopted the Universal Declaration of Human Rights on 10 December 1948 (www.un.org), the human rights agenda expanded significantly (Cmiel 2004, 118). The Universal Declaration of Human Rights created a new relationship between the individual and the global political system. From then on, the human rights became widely used as a tool to bring about social and political changes, acknowledged at the international level (Edelstein 2014, 541). However, struggles remained and various movement continued to fight for women's equality rights, socio-economic rights, LGBT rights and indigenous rights.

The 20st century was a period of profound changes in the establishment and development of the modern concept of human rights. However, the human rights treaties reflected an individualistic notion of rights and rights-holders (Edelstein 2014, 545). This characteristic was especially confusion and difficult for indigenous groups who fought for their collective rights as indigenous peoples. Their contribution to the human rights development shows how the human rights concept has expanded from individual rights to include collective rights. The next paragraph will explain this transition as well as point out some of the key events in the indigenous peoples' political struggle for their rights.

5 Declaration of the Rights of Man and of the Citizen, 1789 (http://www.hrcr.org/docs/frenchdec.html)
6 Declarations of Independence: A Transcription, 1776 (https://www.archives.gov/founding-docs/declaration-transcript)

2.1.2 Indigenous Rights

The history of indigenous peoples is vast and complex. Yet, one thing is clear, they have faced, and are still facing, systematic threats to their cultural identity, self-determination and access to land and resources on which their cultural structures and traditions depend (Coates 2014, 2). The 20th century was a period where indigenous peoples experienced a continued rejection of national governments who denied the regulation and protection of their rights to their cultural traditions and tribal lands. Besides, governments imposed policies of forced assimilation in an attempt to wipe out indigenous people's cultures and heritage (Lenzerini 2009, 80). However, with the implementation of the Universal Declaration of Human Rights, the human rights agenda expanded and this helped indigenous movements to gain greater visibility and reach to advocate their rights (Mazel 2018, 3). The international human rights framework became a tool for indigenous peoples to expose their continuous struggle with foreign occupation, assimilation and the need for decolonization (Lenzerini 2009, 108; Mazel 2018, 1). They used the individual-rights based system of human rights to demand recognition for their ongoing struggle for their survival and their loss over control of lands, territories, and resources. However, when it comes to the individual-rights based system, indigenous peoples' rights cannot be effectively protected because it lacks the inclusion of collective rights (Xanthaki 2009, 8).

The international human rights framework is based on the principle of protecting every individual's humanity. Human rights are defined as "*moral entitlements that every individual in the world possesses simply in virtue of the fact that he or she is a human being. This means that each person had the right to live a life of dignity*" (www.coe.int). In addition, a person has the right to pursue a life without the intrusion of others or the state. As a result, the individual rights are interrelated to the rights of property. As stated in the UDHR, "*Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property*."[7] However, when it comes to indigenous peoples' rights, the individual element is not enough to protect their culture as a collective characteristic. Therefore, the individual framework of the human rights concept is not enough to preserve their identity, heritage and sovereignty.

The inclusion of collective rights is necessary to "*ensure the survival of indigenous peoples as a human group*" (Bellier and Preaud 2011, 479). The indigenous peoples' rights include both individual and collective characteristics. They recognise the rights of individual members to their culture and land but at the same time understand that the these are part of their identity as a group. The collective element of their rights to their land, territories and resources are interrelated to their cultural identity, and to their social and political development as a distinct people (Feiring 2013, 17).

7 Article 17 of the Universal Declaration of Human Rights, 1948 (http://www.claiminghumanrights.org/udhr_article_17.html)

The collective right of indigenous peoples to their land is not the same as having the individual right to property. Collective rights are intergenerational and the practice of their culture is interconnected to their sacred land and territory. The land is passed down through generations and part of their cultural traditions and practices. This means that their rights to their territories and land are regarded as a cultural inheritance rather than property. Therefore, indigenous rights cannot be protected by focusing on the individual aspect alone. Instead it needs to include the collective dimension in order to protect the cultural identity of indigenous peoples as a group (www.foei.org).

There are two international laws that specifically address indigenous peoples' rights and include the collective dimension. These are the ILO Contention No. 169, created in 1980, and the Universal Declaration of on the Rights of Indigenous (UNDRIP), established in 2007. The international laws both address the indigenous peoples' rights to their land, territories and resources. The main provisions of the IL Convention are that the indigenous peoples have the right "*to further develop their culture and it is the authorities' obligation to initiate measures to support this work*" (www.regjeringen.no). In addition, the UNDRIP explicitly states that "*indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples*"[8]. These two instruments represent a different dimension to the human rights concept, where the focus lies on the authorities to fulfil, respect and protect the rights of indigenous peoples by including the collective dimension in order "*overcome the historical injustices and current patterns of discrimination that indigenous peoples face*" (Feiring 2013, 16).

As the previous sections demonstrates, the development of early forms of human rights principles started during the Enlightenment period and gradually expanded to include more groups of people to develop in different forms and dimensions. The indigenous rights have expanded the individual concept of human rights by including the collective element. The overview reveals that the human rights paradigm is never static and always evolving. From this perspective, the idea to grant Nature legal rights can be linked to the expansion and development of the human rights. The emergence of the Rights of Nature can be seen as a new form and dimension of human rights, where the "human rights" are given to natural entities. In addition, the indigenous rights can be placed along-side the development of the Rights of Nature. As described earlier, indigenous peoples' identity is interconnected to the land. The land forms an integral part of their culture, self-determination and traditions. From a pure theoretical point of view, it seems logical that when Nature is given legal rights and protected from environmental degradation, the rights of indigenous people are indirectly protected as well. When the land is no longer treated as property but as a living entity, indigenous peoples' cultural identity can be better preserved. The next sub-chapters will take a detailed look at the Rights of Nature development and characteristics, as well as the heritage interrelation in order to

8 United Nations Declaration on the Rights of Indigenous Peoples, Annex, 2007 (https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

investigate to what specific extent indigenous heritage values, as well as their rights, are represented in the Rights of Nature.

2.2 Right of Nature

2.2.1 Development and Characteristics

The Rights of Nature is regarded as a new development that challenges the Western legal system to include new forms of ecological governance to create sustainable solutions for environmental degradation. However, the preservation of the environment is not an entirely new principle within the Western legal system, both on a national and international level. The origins of the current system of environmental laws date back to the mid-1800s, when governments took the first steps to "*protect, catalogue, and regulate the natural environment*" (www.eli.org). However, only after the 1970s, international environmental law began to take substantial forms to eventually grow into "*hundreds of multilateral and bilateral environmental agreements where different countries have one or more environmental statutes and regulations*" (Weiss 2011, 1). Today, environmental laws are widely acknowledged, recognised and implemented across the board to address environmental issues. However, concerns are raised about the actual usefulness of these environmental laws, since the Earth continues to be in an environmental crisis (Laitos and Wolongevics 2014, 1).

The perceived failures of environmental laws have been ascribed to their anthropocentric Nature (Kotze and French 2018, 5; Kotze and Calzadilla 2017, 401). Anthropocentrism is the belief that value is human-centred and that "*only human interest directly matters morally"* (McShane 2016, 190). Environmental laws are often characterised within this framework and placed within the notion that they only "*protect and benefit humans, not the environment in which humans live; they assume human superiority and exceptionalism to Nature and natural processes; they are based on the notion that humans are separate from Nature; they presume that humans are ultimately limited by planetary boundaries, because they are superior and somehow insulated from Nature*" (Laitos and Wolongevicz 2014, 1). The development of the Rights of Nature tries to create an alternative approach to environmental protection and rejects the anthropocentric view in relation to environmental ethics.

The alternative approach of the Rights of Nature is often referred to as ecocentrism, which is regarded as the direct opposite of anthropocentrism. Ecocentrism extents the human value to all living organisms and the natural environment. As a result, this approach embraced a Nature-centred perspective in relation to environmental ethics, where "*Nature has intrinsic value*" (Kortenkamp and Moore 2001, 261) and needs to be conserved for "*her integrity and beauty*" (Hoffman and Sandelands 2005, 141). A strategy often adopted by ecocentric reasoning is the argument for wilderness preservation (www.landscapemusic.org) and the importance for keeping the natural environment as "wild," as possible (Kortenkamp and Moore 2001, 261) without the destructive influence of human

hands. The works of Christopher Stone as well as the philosophy of Earth Jurisprudence, established by Thomas Berry and Cormac Cullinan, uses the ecocentric approach to establish the idea for the Rights of Nature.

In 1972, Christopher Stone published his essay "Should Trees Have Standing: Toward Legal Rights for Natural Objects," in which he argues that natural objects, in themselves, should have the right the be recognised in the system of law. He justifies his argument by explaining, "*the fact is, that each time there is a movement to confer rights onto some new "entity," the proposal is bound to sound odd or frightening or laughable. This is partly because until the right-less thing receives its rights, we cannot see it as anything but a thing for the use of "us" – those who are holding rights at the time*" (Stone 2010, 3). He uses principles of legal theory and terminologies to justify the Rights of Nature. To clarify, his main objective is to show that the necessary conditions for Nature to have legal standing, legal personality, is threefold. First, it needs to be able to stand in court, *institute legal action at its behest,* this does not literally mean that it can speak for itself, but someone can speak for them, this is similar to children, universities and corporations. Second, the court needs to able to determine the opposing parties to grant *legal relief*. Third, the court's decision must create beneficial results for the parties involved, to the *benefit of it* (Stone 2012, 4). He explains that all the three conditions can be granted to natural entities, such as "*forests, oceans, rivers*" as well as to "*the natural environment as a whole*" (Stone 2010, 3). However, Christopher Stone was aware of the fact that natural objects cannot speak for themselves in court. Therefore, he argued to assign representatives or guardians who can speak for the interest of natural objects. These representatives need to be well-suited to speak on behalf of Nature, which means having a responsible role to take on the interest of Nature by acknowledging Nature's intrinsic value (Stone 2010, 103-104). Overall, he wanted a holistic and non-anthropocentric approach to Nature in order to successfully implement the Rights of Nature.

The philosophy of Earth Jurisprudence is another important influence on the Rights of Nature emergence. The philosophy was first established by Thomas Berry, a cultural historian and eco-theologian. He heavily criticized the anthropocentric Nature of Western environmental laws by pointing out that "*the deepest cause of the present devastation is found in a mode of consciousness that has been established a radical discontinuity between the human and the other modes of being*" (Berry 1999, 4). He labelled this discontinuity as anthropocentrism (Burdon 2011, 152). Instead, he proposed an Earth Jurisprudence that seeks to create a governance focused on Earth-centric rather than human-centric laws (www.gaiafoundation.org; Clark 2019, 788). Thomas Berry uses an ecocentric approach the human-Nature relationship, where he introduces the concept of Earth community, where all its members, both human and non-human, constitute fundamental rights (www.therightofNature.org). This philosophy wants to maintain and regulate the interrelation between all members of the Earth community, including natural objects in order to create a harmonious balance where the environment can flourish and continue to thrive in the present and future. Thomas Berry

explains that each member of the Earth community has three fundamental rights, namely, "*the right to be, the right to habitat or place to be, and the right to fulfil its role in the ever-renewing process of the Earth community.*" (Berry 2006, 149-150). The inclusion of Nature's right into the legal system can be enacted by human guardians, who are appointed to speak on behalf of Nature's interest (www.greenagenda.org). In addition, Thomas Berry argues that Earth Jurisprudence is based on the wisdom and knowledge of indigenous people and believes that the Earth-centred laws, are a direct translation of their cultural values in relation to the natural world (La Folette and Maser 2019, 387).

Overall, the environmental philosophy is a movement toward a "mutually enhancing human-earth relationship" (Berry 1999, 61). The Earth-centred perspective of Earth Jurisprudence is further justified in the argument that "*law and governance structure must be founded in the supremacy of the already existing Earth governance of the planet*" (Berry 2006, 19-20). The philosophy of Earth Jurisprudence places Nature at the centre of human governance (Berry 1999, 64), where the human value is extended to all living organisms and the natural environment. In addition, Cormac Cullinan, another contributor to the Earth Jurisprudence philosophy, wrote the *Wild Law: A Manifesto for Earth Justice*, where he expresses the need for Earth laws, such as Wild law and the Rights of Nature, to be included in the legal system in order to transforms the anthropocentric Nature of environmental governance (Cullinan 2003, 84). Cullinan explains that when society places themselves in the wider Earth community in a mutual relationship, this is "*consistent with the fundamental laws or principles that govern the Universe functions*" (Clark 2019, 790).

The theories of Christopher Stone and Earth Jurisprudence are considered the theoretical framework for the emergence of the Rights of Nature. As a result, the Rights of Nature is part of a Western construct, as well as part of the critique against anthropocentrism. However, the critique carries ambiguities. Their theories lack sufficient explanation to what extent "speaking for the interest of Nature" is non-anthropocentric. The theories strongly oppose any form of anthropocentric governance but do not seem to acknowledge that the very idea of using representatives for Nature can be a cover-up for anthropocentric legislation. In general, ecocentrism strongly criticizes the issue of property in relation to Nature, and states that Nature cannot be owned, however, there is "*little attention to the development of an alternative ecocentric theory of property*" (Breen 2001, 37). As a result, the ecocentric side of the debate is mainly "*busy in their role as opposition*" and "*remains lax regarding crucial questions of property and ownership*" (Breen 2001, 36). This is seen in the work of Christopher Stone and Earth Jurisprudence as well. They do not have a strong counter-argument in how to effectively deal with the Western construct of property and how to prevent a clash of interests when the Rights of Nature is implemented in the legal system. In addition, there are some environmental ethicists that show how the critique on anthropocentrism is narrow-minded and can be misguided (Kopnina *et al.* 2018, 109). They argue that there is a difference between "*legitimate and illegitimate human interest*" (Kopnina *et al.* 2018, 109) and that anthropocentrism does not have to be completely replaced in order to create better environmental sustainable solutions (Rottman 2014,

905). When humans have the "*morality, conscious and self-love*" (Kopnina *et al.* 2018, 3) to understand that they are part of the natural world and can respectfully understand their relation to it, anthropocentrism no longer have to symbolize the destruction of the environment.

The anthropocentrism-ecocentrism debate shows that there are different viewpoints to environmental ethics and principles. The Right of Nature was developed out of the need for an ecocentric approach to environmental governance. However, it remains unclear to what extent indigenous heritage values are included in the Right of Nature and how these values are situated within the Western construct. In order to further investigate the various dimensions of the Rights of Nature, the next section looks at how the Rights of Nature interrelates to landscape protection in heritage studies and to what extent the Rights of Nature carries indigenous cultural heritage values.

2.3 Nature and Heritage

2.3.1 Landscape Protection

As shown in the previous part, the Rights of Nature is not only about acknowledging a new form of ecological governance and recognizing the intrinsic value of Nature. The Rights of Nature challenges the human-Nature relationship and this affects the understanding, management and preservation of our landscapes since landscapes are shaped by the human relationship to its natural environment.

To be more specific, landscapes can be defined as "*a concept which includes the physical environment and people's perception and appreciation of that environment*" (www.environmentguide.org). Landscapes include psychical as well imaginary dimensions because it symbolises "*the environment created by human acts of conferring meaning to Nature and the environment*" (Wolmer 2007, 8). Therefore, landscapes are "*as much imagined as real*" (Wolmer 2007, 9). In a more abstract sense, landscapes are often classified as natural and cultural, where natural landscapes are "*areas without existing human impacts and implies a baseline condition of an ecosystem,*" (Kovarink 2018 ,22) and cultural landscapes are "*areas modified by human impact*" (Wu 2010, 1147). However, this division can be damaging. According to Tress et al. "*all landscapes consist of both a natural and a cultural dimension. The perceived division between Nature and culture has dominated the academic world. In the case of landscapes, this divide is counter-productive and must be overcome since all landscapes are multidimensional and multifunctional*" (Tress *et al.* 2001, 140). From this perspective, all landscapes can be considered cultural landscapes, especially in relation to the need for sustainable solutions for environmental degradation, since this involves the direct management of the natural environment by human hands, governed and justified by their cultural heritage values, traditions and knowledge (Bridgewater and Bridgewater 2004, 193; Bloemers 2010 *et* al 6). This means that "*we cannot understand and manage the 'natural' environment unless we understand the human culture that shaped it*" (Bridgewater and Bridgewater 2004, 193). As a result, to truly understand how the Rights of Nature affects the management and preservation of

cultural landscapes, it is valuable to look at what specific cultural heritage values are embedded in the Rights of Nature. The way the human-Nature relationship in the Rights of Nature is characterized are based on underlying cultural heritage values about how Nature is perceived through cultural identity and collective memory. The next part will look at how indigenous and western cultural heritage values define the concept and understanding of the natural environment. In turn, the overview can show to what specific extent the principles in the Rights of Nature include western and indigenous heritage values.

2.3.2 Western Approach to Nature

The Western perception of humanity's place in Nature is characterised by a dualistic opposition between Nature and culture (Haila 2000, 155; MacCormack and Strathern 1980, 209). From a Western cultural perspective, according to Lowenthal, "*Nature seems essentially other than us; we may yearn to feel at one with its life-supporting fabric, but we seldom put ourselves in Nature's place or project ourselves into non-human lives*" (Lowenthal 2005, 86). The Nature-culture division is deeply rooted in Western thought and considered "*an ontological marker of Western modernity*" (Byrne 2013 *et al.* 2013, 1). The origins stem from the Enlightenment period, where the belief in reason and the need to understand and conceptualize the unknown was central to establish new theories and conceptions on the workings of reality. Nature was considered the mysterious and the unknown force that needed to be understood in order to be controlled (Tulloch 2015, 21). The focus was to objectify and frame Nature in an attempt to enlighten the human uniqueness, to claim the individual freedom and right to control (Murphy 1992, 311). Also the philosophy of Rene Descartes, defined as the Cartesian dualism, shows how the Nature-human dualism was established. The Cartesian dualism regards the mind and body as separate. The mind enables humans to rationalize and distinguish themselves from the chaotic natural world, leaving Nature "*mind-less*" (Harrison 2015, 30).

In addition, the human-Nature dualism is visible in how Western societies structure and organize their political, economic and social systems. For example, democracies have a structure where voters represent current generations as well as future generations but exclude the representation of Nature. The legal system is further established as a hierarchical system, ranking humans at the top. In addition, environmental laws are further divided into international and domestic laws. The natural environment is placed within a legal system that is characterised by a hierarchical division under the authority of different sets of binding rules, interests and guidelines (Inoue and Moreira 2016, 1).

Another important aspect that shows the human-Nature division is in the way Nature is represented through language. The Western description of the natural environmental is often defined as wilderness (Pickerill 2008, 97). The conception of wilderness went through different phases. First being presented as the unknown, dark land inhabited by savages, and outside the sphere of the

"*civilized world*" (Light 1995, 196). Later, at the beginning of the 19th century, wilderness shifted to become a romantic, magical place, still outside the realm of humans but glorified for its greatness and often defined as a "*supernatural holistic being*" (Moore and Strachan 2010, 48). In addition, the western romantic painters contributed to this image, by portraying Nature as the utopian space, free from human intervention (Light 1995, 196). As a result, the concept of wilderness in relation to Nature creates a division between the natural and human world and approves the dualistic thinking.

In addition, the human-Nature opposition is also represented in how Western cultures define their concept of heritage. In the Convention Concerning the Protection of the World Cultural and Natural Heritage, adopted by the General Conference of UNESCO in 1972, heritage is divided into natural and cultural, where natural heritage includes the natural environment, such as "*natural features, geological and physiographical formations and natural sites*," and cultural heritages includes "*monuments, groups of buildings and sites, such as archaeological sites*"[9] This shows a separation between the heritage of the natural environment and the cultural society. However, these terms have been changed in recent decades to integrate them by including the intangible heritage aspect. The intangible heritage refers to the intellectual property of heritage which are the expression, representation, skill, and practices which individuals, groups, and communities recognize as their cultural heritage[10]. In 2003, UNESCO adopted the Convention for the Safeguarding of the Intangible Heritage, to reconsider "*the deep-seated interdependence between the intangible cultural heritage and the tangible cultural and natural heritage*."[11] However, scholars have pointed out that the attempt to create an integrated heritage of the different dimensions hasn't been truly established yet (Leitao 2017, 195). In fact, the World Heritage Convention keeps the dimensions divided and separated (Larsen and Wijesuriya 2017, 142).

The separation between human and Nature is very much embedded within the Western cultural structures of society. On the contrary, indigenous people have a different perception of the human relationship to the natural environment. The next part looks into the indigenous approach to Nature and reveals that the distinct Western categories of natural heritage and cultural heritage displays further problems for indigenous peoples.

2.3.3 Indigenous approach to Nature

The indigenous cultures regard no boundary between humans and Nature. In fact, they see themselves "*connected to Nature and part of the same system as the environment in which they live*" (www.faor.org). Indigenous people define their relation to the natural world as "*kindred relations*"

9 Definitions of the Cultural and Natural Heritage, 1972 (*Article 1 and Article 2).*
10 Definition of intangible heritage in the Convention for the Safeguarding of the Intangible Cultural Heritage, 2003 (www.unevoc.unesco.org).
11 Explanation of the considering of the ICH Convention, 2003 (www.unevoc.unesco.org)

(Salon 2000, 1331). The natural world is the extended family and is interconnected to the cultural identity of indigenous people (Salon 2000, 1332). Indigenous cultures feel the responsibility to respect the natural environment and cultivate a close relationship with Nature in order to protect and enhance it. This means that the indigenous approach to Nature embraces the interdependency with all its members of the Earth, both humans and non-humans. In addition, the harmonious relationship with Nature is not only perceived as common but important to protect in order to preserve "*the spiritual, physical, social, and mental health*" (Salomon 2017, 321) of both the environment and the people as one. To clarify, indigenous peoples believe that "*a person who harms the natural world also harms himself*" (Salomon 2017, 322). Their land and territories are part of their identity and spirituality and therefore, deeply embedded in their culture and history, interlinked to their ancestors and passed on to future generations (www.un.org; Sangha *et al.* 2015, 197). As a result, the indigenous approach doesn't see Nature as the *other* but part of the *self*, which enables indigenous people to put themselves in Nature's place. In addition, the land forms an integral part of indigenous cultural practices since the land plays a central part in indigenous oral traditions. In these stories, the land symbolises the place from which indigenous people emerged and came into existence. Therefore, the natural world is a mythical as well historical feature and is deeply interconnected to the indigenous people cultural heritage (Salomon 2017, 334).

As a result, the indigenous approach to Nature reflects a different perception of the cultural heritage than the western perception. The indigenous ontologies challenge the natural and cultural heritage division as well as the tangible-intangible separation (Harrison 2015, 31). The interrelations between Nature and culture, within the indigenous worldviews, shows that the cultural heritage of indigenous peoples cannot be separated into different parts. The cultural heritage of indigenous peoples shows an integration of all dimensions of heritage where cultural, natural, tangible and intangible heritage are all part of an interdependent whole. As a result, indigenous cultures do not separate different aspects of heritage in opposition or label them according to their highest value. Instead, all aspects have the same value and are equally respected and protected. This means that indigenous peoples protection of their cultural heritage includes the protection of their lands and territories, which are part of the natural environment[12].

The close interrelation with humans and Nature is also visible in their languages (Salmon 2000, 1328). The natural environment carries many different expressions in the indigenous languages. In most cases, indigenous cultures share "*a set of structures, expressions, metaphors, concepts that describe their links to the natural world*" (Salmon 2000, 1331). These various terms often express "*the complex flow of life with which they and their ancestors have lived interdependently for centuries*" (Salmon 2000, 1331). For example, in the Māori language, Nature and human aspects are expressed interchangeably. The term *Ko wai au* has the double meaning of w*ho am I* and *I am water*

12 Report based on presentations of the International Expert Seminar of the Saami Cultural Heritage Week, organized by the Saami Council in Rovaniemi, 2008 (www.saamicouncil.net).

and the word land, *whenua*, also means the word placenta (Sanders 2018, 208). In addition, the Nature-human separation in western society is often confusing and uncomfortable for indigenous people. They do not only intellectually understand there is no boundary between the natural world and human society but they also feel it on a spiritual level and deeply sense that "*Nature is people and people are Nature*" (www.huffpost.com). As a result, indigenous languages express a "*blur between people and Nature*" (www.all-languages.org). Even talking about the value of Nature can be contradictory for indigenous peoples. For example, Tina Ngata, a member of the Maori tribe from New Zealand, explicitly states "*If you ask me the value of Nature for my well-being it's like asking me the value of my head for my well-being. It doesn't make sense*" (www.novalanguages.com).

2.3.4. Heritage and Nature's Right

The previous approaches reveal how western and indigenous cultural heritage values define the concept of Nature. Especially the way Nature is expressed through language shows how Nature is valued in different ways. In addition, the different expressions of Nature reveal that languages are connected to the creation of cultural identities and play an important role in the understanding of environmental communications (Olusola 2007, 230). Language is a key component in considering how dimensions of heritage are expressed and valued. Therefore, the analytical chapter 3 will further explore the language aspect in the Rights of Nature implementations in order to investigate to what extent the various terminologies of Nature are linked to indigenous and westerns traditions.

To what extent the principles in the Rights of Nature include western and indigenous cultural heritage values can be analysed from different perspectives. On the surface, the legal and philosophical theories of Christopher Stone and Earth Jurisprudence seem to embrace the indigenous approach to Nature. Their theories reflect an ecocentric approach to Nature where humans and Nature constitute fundamental rights and are interconnected. This fits with the indigenous approach which embraces the ideology that humans and Nature are interconnected and part of the same extended family. However, a closer look shows that some elements in the Earth Jurisprudence create dualism between humans and Nature.

To be more specific, Earth Jurisprudence argues for the implementation of Earth-centric laws where Nature becomes the centre of human governance. The theory wants to shift the environmental perspective away from a human focus. Although the intentions are probably well-meant, placing the Earth as the "new" centre, creates a "new" distance between humans and the natural world because there is a still a form of boundary present; where non-humans seem to take the place of humans. As a result, this focus undermines their argument of interconnection and interdependence, because the need for "replacing" seems the be the underlying focus.

In addition, Thomas Berry argues that Earth Jurisprudence is "*based on the wisdom and knowledge of indigenous people"* and he believes that the *"Earth-centred laws, are a direct*

translation of the indigenous cultural values in relation to the natural world." This is a problematic assumption. First, his argument implies that indigenous people use the same concept of "*Earth-centred laws*" in their cultures. This remains debatable since there are no verifiable sources where indigenous peoples themselves use the term "*Earth-centred laws*" to describe their relation to the natural environment. Also, the claim that Earth Jurisprudence is based on the "*wisdom and knowledge of indigenous people*" is tricky. According to Paul Nadasdy, "*environmental thinkers have increasingly looked to indigenous peoples for inspiration and guidance. They regularly invoke native traditions and philosophies when they articulate their own visions of the ecologically ideal society, and they frequently seek to enlist indigenous peoples as allies in environmental struggle*" (Nadasdy 2005, 291-292). In this process of invoking indigenous people philosophies, the real realities of indigenous peoples are often denied and they are placed into a "*one-dimensional caricature*" (Nadasdy 2005, 293) where all indigenous peoples seem to live in perfect harmony with the environment (Nadasdy 2005, 293). I do not claim that Earth Jurisprudence deliberately places indigenous peoples into this "*one-dimensional caricature*" but it is important to remain critical when western environmental thinkers claim to include indigenous values, when in fact they only want to justify their own arguments and "*visions of the ecologically ideal society."*

In addition, Cormac Cullinan's academic book W*ild Law: A Manifesto for Earth Justice* carries a dualistic approach to the human-Nature relationship. Ironically, the term *Wild Law*, fits well within the western terminology of wilderness that defines Nature as the romantic, magical place, outside the realm of humans and free from human intervention. Although Cormac Cullinan argues for an interconnection between humans and Nature, the term *Wild Law* generates a distance between human culture and the natural environment. It creates the assumption that, in order to protect the environment from destruction, the legal system needs to make Nature wild again. The notion that Nature is a magical place of wonder, is part of a western idea of Nature. In contrast, "*the natural world for indigenous peoples, is not one of wonder, but of familiarity*" (Salmon 2000, 1329) which further demonstrates that Earth Jurisprudence does not necessarily embrace indigenous cultural heritage values.

Also, ecocentrism focuses on keeping the natural environment as natural as possible without the destructive influence of human hands. This notion does not necessarily coincide with indigenous people's cultural values either. Research has shown that indigenous people have always changed, managed and altered the natural environment according to their needs (Nadasdy 2005, 293) and to create a "*healthy ecological state of their homeland*" (Liu 2016, 145). This insight shows that indigenous people's cultural traditions can even be framed within the anthropocentric approach, not as a destructive role, but where legitimate human interest is used in relation to managing the natural world.

The analysis shows that the philosophical theories of law in the Rights of Nature carry both element of indigenous and western cultural values. However, it seems that the main principles in the

Right of Nature are still coming from a western dualistic approach that sees Nature essentially as *other* than humans. The theories in the Rights of Nature do point out the need for a human-Nature interconnection, an *Earth community*, where all its members have equal rights, however, this seems to be rationalized from an intellectual point of view. The indigenous approach to Nature includes a spiritual level understanding of the human interrelation with the natural world. This spiritual focus is inconclusive and inadequate in the theoretical framework of the Right of Nature. As a result, it remains unclear to what extent the Rights of Nature truly includes and represents indigenous cultural heritage values.

2.4 Conclusion

This chapter has shown that the Rights of Nature can be regarded as an outward expansion of rights, where the origins lie in the development and expansion of the concept of human rights. The Rights of Nature emerged out of the western environmental philosophies of law that wanted to replace the anthropocentric Nature of western environmental laws with ecocentric ethics. In addition, the Rights of Nature is not only about recognising Nature's right, but also about changing the human-Nature relationship. It is within this context that the Rights of Nature relates to landscape protection since landscapes are shaped by the interaction with humans and how humans perceive the environment. In addition, when it comes to landscape protection, understanding the human culture that manages and protects the environment is crucial. The indigenous and western cultures values were analysed in order to understand their approach to Nature. The overview revealed their different perceptions and understanding of Nature. From a pure theoretical point of view, the principles in the Rights of Nature includes both indigenous and western cultural elements, however, this remains unclear since the principles emerged out of a western construct. Therefore, the study requires additional analysis. The next chapter provided further investigation into these claims and focuses on the parallel cases of Ecuador and New Zealand.

3. Legal Recognition of Nature's Right in Ecuador and New Zealand

3.1 Ecuador

Fig 2. Geographical map of Ecuador. (Source from: https://www.southwindadventures.com/destinations/travel-to-ecuador-and-galapagos/ecuador-map/)

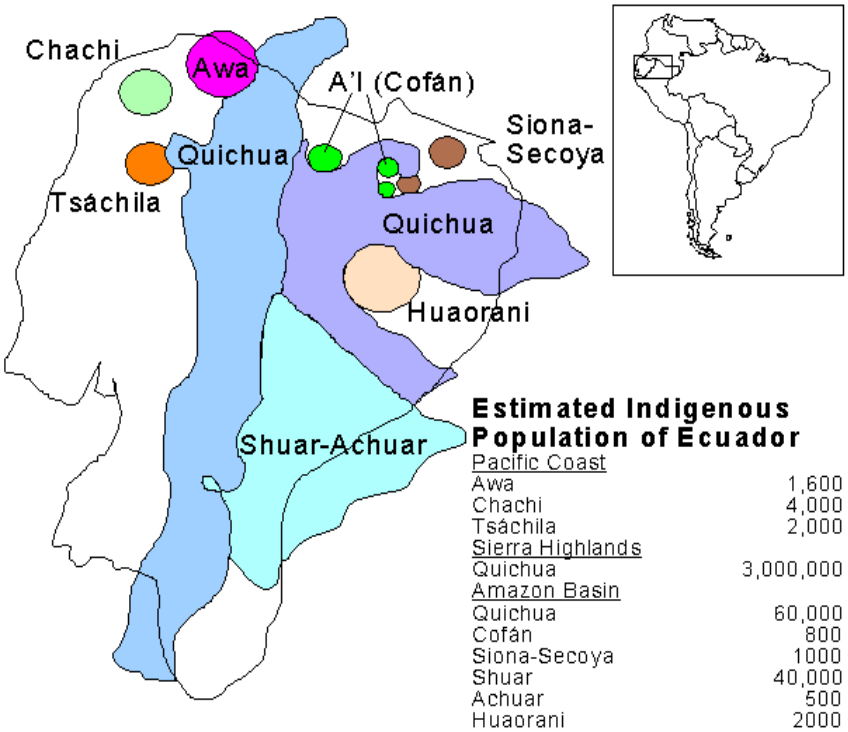

Fig. 3 Map of Indigenous Population of Ecuador. (Source from https://blogs.covchurch.org/delp/?p=1822)

3.1.1 Background

The population of Ecuador consists of an average of 16,5 million people (www.cia.gov) from which 1,1 million represent the indigenous population (www.iwgia.org). The country is divided into diverse ethnic groups, such are the mestizos, Ecuadorans of African descent and indigenous people (Telles and Garcia 2013, 130). The indigenous people are further divided into fourteen nationalities (iwgia.org). Figure 3 only shows the ten largest indigenous nationalities. The Quichua are considered the biggest indigenous group, more than three million people belong to the Quichua ethnic. Approximately 40000 to the Shuar ethnic, and 4000 to the Chachi ethnic. These three ethnic groups are considered the biggest indigenous groups in Ecuador. Spanish is the official language in Ecuador, around 78% of the population considers the Spanish language their mother language. In addition, the Quichua language is the most used indigenous language, with around 1,5 million speakers. Other practiced indigenous languages include Shuar, with over 30000 speakers, the Chachi, 5000 speakers and others. Overall, according to the Indigenous Nationality Confederation of (CONAIE) the total of indigenous speakers is less than two million (www.yanapuma.org).

The overview shows that Ecuador represents a multiethnic and multicultural society. This characteristic is especially challenging within their political and social systems because the political agenda and the formation of various policies need to take into account the heterogeneous population as well as the different needs and demands of each ethnic group. In addition, the country faces severe social inequality. Indigenous people remain marginalized and are often socially excluded from opportunities, rights and resources. One of the reasons for the continued marginalization lies in the colonial past. During these times, the indigenous social and political systems were undermined, destroyed and replaced with European models of development (Masala and Monni 2017, 2). Overall, the various problems indigenous people in Ecuador endure are "*related to poverty, participation, lands and natural resources, education and health and lack of disaggregated data to analyse their condition and formulate appropriate policies"* (Masala and Monni 2017, 2).

During the past decade, various indigenous organizations in Ecuador developed and became increasingly suspicious of governmental policies (www.refworld.org). An important development that characterized the indigenous people's social and political mobilization was the establishment of the Indigenous Nationality Confederation of Ecuador (CONAIE) in 1986. This confederation was built out of the alliance of two indigenous organizations, ECUARUNARI and CONFENIAE, in reaction to the increased marginalization and disintegration of indigenous efforts. During the formation process of CONAIE, 500 indigenous people were present, and created a political agenda that focused on the indigenous rights, including land rights, the protection of their sacred territories and indigenous languages as well as economic policies, the termination of indigenous debt and stopping the continued tribal dispensations from land taxes (Mijeski and Beck 1998, 3). Overall, the main objective of CONAIE is "*the construction of an inclusive Plurinational State and the consolidation of the indigenous peoples and nationalities and their territories. CONAIE struggles against discrimination and to guarantee unity in diversity, social equality, and equity*" (www.npaid.org).

During the 1990s, CONAIE organized important riots in Ecuador that created the beginning of on-going political struggles against the power of the traditional oligarchy of the state. These riots were mainly large scale, nonviolent, protests that opposed the governmental policies as well as honoured their indigenous cultures. Various protests were spread across several years and created an increase awareness among governmental bodies to incorporate and conciliate indigenous rights (Clark and Becker 2007, 2). In 1996, the CONAIE united with a league of social movements to form a new political party, *Pachakutil-Nuevo Pais* (Pallares 2002, 104). This party managed to include 27 local governments and 5 provincial governments to fight the corruption present in the governmental systems. As a result, indigenous people began to increasingly integrate themselves into the political arena, to promote their rights as well as their culture and heritage (Clark and Becker 2007, 2). Shortly after, in 1998, the adoption of the new Constitution represented a new area for indigenous peoples. In the Constitution, indigenous as well as Afro-Ecuadorian peoples were recognized, and the following claim was made: "*Ecuador is a social state, a state of Law, a sovereign, unitary, independent, democratic, multicultural and multi-ethnic state."*[13] In addition, the Constitution acknowledged that *"Castellan is the official language, Quechua, Shuar and other ancestral languages have an official use for indigenous peoples*"[14]. As a result, the indigenous social and political mobilization began to be increasingly recognized and incorporated into the political agenda. However, struggles remained and the social, political and economic circumstances for indigenous people remained difficult. Overall, the late 80s and 90s were characterized by ongoing political unrest. During these periods, nine presidents were in office, from which three were overthrown due to riots and public pressure. As a result, social movements developed extreme distrust towards the political system and traditional parties (Jameson 2010, 64).

However, this changed with the arrival of a new movement, the *Revolución Ciudadana*. This movement "*based on values like equality, solidarity, and restitution of dignity to indigenous peoples*," (Masala and Monni 2017, 2) gained significant support of the indigenous peoples and eventually established the new government of Rafael Correa in 2007. His party, *Alianza Pais*, and his policy of *buen vivir*, good living, stood synonym for the "*left turn*" as well as "*pink tide wave*" after years of a right-wing governance. (Masala and Monni 2017, 2). The victory of former president Correa promised real changes for the indigenous people of Ecuador. His precedency was marked by the drafting of a new Constitution that was regarded as the tool for institutionalizing the promised changes (Masala and Monni 2017, 3). The Constitution, which was approved in 2008, marked the inclusion of a new form a rights, namely the Rights of Nature. The next sub-chapters will take a closer look at the implementation process as well as the specific components of the legal recognition of Nature's right.

On

13 Source retrieved from: www.yanapuma.org. The original source, the Constitution from 1998, is in Spanish.

14 Source retrieved from: www.yanapuma.org. The original source, the Constitution from 1998, is in Spanish.

the surface, the victory of Rafael Correa created stability, especially after a long period of political and social unrest, and he is often regarded as the president who "*crushed the traditional political parties and the conservative opposition*" (Becker 2013, 47). However, social-movements were unhappy with the slow pace and implementation of the promised changes. Indigenous peoples, environmentalists, and other activists have argued that "*Correa has benefited from his occupation of spaces that social movements had previously created and held but failed to use these to rule on their behalf*" (Becker 2013, 51).

In addition, the environmental situation in Ecuador is complex and severe. According to Alvarez, "*Ecuador has one of the highest population densities in South America, high rates of deforestation and a high demand for natural resources such as water and soil. In the economic field, its production structure remains highly dependent on the exploitation and export of oil and other commodities*" (Alvaraz 2015, 228). This shows that Ecuador faces a challenging position in relation to environmental problems. The last part in this chapter will investigate to what extent the legal recognition of Nature's right has created any positive outcomes for their environmental situation.

3.1.2 The Indigenous Cultural Traditions

As stated in the previous section, there are fourteen indigenous nationalities in Ecuador. The focus of this section is not to analyse all the fourteen different indigenous ethnic groups, but only incorporate the cultural traditions of the Quichua, who live in the Andes highlands as well as parts of the Amazon rainforest (Fig. 2 and Fig. 3). The reason for this, is that the Quichua cultural values are incorporated into the Ecuadorian Constitution in relation to the Rights of Nature. The legal recognition focuses on the rights of *Pachamama* and the *sumak kawsay* expression, which are Quichue words and play a central role in their cosmology (Bidmead and Stearns 2015, 16). Quichua is often intermixed with Kichwa, however the difference is simply ideographic. The Kichwa refer to the varieties of Quechua languages spoken in Colombia and Ecuador. In addition, other indigenous groups living in the Andes and Amazon forests, such as Shuar-Achuar recognize the Quichua philosophy and often share similar cosmologies (www.pachamama.org). However, the main focus is to analyse the Quichua cosmology and their cultural traditions.

The Mother Earth goddess, *Pachamama*, according to the Quichua, is regarded as an entity with intrinsic value that has dominion over itself. As a result, the natural world is treated with respect and understood from a holistic perspective where all members, humans and non-humans have equal rights (Bidmead and Stearns 2015, 16). The Quichua ideology considers no boundary between humans and Nature. In fact, Nature constitutes everything, including human beings. There is an interdependence between all forms of life and a recognition that "*despite being different, we are complementary, we need each* other" (Alvaraz 2016, 229). Also, the indigenous culture defines their

relationship with Nature as part of the *self.* There is no "*subject-object relationship*" but a "*subject-subject relationship*" (Alvaraz 2016, 229) where Nature is interconnected to all forms of life.

However, translating Pachamama to the concept of Mother Earth and the natural environment does not encompass the entire meaning for the Quichua culture (Cobey 2012, 47). Pachamama also extends to the cosmos (Ableman and Benjamin 2016, 37). The multi-dimensional meaning of Pachamama can be better understood in relation to the Quichua expression *sumak kawsay.* The term *sumak kawsay* can be defined as, "*sumak which means fullness, sublime, magnificent, beautiful, superior and holistic. Kawsay means life. Thus the literal translation of sumak kawsay would be the fullness of life*." (Alvaraz 2016, 238). The translation of life in relation to *kawsay* also includes "*considering, or perceiving life*." (Cobey 2012, 47). When Pachamama is used in combination with *kawsay*, the meaning transforms into *pacha-kawsay* which can be further characterized as "*to grow in knowledge as your life and the life around you grows*" (Cobey 2012, 48). Therefore, Pachamama entails much more than just understanding that the Earth has rights and that it is a living being with intrinsic value. The Quichua cultural values express a spiritual understanding of Pachamama and sees it as the embodiment of existence itself. This means that their cultural values reflect a philosophy that does not focus on the physical aspect of Mother Earth alone, but in fact, "*it is a universal philosophy that expresses an integral reflection about cosmic relationality, as the manifestation of the collective Andean experience of reality*" (Rozzi *et al.* 2018, 178). As a result, the Quichua understand that they are part of the natural world as well as have a close interrelation that creates wisdom and knowledge about their place in the Universe.

3.1.3 The Implementation Process

The general notion is that the indigenous movements of Ecuador played an important role and were included in the framing of the Rights of Nature in the Constitution (Becker 2013, 54; Kauffman and Martin 2018, 53). However, a closer analysis reveals that the implementation process was much more complex and can even be considered as a top-down strategy.

First, the process of writing the Constitution was regarded as a "*remarkably participatory*" process (Kauffman and Martin 2018, 55), in which citizens put forward more than three thousand recommendations, which were negotiated by the Constituent Assembly. This enabled many indigenous peoples as well as environmentalists and activists to have the opportunity for their voices to be heard in the political arena. In addition, the Constituent Assembly wanted to replace the country's mode of extractivism with an alternative development approach that acknowledges the intrinsic value of the natural environment, in order to not only safeguard the environment but also the well-being of humans connected to it. As a result, numerous scholars, lawyers and activists proposed the recognitions of Nature's right to the Assembly (Kauffman and Martin 2018, 55). This was notified by Alberto Acosta, a politician, academic and economist that was the energy minister and the

president of the Constitutional Assembly that drafted the 2008 constitution. He is regarded a key figure in the drafting of Rights of Nature in the constitution (Tanasescu 2013, 848).

Alberto Acosta was the of the main forces behind the implementation of the Right of Nature. He was one of the main advisers to president Correa and had the power to put the Rights of Nature subject in each roundtable before the official drafting of the Constitution (Laastad 2016, 14). Also, Natalia Green, the coordinator for the 'Political Plurinationality and the Rights of Nature' at the Fundación Pachamama, which is an important environmental organization in Ecuador, pressured the Constitutional Assembly to include the Rights of Nature as well as how Nature's right should be defined and expressed. She invited the Community Environmental Legal Defense Fund (CELDF), established in Mercersburg Pennsylvania and considered to be the initiators of the Rights of Nature movement (www.celdf.org), to help her convince the Assembly members to include the Rights of Nature (Tanasescu 2013, 852-853). The CELFD helped the Pennsylvania community of Tamaque Borough to legalize Nature's right to fight against the toxic water being dumped on the surrounding farmlands (www.shareable.net). As a result, CELFD was an important tool for Natalie Green to push the government to incorporate the Rights of Nature. Fundación Pachamama invited Mari Margil, director of CELFD, to meet the assembly members (Tanasescu 2013, 853). In an interview with David Kupfer, Mari Margil describes her meetings in Ecuador as following, "*in essence they hosted us to come down and they arranged meetings for us with elected delegates in the Constitution assembly and we just told stories about the places that we had been working and why the rights of Nature is an important tool*." She further explains that "*Through the course of a number of these meeting with different delegates they asked us to draft language for them for the new constitution and they took that language and turned it into their own*."[15] Although the mission of Fundación Patchamama is to "*weave together indigenous and modern worldviews*" (www.pachamama.org) and to safeguard the rights of indigenous peoples and their cultural heritage, the meetings with CELFD and the Assembly were not represented by indigenous peoples from the Andes and Amazon forests of Ecuador. As a result, indigenous peoples were not actively invited and partaking a to influence the writings of the Constitution as well how to define Nature's right. In addition, the majority of the Assembly did not grasp the full meaning of the Rights of Nature, and did not put the effort the truly understand it. As a result, the Rights of Nature were little discussed in terms of its true implications. In turn, this enables the environmental organizations, CELDF and Fundación Pachamama to draft the rights outside the formal meetings (Tanasescu 2013, 854). This account is in contradiction with the notion that the indigenous peoples themselves played a major role in the Rights of Nature implementation in the Constitution. In fact, a month before the official deadline of the finalization, Alberto Acosta pushed the assembly to finish the draft. The final version was established

15 Interview published on the website of therightsofNature.org. Freelance author and environmental analyst, David Kupfer provides an in depth interview with Mari Margil (https://therightsofNature.org/margil-on-ron/)

within a sharp time-frame (Laastad 2016, 14) where the Rights of Nature unnoticeably made it in the Constitution and was regarded as a surprise resulting from a hurried process. This shows the complex situation regarding the Rights of Nature in Ecuador. The simple notion that the implementation was due to bottom-up struggles of indigenous peoples is therefore problematic and remains debatable. Due to the political unrest and indigenous social movements, indigenous people were undoubtedly related to the Right of Nature recognition. However, their inclusion in the drafting of the Constitution remains unclear. Instead, the implementation of Nature's right seems to be "*a top-down strategy that counted on a healthy dose of luck*" (Tanasescu 2013, 855).

3.1.4 Pachamama

In the 2008, the Constitution of Ecuador included the Rights of Nature in their law in chapter 7. Nature is defined as Pachamama and acknowledged as a right-bearing entity. Pachamama is mentioned two times. In the first, Pachamama is defined as "*Celebrating Nature, the Pachamama, of which we are a part and which is vital to our existence*."[16] The second reference defines Pachamama as "*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*" (Article 71). The definitions recognize that Nature is part of the human world and that Nature has intrinsic value and dominion over itself. As a result, these definitions include the Quichue cosmology where Pachamama is defined in a similar way. The inclusion of these rights, show that the Constitution tries to connect society with Nature in an interdependent structure. As a result, the constitution shifts the traditional Ecuadorian political and legal system, which is mainly based on traditional European structures (Laastad 2016, 14) where Nature and humans are regarded as separate, to include elements of the indigenous cosmologies. In addition, the first definition is expansive since it focuses on the general conception of Pachamama. As a result, it tries to expand the concept of Nature's right to move beyond the national borders and include the ecosystems of the entire planet (Ecuador's borders (Kauffman and Martin 2018, 49).

In addition, the Rights of Nature in the Constitution are transversal, which means that "*all the actions of the State, as well as of individuals, must be in observance to the Rights of Nature*" (www.intercontinentalcry.org). As a result, the Rights of Nature affects all other rights, including property rights, and focuses on a "*bio-centric vision that prioritizes Nature in contrast to the classic anthropocentric conception in which the human being is the centre and measure of all things*" (Betsan *et al.* 231. 219).

However, when it comes to the representations of Nature and who can speak on behalf of Nature, the constitution keeps it vague, since "all persons, communities, peoples and nations can call upon public authorities to enforce the rights of Nature" (Chapter VII, Article 71). This means that

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anyone is able to file a suit on behalf of Nature to defend its rights. At the same time this leaves the responsibility toward Nature open-ended because the Constitution does not require anyone to protect Nature, only if they wish to do so (Kauffman and Martin 2018, 51).

In addition, the Constitution includes contradictions. In chapter 7, Nature is recognized as having rights, however, in chapter 2, the basic principles define Nature as a resource to be used according to human needs. To be more specific, the law states "*natural resources of the State's territory belong to its inalienable and absolute assets, which are not subject to a statue of limitations*" (Chapter 2, Article 1). This shows that Nature is under the control of the State and can be exploited according to the needs of the State, which contradicts the statement that Nature has the *"right to integral respect for its existence and for the maintenance and regeneration"* (Article 71).

Another interesting element in the Constitution, is the concept of buen vivir, which is defined as the "*rights of the good way of living" (Title II).* Buen vivir is regarded as the direct translation of sumak kawsay, which promotes the fullness of life in harmony with Nature. The concept of buen vivir emerged as a need to create a new development policy that "*emphasises community well-being, reciprocity, solidarity, and harmony with Pachamama*" (Willeford 2018, 96) and excludes the need for dominant economic progress and capitalism. The incorporation of buen vivir in the Constitution is regarded as a fundamental shift in politics where a new paradigm is created that embraces the worldviews of the indigenous peoples of Ecuador who have been marginalised for centuries (Laastad 2016, 15). However, this is not as simple as it sounds. According to Cuestas-Caza, buen vivir and sumak kawsay are not the same concept. He points out that their differences lie in the several elements. The first being the issue of translation. Sumak Kawsay, in the Quichua refers to the fullness of life, but more specifically "*the ideal and imaginary of beautiful life*" (Cuestas-Caza 2018, 54), whereas buen vivir literally means "*good-living*" (Willeford 2018, 102). Although it can be considered similar, since both concepts talk about the quality of life, buen vivir focuses more on the present, whereas sumak kawsay includes a spiritual element relating to an utopian future. In addition, Cuestas-Caza points out that buen vivir is just another word for development strategy and does not necessarily include the harmonization of Nature, he explains "*when economic resources were scarce, the Nature rights declared in the new Constitution fell into the background*" (Cuestas-Caza 2018, 55). Also, the concept of buen vivir is part of a Western construct, dating back to the European philosophers who used the term to study the meaning of a happy life (Cuestas-Caza 2018, 58).

Another element that is missing in the Constitution that could have better reflected the Quichua people, is the incorporation of *pacha-kawsay*, that signifies the wisdom that is generated from an interdependent relationship with the natural environment. Overall, the Constitution does not explicitly refer to other indigenous ethnics of Ecuador. As mentioned earlier, the country includes fourteen different indigenous nationalities, therefore, to only include elements of the Quichua cosmology, does not mean the Constitution represent the cultural heritage of the indigenous Ecuadorian population.

3.1.5 The Aftermath

The 2008 Constitution of Ecuador is regarded as a new paradigm shift that includes the Rights of Nature. However, since its official implementation, little has changed in favour for indigenous people as well as the protection of the natural environment.

There is one successful case where the government ruled in favour for Nature. The case was represented in March 2011 and based on the rights of the Vilcabamba River (www.therightsofNature.org). The case was put forward by two U.S citizens, Richard Frederick Wheeler and Eleanor Geer Huddle, who are owners of a plot of land nearby the river. They demanded the Rights of Nature, protected in Article 71 of the Constitution, since the river was being polluted and damaged by a road project to widen the Vilcamaba-Quinara road. The project violated the river by increasing the flow and causing large flood damages. Eventually the Provinival Court of Loja ruled in favour for Nature. One of the claims made by the government to rule in favour for Nature, was "*the recognition of the importance of Nature raising the issue that damages to Nature are generational damages, defined as such for their magnitude that impact not only the present generation but also future ones*" (www.therightsofNature.org). This shows that the government recognizes the interrelation between humans and Nature. When Nature is damaged, this may not immediately damage the current generation but have drastic consequences for future ones. Hence, the decision shows that the health and well-being of Nature is interconnected with the well-being of humans. On the contrary, it remains problematic that only two U.S citizens have been able to successfully use the Constitution to safeguard the Rights of Nature. Currently no cases exist where indigenous people have been able to use the Rights of Nature to safeguard their territories and lands.

In fact, the contrary has taken place. In 2013, former president Rafael Correa wanted to focus on the oil and mining explorations in order to battle the increase poverty among the population. However, he received severe backlash from environmentalists, activist and indigenous organizations, since he no longer kept to his promise to safeguard the natural environment and help protect the cultural heritage and rights of indigenous peoples. During the 12th annual ALBA Summit, in Guayaquil, president Rafael Correa responded to the critique on his administration, by stating "*What we have to consider is whether or not we want to make human rights secondary to the supposed rights of Nature. Human beings are the most important part of Nature. If we don't overcome poverty, poverty itself will degrade our environment*." (www.cuencahighlife.com). Although at the beginning of his presidency, Correa acted against the mining industry and prevented international companies from exploiting the country's natural environment. This had a positive effect on indigenous communities who live close to the natural resources and regard as their sacred territory. However, since 2013, Ecuador has been actively trying to establish new partners with international and national mining companies. According to the news website BizLatinHub, "*between 2016 and 2018, mining*

grew from 0.8 percent to 1.55 percent of GDP, and the aim is for this figure to hit four percent by 2021" (www.bizlatinhub.com).

In addition, indigenous peoples are still struggling to protect their lands as well as their cultural heritage. For example, on 2015, the Guardian published the news that indigenous leader, Jose Isidro Tendetza Antun was killed for protesting against a 1,4 billion gold and copper mine, the El Mirador project. The project is owned by a Chinese company named EcuaCorriente. Jose was part of the Shuar ethnic group who fought against this company as well as the rights of his people, their land, including the rivers. Since his death, the brother of Jose told the Guardian, "*the Rights of Nature as the government had set out but we don't believe the government anymore*." (www.theguardian.com). This example shows that the situation for indigenous people in Ecuador, especially communities who rely on their lands, rivers and mountains as sacred land and ancestrally territory, are still being marginalized and oppressed for protecting their rights and cultural heritage.

Last but not least, in September 2018, in Quito, an international symposium of indigenous peoples, environmentalist and activists gathered together to discuss the changes after Ecuador became the first country to include the Rights of Nature in their Constitution. Statements were made about the slow processes of the aftermath of the Rights of Nature, however, at the same time there was a sentiment of hope. The statement of Patricia Gualinga, part of the Sarayaku Kichwa people, shows an indigenous point of view concerning the Rights of Nature movement, she stated "*When we started the process on the Rights of Nature, we asked ourselves if it makes sense to do it on a legal basis. And we said yes. Yes, it does make sense: for you. For us, Nature has always had rights. So, if Western society needs to understand this on the basis of jurisprudence, law, a constitution, it is important. It is important that Western society understands*" (www.opendemocracy.net). As a result, the aftermath shows that the implementation of Nature's right in Ecuador hasn't created the changes it promised. Environmental degradation continues to take place. In addition, the story of Jose is just one of the many where indigenous activists are discriminated and even killed for speaking out. However, as the symposium reveals, small steps of awareness about the importance of protecting the natural world have taken place. The road is not easy, but when there is hope, there is life. The next part looks at the New Zealand case.

3.2 New Zealand

Figure 4. Map of New Zealand. (Source from: https://www.explore-new-zealand.com /new-zealand-national-parks.html)

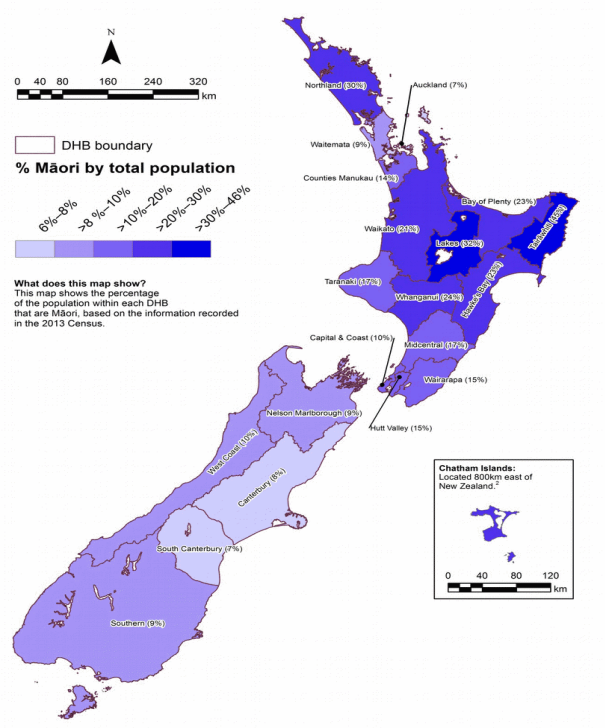

Figure 5. Maori population by region. (Source from https://imgur. com/r/mapporn/EHYBB4H)

3.2.1 Background

The population of New Zealand consists of approximately 4,5 million people. The country is divided into two islands, North and South. The population density on the North Island is the highest, around 76 percent of the inhabitants live on this part of the country (www.cia.org). The ethnic groups are Europeans, they consist of 74 percent of the population, the Maori, with 15 percent and the Asian, Pacific, Middle Eastern and Latin American peoples are 21 percent of the population (www.stats.govt.nz). Overall, one in seven is considered part of the Maori ethnic group. This has increased with 21 percent since 1991 (www.archive.stats.govt.nz). As shown in fig. 5, the percentage of Maori population is the highest in the northern part. The official languages of New Zealand are English, Maori and New Zealand Sign language. One out of four of the people of the Maori ethnicity speak their Maori language (www.archive.stats.govt.zn). In addition, the Maori cultural society is characterized by *iwi*, tribe and *hapu*, the clans. In turn, each *hapu* is composed of *whanau* which are considered the extended families. The tribal families consist of 26 different *hapus.* These tribal families are spread across the country, each tied to a significant cultural area and interconnected to their natural environment (www.teara.govt.nz; www.nzetc.victoria.ac.nz).

The Maori people are considered "*the local people,*" or "*the original people*." The word Maori stands for "*local*" or "*original*" (www.history-nz.org). They arrived in New Zealand around the

period between 1250 and 1300 A.D. and remained the main inhabitants until the arrival of the European settler, in Maori language they are called the "*pakeha*," around 1815 (www.history-nz.org; www.cia.org). When the British empire began to colonize New Zealand around the beginning of the 19th century, the Maori people began to face long periods of oppression, resulting in land and population loss, that extended to nearly two hundred years. In 1840, the British Crown and the Maori chiefs established the Treaty of Waitangi, in which the British government recognized the Maori ownership of their territories and lands. This law recognizes that "*Maori land is a treasure, taonga, to be held in trust for future generations*" (Bourassa and Strong 2002, 240). The Treaty was composed out of two texts, one in English, one in Maori language. This created different translations, particularly in the meaning of ownership of land and self-determinations. As a result, it benefitted the British settlers and a decade long period of disagreements followed, including the New Zealand Wars from 1845 to 1872 (Kauffman and Martin 2018, 56; Whaanga 2012, 97; www.nzhistory.govt.nz)._

The colonial situation shifted after World War II. England adopted the Statue of Westminster Adoption Act in 1947 that granted self-determination to New Zealand and is regarded as the first step in the country's independence (Gagne 2013, 22). However, the disentanglement process between the England and New Zealand remained slow. In addition, the economic and social situations worsened, and poverty rates increased, mainly among the Maori population. As a result, the Maori continue to struggle for justification and their rights as a people. The 1960s and 1970s marked an "*Maori Renaissance*" (Kauffman and Martin 2018, 57), where the Maori pressured the government to correct the treaty violations and officially acknowledge their rights to protect their cultural heritage, including their lands and territories. This resulted in the creation of Waitangi Tribunal act in 1975 (Magallanes 2015, 275). This Act symbolizes the start of the Crown to legally recognize the Maori values and traditions as well as the recognitions of their loss of ownership to the land and resources (Magallanes 2015, 295). This can be seen in the Resource Management Act, established in 1991, that focuses on the protection and management of the natural resources. The act includes the Maori term *kaitiakitanga*, guardianship, as well as other Maori cultural values to acknowledge the Maori's understanding of their relationship to the natural world (Magallanes 2015, 301). Also, the Historic Places Act established in 1993 included various Maori cultural traditions which was recently replaced by the Heritage New Zealand Pouhere Taonga Act 2014 (Magallenes 2015, 301).

Overall, after the Constitution in 1986, which legally "*terminated the right of the United Kingdom parliament to legislate for New Zealand*" (Natascha 2013, 23), the Maori cultural heritage became increasingly accepted and recognized within the political and social structures of society. During the end of the 20st century, the government of New Zealand slowly began to integrate Maori beliefs in the legislations, especially laws concerning the management and protection of the natural landscapes. One of such integrations is the adoption of the Cultural Health Index (CHI). In 1999, the government developed the CHI to include Maori members in the management of freshwater. The CHI is an environmental health assessment strategy that aims to "*provide a way for Maori to take an active*

role in managing fresh water resources" as well as *"to provide an opportunity for resources management agencies to discuss and incorporate Maori perspectives and values for stream health in management decisions*" (www.mfe.govt.nz). This CHI shows that the New Zealand government have taken steps to include Maori cultural traditions with Western approaches to protection of the natural environment (Harmsworth and Awatere 2013, 277). Nonetheless, Maori people continue to demand fight for their recognition of their rights and cultural heritage since they often remain socially excluded and marginalized (Kauffman and Martin 2018, 57; www.mentalhealth.org.nz).

In terms of the overall environmental situation, New Zealand does not suffer as much as other countries due to its relatively small population. Natural resources are relatively less exploited. However, water pollution is a problem as well as forest extractions. To be more specific, two-thirds of the country's forests has been removed (www.nationsencyclopedia.com). The last sub-chapter further investigates to what extent the legal personality of the Whanganui River and the Te Urewera forest have created sustainable environmental solutions.

3.2.2 The Indigenous People Cultural Traditions

As shown in the previous chapters, indigenous people maintain a close relationship with Nature. The Maori cultural traditions include the same philosophy. The traditional worldview of the Maori people defines as "*a belief there is a deep kinship between humans and the natural world. All life is connected. People are not superior to the natural order; they are part of it. Like some other indigenous cultures, Maori see humans as part of the we or fabric of life. To understand the world, one must understand the relationships between different parts of the web*"(www.teara.govt.nz). This shows that the Maori regard everything within Nature to be interconnected, "*in an intricate web of cause and effect*" (Harmsworth and Awatere 2013, 275) with a focus on maintaining an equal relationship. The interconnection is reflected in how Maori understand their well-being in relation to the well-being of the Earth. In an interview by Findhorn Foundation, an environmental NGO organization associated with the United Nations Department of Public Information, at the Climate & Consciousness conference in 2019, two indigenous representatives were asked questions about their cultural traditions in relation to environmental protection and climate change. Maori Te Akau was asked "*what is the gift of the Maori's?*" and he explains, "*The gift of the Maori's is love, compassion and connection with the land. When we love the earth, we can love the people. For us, connecting with the Earth is not difficult, it is more natural. It is in our traditions […] When you connect to the Earth and your intentions are good, then good things will come about.*"[17] This shows that the Maori have a deep kinship between humans and the natural world. This is not only understood from an

17 Interview held by the Findhorn Foundation, 2019. Maori Te Akau and Aztec Anita Sanchez: an indigenous perspective on Climate Change, (https://www.youtube.com/watch?v=EqPTV_YK_kI)

intellectual perspective but felt on a spiritual level which is passed down from generations and deeply embedded in the Maori's cultural traditions.

To better understand how the Maori's relate to the ecosystems and the natural world, the terms *whakapapa*, *kaitiakitanga* and *manaaki* are important to explore. The term *wakapapa* means a "*connection, lineage, or genealogy*" (Harmsworth and Awatere 2013, 275) between humans and nonhumans as well as "*all flora and fauna*" (Harmsworth and Awatere 2013, 275). The term *Kaitiakitanga* means "*guardianship, protection, preservation or sheltering*" (www.teara.govt.nz). Joe Harawira, a Maori from the Pou Hapai clan, explains that *manaaki* means to look after and to care for. He describes that it is the human responsibility as a good kaitiaki to look after the natural world.[18] As a result, the Maori are aware of their responsibly towards the natural world and remain careful to not damage it in order to keep a harmonious relationship where all elements of the environment can remain in balance (Harmsworth and Awatere 2013, 277). In addition, the interrelation with the environment is also visible in their language expression. Although *kaitiakitanga* means "*guardianship,*" it is often used in relation to *whakapapa,* which transforms the meaning into *a way of living* where reality and existence symbolises the close relationship with the natural world (Kawharu 2000, 351). In addition, *kaitiakitanga* is a community-based concept. This means that "*it is not the obligation of an individual but of an entire tribal community. While the community exists, the obligation exists*" (Magallanes 2015, 281). This shows that when it comes to the preservation of their cultural heritage, the focus lies on the collective rights as a group. It is the responsibility as a tribal community to nurture the natural world as well as themselves connected to it.

In addition, the Maori regard no hierarchy in the natural order; humans are not superior. All elements, humans and non-humans, of the Earth are equal and need each other to move forward to create a balanced and harmonious way of living (Kawharu 2000, 351). The management and preservation of the natural environment safeguards the human survival as well as the cultural link to the Maori's ancestors who have lived on the lands and territories and are still part of their cultural heritage (Kawharu 2000, 352).

3.2.3 The Implementation Process

Although the official implementation process of the legal recognition of the Whanganui river took eight years of intensive negotiations between the Maori tribes of Whanganui and the New Zealand government (www.rainforestpartnership.org), the overall process, for both the river and the forest

18 Department of Conservation pusblished a video of storyteller Joe Harawira telling the meaning of Maori value of *manaaki*, 2010. (https://www.youtube.com/watch?v=wv93iV6z8qw).

legalization, can be regarded as "*a culmination of two centuries of physical and legal struggle by the Whanganui people against colonial control of the river and its water*" (www.rapidtransition.org).

In 1990, the members of the Whanganui tribes brought a claim to recognize the representation and control over the Whanganui River. This claim was recognized by the authorities but not legally acted upon. In 2014, the New Zealand government and the Whanganui tribes signed the Whanganui River Claims Settlement (www.loc.gov). It took three more years of intensive negotiations to finally legally settle the claims in the Whanganui River Act in 2017, also called the Te Awa Tupua Act. In these negotiations the Whanganui tribes brought about many claims in an effort to safeguard their property and fishing rights over the Whanganui River as well as protect it from depletion and maltreatment (Argyrou and Hummels 2019, 752). The recognition of the Te Awa Tupua was an important turning point for the Maori people. Te Karere TVNZ published a short fragment where reporter Eruera Rerekura interviewed some of the Maori people involved in the legal negotiations of the Act. Nancy Tuaine, part of awa tupua tribe, explains "*when we were looking to find a solution to our settlement. It is a heavy weight on your shoulder, when you are negotiating on behalf of your people because it is not the present you are trying to satisfy but the past.*"[19] This shows that the recognition of the river as a legal person is not only about the river itself but also about a reconsolidation of their colonial past, to respect and include Maori cultural heritage and traditions into the legal construct of the governing bodies of New Zealand. In addition, the legislation of the Te Urewara Act also reflects an active involvement of the Maori people. In 2012, the Waitangi Tribunal report discovered that management of the Te Urewara National Park breached the Treaty of Waitangi. Soon after the Tuboe iwi tribe and the government settled on an agreement that forest should become its own legal person. Eventually in 2014, the Te Urewara Act was established and from then on the forest was officially legally declared as a right-bearing entity, where the Crown handed over the ownership to the forest itself (www.environmentguide.org.nz).

3.2.4. The Whanganui River and Te Urewera National Park

The Te Awa Tupua Whanganui River Claims Settlement Act 2017 legally recognizes the Whanganui River, Te Awa Tupua, "*as an indivisible and living whole comprising the Whanganui River from the mountains to the sea, incorporating its tributaries and all its physical and metaphysical elements*" and "*is a legal person and has all the rights, powers, duties, and liabilities of a legal person.*" (Subpart 2, 12 and 14). The River is recognized as a single entity which holds dominion over itself and has all the rights and responsibilities of a legal person. Te Awa Tupua is represented by two guardians, *Te Pou Tupua*, one from the Whanganui iwi, and one from the Crown (www.rapidtransition.org). The

19 Te Karere TVNZ, 2017. River Aspirations Fulfilled. (https://www.youtube.com/watch?v=Q5YcW5hjTII)

objectives of the guardians are that they hold the responsibility for the rivers' liabilities as well as to speak on behalf of Te Awa Tupua. More specifically the guardian "*must act in the interests of Te Awa Tupua and consistently with Tupua te Kawa*" (Subpart 3, 19). *Tupua te Kawa* means the intrinsic values of the river. The appointed guardians are considered of high standing, where guardian must have "*the mana, skills, knowledge, and experience to achieve the purpose and perform the functions of Te Pou Tupua*" (Scanlan 2017, 92). Under the two guardians is an advisory group consisting of three persons. Overall, the Te Awa Tupua Act consists of a mix of Maori and English language, where terms are blended in order to create a comprehensive understanding of the rights of the Whanganui River in relation to the cultural heritage of the Maori people. For example, Subpart 2, section 13c explicitly states that the river forms an integral part of the Whanganui tribe, namely "*I am the River and the River is me: The iwi and hapu of the Whanganui River have an inalienable connection with, and responsibility to, Te Awa Tupua and its health and well-being*." This shows that the law embraces and recognizes the cultural heritage of the Maori which includes the Whanganui River as part of their heritage and responsibility to nurture and protect. However, at the same time, the Act does not permit the Whanganui iwi to govern and manage the river by themselves because the tribe does not have full ownership. The legislation only grants the river legal personality, in a sense, this does not give the Whanganui iwi their ability to fully practice their cultural traditions, because they are still removed from the complete right and freedom to manage the river by themselves. The Te Urewera Act 2014 grants legal rights to the forest as describes it as an "*ancient and enduring, a fortress of Nature, alive with history; its scenery is abundant with mystery, adventure, and remote beauty"* and *"is a place of spiritual values, with its own mana and mauri"* and *"has an identity in and of itself, inspiring people to commit to its care*" (Subpart 1, section 3). The description values the intrinsic Nature of the forest and acknowledges its spiritual element. At the same time the term "*mystery*" seems to denote more the traditional western conception of Nature where Nature is essentially the *other*, wild, mystical and unknown place full of beauty but unreachable for the humans to fully comprehend. In addition, the first principle expresses a sense of wonder which contradicts the indigenous cultural value that regard Nature as a place of familiarity. Although the other principles are more specifically addressing the Maori perspective. In addition, Subpart 1, section 6 states "*Te Urewera expresses and gives meaning to Tuhoe culture, language, customs, and identity*." This reflects the understanding and acknowledgment that the rights of the forest are interlinked with the rights and cultural heritage of the Tuhoe tribe. Like the Whanganui River, the Te Urewera comprised of six members of the Tūhoe iwi and three Crown representatives, imposed with acting "*on behalf of, and in the name of, Te Urewera*" and providing "*governance for Te Urewera*" (Part 2, section 17). Both laws recognize the river and the forest as legal personality with "all the rights, powers, duties, and liabilities of a legal person" (Te Urewera Act 2014, section 1; Te Awa Tupua Act 2017, section 14). This gives the river and the forest the ability to enter the legal and political system on an equal basis and intersect with other legislations. To clarify, these ecosystems "*can own property, incur debts, petition the courts and*

administrative agencies, and receive reparations for damages, should a court rule in their favour" (Kauffman and Martin 2018, 50). Since Te Awa Tupua is a river and enables the extraction of various resources, the Act is subject to the Resource Management Act 1991. According to Resource Management Journal report, the RMA "represents both anthropocentric and ecocentric principles of sustainability" (www.rmla.org.nz). As a result, this can create complications and even conflicts when both Acts are called into the court and the government needs to make an informed decision to rule in favour for Nature. The Te Awa Tupua Act does not include any references to this RMA Act because the forest is no longer considered property under the rule of the Crown, instead it is guarded by the Te Urewera Board that has the responsibility to speak on behalf of the interest of the forest. In addition, the Te Urewera is governed by 6 Tuhoe 3 Crown guardians which shows a much bigger Maori involvement compared to the Te Awa Tupua representatives. Therefore, the Te Urewera Act enables Maori representatives to have much more space and possibility to practice and implement their cultural heritage traditions in relation to protecting the national park. However, both Acts do not specifically address guidelines to help the representatives established informed decisions, such as conflict between the guardians or to even held them accountable if they do not act in the true interest on behalf of the natural entities. As a result, it remains critical to what extent the Acts will work in the long term and to the benefit of the ecosystems and the natural environment as well as to the acceptance and inclusion of the Maori's cultural heritage.

3.2.5 The Aftermath

There are no official cases that have ruled in favor for the Whanganui river and Te Urewera National park. As a result, there is little evidence to proof how beneficial these laws truly are. In fact, on the 29th of November 2019, the Guardian posted an article about the legal personality of the river and the national park in New Zealand and explicitly stated that it remains "*unclear whether it will work*." (www.guardian.com). In addition, the water pollution in New Zealand remains problematic and citizens are concerned about the degradation of the rivers and want the government to take action to implement sustainable solutions (www.stuff.co.nz).

The situation for the Maori people remains critical as well. Their struggle for self-determination and rights are still not being achieved. The Te Awa Tupua and the Te Urewera Acts have established a form of reconciliation, however, the complete recognition and acknowledgement of the Maori's rights and cultural heritage has not been achieved yet (McCarthy 2019, 1).

In 2017, after the legal recognition of the Whanganui River, Gerrard Albert, chair of the Nga Tangata Tiaki o Whanganui, gave a presentation at the Tuna Conference, organized by the Te Wai Maori Trust. In his presentation he explains that "*we should be crying about the fact that legal*

personality has been granted to the river for the first time in the world but this isn't the achievement."[20] He describes that much more is needed to achieve the recognition and rights that belong to the Maori people, he argues that there is "*a lot of work ahead for us to move the conversation away from the areas the government and the Crown feels comfortable talking about and to move it back to the model, we as Maori understand."* This reflects the ongoing struggle the indigenous peoples of New Zealand still face. The incorporations of Maori terms in the legalizations as well as the guardianship model to advocate Nature's rights is not enough to truly expand the rights and cultural heritage of the Maori people.

3.3 Conclusion

The chapter has focused on the parallel cases of Ecuador and New Zealand. The background of Ecuador revealed that the political mobilization and social exclusion of indigenous peoples have undergone a transformation. The establishment of the Indigenous Nationality Confederation of Ecuador (CONAIE) organized various riots and protests which have led to an increase awareness and recognition of indigenous peoples' rights and cultural heritage. The precedency of Correa marked the drafting of a new Constitution, which was approved in 2008, and was regarded as a tool for the expansion and institutionalization of indigenous peoples' rights. However, social movements were unhappy with the slow pace and implementation of the promised changes. Although the writing of the Constitution was regarded as a participatory process, the inclusion of the Rights of Nature can be regarded as a top-down strategy. The indigenous peoples, in particular the Quichue people, were not invited and actively involved in the writing process of Nature's right. Instead, the environmental organization CELDF and Fundación Pachamama drafted the language for the Assembly.

The Rights of Nature in the Constitution recognizes that Nature has intrinsic value and is interconnected to humans. On the surface, the recognition of Nature's rights seemed to include the Quichue cosmology. However, a closer look revealed that *buen vivir* is not the direct translation of *sumak kawsay*. Als a more expanded incorporation of Pachamama, namely *pacha-kawsay*, could have better represented the Quichue cultural traditions. In addition, the Constitution includes contradictions, such as the anthropocentric principles, the State's ownership of the natural resources, that clash with the Quichue principles which defines Nature and humans as equal partners, with equal rights. As a result, the Constitution remains ambiguous to what extent the recognition of Nature's right reflects the indigenous peoples' heritage values. The aftermath reveals that indigenous peoples in Ecuador are still struggling to protect their lands as well as their cultural heritage. In addition, only one successful case has ruled in favor for Nature. Ironically this case was brought forward by two U.S citizens who owned a plot of land nearby the Vilcamaba River. As a result, the case has more to do

20 TeOhuKaimoana, 2017. Presentation of Gerrard. (https://www.youtube.com/watch?v=78PKfs8WWCc)

with the clash of property rights and the Vilcamaba-Quinara road project, than the inclusion and recognition of indigenous peoples rights and their close interrelation to the Naturel world.

The background of New Zealand revealed that the slow inclusion of the political mobilization and rights of the Maori peoples is characterized by a culmination of two centuries of physical and legal struggles against the British colonial power over their sacred lands, territories and resources. Especially during the 60s and 70s, the Maori pressured the government to correct the violations of the Treaty of Waitangi and to legally acknowledge their rights to protect their cultural heritage and traditions. The adoption of the Cultural Health Index in 1999 was such an inclusion.

In 2017, the government legally recognized the Te Awa Tupua Whanganui River Claims Settlement Act. The River is recognized as a single entity which holds dominion over itself and has all the rights and responsibilities of a legal person. Te Awa Tupua is represented by two guardians, *Te Pou Tupua*, one from the Whanganui iwi, and one from the Crown. The law embraces and recognizes the cultural heritage of the Maori which includes the Whanganui River as part of their heritage and responsibility to nurture and protect. However, at the same time, the law does not permit the Whanganui iwi to govern and manage the river by themselves because the tribe does not have full ownership. The legislation only grants the river legal personality, in a sense, this does not give the Whanganui iwi their ability to fully practice their cultural traditions, because they are still removed from the complete right and freedom to manage the river by themselves.

In 2014, the Te Urewera Act was legally recognized by the government. The law values the intrinsic Nature of the forest and acknowledges its spiritual element. The Te Urewera board comprised of six members of the Tūhoe iwi and three Crown representatives who can speak on behalf of the forest. The Te Awa Tupua is subject to the Resrouce Management Act which holds parts of the River in its dominion. As a result, conflicts can result when the Te Awa Tupua clashes with the RMA in court. The Te Urewera is not subject to the RMA since the forest is under the total care of the Te Urewera board. As a result, the Maori representatives have much more possibility to practice and implement their cultural heritage traditions in relation to protecting the national park. However, both Acts do not include specific guidelines how the guardianship model as well as the collaborative governance can best be achieved when conflicts arise. As a result, it remains critical to what extent the Acts will work in the long term to benefit the ecosystems and the natural environment as well as the expansion of the Maori's cultural heritage. The aftermath reveals that the Maori people consider the two Acts as a step forward but not as an achievement per se. There needs to be more recognition and political mobilization to truly expand the rights and cultural heritage of the Maori people in New Zealand.

4. Discussion

4.1 *Similarities and Difference*

The previous chapter has provided an analytical overview of the parallel cases of Ecuador and New Zealand. As a result, the similarities and differences as well as patterns and distinctions can be further discussed. Overall, the cases studies are unique and display significant differences. The similarity lies in the fact that both countries' legal recognition of Nature's right does not adequately expand the rights and cultural heritage of the indigenous peoples. After their legalization of the Rights of Nature, the countries still struggle to implement sustainable solutions to protect the natural environment as well as actively recognize and exercise the interdependent relationship and rights, the indigenous peoples have, with their sacred lands, territories and resources. However, a closer look reveals their distinct differences. In turn, the variations show which implementation model for the Rights of Nature is relatively more 'promising.'

The main differences are how they define the rights-bearing entity, who can legally represent Nature as well as who should be responsible for protecting Nature. Ecuador's Constitution provides the most all-embracing and expansive definition of Nature's right. Pachamama is defined as Mother Earth and celebrated for being part of the human interdependent existence. She has the rights to integral respect, to flourish and to be restored. The definition extends the right of Pachamama to the entire Earth and all its ecosystems, leaving the legal recognition less restricted to boundaries of the State. Anyone can fill a suit on behalf of nature and represent Nature's interest in court. However, at the same time the Constitution does not place anyone in the role of the responsible caretaker for Nature. This is not explicitly mentioned and therefore remains vague, open-ended and prone to misuse.

In contrast, New Zealand does not grant rights to all of Nature, but only to specific ecosystems, the Whanganui River in the Te Awa Tupua Act and the forest Te Urewera in the Te Urewera Act. As a result, the Acts define boundaries between the ecosystems who are a legal person and who aren't as well as keeping the right of the river and the forest within the boundaries of the State. In addition, the laws do not explicitly state that the ecosystems have the right to flourish and be restored. The focus is much more on the responsibility of the rights through the use of guardians who have the authority to keep the ecosystems healthy and balanced. They can speak on behalf of Nature and have the control to decide what is best for the interest of the river and the national park.

The reason the countries display these differences is due to their political, social and cultural background. The legal implementation of the Rights of Nature in Ecuador was more a top-down strategy, involving only a small group of people interested in the implementation of Nature's right. In New Zealand, the Maori tribes were much more actively involved. The laws are intermixed with the Maori language throughout the entire texts. As a result, the issue of translation was much less problematic compared to Ecuador where terms such as *sumak kawsay* were incorrectly reworded with the western term *buen vivir*. In addition, in Ecuador the drafting of a new Constitution was due to long standing protests and social unrest partly by environmental organizations to fight against the corruptive oligarchy and the right-wing governance. In New Zealand the focus was much more to

provide reconciliation for the Maori's long-standing oppressions and settling the violations of the treaty of Waitangi.

Overall, in Ecuador, the Rights of Nature in the Constitution is subject to vagueness which enables the abuse of power interests. It carries an ambiguous process of implementation. Indigenous peoples were not as much part of the implementation process as claimed. In New Zealand, the river and the national park are granted legal personality which makes the laws much more specific. The New Zealand case is more 'promising' since it adopts a guardianship model, as well as a collaborative model, where representatives are appointed to protect and favour Nature's interest. In this case, the Maori guardians are able to implement their values and traditions and in turn, help to expand the collective rights of their cultural heritage as a group. However, it remains difficult to what extent the guardianship model can work in creating sustainable solutions rather than ending up in conflicting interests between the Maori and the Crown guardians.

4.2 Connecting the Dots

4.2.1 The Key Contributions

The key contributions that Ecuador and New Zealand make to landscape protection is shifting the western approach of treating nature and humans as separated. The Constitution as well as the two Acts change the physical as well as imaginary dimensions of understanding what a landscape means. As seen in the theoretical framework, landscapes are often classified as natural and cultural. However, with the implementation of nature's right, the natural world becomes part of the cultural dimension of landscapes. Nature is recognized as a right-bearing entity and interconnected to the human world as one. As a result, the countries' legal recognition of Nature's right shifts the perception of what a landscape looks like as well as how to manage and protect it. As described in the previous section, the countries still struggle to implement sustainable solution to prevent environmental degradation. As a result, it can be argued that the Nature's legal recognition does not change the underlying mechanism of the legal system which is still operating from a human nature division as well as hierarchical structure with a focus on human, individual rights. This can be clarified in the statement of Rafael Correa "*What we have to consider is whether or not we want to make human rights secondary to the supposed rights of Nature. Human beings are the most important part of Nature.*" The human, individual right, is placed above the Rights of Nature. When issues such as poverty are increasing, Nature comes less important.

In addition, the key contributions Ecuador makes to rights of indigenous peoples and their cultural heritage are not straight-forward. The inclusion of some elements of the Quichue people does contribute to their acceptance and recognition of their cosmology, however, as pointed out earlier, the Quichue values in the Constitution are intermixed with western concepts and remain superficial. The main text is in Spanish and places the language construction within western legal terms. This creates a

separation between the indigenous peoples of Ecuador and the dominant political and cultural structures of society. When it comes to New Zealand, the contribution to the rights of indigenous peoples and their cultural heritage is much clearer. The Te Awa Tupua and the Te Urewera Acts have established a form of reconciliation, where the Maori cosmology is intergraded in the system of law. Their language is much more equally intermixed with the English language, creating the space for Maori cultural traditions to become visible and recognized. However, the situation for the Maori people remains critical as well. Their struggle for self-determination and the complete recognition and acknowledgement of the Maori's rights and cultural heritage has not been achieved yet.

4.2.2 Shift to relational framework

As seen in the previous chapters, the Rights of Nature is not the end solution for protecting the natural environment as well as the rights and cultural heritage of indigenous peoples. It can be regarded as a small step in the shift towards a human-nature relationship based on equality and interconnectedness. The problem that the Rights of Nature is not as effective as believed by environmental activists and main stream media, is that the western legal system still operates from a framework of individuality, boundaries and hierarchy. As shown in the theoretical framework, the roots of the western though on individuality lie in the Enlightenment period where the conception was made that freedom, wealth and well-being are connected to the rights of property. The notion was rationalized by stating that without the right to property, citizens are not able to be free. It is this particular belief system that is still part of western society and embedded in the political structures of legislation and policy making.

Jennifer Nedelsky, professor of law and political science at the University of Toronto, offers an alternative approach to the mechanism of western legal structures. Her work can be connected to the Right of Nature topic in order to expand the objective of the 'promise' of the Rights of Nature.

Her theory explains that the idea of individual right is related to the idea of autonomy and property rights. Western structures are based on the idea that boundaries protect the individual, as well as the right to property. She states, "*rights define boundaries others cannot cross and it is those boundaries, enforced by the law, that ensure individual freedom and autonomy. This fits well with the idea that the essence of autonomy is independence, which thus requires protection and separation from others*" (Nedelsky 1993, 8). However, according to Nedelsky, this form of autonomy is "*misguided*" (Nedelsky 1993, 8). She explains that a true implementation of autonomy is "*not separation, but relationship*" (Nedelsky 1993, 8). When patterns of relationship become the focus of the legal structure, the issues of rights and interests that generate conflict as well as hierarchies are no longer taking the lead. Instead, patterns of relationship "*can develop and sustain both an enriching collective life and the scope for genuine individual autonomy*" (Nedelsky 1993, 8). Therefore, "*we need a language of law whose metaphoric structure highlights rather than hides the patterns of relationship its constructs foster and reflect*" (Nedelsky 1990, 163). When the legal system changed

the conception of rights to a relationship pattern, "*the sense of responsibility to care and to build and sustain relationships becomes central*" (Nedelsky 1993, 10). As a result, this focus on responsibility to care indirectly embraced a more indigenous approach to understand Nature. Since the indigenous cultural traditions focuses on interdependence where nature is equal to humans and is respected, protected and nurtured in order to create a harmonious balance between the autonomy of Nature and the autonomy of humans. In addition, in the relational framework, it is important to communicate. The imagination of a better world is not enough to construct a law based on relationship, there needs to be real experience and interaction between different views, ideas and perspectives. Nedelsky argues that "*such real experience must be characterized by openness, attentiveness, and receptivity. These qualities are the conditions for identifying common sense that can form the basis for valid judgment. Relationships and dialogue are important aspects of developing judgment*" (Cochran 2017, 142-143).

What is unique with the work of Jennifer Nedelsky is that she brings in the aspect of healthy autonomy within the relational framework of law. It is moving beyond the idea of an Earth Jurisprudence that includes western structures, such as Wild law and Earth-centred laws, but really changing the way we perceive law itself. In order to truly change law itself, it is not so much about replacing the western with indigenous cultural heritage traditions or vice versa but to have an equal place for both in a respectful interrelation where there is space for communication, inspiration, care and a healthy autonomy. Only when the framework of the structure of law and the rights system itself is able to change to a relationship framework, only then the indigenous cultural traditions and values are easier embraced and incorporated in the management and preservation of the natural environment. In addition, n the patterns of relationship, different views and perceptions, both western and indigenous, about landscape protection can be shared, in respectful ways, in order to create real sustainable solutions for the environmental crisis.

5. Conclusion

In this thesis, the focus was to study the Rights of Nature from a cultural heritage perspective. The aim of the thesis was to investigate the interrelation between the Rights of Nature, landscape

protection and heritage studies. In turn, the interrelation uncovered to what extent the Rights of Nature truly expands the cultural heritage and rights of indigenous peoples as well as promotes environmental protection. In order to systematically approach this interrelation, I have used the parallel cases of Ecuador and New Zealand. The thesis was divided into eight sub-questions spread across the chapters.

The first two sub-questions were answered in Chapter 2. In this part, I looked at the origins, developments and characteristics of the so-called Rights of Nature movement. Also, how the Rights of Nature relates to landscape protection in heritage studies as well as how western and indigenous cultural heritage traditions fit into this context were investigated. The Rights of Nature can be regarded as an outward expansion of rights, where the origins lie in the development and expansion of the concept of human rights. The Rights of Nature emerged out of the western environmental philosophies of law that wanted to replace the anthropocentric Nature of western environmental laws with ecocentric ethics. It is within this context that the Rights of Nature relates to landscape protection since landscapes are shaped by the interaction with humans and how humans perceive the environment. In addition, when it comes to landscape protection, understanding the human culture that manages and protects the environment is crucial. This revealed that the principles in the Rights of Nature includes both indigenous and western cultural elements, however, this remains unclear since the principles emerged out of a western construct.

The next part, Chapter 3, focused on the important social and political developments in Ecuador and New Zealand in relation to the political mobilization and rights of indigenous people. As well as to what extent the legal recognition of Nature's right reflect the indigenous peoples' heritage values. The last sub-question looked at the aftermath of the Right of Nature implementation. The chapter showed that the precedency of Correa marked the drafting of a new Constitution, which was approved in 2008, and was regarded as a tool for the expansion and institutionalization of indigenous peoples' rights. The Rights of Nature in the Constitution recognizes that Nature has intrinsic value and is interconnected to humans, however, it remains ambiguous to what extent the recognition of Nature's right reflects the indigenous peoples' heritage values. The aftermath reveals that indigenous peoples in Ecuador are still struggling to protect their lands as well as their cultural heritage. The background of New Zealand revealed that the slow inclusion of the political mobilization and rights of the Maori peoples is characterized by a culmination of two centuries of physical and legal struggles against the British colonial power over their sacred lands, territories and resources. In 2017, the government legally recognized the Te Awa Tupua Whanganui River Claims Settlement Act. On the surface, the laws embrace the cultural heritage of the Maori, however, it remains critical to what extent the Acts will work in the long term to benefit the ecosystems and the natural environment as well as the truly expand Maori's cultural heritage. The aftermath reveals that the Maori people consider the two Acts as a step forward but not as an achievement per se. There needs to be more

recognition and political mobilization to truly expand the rights and cultural heritage of the Maori people in New Zealand.

Chapter 4 discussed the countries differences and similarities as well as the key contributions the countries make to landscape protection and the rights and cultural heritage of indigenous peoples. The last sub-question looked at what knowledge can be added to the Rights of Nature 'promise' to advance the understanding of landscape protection in relation to environmental degradation and further expand the cultural heritage and rights of indigenous peoples. The countries differ substantially in how they define the rights-bearing entity, who can legally represent Nature as well as who should be responsible for protecting Nature. The outline revealed that the New Zealand case is more 'promising' since it adopts a guardianship model, as well as a collaborative model, where representatives are appointed to protect and favour Nature's interest. However, it remains difficult to what extent the guardianship model can work in creating sustainable solutions rather than ending up in conflicting interests between the Maori and the Crown guardians. Alternatively, when the western legal system changes its fundamental normative rules that define the principles of rights to a relationship framework, indigenous people's rights and cultural traditions can be easier embraced. We need a language of law that brings to light the patterns of relationship rather than hides it in structures of hierarchies, boundaries and competing interests. When relationship patterns become the intention within the legal framework, the Rights of Nature can become more effective in bringing about its aim. In the patterns of relationship, different views and perceptions about landscape protection can be shared in order to create real sustainable solutions for the environmental crisis.

All the sub-questions have been answered which enables me to answer my main research-question: **In what ways does the legal recognition of the Nature's right in Ecuador and New Zealand relate to the critical subject of landscape protection in heritage studies and in particular to the cultural heritage and rights of indigenous peoples?** The Rights of Nature is a challenging and complex topic. As seen with this research, the Right of Nature shifts the human-nature relationship to become interdependent instead of separated. As a result, the human-nature relationship influences the way landscapes are managed and protected. However, a closer look reveals that the Rights of Nature is still part of a western construct, that generates western principles of human-nature dualism. The Rights of Nature can be connected to the cultural heritage of indigenous peoples, however, in order to truly expand the rights and cultural traditions of indigenous peoples, the Right of Nature is not the end-solution, but only a small step, if taken with careful consideration.

The overall research of this thesis has been challenging. The sources on the Rights of Nature were limited. In addition, my language limitation did not improve my research since there are many interesting sources from Ecuadorian academics that I couldn't analyse and interpret. Overall, I used many governmental and non-governmental websites pages which gave me extensive information on the countries social, political and cultural strictures. However, on some moments, I was hoping to find

more sources that could give me further detail on certain aspects of the Rights of Nature implementation in Ecuador as well as in New Zealand. It would have greatly improved my analysis if I had access to more in-depth knowledge and information about the exact processes that went on during the implementations of Nature's right. Therefore, future research should further investigate to what extent the indigenous peoples were truly influencing and in control of the legalization of the Rights of Nature. In addition, future research can focus to what extent a relationship framework can help to improve the 'promise' of the Rights of Nature.

Abstract

The Rights of Nature is a new paradigm shift which holds that Nature has fundamental rights. Proponents claim that this new form of ecological governance will create sustainable solutions for environmental degradation as well as expand the cultural heritage and rights of indigenous peoples. However, there lacks sufficient transparency to what extent these claims are accurate. The goal of this thesis is to investigate the Rights of Nature from a cultural heritage perspective in order to create greater understanding and clarity. The core of the research is to look at the interrelation between the Rights of Nature, landscape protection and heritage studies. In turn, this interrelation can reveal to what extent the Rights of Nature truly expands the cultural heritage and rights of indigenous peoples as well as promotes environmental protection. The research focuses on the parallel cases of Ecuador and New Zealand where the Rights of Nature are legally recognised but approached in different ways.

First, the research takes a closer look at the origins, developments and characteristics of the Rights of Nature movement, including the interrelated expansion of the human rights development. Second, the heritage focus reveals that western and indigenous heritage values have a different conception of the human-Nature relationship. Indigenous heritage values reflect an intimate relation with Nature where both humans and the natural world are equally interconnected. In contrast, western heritage values reflect a dualistic perspective on the human-Nature relationship, where human culture is separated from Nature and often in dominion over Nature. These contrasting conceptions, in turn, shape the way cultural landscape protection as well as the Rights of Nature is defined and expressed. From a pure theoretical framework, the Rights of Nature carries both elements of western and indigenous heritage values, however, this is not straightforward and remains ambiguous. The case studies show that Ecuador and New Zealand carry both strong and weak elements in how the implement their Rights of Nature. As a result, the countries have a different outcome in how they protect their cultural landscapes in relation to environmental challenges as well as to what extent they expand the cultural heritage and rights of indigenous peoples.

The research presents a variety of conclusions, but the main point is that the Rights of Nature can be regarded as a small step forward in the recognition of Nature's right, however, it is not the end-solution. So far, the Rights of Nature does not sufficiently expand the cultural heritage of indigenous peoples as well as provides straightforward solutions to environmental degradation. Alternatively, when the western legal system changes its fundamental normative rules that define the principles of rights to a relationship framework, indigenous people's rights and cultural traditions can be easier embraced. We need a language of law that brings to light the patterns of relationship rather than hides it in structures of hierarchies, boundaries and competing interests. When relationship patterns become the intention within the legal framework, the Rights of Nature can become more effective in bringing about its aim.

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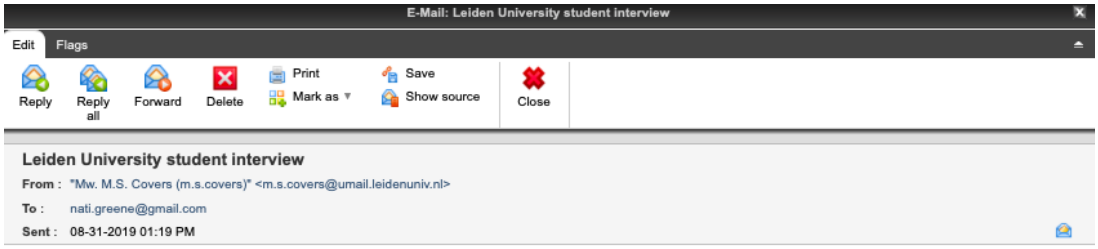
List of Figures

Appendices



Leiden University student interview

From : "Mw. M.S. Covers (m.s.covers)" <m.s.covers@umail.leidenuniv.nl>

To : nati.greene@gmail.com

Sent : 08-31-2019 01:19 PM

Dear Ms. Greene,

My name is Marijn Covers and I'm a Master's student from the Faculty of Archaeology at the Leiden University in the Netherlands.
Currently, I'm doing my Master's thesis on the relation between Indigenous cultural heritage and the political and legal provisions to protect the rights of nature.
My research focuses on the parallel cases of Ecuador and New Zealand.

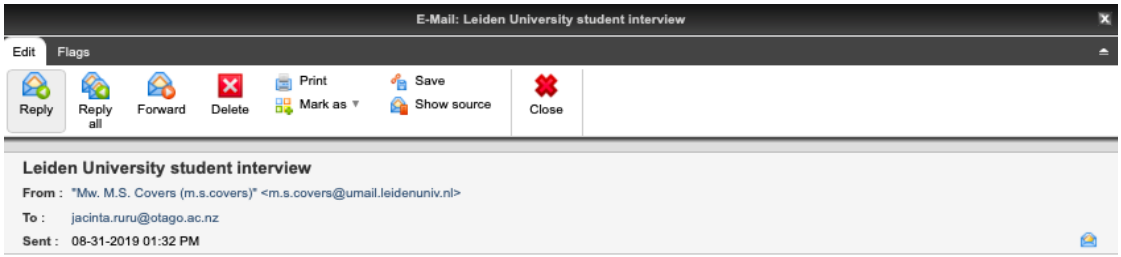
I came across your name on the Global Alliance for the Rights of Nature website.
Since you are an acknowledged expert in this field, is there a possibility to do an interview with you?
I would love to hear your insights on the rights of Indigenous people and Nature.

I can only imagine how busy you must get, so a short interview would be very valuable for my final thesis.

Thank you for considering my request.

Looking forward to hearing from you.

Kind regards,
Marijn Covers



Leiden University student interview

From : "Mw. M.S. Covers (m.s.covers)" <m.s.covers@umail.leidenuniv.nl>

To : jacinta.ruru@otago.ac.nz

Sent : 08-31-2019 01:32 PM

Dear Ms. Ruru,

My name is Marijn Covers and I'm a Master's student from the Faculty of Archaeology at the Leiden University in the Netherlands.
Currently, I'm doing my Master's thesis on the relation between Indigenous cultural heritage and the political and legal provisions to protect the rights of nature.
My research focuses on the parallel cases of New Zealand and Ecuador.

I saw your presentation on YouTube from the Ted Conference.
Since you are an acknowledged expert in this field, is there a possibility to do an interview with you?
I would love to hear your insights on the rights of Indigenous people and Nature.

I can only imagine how busy you must get, so a short interview would already be very
valuable for my final thesis.

Thank you for considering my request.
Looking forward to hearing from you.

Kind regards,
Marijn Covers