

## CHAPTER 4

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# Lost Through Translation: Political Dialectics of Eco-Social and Collective Rights in Ecuador

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It is now commonplace that transformations of substance through the translations of rights and human rights–related assessment methods can occur across scales within countries, regions, and globally. In doing so, circulations and transformations may follow several directions simultaneously and involve similar and different actors, concepts, and ways of referring to them. This, necessarily, touches the local and international politics of rights, which, as it is argued here, must be inherently considered in analyses regarding the “localization” (De Feyter et al. 2011; Goodale 2007; Aguilar 2011), “vernacularization” (Merry 2006b, 2009), “translation” (Waldmüller 2014b; Merry and Wood 2015), and “upstreaming” (De Gaay Fortman 2011) of rights. The politics of rights always involves the establishment of hierarchies and the prioritization of values, actors, methods, and claims. In this way, certain aspects are highlighted, while others (whether purposely or unconsciously) are set aside together with the associated implications. In other words, while some are made visible and others become invisible, human rights–based claims of (in)justice also become transformed.

It is this dialectic process of politics and transformations, inherent to any translation (Vázquez 2011), which this chapter seeks to discern with regard to seemingly contradictory Ecuadorian human rights politics in the recent past. For this purpose I draw on extensive ethnographic fieldwork (including

participant observations and over 150, partly repeated, interviews with academics, public officials, representatives of social movements, as well as local and international NGOs) between 2010 and 2015 in the country, focusing primarily on the nation-level implementation of an international methodology for human rights indicators. My role and position has initially been that of an independent academic observer who traced translation processes from UN headquarters to the implementing periphery, where I immersed myself in new cultural, social, and political contexts while gradually establishing lasting relations with my key interlocutors. Later on I became partly more involved, as a lecturer, human rights activist, and occasional consultant in Ecuador, but also as a “translator” of locally translated human rights content back to international levels through my publications and public presentations. I am thus aware that my own gradual involvement and learning co-configure and shape what I discuss as dialectic translations, transformations, and possible omissions.

In the following, I analyze two cases related to extractive industries—one domestic, one international—that are both grounded in the same normative-legal framework of the country. While in the former opponents of a state-led mining project invoke rights of nature, the right to protest, and the integrity of ecosystems and communities, in the latter the government of Ecuador invokes similar rights, selectively reinterpreted and thus transformed, to push internationally for the regulation of transnational corporations. In this process of upstreaming a localized understanding of resistance-related human rights to the international level, something important happens with regard to power inequality: distinctive meanings and notions of rights and rights bearers, in the former case referring to ecosystems and group rights, go by the board and become reinterpreted mainly as claims to financial compensation and political responsibility, as we will see. These “leftovers” do not simply disappear, however. Instead, they become (violently) “invisibilized.” This reveals a deeply political and thus power-related dimension of such translational processes. Suggesting a dialectical perspective for analyzing such political transformations, this chapter therefore addresses the residue, or “erasure” (Vázquez 2011), resulting from translating and transforming human rights across scales and actors. Why and how does this occur? Is it ever possible to avoid these erasures completely? And if so, why do power-contesting actors at different scales continue to adopt human rights discourses despite the risk of erasures?

### **Extractive Industries, Collective Damages, and Regulation**

Ecuador, 2014: Soon after the arrest of community leader Javier Ramirez in May 2014, the military violently forced its way into the community of Junín located in the Northern Intag region (Canton Carchi), as previously attempted in September 2006. Its goal was to enforce a dubious law that, under the pretext of the right to national development, permits the national mining enterprise, ENAMI EP, to conduct copper mining explorations in the Junín area for a period of six years. For ten months Javier Ramirez was imprisoned, until his eventual acquittal of the highly political charges of terrorism and sabotage and the reinstatement of his lawful freedom (see Álvarez 2015). He was, nevertheless, later found guilty of certain minor crimes under laws adopted to repress social protest. Between 2006 and 2014, the entire Intag region was militarized and its eco-social resistance movement against the mining project, which had been enduring the struggle for more than 20 years,<sup>1</sup> was undercut by state-led so-called “socialization programs,” leading communities to disunite in the face of economic promises and repression. In fact, a campaign of repression and defamation was spearheaded by the Ecuadorian president, Rafael Correa, who continued to ridicule the protesters for weeks and disseminated incorrect information about them in his weekly TV show (Álvarez 2015).

Yet, all this happened in a country acclaimed for its progressive politics as well as its far-reaching and comprehensive 2008 constitution, including vanguard rights of nature (Gudynas 2009), encompassing legal means to ensure the right to resistance, social protest, and rights to free prior consultation. How can such a blatant discrepancy between international acclamation and domestic politics be explained? Providing an answer becomes all the more troubling in light of the fact that all actors involved claimed similar rights, apparently translating and transforming them in different ways. Around the same time as the violent events in Intag in 2014, Ecuadorian diplomacy in Geneva pushed for the establishment of an international expert working group to elaborate a new binding human rights instrument for regulating transnational corporations.

As I am going to trace here, a driving force behind Ecuadorian diplomatic efforts has been the Chevron-Texaco pollution in the Ecuadorian Amazon and subsequent international litigation cases that Ecuadorians have led against the U.S.-based oil corporation for more than 20 years.<sup>2</sup> Allegedly,

Chevron-Texaco had left major devastation and pollution in their wake in the area of Sucumbíos, causing thousands of cases of severe illness and permanent secondary cultural and social damage within the local population and the ecosystem.<sup>3</sup> Since then, indigenous Amazonian communities had been at the forefront of promoting what eventually became the new national paradigm in 2008—*sumak kawsay* in Kichwa, or *Buen Vivir* (“good living”) in Spanish (see Gudynas 2011). *Buen Vivir* replaced the goal of national development with its adoption in both the constitution of 2008 and subsequent national development plans. It promotes an Andean vision of eco-social progress based on values such as correspondence, complementarity, and reciprocity between humans and nature. However, the Ecuadorian government does have a questionable record of implementing *Buen Vivir* as an overarching paradigm. Yet this framework also partly informs the Ecuadorian efforts to foster a legal device for dealing with eco-social damage (as in the Amazon) caused by transnational corporations in countries other than where they are registered. However, as we will see, it uses a reduced and selective reading of *Buen Vivir* that fits its purposes, related to increased mining and extraction activities. In this sense, while the Ecuadorian government advocates individual human rights at the international level, the domestic reality within the country is in stark contrast to these efforts. Here, the government, supposedly acting in the name of development to overcome poverty, becomes an important protagonist of an unlawful and potentially destructive path that subordinates individual rights to the right to development.<sup>4</sup>

Concrete transformations happen by certain ways of translation, which require cautious examination. It is thus far from clear at the outset where, also within governments, the power to shape norm-related discourses and legal regimes of human rights is located. Thinking about micro and macro dimensions of localization requires us to take partial and entire overlaps as well as possible collusions of interests and interpretations into account, as in the example of Latin American and international human rights frameworks and their corresponding methodologies. Therefore we have to ask: How can we approach such complexities of different levels of localization with regard to transformations of human rights? What, ultimately, is each of the human rights envisioned by different actors at different levels in these cases?

In order to address these issues, I will first present the case of human rights indicators—an international methodology for monitoring the human

rights situation within countries—that became implemented and thus localized (that is, transplanted from the international headquarters to a national government) in Ecuador mainly between 2009 and 2013. I will then return to the abovementioned paradoxes regarding historical human rights violations in the Amazon, committed by foreign and national companies, and their diverging repercussions for contemporary struggles inside and outside Ecuador. In order to analyze them, let me introduce three crucial, and explicitly political, dimensions to the discussion on localized human rights law, norms, and methods (indicators, for example), which bear particular importance for postcolonial contexts.

First, from a Western perspective of law and social studies we tend to overlook the dependency of humans, and *mutatis mutandis* of human rights, on “socio-natural” (Castree and Braun 2001) dimensions (ecological conditions, socioenvironmental impacts and conflicts, etc.). Second, the dominant liberal version of individualized human rights—a general orientation that can be observed in contemporary human rights regimes (Hinkelammert 2004; Tully 2007; Mignolo 2013)—still tends to neglect the full implications of the political and civil right to self-determination, that is, collective or group civil and political rights (Jordan 2008). Third, and more empirically speaking, cases presented under the header “localizing human rights” in fact refer chiefly to postcolonial states, with their emphasis more often than not on the “colonial,” rather than on the “post” related aspects. In other words, neither frontiers nor domestic (political and/or economic) power and equality constellations have seen large shifts since independence or proclamation of these states. Although rarely thoroughly reflected, these three elements combined point to the problematic nature of postcolonial governments as duty bearers of human rights and therefore also of human rights translations, transformations, and erasures. The reason is more often than not related to the assumed state ownership of territories, and in particular subsoil territories, which frequently delimit both the full realization of collective civil and political rights and the protection of ecosystems from the outset. These contextual dimensions are therefore also crucial when discussing the Ecuadorian case presented here. Current approaches defining the local level as the “lowest unit of devolving power being appropriate for a particular goal” (Aguilar 2011) have their merit in an analytical sense. However, broader, long-standing, and deeply engrained global—while at the same time local (Merry 2006a; De Feyter 2007)—power structures, for

example with regard to human rights as such, should not be overlooked, particularly not when it comes to translations in the context of epistemic violence (Vázquez 2011).

### **Human Rights Indicators and Varying Levels of Localization**

Following long-standing discussions on how to better bridge development and human rights work at the international and local level, the UN OHCHR developed an all-encompassing methodology for human rights indicators (HRIs)<sup>5</sup> between the years 2000 and 2012. These HRIs were designed according to typical management performance indicators (Merry 2016), particularly familiar in the field of public health. They envisioned enabling governments and civil society to monitor the human rights situation in their countries as a requirement for better international assessments during the common Universal Periodic Review (UPR) sessions. At the same time they should lead to improved data recompilation at the national levels. In addition, HRIs were supposed to “mainstream” a human rights focus in national and regional statistics, foster cross-institutional cooperation, and empower citizens to demand government fulfillment of their rights (Waldmüller 2014c).

Generally, HRIs are designed in such a way as to assess each internationally guaranteed human “right to . . .” individually, by means of so-called structural, process, and outcome indicators. Neither ecosystemic thinking nor the environment has a place in the highly anthropocentric and utilitarian rationale of HRIs, which, moreover, foresee no methodology to assess group rights at all (see UN OHCHR 2012). The first two countries to have implemented HRIs were Mexico, starting in 2008–2009, and Ecuador, as of 2009–2010. It should be noted that both countries worked solely with the methodology elaborated by the UN OHCHR, although the regional Inter-American Commission of Human Rights had developed its own, slightly diverging, methodology around the same time (IACHR 2008). While in the Mexican case, the UN OHCHR office elaborated HRIs only at the federal state level, in the case of Ecuador, an attempt was made to implement HRIs for at least 12 selected human rights at the national level at once. The Mexican case resulted in a series of publications, acting as a form of exemplary localization—from the international methodology to implementation guidelines and practice models in Spanish for the entire region—that has been used

to counsel and support other countries' experiences with HRI implementations.<sup>6</sup> I will now turn to the case of HRIs in Ecuador. The remarkable effect there with regard to HRIs has been somewhat antithetic to the Mexican case. HRIs were never actually implemented (as of yet), although they acted as very specific "filters" of a local understanding of human rights that was recently promoted at the international level.

### Translating Human Rights into Eco-Social Rights

This section briefly recounts the implementation of HRIs in Ecuador, a country in the midst of multiple transitions: having witnessed a serious breakdown of Ecuador's economy and political system throughout the 1980s and 1990s (see Lauderbaugh 2012; Becker 2007; Ayala Mora 1989), President Rafael Correa's Alianza País has followed a "post-neoliberal" (Macdonald and Ruckert 2009; Bebbington and Bebbington-Humphreys 2011) and "neo-extractivist" path (Veltmeyer and Petras 2014) since 2006–2007. While this path, self-styled as a "citizens' revolution," is characterized by manifold social and environmental conflicts, largely owing to the strict hierarchical top-down homogenization of centralized state governance and increasing legal persecution of political, social, indigenous, and environmental movements (Dávalos 2014b; CEDHU, Acción Ecológica, and INREDH 2011), it is likewise characterized by comparably stable state institutions. These are based on partly nonconformist, novel legal approaches and political concepts. After his landslide victory in 2006–2007, Correa dissolved the national parliament and established the Asamblea Nacional (National Assembly) as well as the Asamblea Constituyente (Constituent Assembly) that elaborated the Constitution of 2008 (see Asamblea Constituyente 2008), still in force today. This constitution is based on the following five pillars: (1) Buen Vivir (good living in harmony) as a state ideology and goal, drawing on the Kichwa indigenous concept and worldview of *sumak kawsay*;<sup>7</sup> (2) "plurinationality" and (3) "interculturality" (both the latter being longstanding indigenous demands); (4) human rights as the highest normative and legal principles together with (5), a global legal novelty, rights of nature (*derechos de la naturaleza*; see Art. 13, 15, 281–285, 304, 318, 410, 413, 423 of the Constitution; Asamblea Constituyente 2008). Importantly, these rights are explicitly placed at the same legal-hierarchical level in the constitution as human rights (Ávila 2011; Acosta and Martínez 2011).

It is against this general backdrop that in the year 2009 Ecuador was the first country worldwide to start implementing human rights indicators at the national level. At the launch of the project, the general aim was to develop HRIs for all human rights equally, but it shifted gradually toward blending them with Buen Vivir indicators in order to continuously monitor the improvement of human rights through public policies. In 2009 a local cross-institutional expert group started to work on human rights indicators as part of larger reforms in the juridical sector. The project's name, SIIDERECHOS (Sistema Integral de Indicadores de Derechos Humanos), emerged soon after. Due to the heavy emphasis on consolidated state planning and investment to bring about Buen Vivir (see SENPLADES 2009, 2013)—understood *inter alia* as the gradual realization and constant monitoring of all human rights, including a few additional rights—SIIDERECHOS was equally embraced by various functionaries at the national Ministry of Justice, Human Rights, and Religious Affairs and the National Secretary for Planning and Development (SENPLADES). Together with the prolific local UN OHCHR office in Quito, in 2011 they set out to promote the already existing methodology of HRIs vis-à-vis the national planning authority, SENPLADES. In early 2012, an initial multiday high-level meeting took place at the UN OHCHR premises in Quito (at which I was present) that assembled all local actors as well as the Latin American regional HRI expert, based in Mexico City.

The role of the regional UN OHCHR HRI expert for Latin America was crucial in terms of “brokerage” (Bierschenk, Chaveau, and Olivier de Sardan 2002; Lewis and Mosse 2006): her task was to mediate between local decision-makers and international experts based mainly at the UN OHCHR headquarters in Geneva. This included reporting on the progress and shortcomings of projects, while forging trust and commitment among local officials in various Latin American countries across cultural contexts. Given this sensitive setting, the lowest common denominator for this brokerage to be successful has been to insist chiefly on technical compliance and methodological rigor. In this way, HRIs become, in a quite unidirectional sense, translated from the HRI methodology of the international headquarters toward local applications but rarely vice versa (e.g., local experiences shaping international designs; see also Waldmüller 2014b, 2014c), which reveals serious weaknesses with regard to the upstreaming of local human rights understandings and methodologies.

In mid-2012, the head of the Ecuadorian Human Rights Sub-Secretariat became responsible for SIIDERECHOS and, as such, the main interface between various data-collecting and processing institutions, SENPLADES



(to obtain funding for SIIDERECHOS), the local UN OHCHR office, and national, regional, and international experts. The decisions forwarded by the Sub-Secretariat preceded communication exchanges over several months that hinged on the input of technical experts, for example on the elaboration of a five-year funding proposal to SENPLADES. An important decision was to determine goals and targets for SIIDERECHOS in accordance with the regional HRIs expert.

It soon became clear that the international UN OHCHR methodology of 2012, upon which experts had insisted, would not satisfy the perceived needs of the Ecuadorian civil servants engaged in the project. According to some, the constitution appeared to be “more advanced with regard to rights” than the international human rights framework itself.<sup>8</sup> As SIIDERECHOS was a national project, it was therefore suggested that it should instead monitor and measure any (non)progress with regard to the national/constitutional rights framework (embedded within the international framework) in order to be “useful for any Ecuadorian public authority,” as one interlocutor at the statistics department of SENPLADES stated.<sup>9</sup> In other words, it was suggested that the constitutional legal framework should primarily be applied in order to “envelop” international human rights standards—and not vice versa, as initially projected by the UN OHCHR. In late 2012, it was also decided to deviate broadly from the international methodology and to develop structural and process indicators for all assessed rights together, instead of elaborating them on the basis of single rights. This step was justified by highlighting the interlocked nature of human rights that were addressed by various policies prescribed in the national Buen Vivir plans. In early 2013, based on academic input and facilitated by changes in staff at the Ministry for Justice and Human Rights, some influential discussions took place. The former SIIDERECHOS project leader had been recently replaced by a new manager who also supported basing HRIs on the Buen Vivir legal framework of the country. This was inspiring for some consultants, academics, and public officials who argued in favor of adopting a biocentric perspective on SIIDERECHOS, as expressed in Buen Vivir principles, and for others who simply demanded national ownership of the SIIDERECHOS project. Inspired by anti-imperialist rhetoric and the international Yasuní-ITT initiative (see Rival 2012; Le Quang 2016), a biocentric take on international governance got wind in the sails of Ecuador’s administration. Perhaps also as repercussion of President Correa’s frequent attacks on the Inter-American human rights system, criticisms could suddenly be perceived in the hallways of the ministry that human rights would be

overly “anthropocentric,” monocultural, reductionist, and, importantly, would not take human-nature relationships and ecosystems sufficiently into account. Both national Buen Vivir plans and discussions about postextractivism have in fact led to the adoption of a strong eco-social, biocentric, or socionatural” (Castree and Braun 2001) perspective in describing social, political, and economic change as well as possible policy solutions (Waldmüller 2014b). At stake in the resolution of this profoundly epistemological debate was a radically different vision than that of the UN OHCHR: in the international methodology, HRIs are essentially modeled after common development indicators and oriented along mainstream economic models of assessment. In addition, they prescribe a structure and vision of development that follows the approaches of specified development algorithms (“getting the parameters just right) toward a certain desired outcome (see also Apthorpe 1996; Gasper 2000; Merry 2013b). HRIs, as they are currently designed, are in fact highly reductionist: for instance, the question of indigenous, collective, or group rights, or the relationship between governmental realization of economic, social, and cultural rights and the famous obligation to do so “to the maximum of available resources” (Fukuda-Parr and Ely Yamin 2015, 23, 28, 41), which explicitly hints at human-nature interactions, are simply disregarded. Nature, commons, collectives, and all sorts of resources are merely subsumed into this assumed process of change, regarded as subsequent to consciously made choices by humans. This is all the more questionable for a country considered to be a “megadiverse hotspot of fauna and flora” and economically dependent on exploitation and exportation of natural resources (crude oil, mining), agriculture, and fishery products (see Dávalos 2013; Moore and Velasquez 2012).

Given this paramount dependence on nature and its inherent transitions, the Buen Vivir–inspired accusation of anthropocentrism regarding human rights becomes meaningful in the Ecuadorian context. Anthropocentrism is commonly defined as the position “that considers man as the central fact, or final aim, of the universe” and generally “conceiv[es] of everything in the universe in terms of human values” (Watson, 1983, 245). Within and around SIIDERECHOS, it was therefore argued that a biocentric (Agar 1997; Sterba 2011) version of human rights measurement should not be centered on the human individual but should instead take people’s encompassing environments as their starting point. This way HRIs became at the same time translated, localized, altered, repoliticized, and essentially expanded by public officials and intellectuals. During this process, human rights parlance was extended to nonhuman, or “Earth beings” (de la Cadena 2010), as in the case

of the “vulnerability” of volcanoes or coastal shores. I have analyzed elsewhere (Waldmüller 2014b) how HRI became transformed under the impact of such a state-sponsored biocentric perspective.<sup>10</sup>

For this chapter, however, I am more interested in analyzing the causes that made this particular transformation through localized translation possible. What I am arguing here is that it is associated with the extreme destruction caused by extraction activities in the Amazon decades before the adoption of the current constitution. As previous research suggests (Becker 2011, 2012), the emergence of the Buen Vivir paradigm and rights of nature is, *inter alia*, linked to the massive pollution caused by Chevron-Texaco in the Ecuadorian Amazon, from which mainly Kichwa indigenous communities have gravely suffered (Rival 2012). It has been the Kichwa community of Sarayaku in the Amazon that—despite not having been directly affected by the destruction left by this U.S. company—is frequently cited as having made one of the earliest references to and descriptions of this paradigm (Viteri 1993, 2002; Altmann 2013a, 2013b). It later found its way, via the detour of international cooperation in Ecuador and Bolivia, into the catalogue of claims issued by the largest indigenous organizations in Ecuador, CONAIE and ECUARUNARI. These claims, linking human rights violations to violations of eco-social dimensions, were eventually taken up by the Constituent Assembly and adopted in 2008. This suggests that in the case of HRIs in Ecuador, a very local, yet long-standing,<sup>11</sup> “vernacularization of human rights” (Merry 2006b, 39)—linking human rights to nature rights and the protection of life—became significant for the way human rights became generally framed in the country.

With regard to HRIs it is important to stress, therefore, that one influential local understanding of human rights is inherently related to indigenous collective rights, self-determination, and an ecological dimension in the sense of protecting human life by protecting natural life and its ecological sources (water, land, food, etc.). However, the current government has assumed a strong role in the litigation between indigenous claimants and Chevron-Texaco, for instance by launching a worldwide campaign against the company.<sup>12</sup> Overall, adopting HRI in Ecuador can be regarded, as I argued here, as a first instance of transformation, facilitated in negotiations between state and international officials (UN staff and international consultants): one of integrating an international methodology that became gradually imbued with local discourses, perspectives, and values until finally the international methodology was itself altered.

In the next section I will show that the shared historical experience for the understanding of human rights norms has equally been promoted back to the international level; it includes a second instance of transformation. The promotion of a new international human rights document (whether a declaration or treaty remains to be seen), as mentioned earlier, can be interpreted as being essentially inspired by rights-based claims with regard to extractive industries. However, some crucial elements of the first transformation of human rights and HRIs to the local level seem to be absent from this second and simultaneous instance of translation back to the international level. In fact, a different translation of human rights took place, again filtered through the government; one that permits government to effectively capitalize on the emerging erasure between the first and the second instance in order to push its own agenda.

### **Overlapping Transformations, Erasures, and the Postcolonial “Cunning State”**

It was stated earlier that transformations through translations of human rights norms, tools, and methods sometimes occur in parallel, partly overlapping and across scales, which involves the—sometimes dirty—politics of human rights. The following sections provide a concrete example of how such processes may play out and offers both a tentative explanation and additional perspective for methodologically approaching such issues.

While concerned institutions of the Ecuadorian administration substantially altered the international HRI methodology during the period of local implementation between 2009 and 2014 and litigation had been continuing against Chevron-Texaco since 1993, the Ecuadorian delegation to the United Nations used its position in the Human Rights Council as of 2014 to push for a new human rights instrument.<sup>13</sup> The legal device envisaged would regulate and sanction the conduct of transnational corporations (see Human Rights Council 2014; de Schutter 2014) operating on foreign territories. More precisely, the goal of this initiative was to generate a political and legal hold over those corporations that violate human rights when extraterritorially active and where the governments of the states where these corporations are registered are not able or willing to pursue legal prosecution. In my view, the Ecuadorian initiative should be seen in the light of the *Buen Vivir* paradigm enshrined in the Ecuadorian constitution that stipulates, *inter alia*, rights of

nature, food sovereignty (Fairbairn 2010), and rights to free prior informed consultation (Art. 57), including the possibility of withholding consent. As described above, the emergence of this paradigm and its adoption into the constitution can be seen as related to the country's catastrophic experiences with foreign oil companies, which had devastated both indigenous and nonindigenous communities. These experiences have fostered and consolidated the national indigenous movement, which succeeded in becoming an important political actor in the 1990s and even an initial partner of President Correa's Alianza País movement (Becker 2011; Walsh 2010; Acosta and Martínez 2009; Gudynas 2011; Altmann 2014). Crucially, Buen Vivir links human rights and well-being to the well-being of ecosystems and the environment. Yet, these aspects were stripped off from the international initiative, permitting the government to capitalize on this erasure both to the detriment of social movements' claims and the substance of human rights themselves.

What Ecuador is pushing for at the international level is a new human rights instrument to enable governments and the international community to regulate transnational corporations that appear "too powerful and cunning to be effectively controlled by their governments."<sup>14</sup> This, in my view, second instance of transformation—the upstreaming of an understanding of eco-human rights protection to the international level—aims at the creation of three main legal devices that, according to its protagonists, should go beyond the Guiding Principles of Business and Human Rights to (1) clarify the question of extraterritorial responsibility, (2) grant all victims access to the national legal system where corporations are based (for claiming compensation), and (3) obligate all implicated parties to establish fair conduct principles respecting priorities according to the legal setup of the country where a corporation operates.<sup>15</sup> Within this parallel process of transforming a shared horizon of affected communities by international extraction business (which became essential for Buen Vivir) into international human rights claims, an important shift occurs.

The main rationale behind this initiative appears to be the creation of a mechanism for international legal recourse that would enable the victims of disastrous business conduct in one country to claim financial redress in the country where corporations are formally based. Beyond questions of legal applicability and feasibility (after all, it's still the local governments that have the obligation to protect their citizens from transnational businesses' wrongdoing; see de Schutter 2014), it is striking that substantial parts of the first instance of transformation, in the case of HRIs, have partly or completely

fallen away by this stage. There is no longer reference to rights of nature, to *Pachamama* (Mother Earth), or to the vulnerability of ecosystems and their right to redress, nor to the critique of anthropocentric human rights that would neglect the inherent linkage to territory, water, healthy food, in short life as such, which primarily sustains humans and their conduct. Instead, it is argued that governments are unable to effectively control and regulate the conduct of transnational corporations that they frequently themselves contract. In other words, the semi-parallel circulation of a local understanding of human rights between national and international levels seems to lead to a transformation of substance. This erasure becomes tangible on its way to an economistic translation, spearheaded by government actors, at the international level.

While being based on shared historical experience and political demands emerging therefrom, the divergent paths at different levels of human rights localization in practice is notable. It is therefore necessary to take the context into account for a moment. The case of Ecuador is paradigmatic in this sense for the ambiguous role postcolonial governments tend to play in the era of a “postdemocratic” (Crouch 2004) Anthropocene. Despite its encompassing domestic legal protection framework,<sup>16</sup> the Correa administration has continuously promoted the expansion of frontiers for the extraction of what is called “natural resources.” A major example is the withdrawal of the Yasuní-ITT initiative (Burbano et al. 2011) and the subsequent opening of oil explorations in the Amazonian Yasuní national park, one of the most biodiverse places in the world, despite a constitutional prohibition (Rival 2012). As of 2013, faced with declining oil prices and financial obligations to China, the Ecuadorian government began to heavily promote large-scale mining, a complete novelty for the country (Moore and Velasquez 2012). While more than 90 percent of capital investment in Ecuador’s nascent mining sector stems from Canadian companies (CEDHU and FIDH 2010, 7), the state itself became highly involved and established its own public national mining company. There is a wealth of documentary evidence to support accusations of persistent human rights violations that have been brought against the large-scale mining activities of Chinese, Canadian, Chilean, and national companies (complex business constructions often make it difficult to identify the exact ownership and funding of mining projects), both in the south (CEDHU and FIDH 2010; Sacher et al. 2015) and north of the country (Waldmüller 2015; Latorre, Walter, and Larrea 2015). In an inherently still colonial world economy—extraction and exportation of natural resources in the global South, import and export of manufactured quality goods in the

global North—postcolonial governments tend to act cunningly in a limited margin of maneuvers, which includes trade-offs between (human, ecosystemic, etc.) sacrifices and progressive rhetoric.

In response to these difficulties, social protest has become increasingly criminalized and defenders of human and nature rights are frequently faced with intimidation and violence (Plan V 2015; CEDHU, Acción Ecológica, and INREDH 2011). As mentioned earlier, an important case in point is that of Javier Ramirez, who led the community protests against the governmental showcase mining project in the Intag region (see Álvarez 2015). These projects of increased exploitation of resources are deemed necessary by the government to overcome poverty and achieve national modernization, since, as President Correa famously stated, “we cannot sit like beggars on a sack of gold” (Dávalos 2013). Communal property, indigenous land rights (and claims to land), collective rights, and rights of nature, invoked by anti-extractivism protesters and movements, have thus all become caught in the crossfire of the governmental PR and police apparatus. Social and indigenous protests culminated in violent clashes and countrywide suppression at the end of August 2015 (see Colectivo de Investigación y Acción Psicosocial 2015). As of 2016, it seems that the genuine Buen Vivir paradigm has become virtually voided—yet, human rights in particular have remained a highly contested subject in the country (Waldmüller 2014b), serving as a discursive platform for including all sorts of claims against the government.

How can the international proposal by Ecuador, which draws on local experiences and interpretations, be interpreted while being inconsistent with the business operations launched within the country that are in clear opposition to its own proposal? How can this particular double-localization of human rights be approached in a more analytical sense than simply ascribing it to human rights politics? It seems that the Ecuadorian example falls within the range of what postcolonial scholar Shalini Randeria diagnosed in the case of India (and not for human rights but general politics), that is, a paradigmatic expression of the “cunning state” (Randeria 2007). According to her, states are nowadays not simply weakening or losing sovereignty, as it would seem in the way the Ecuadorian government portrays its situation vis-à-vis international corporations: “The state is not merely a victim of neo-liberal economic globalization as it remains an active agent in transposing it nationally and locally” (Randeria 2003a, 28). Furthermore, states do so, as the author demonstrates through her works, by being “cunning,” since they “capitalize on their perceived weakness in order to render themselves unaccountable

both to their citizens and to international institutions” (Randeria 2003b, 306). In other words, and as an inverse version of Putnam’s well-known two-level game theory (Putnam 1988), governments and public administration seek, for example, to escape international regulations by playing off the demands of their citizens against those of the international community. Applying her analysis to our case permits acknowledgment of a double twist: Ecuador introduced a new human rights monitoring mechanism that should supposedly assess the compliance of all national public policies with human rights. But instead of making itself a subject of this mechanism, the government incorporated long-standing locally grounded claims to life protection, framed in human rights language, to alter and twist the international methodology to such an extent that it in fact never became implemented in the country. At the same time its earlier role as human rights vanguard permitted the government to push a different, yet entangled, agenda at the international level to help it get a better hold on transnational corporations active in the country. However, instead of pushing for an international working group on, for example, international rights of nature or ecosystemic human rights, the main goal has been (so far) to hold those countries where these corporations are based financially accountable instead of reinforcing the government’s own protection mechanism for its citizens.

Seen this way, the local translation of human rights, as inherently anthropocentric, individualistic, and at the same time (but on a different level) fundamentally neglecting an eco-social, or socionatural, dimension of justice, serves the Ecuadorian government to render itself unaccountable (and thus enables it to point to foreign governments for the paying of indemnifications, as in the case of Chevron-Texaco).<sup>17</sup> Given these politics, should international human rights norms therefore abstain from including local translations and transformations altogether? I think such a view would amount to a misconception of the nature of human rights as such, since human rights were neither generated nor are they managed in a space of cultural vacuum. They have, of course, in a sense always been local. The common accusation against the international human rights regime as being overtly individualistic points in this direction. Indeed, human rights have been, and rightly so, criticized for their overtly liberal outlook and propaganda in recent decades, based on a very particular (Western) image of the human in human rights (see Tully 2007; Hinkelammert 2004; Mignolo 2013). This critique cannot easily be dismissed, and negotiating with, as well as including, different local translations seems the only viable strategy in



order to forestall cunning governance of governments. Instrumentalized translations of human rights, including transformation of substance and erasure, can indeed serve governments to render themselves unaccountable within a global architecture of resource-based capitalism (Charvet and Kaczynska-Nay 2008) and therefore required “accumulation by dispossession” (Harvey 2003). Neither sensitive vernacularizing nor locally adapting international human rights norms and procedures necessarily prevents this from happening. It is precisely for this reason that it is crucial to unpack all the different layers of circulation and transformation involved in detail, analyzing the reappropriation of human rights and of the upstreaming of such altered human rights practices and discourses.

### Final Reflections

It was stated in the introduction that processes of transformation through translation inevitably involve what seem to be losses or erasures. I want to return to this crucial dimension now, since it weaves our two threads of human rights transformations together. The reason is that there is a tragic side story related to the project of the Ecuadorian delegation pushing for a new international human rights instrument, one being truly local, but largely remaining swept under the rug.

In June 2015, at the 29th session of the Human Rights Council in Geneva, Ecuadorian plaintiffs denounced the role of Chevron-Texaco in silencing and criminalizing testimonies and critical voices during this 22-year-long litigation. Around the same time, the Ecuadorian government doubled its efforts at the diplomatic level in Geneva to push for the new human rights instrument it envisioned. NGOs from all over the world and governments allied with the Ecuadorian proposal closely observed and hoped for a breakthrough toward better regulation of transnational businesses.

At the end of May 2015, a political activist explained to me in Quito the moral dilemma facing him and his organization. The issue was the deployment of a delegation of local Shuar community members to Geneva, planned for the following week. The purpose of this delegation was to render public testimony about the case of the indigenous Shuar leader José Isidro Tendetza Antún, whose dead body was found, showing signs of torture, on December 3, 2014 (see Watts 2014). Tendetza had been highly involved in resisting a Canadian-Chinese mining project in the Ecuadorian province of Zamora. After having

suffered severe intimidation, he had supposedly been on his way to Lima to denounce the project before the World Summit on Climate Change and to file a complaint against the company before the International Tribunal for the Rights of Nature in the Peoples' Summit, when he encountered his assassins. Already in 2009 and 2013, two other Shuar leaders opposing the mining project in the region had been killed. Yet, the case of José Tendetza is particular insofar as he had been an active plaintiff against the state of Ecuador claiming rights of nature at the Inter-American Commission on Human Rights (Cortes 2015). The examination of the circumstances of his death is a case still pending with the Ecuadorian authorities—it seems that the state itself has become involved in the deadly oppression of protesters and resistance, protecting precisely those transnational corporations on its own (in fact, on illegally appropriated Shuar) territory (Sacher et al. 2015) that it purports to regulate at the international level. My interlocutor's dilemma was linked to the fact that his delegation would denounce the Ecuadorian government in Geneva at the very same moment as social movements from all over the world were expecting to see an important international move from the Ecuadorian government with regard to Ecuador's human rights proposal. The hazard was that the testimony of the Shuar delegation would undermine the global efforts of the Ecuadorian government, spurring its critics to lay the Ecuadorian hypocrisy bare. Should the Shuar delegation be sent? Should, in the context of seemingly almighty transnational businesses and the cunning states complementing them, the greater global good be treated preferentially to the very local case of a severe violation of human rights? These, admittedly, are not easy questions. While they must remain open for now, Tendetza's case of literal erasure points to complex ethical and political considerations that reflections about human rights transformations have to address beyond empirical documentation. The case of José Tendetza, despite having received international news coverage at the time, has remained largely invisible, or rather, has been made effectively invisible by the politics of filtering and surfacing selected human rights violations between local and international levels.

Summarizing the discussions presented in this chapter, two dimensions of translating human rights between local, national, and international levels are crucial to analyzing how human rights become transformed across scales and times. First, assuming that all that becomes global has previously been local (De Feyter 2011, 14), what are counted among human rights cases are always the results of previous filtering mechanisms. These mechanisms include violations, but also new instruments and norms, methodologies, impacting

discussions or highlighted cases. Specific state actors and institutions, perhaps particularly in postcolonial and extracting contexts, are crucial in this process, as they tend to play two-level games, playing off local against international politics and vice versa. In addition, the nature of local UN OHCHR offices, as key information filters within an international network, also can contribute to highlighting certain human rights-related aspects, while making others invisible, which inevitably leads to transformations of human rights understandings. This complexity also involves the competition among regional human rights institutions and regimes, as briefly mentioned with regard to different HRI methodologies, especially when it comes to the use of data, methods, and numbers. It also includes international NGOs, which are faced with human rights politics determining the appropriate moment to surface specific information, as in José Tendetza's tragic case. Therefore, while human rights necessarily become translated and localized all the time, the concrete transformation of their substance is always also embedded within broader contexts and constellations, for example, political interests, appropriate moments in time for different actors, media attention, potential allies, funding, and political cycles.

Focusing ethnographically on (1) transformations between various local and international levels of understanding, (2) especially on specific state institutions as main translating interfaces in this process, and (3) erasures or absences of key parts of the local understanding when governments pick them up and transform them seems crucial for analyzing further how human rights law, norms, and methods become shaped across scales, actors, and regions. By doing so, conditions of state dependency on so-called natural resources in a postcolonial setting deserve particular attention. The reason is that local, indigenous, or social movement-related transformations of human rights claims are frequently directed to both governments and the international level of attention at the same time. This involves, therefore, multiple and parallel translations as strategy to gain attention; and translations always bear the danger of erasures. Accordingly, analyses should take these into account, as they are key to unfolding the various scales where transformations through translations take place simultaneously. Also, local UN OHCHR offices would therefore be required to adopt a less purportedly neutral legalistic perspective and a more critical ethnographical position of inquiry, focusing on the cunning politics of both local movements and governments vis-à-vis the international level. This would, furthermore, represent a first step toward opening up for truly local understandings of human rights.

Second, the notion of “cunningness” might help to explain the particular complexity human rights are facing in postcolonial contexts. As of yet, the group political right to self-determination, as it is enshrined in Article 1 of both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), has been realized nowhere in the region. Ubiquitous notions of modernization and development still serve postcolonial (read still inherently colonial) states in the appropriation of indigenous territories, and in particular, subsoil territories that remain outside of human rights legislation and are not subject to full collective control by indigenous peoples (Merino Acuña 2014; Schulte-Tenckhoff 2012). Finally, this points to the necessity, when analyzing human rights transformations, of taking into account that selective treatment of local values and tragic fates can always be a possible route while translating substance across scales. Apparent translational paradoxes may actually serve to capitalize on them by pushing or obscuring certain agendas. The question is therefore precisely which parts get erased, which ones added instead, by whom, and whether this occurs intentionally or not. In the case of both HRIs and the international treatment of transnational corporations, ecosystemic considerations eventually became replaced by an economic calculus of compensation. Such a strategic, and less idealistic, approach was later echoed by the social movements’ dilemma regarding the delegation’s travel to Geneva. Assuming that strategic, instrumental and cunning treatment of human rights politics also impacts the substance of human rights, it therefore remains to be seen whether localizations of human rights can become disentangled from the strategic-utilitarian considerations between cunning states and the “visibilization” of selected human rights violations.<sup>18</sup>

## Notes

1. For an overview of the decades-long struggle of Intag communities, see the blog by Carlos Zorrilla (<http://www.decoin.org/> [last accessed October 23, 2015]).

2. See the campaign Chevron Toxicó (<http://chevrontoxico.com/> [last accessed October 22, 2015]) for an overview.

3. According to local plaintiffs, “Chevron-Texaco has polluted more than 450,000 hectares of one of the richest areas of biodiversity on the planet, destroyed the lives and livelihood of its inhabitants, and caused the death of hundreds of people and a sharp increase in the rate of cancer and other serious health problems. More than 60 billion liters of toxic water were dumped into the rivers and streams, 880 hydrocarbon waste pits were dug, and 6.65 billion cubic meters

of natural gas were burned in the open air” (cf. <http://chevrontoxico.com/news-and-multimedia/2015/0618-chevron-denounced-before-the-human-rights-council> [last retrieved October 23, 2015]).

4. See Kuosmanen (2015) for a philosophical exploration of this complex terrain. In Latin American contexts, the continued scarification of selected individual rights (and rights of nature) for the sake of an envisioned greater good, justified by invoking the right to development, caricaturizes the common approaches and statements by the United Nations to this relationship.

5. The three UNHCHR standard publications on HRI are: UN OHCHR (2006; 2008; 2012—the latter guide provides the most thorough introduction and methodology). In addition, the Mexican UNHCHR office, the first worldwide to implement HRI projects, has published several detailed reports and guides, including accounts of the implementation of various HRIs in the country. These can be found online, at <http://www.hchr.org.mx/> (last retrieved April 27, 2015). The report focusing on Latin America, summarizing all regional field projects, has recently been published by UN ACNUDH (2013). Further essential texts regarding the evolution of the debate, starting with Barsh (1993), who elaborated on the basic scope of measuring human rights, are: Fröberg (2005); Andersen and Sano (2006); Malhotra and Fasel (2005); McInerney-Lankford and Sano (2010); Merry (2011, 2013a); Hines (2005); Welling (2008); Rosga and Satterthwaite (2009); de Béco (2014); Riedel, Giacca, and Golay (2014); Riedel (2007, 2013) and Merry (2016).

6. So far, Brazil, Bolivia, Paraguay, Argentina, and Colombia also have officially begun to implement HRIs without generalizable or homogenous paths, goals, and success (see UN ACNUDH 2013, published in Mexico, for an overview of all regional projects).

7. *Sumak Kawsay*, roughly translated as “living in harmony all together,” refers to value-based spiritual, ecological, collective-social, and normative-individual principles that should ensure a sustainable, biocentric, and harmonious way of life beyond material accumulation, extraction of natural resources, and exploitation of humans or nature. *Sumak Kawsay* is officially translated as *Buen Vivir* (e.g., in the constitution), which became gradually co-opted by the government and voided of any overly spiritual and politically transformative content (Gudynas 2014; Oviedo 2014).

8. Personal communication with the SIIDERECHOS manager at the Sub-Secretariat, July 23, 2012 (Quito).

9. Interview, conducted at SENPLADES, January 2012 (Quito).

10. In short, structural indicators became reinterpreted as topographical indicators, that is, focusing first on rights of ecological zones (mountains, bays, beaches, rivers, etc.). In a second step, human interaction with these zones and among humans themselves (mobility) should be assessed as process indicators. Outcome indicators should evaluate potential risks and probabilities for vulnerability (of both humans and nature).

11. On November 3, 2015 the still ongoing litigation process celebrated its 22nd anniversary.

12. See <http://lamanosucia.com/> (last accessed October 23, 2015).

13. Together with Bolivia, Venezuela, Cuba, and South Africa.

14. Statement by Pablo Fajardo, longtime attorney of Ecuadorian plaintiffs in the Chevron-*Texaco* case, during a public conference on the matter at the Universidad Andina Simón Bolívar in Quito, October 14, 2015.

15. According to a public presentation by the Ecuadorian delegation to the United Nations in Quito, October 14, 2015.

16. As of 2015, Ecuador has signed and ratified all major human rights treaties and declarations.

17. As a matter of course, reality is more complex than what such a simplistic diagnosis could reveal. The case of Chevron-Texaco in Ecuador has been one of particular “cunningness” and criminalization of plaintiffs also by the company itself; see <http://chevrontoxico.com/news-and-multimedia/2015/0618-chevron-denounced-before-the-human-rights-council> (last retrieved October 10, 2015).

18. Similar to Agamben’s *homo sacer* (1997 [1995]), Hinkelammert has insightfully pointed out that human rights always imply not only some form of hierarchy of rights, precisely because of being translated and transformed by governments that have an agenda, but also their rightful violation against violators—the necessary human sacrifice—in order for human rights to be reaffirmed and valid. For the Latin American context, it thus remains necessary to disentangle the link between governments and the (collective) right to development, which appears to commonly trump the human rights of individuals, nature, or certain groups within the national state that become in this sense “sacrificed” in the name of national progress (see Hinkelammert 1999).

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