

Indigenous Knowledge and Tourism on Protected Areas Under Constitutional Sumak

Kawsai in Ecuador: Policies and Legislation

by

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Abstract

This thesis aims to expose the deficiencies in Ecuadorian legislation in protecting Indigenous culture and Indigenous knowledge within the tourism economy located within Indigenous traditional lands and protected areas of Ecuador. It delves into the vulnerabilities linked to Indigenous intangible cultural heritage within the tourism industry. The goal is to highlight the differences between Indigenous community tourist centers and tourist operators. These inequities extend beyond financial aspects; they also involve more general issues regarding the expression and conservation of Indigenous intangible cultural heritage. In addition to illuminating these challenges, this research offers potential mechanisms that the Ecuadorian State could adopt to safeguard Indigenous knowledge and promote responsible utilization of it by tourism operators.

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Chapter 1: Introduction and Literature Review

1. Introduction

1.1. Background

Ecuador is one of the most biologically diverse countries, holding 70% of the world's biodiversity and having a large cultural richness because of the many ethnicities in its territory (Gaceta 636, 2018). However, its cultural and natural diversity is threatened by capitalist practices to achieve "economic development" regardless of Indigenous communities and Nature (Martinez, 2017). The expectation was that the new 'socialism of the 21st century' government of 2007 which promoted the current 2008 Constitution, would moderate the capitalist system that has negatively impacted Nature and Indigenous communities. However, the paradigms of traditional capitalism impacting natural resources and Indigenous communities remained during the socialism of the 21st-century government. Indeed, these new socialists sought economic growth through the promotion of economic expansion policies that multiplied their socio-environmental impacts (Gudynas, 2019). These policies were being implemented tangentially while this government introduced a constitution that had the intent of protecting Indigenous peoples and Nature.

The Ecuadorian Constitution of 2008 is one of the most progressive in the world, protecting Indigenous peoples and Nature by including concepts such as Sumak Kawsay, a term meaning "living well" in the Aboriginal Kichwa language (Acosta, 2017), as well as recognizing Nature's inherent rights (Wolff, 2012). However, Indigenous Peoples remain the most marginalized people in Ecuador while Nature is threatened by economic expansion policies in areas of high biodiversity throughout the country. Indeed, In Ecuador, tourism policies could potentially neglect the cultural

heritage and traditions of Indigenous communities. This could lead to a loss of their unique cultural practices, languages, or ways of life due to the emphasis placed on tourist representations of culture. In addition, if tourism is not managed sustainably, it can have negative effects on the environment. Increased tourism can lead to habitat destruction, pollution, or disruption of ecosystems due to the construction of infrastructure or increased human activity in natural areas. (Roy et al., 2018). Ecuador's travel and tourism contribution to Gross Domestic Product (GDP) increased from 5.7% in 2019 to 6.0% in 2000 (World Data Atlas). Moreover, in 2019, more than 408,000 Ecuadorians depended on tourism and its associated activities for employment. This consists of 5.2 % of the total labour force, approximately half of which are direct employees of tourism companies (International Finance Corporation, 2022). However, the literature does not explore the situation of Indigenous knowledge as being protected from tourism activities under the constitutional framework of Sumak Kawsay (Living Well),

1.2. Chapters description

Chapter I: Introduction and Literature Review: Chapter I provides an overview of Ecuador's rich biodiversity and cultural heritage, juxtaposing them against the threats posed by capitalist practices despite constitutional safeguards. It underscores gaps in existing literature concerning the misappropriation of Indigenous knowledge, conflicts with Western ideals, and the impacts of economic policies on Indigenous rights. The subsequent literature review explores the nexus between Indigenous knowledge and tourism within Ecuadorian legislation. It emphasizes the dangers of exploiting Indigenous knowledge through Western tourism practices and examines the concept of

Sumak Kawsay within the Ecuadorian Constitution. The review also identifies deficiencies in the literature regarding Indigenous community participation in tourism and advocates for clearer regulations to safeguard Indigenous cultural heritage.

Chapter II: Research Design and Methods delineates the methodology for this report. It utilizes qualitative methods such as literature review, legal hermeneutics, and stakeholder interviews to scrutinize tourism policies, legislation, and Indigenous viewpoints. Interviews with officials and Indigenous representatives are centered on safeguarding Indigenous knowledge from exploitation in tourism.

Chapter III: Protection of Indigenous Knowledge in relation to Western Tourism within the Legislation: This chapter explores Ecuador's legal framework for protecting Indigenous knowledge within tourism. It outlines constitutional provisions mandating the protection of intangible cultural heritage but highlights gaps in concrete measures. Additionally, the chapter discusses the role of customary law in protecting Traditional Cultural Expressions (TCE) and Indigenous ways of life, emphasizing the need for states to support enforceable practices of Indigenous customary law. Despite laws promoting Indigenous community participation, there's a lack of specific safeguards for their cultural heritage. Challenges in proving misuse of ancestral knowledge are discussed, along with the role of Biocultural Community Protocols. The chapter calls for stronger legal measures to ensure fair treatment and preservation of Indigenous knowledge in tourism.

Chapter IV: Participation of Indigenous Communities in Tourism while safeguarding their Indigenous knowledge within the Ecuadorian Legislation: this chapter delves into the complex dynamics of Indigenous participation in tourism within the framework of Ecuadorian legislation. It examines the internalized racism and

ventriloquism that stem from centuries of colonization, which have led many Indigenous individuals to distance themselves from their cultural heritage in favor of a Mestizo identity. In addition, the chapter scrutinizes the participation of Indigenous communities in tourism under the 2008 Pluricultural Ecuadorian Constitution, which recognizes Indigenous collective rights and promotes the concept of "Sumak Kawsay" or 'living well.' It analyzes the limitations placed on Indigenous participation in tourism, particularly through Community Tourism Centers. Furthermore, the chapter discusses the compilation and presentation of Indigenous knowledge to tourists, for non-Indigenous actors as another form of capital accumulation. In this case cultural capital accumulation. It examines the power dynamics inherent in this process and the importance of Indigenous community involvement in safeguarding their cultural heritage. Lastly, the chapter explores Indigenous tourism as a means of protecting Indigenous knowledge, lands, and the environment. It discusses how Indigenous practices and philosophies, such as 'living well,' can offer alternatives to capitalist exploitation and contribute to environmental conservation. Overall, this chapter underscores the importance of empowering Indigenous communities to control and benefit from tourism activities while safeguarding their cultural heritage and natural resources.

Chapter V explores the tension between Ecuador's Constitutional Sumak Kawsay principle and its economic policies regarding tourism and Indigenous Knowledge. It highlights the importance of community needs over extractive policies and warns against misinterpreting Sumak Kawsay as mere material wealth. The chapter contrasts Ecuador's Constitution's recognition of nature's rights with extractive practices, particularly in Yasuni National Park. It also discusses resistance against

extractive practices, the impact of tourism on Ecuador's economy, and Indigenous knowledge. The chapter criticizes the lack of regulations regarding the power imbalances in tourism agreements with Indigenous communities. It calls for state intervention to ensure the protection of Indigenous cultural heritage and fair compensation within the tourism industry.

1.3. Statement of Problem

This thesis posits that Ecuador's cultural and natural diversity is at risk due to overlooking Indigenous community rights and exploitative policies against Indigenous culture and Nature even though both are recognized in the Constitution. Nemogá et al. (2022), identify Indigenous and local communities' worldviews as part of a biocultural diversity structure. This means that Indigenous culture and Nature are intertwined. Therefore, if Nature is harmed, Indigenous knowledge and culture are at risk as well. This proposal identifies three main issues leading to the need for this research.

The first issue involves lodges and tourist companies misappropriating Indigenous knowledge (IK) in Ecuador. There is a common use of IK by tourism agents who do not consider this practice inappropriate. Moreover, Indigenous communities are not the ones who transmit their cultural knowledge to tourists. Indeed, one of the tourist attractions is the Indigenous stories and customs that tourist companies share with clients. Marcinek and Hunt (2019) identify that Indigenous knowledge is being used as a cultural resource in tourism. Thus, Indigenous cultures influence tourism and tourism influences Indigenous cultures. This situation endangers the Indigenous community's way of life and their in-place knowledge (Marcinek & Hunt, 2019).

Indigenous peoples' right to protect their IIK from tourism misappropriation is recognized by international organizations and institutions. The International Labour Organization (ILO) confirms the protection of Indigenous knowledge through ILO Convention 169 ratified by Ecuador on May 15, 1998. Articles 3, 4, 5, 7, 8, 14, and 15 within the ILO Convention No. 169 expressly acknowledge the rights of Indigenous peoples. Articles 3, 4, 5, 7, 8, 14, and 15 of the ILO Convention 169 collectively uphold Indigenous peoples' rights and self-determination by recognizing and safeguarding their institutions, cultures, and rights. Article 3 acknowledges the human rights and freedoms of Indigenous peoples, Article 4 ensures their equality and non-discrimination while protecting their own Indigenous institutions and culture. Article 5 mandates the involvement of Indigenous communities on matters affecting them directly, reinforcing their participation in decision-making. Articles 7 emphasize Indigenous peoples' rights to determine their development priorities and preserve their cultures and traditions. Art. 8 remarks on the importance of Indigenous customary law and institutions. Article 14 protects their land rights, and Article 15 grants them a voice over their land's natural resources. Together, these articles call upon governments to uphold and respect Indigenous peoples' rights and self-determination, in addition to economic, socio-cultural, and political rights within nation-states. Moreover, the Convention on Biological Diversity (CBD), ratified by Ecuador on November 29th, 1993, requires governments to preserve Indigenous environmental knowledge to help conserve biodiversity and to share equitably any benefits arising from the use of Indigenous knowledge. Although the Nagoya Protocol of 2010, ratified by Ecuador on December 19, 2017, primarily addresses genetic resources and the fair and equitable sharing of benefits arising from their utilization, it also addresses Indigenous knowledge and

underscores the significance of sustainable biological diversity utilization. (Burger, 2011). However, in Ecuador, Indigenous communities are not necessarily consulted on the use of their Indigenous knowledge by tourist agents or able to participate in the benefits derived from the use of their knowledge within the tourism industry. The literature is lacking regarding Indigenous communities' participation in tourism, putting at risk the protection of their Indigenous knowledge.

The second issue involves the idea of `Western Prosperity and Progress that embodies the technological advancements, social trends, and economic prosperity that are mostly observed in North America and Europe. This notion stands in direct conflict with the Ecuadorian constitutional principle of Sumak Kawsay (Living Well). Since November 2007 the government began Indigenous repression to defend oil interests in Dayuma, a town attached to an oil field and built in the middle of the Amazon jungle. At that time, the Pachakutic Indigenous party, which previously supported the government, became their opposition (Diario el Pais, 2013); (Hacemos periodismo, 2018). The Socialist government also began a recentralization process that concentrated decision-making to the ruling party in conflict with Indigenous interests. Eaton (2013) observed that re-centralization during the leadership of the 21st-century socialist government provided the Ecuadorian president the possibility to control and limit the opposition's actions. Although there is no research on whether the government's recentralization policies impacted the Indigenous movement and its participation in tourism within the Ecuadorian legislation, Latip et al. (2018) explain that Indigenous participation may alleviate the misuse of Indigenous knowledge. Indigenous tourism is an economic activity where Indigenous peoples can obtain economic benefits for the use of their Indigenous culture and knowledge by tourists. Through tourism

participation, Indigenous peoples can protect their cultural and land possession Today, Indigenous peoples need a space in the planning, implementation, and regulation of tourist activities that affect them (Latip et al. 2018).

Finally, there is an incongruity between the Ecuadorian economic expansion policies, the Indigenous traditional way of life, and Nature rights recognition. The 2008 Ecuadorian Constitution includes the historic decision to provide Indigenous peoples the right to their traditional way of life, and to give Nature intrinsic rights to exist, to maintain and regenerate its vital cycles, and to be restored if damaged. It also established the right of individuals and communities to bring cases on behalf of Nature to public authorities (Akchurin, 2015). However, Ecuadorian legislation allows mining in protected areas by special request of the President and approval by the National Assembly (Roy et al., 2018). This situation endangers Indigenous communities living in protected areas. The expansion of capitalist activities affects Indigenous means of life and their possibility to protect Nature. Within this contradiction, Indigenous communities cannot attain the “Living Well” that the 2008 Constitution promotes. In fact, economic activities in Ecuadorian protected areas are based on Western development ideals and may be developed regardless of the Indigenous community's opinions and rights. Indigenous participation can be linked to Indigenous representation. Indeed, through adequate representation, participation, and procedures, Ecuador's Indigenous people can provide their consent to protect their Indigenous knowledge following their customary practices and in alignment with Article 57 of the Ecuadorian Constitution. (Ecuadorian Constitution, 2008).

Moreover, international organizations and institutions such as The United Nations Educational, Scientific and Cultural Organization (UNESCO), recognize

traditional ways of life and Indigenous knowledge protection. Indeed, The Convention for the Safeguarding of the Intangible Cultural Heritage, established by UNESCO in 2003 and ratified by Ecuador in 2008, aims to safeguard and protect intangible cultural heritage worldwide. Moreover, The World Intellectual Property Organization (WIPO) established the Intergovernmental Committee on Intellectual Property and Genetic Resources, Indigenous Knowledge, and Folklore (IGC) to discuss and negotiate issues relating to Indigenous knowledge, traditional cultural expressions, and genetic resources. (WIPO, n.d.). In addition, UNESCO recognizes Indigenous traditional cultural expressions as productions consisting of characteristic elements of the traditional artistic heritage developed and maintained by a community or by individuals reflecting the traditional values of such a community (Cruz, 2006). Additionally, Article 7 of the Andean Decision 391 refers to customary law, affirming that:

The member countries, in keeping with this Decision and their complementary national legislation, recognize and value the rights and the authority of the native, Afro-American, and local communities to decide about their know-how, innovations, and traditional practices associated with genetic resources and their by-products (Andean Decision 391, 1996, p.1).

The Andean Decision 391 holds great importance for Ecuador as it was ratified by the country in 1996, making it an integral part of its legal system from that point forward. In addition, Jefferson (2017) points out that the 1996 Andean Decision 391 includes the treatment of customary law as one of the basic elements for the protection

of traditional knowledge associated not only with genetic resources but also with traditional cultural expressions (TCE).

Moreover, Ecuador's Code of the Social Economy of Knowledge, Creativity, and Innovation (COESI) stands for its initials in Spanish and was enacted in 2016 with a multifaceted purpose. First, it regulates intellectual property rights. Second, it seeks to enable the enjoyment of the benefits derived from scientific progress and Indigenous knowledge. The Code seeks to achieve these objectives through the generation, transmission, management, and utilization of knowledge as a public interest good of free access (Jefferson, 2017). In addition, the Code aims to bridge the gap between economic growth initiatives, which might sometimes overlook or conflict with Indigenous ways of life, and the need to safeguard both the environment and the cultural heritage of Indigenous communities.

However, the COESI does not specifically exclude the protection of Indigenous knowledge concerning tourism, nor does it contemplate any protection for Indigenous knowledge in relation to tourism. Therefore, Indigenous knowledge can potentially be transformed into a commodity of "public interest" that could cause misappropriation of Indigenous ancestral knowledge.

The aforementioned three issues coincide with three broad deficits in the literature that justify this research. First, Indigenous knowledge protective legislation is mostly related to intellectual property rights, thus the Indigenous knowledge that is used by tourism to generate profits in Ecuador has not been explored within the Ecuadorian legislation. Secondly, there has been no discussion about Ecuadorian economic expansion policies of tourism in connection to Indigenous knowledge and the Indigenous "Living Well" concept within the Ecuadorian legislation. Finally, there

has been no analysis of the participation of Indigenous communities in tourism within Ecuadorian legislation while safeguarding their Indigenous knowledge. Nevertheless, this report will delve into non-Ecuadorian authors who have extensively explored these problems.

1.4. Purpose and objectives

This research explored Indigenous knowledge concerning tourism in protected areas within the Ecuadorian legislation since the inception and adoption of the 2008 Constitution. In that regard, this research analyzed the Ecuadorian policies, legislation, and information collected from key Ecuadorian institutions. The document sources have been studied using a qualitative research method that interprets the literature in its integral context to develop findings that could contribute to the solution of a problem (Chilisa, 2010).

The research has three objectives:

1) To explore the Ecuadorian legislation as it pertains to tourism in relation to Indigenous knowledge that is used by tourism to generate profits.

2) To determine if the Ecuadorian legislation promotes Indigenous communities' participation in tourism while safeguarding their Indigenous knowledge since the adoption of the 2008 Constitution

3) To describe the impact of the Ecuadorian economic expansion policies on Indigenous cultural integrity, Indigenous knowledge, and Indigenous "Living Well" within the Ecuadorian legislation as it relates to tourism development.

1.5. Significance of research

This research is critical for Indigenous communities for three main reasons:

1) It identifies the contradictions between the Ecuadorian economic expansion policies, and the Indigenous communities' Sumak Kawsay (living well) and Nature rights as identified within the Ecuadorian Constitution.

2) It enriches the literature by recommending mechanisms through which the Ecuadorian legislation can promote Indigenous communities' participation in tourism, safeguarding their Indigenous knowledge.

3) Finally, this research analyzes the application of the Sumak Kawsay (living well) concept within the 2008 Ecuadorian Constitution regarding the protection of Indigenous peoples against Western tourism practices that are supported by Ecuadorian legislation and policies. "Western tourism" refers to tourism practices influenced by Western or modernized societies. These practices commonly involve commercialization and exploitative strategies that prioritize profit over the well-being, autonomy, and rights of the Indigenous peoples. In contrast, tourism in Indigenous territories should prioritize participation and equality, aiming to enhance the quality of life for Ecuadorian Indigenous peoples.

1.6. Self-positioning in the research

I am uniquely positioned to carry out this research due to my Ecuadorian mestizo origins, my participation in ecotourism activities, my experience as a founder and consultant of the Ecuadorian Corporation of Research and Development for Health, and my work as a facilitator in many workshops in peasant municipalities sharing numerous days with Indigenous communities, eating meals with them and fishing with

their children. I have personally seen how these communities, such as the Ozogoche or Mojanda Indigenous communities, receive no benefit from tourism in protected areas where they are located. This situation has only increased the economic gap between Indigenous communities, who live in poverty, and the managers of tourism which have become wealthy. These life experiences have inspired me to seek this topic for my Master of Arts thesis research, which specifically seeks to address the contradictions between the progressive 2008 Ecuadorian Constitution and the legal and practical situation as it pertains to tourism in protected areas of Indigenous communities. Since Ecuador is also my home country, I have the ethical duty to provide my findings in a language that is understandable by communities. There are many Indigenous languages in Ecuador. However, all contacted Indigenous communities speak Spanish.

2. Literature Review

2.1. Overview of Literature Review

The findings in the research were obtained from a diverse range of sources encompassing academic, institutional, and governmental perspectives. These sources were instrumental in initiating a discussion about the utilization of Indigenous environments and knowledge by tourist companies. This research extensively utilized databases, including those available through the University of Ottawa Library, University of Winnipeg Library, Google Scholar, ProQuest, and various others. These sources were employed to gather scholarly articles, government publications, and institutional reports relevant to the study. The search methodology involved employing specific keywords and phrases related to Indigenous rights, tourism practices, governmental policies, and the application of Sumak Kawsay (Living Well) principles

within Ecuador. This approach aimed to comprehensively explore the impact of Ecuadorian governmental economic policies on Indigenous rights and the dynamics between Western tourism practices and Constitutional principles concerning Indigenous communities. The literature reviewed emphasized themes of protecting Indigenous knowledge from the detrimental effects of Western tourism, particularly in designated protected areas. Moreover, it highlighted the dichotomy between these tourism practices and the Constitutional principle of Sumak Kawsay, emphasizing the need for Indigenous communities' active participation in tourism initiatives.

2.2. Operational definitions

- Ecotourism: Tourism in an area of ecological interest, typically exotic and often threatened natural environments, to support conservation efforts and observe wildlife access to an endangered environment controlled so as to have the least possible adverse effect.
- Ayahuasca: Also known as yage, is a mixture of the ayahuasca vine (*Banisteriopsis caapi*) and the chacruna shrub (*Psychotria viridis*), which includes the hallucinogenic chemical dimethyltryptamine.
- Neo-shamanism: Neo-shamanism refers to "new" forms of shamanism, or methods of seeking visions or healing. Neo-shamanism comprises an eclectic range of beliefs and practices that involve attempts to attain altered states and communicate with a spirit world. Neo-shamanic systems may not resemble traditional forms of shamanism.

- New Age: A new era of human history, or the history of a particular society or nation; a name given to the Age of Aquarius which, according to astrological progression, the world entered into in the late 20th or early 21st century, and which is believed to signal the beginning of a new spiritual awareness and collective consciousness.
- Pachamama or Mother Earth: Pachamama is a goddess revered by Indigenous people in Latin America. She is also known as a goddess who presides over planting and harvesting, embodies the mountains, and causes earthquakes. She is considered the mother of Earth's inhabitants and products.
- Decentralization: The action or fact of decentralizing; decentralized condition; in *Politics*, the weakening of the central authority and distribution of its functions among the branches or local administrative bodies.
- Socialism of the 21st century: an interpretation of socialist principles first advocated by German sociologist and political analyst Heinz Dieterich and taken up by several Latin American leaders.
- Re-Centralization: The concentration of power in a central authority that had previously been delegated to regional and local authorities.
- Neoliberalism: A modified form of liberalism tending to favor free-market capitalism.
- Capitalism expansion: an expansion process of a capitalist economy that has been characterized by the idea of "warranted" or "desired" growth.
- Degrowth: a political, economic, and social movement based on ecological economics, anti-consumerist, and anti-capitalist ideas. Degrowth refers to

contracting economies instead of expanding them. This means we use less of the world's energy and resources and put people's well-being ahead of making money.

- Shaman: In Ecuador, shamans are traditionally known as "yachaks." These individuals hold spiritual, healing, and ceremonial roles within their communities. Yachaks, or shamans, are respected figures who possess extensive knowledge of traditional healing practices, herbal medicine, rituals, and spiritual beliefs.

Oxford Dictionary. Retrieved from <https://www.oed.com/>

2.3. Indigenous knowledge and tourism

Marcinek and Hunt (2019) explain the danger of tourism to the Indigenous community's lifestyle and their in-place knowledge. In fact, Indigenous knowledge influences tourism and is influenced by it. The authors note that in tourism, Indigenous communities do not participate in the transmission of their own Indigenous knowledge (Marcinek and Hunt, 2019). This is evident in Ecuador, where some lodges and tour agents share Indigenous spirituality and stories as part of their tour packages. The authors conclude that tourism can be planned and managed more sustainably by Indigenous communities; they present ecotourism as a way to sustainably manage tourism by Indigenous communities.

Bandavikatte and Jonas (2010) explain that Indigenous knowledge is embodied in the traditional lifestyles of Indigenous and Local Communities (ILCs). The spread of ecotourism in remote areas often coincides with regions that are still traditional homelands of Indigenous peoples. While ecotourism could potentially endanger Indigenous communities and territories due to the increased accessibility and contact

with outsiders, Indigenous ecotourism involves native people negotiating access to tribal lands, resources, and knowledge for the tourist and tour operator. The development of Indigenous ecotourism may be an important instrument for the protection of Indigenous territories especially for those located in the Amazon. The International Forum on Indigenous Peoples, held in Oaxaca Mexico in March 2002, generated a declaration on the rights of Indigenous Peoples to control tourism on their lands (Zeppel, 2006). Since most of the natural tourist attractions in Ecuador are close to Indigenous communities, regulations are required to preserve the lifestyle and knowledge of the Ecuadorian Indigenous communities. For example, in the Amazon, Western tourism agencies conduct operations within Indigenous territories, often capitalizing on the Waorani culture as the primary attraction. While the COESI (Code of the Social Economy of Knowledge, Creativity, and Innovation) includes specific regulations safeguarding Indigenous knowledge related to agriculture, biodiversity, and copyrights of cultural expressions, it lacks explicit provisions to safeguard the Indigenous knowledge exploited by Western tourist agencies for financial gain.

Misappropriation of Indigenous knowledge by Western tourism.

The expansion of capitalist activities often leads to the displacement of Indigenous and Afro-descendant communities across significant areas of the rainforest and coastal regions. For Indigenous peoples, ensuring land security equates to ensuring land tenure security. This means ensuring that Indigenous communities have rightful ownership and control over their ancestral lands. The creation of protected areas, or "conservation encounters," while globally recognized, can bring about injustices concerning land possession for Indigenous peoples. It's important to note that Indigenous communities perceive poverty not solely as an absence of income but

primarily as an insecurity regarding their land tenure, their ability to retain control over their territories, and their ability to maintain their traditional ways of life. Laws regulating property rights should be reviewed to respect Indigenous ancestral territories. Further, to consider ancestral lands as nobody's land is not to respect Indigenous rights (Mollett 2016). In Ecuador, Indigenous communities inhabit regions nestled within protected areas. These areas, acclaimed for their natural splendour, distinctive biodiversity, or cultural importance, often captivate tourists' interest. These Indigenous communities, dwelling within these areas, could have established settlements or possess cultural connections to the land, potentially amplifying the region's attraction for tourists. Their presence may involve preserving traditional practices, safeguarding cultural heritage, or maintaining historical ties to the territory, enhancing the area's appeal for visitors interested in indigenous cultures or authentic experiences. However, despite their historical ties, these communities lack decision-making authority regarding the utilization of these protected areas in accordance with Ecuadorian legislation. Fotiou (2016) describes the use of Ayahuasca for Indigenous peoples. He explains that Shamans are mediators between men and the spirit. To do that mediation they need Ayahuasca. Shamanism is a holistic spiritual belief. The shaman has the power to harm and heal. His power comes from the same source: spiritual power. The author recognizes the role of the sacred and the spiritual in the psychological development of Indigenous peoples (Fotiou, 2016). Shamanic tourism aligns with the inherent nature of Shamanic knowledge, historically exchanged between diverse cultures. However, this exchange has unfortunately opened the door to its misappropriation within Western tourism. The emergence of New Age and Neo-shamanism by Westerners is a form of appropriation that distorts Indigenous practices

and subtly perpetuates prejudiced notions, exemplified by the concept of the "Noble Savage." This stereotype romanticizes Indigenous cultures, often portraying them as inherently pure and untainted by modern civilization, reinforcing biased and colonialist attitudes. (Fotiou 2016). Indigenous tourism can prevent cultural misappropriation as the community acknowledges the differences between cultural interchange and the attempts of cultural misappropriation.

Between 1999 and 2019, South American leftist governments, including leaders such as Lugo in Paraguay, Morales in Bolivia, da Silva in Brazil, Correa in Ecuador, and Chavez in Venezuela, pursued economic policies aimed at integrating their nations into the global markets. However, these initiatives, particularly through extractive policies, transformed these countries into suppliers of unprocessed world goods. Regrettably, this development inflicted harm on the environment and adversely affected both rural peasant and Indigenous communities. (Gudynas 2016). Tourism in Ecuador is an important economic activity, similar to oil or mining. Consequently, it should be regulated to protect Indigenous knowledge, culture, and Nature.

Theme Gaps:

The literature reveals significant oversights in addressing the just and equitable participation of Indigenous communities in the application of their Indigenous knowledge by both lodges and tourism enterprises. Regrettably, instead of being acknowledged as a profound reservoir of wisdom, Indigenous knowledge is often commodified and reduced to a superficial cultural resource within the tourism industry. This commodification not only undermines the richness of Indigenous cultures but also perpetuates an imbalanced power dynamic between Indigenous communities and the entities benefiting from their knowledge.

Another gap in the literature pertains to the lack of proposals for ecotourism guide licenses issued by Indigenous communities. Such licenses could serve as crucial instruments for preserving and protecting Indigenous knowledge while fostering sustainable and respectful tourism practices. The lack of a well-defined framework for these licenses not only makes Indigenous communities susceptible to exploitation but also overlooks their connection with their territories.

Furthermore, the literature lacks a substantive discussion on the formulation of protocols guiding the conduct of the tourism sector in its interactions with Indigenous peoples. Establishing clear protocols is essential for fostering respectful relationships, ensuring the protection of Indigenous rights, and promoting sustainable tourism practices. These critical omissions underscore the pressing need for a paradigm shift towards a more inclusive, ethical, and culturally sensitive approach to Indigenous knowledge within the broader context of tourism. Addressing these gaps will contribute not only to the empowerment of Indigenous communities but also to the development of a more sustainable and responsible tourism industry.

2.4. Sumak Kawsai (Living Well) for Indigenous peoples in the Ecuadorian Constitution

Subtheme: Living Well vs. Western Prosperity Concept

The Living Well approach is addressed in Acosta (2017). He states that “Living Well” is a concept from Indigenous cultures in South America. This conception includes living in harmony with Nature. Community and Nature are the fundamentals on which Living Well is built. Living Well does not relate to capitalist civilization based on anthropocentrism and utilitarianism. Furthermore, within the Indigenous worldview, the meanings attached to concepts such as poverty, wealth, underdevelopment, and

development diverge from those in Western societies. For Indigenous communities “Living Well” is living in harmony with Nature and the community (Acosta 2017). Under this perspective, “Living Well” in Ecuadorian legislation implies keeping Indigenous communities safe from the disturbances derived from the development of tourist activities that take place in Indigenous territories.

Another approach to “Living Well” is Rafael Correa’s perspective. He led the Ecuadorian 21st Century socialist government when the 2008 Constitution was enacted. Correa states that Ecuador has groups of power with self-interests that are responsible for the people’s needs. For Correa, “Living Well” includes the transfer of power from “poderes fácticos (vested interests)” to “popular masses.” Ecuador has groups of power that manage economic, political, and social power. “Living Well” requires eliminating that power to improve the living conditions of the people. In fact, the traditional group of power in Ecuador should be destroyed to achieve the country’s development (Correa, 2011). Furthermore, important policies and legislation were enacted after the 2008 Ecuadorian Constitution, however, there has been no research about whether this legislation protects Indigenous knowledge concerning tourism.

Additionally, a modern approach to the constitutional reforms of 2008 in Ecuador provides Akchurin’s perspective on Nature’s rights. She remarks that the new constitutional language affirmed Nature’s intrinsic right to exist, to maintain and regenerate its vital cycles, and to be restored if damaged, as well as establishing the right of individuals and communities to bring cases on behalf of Nature to public authorities (Akchurin, 2015). This Ecuadorian perspective on Nature’s rights has a relation to Indigenous worldviews. For Indigenous peoples, the Pachamama or Mother Earth has a spirit. There is a close interdependence between Nature and Indigenous

peoples. Indeed, Indigenous peoples' "Living Well" depends on the protection of Nature. Despite the Constitutional regulation, Ecuadorian laws allow mining in protected areas by special request of the president and approval by the National Assembly (Roy et al., 2018).

Radcliffe (2012) explains that Sumak Kawsay is a form of development grounded in community participation in contrast to the neo-liberal conception of individual rights and responsibilities. Sumak Kawsay is conceptualized as a collective experience of the Indigenous peoples and nationalities, relying on a complex interrelationship between state, market, citizens, and associations. Development in this sense is embedded relationally in the interactions between diverse people, Nature, and communities. The name Sumak Kawsay and many of its conceptual aspects derive from diverse Andean Indigenous lifeways and their understanding of the relationships between individuals, society, and Nature. Ancestral thinking is eminently collective; the conception of 'living well' necessarily relies upon the idea of 'us'. The community reproduces the collective subject of rights that we all and each are one. The Ecuadorian Constitution, Article 3, includes the Sumak Kawsay principle that affirms the sustainable development and the equitable distribution of wealth and resources as being the route to 'Buen Vivir' (Radcliffe, 2012)

Subtheme: Living Well and Ecuadorian policies after the 2008 Constitution

Martinez (2017) presents a discussion of natural resource exploitation to obtain profit. He remarks that extractive projects reveal how rights are ignored by state officials and subordinated to powerful economic interests in a new phase of capitalist expansion. The main hypothesis here is that the neoliberal state generates a situation of

tense contradictions by simultaneously trying to guarantee the economic interests of transnational enterprises and the rights of Indigenous people.

The 21st-century socialism in Ecuador was ideologically opposed to neoliberalism. However, they followed the same capitalist parameters regarding expansion through the exploitation of natural resources. Erazo (2010) confirms that an important 21st-century socialist economic policy constitutes exploitation activities that affect Indigenous communities in Ecuador. He observes that the resilience of Indigenous peoples is evident through their collectivist organization. Initial support from NGO development programs allows Indigenous peoples to demonstrate collectivism through the receipt of funds and participation in projects. In fact, collectivist economic endeavors encourage Indigenous people to govern one another and govern themselves towards greater community participation. (Erazo, 2010).

Theme Gaps:

There is a significant research gap regarding the impact of the "Living Well" concept, as outlined in the 2008 Constitution, on Ecuadorian laws on tourism and Indigenous knowledge. Similarly, there is a lack of discussion surrounding the impact of 21st-century socialism's economic expansion policies on tourism and Indigenous knowledge within Ecuadorian legislation.

2.5. Indigenous participation in tourism within the Ecuadorian legislation

Indigenous territories and commodities in exploitation

Gilbert (2018) discusses the economic system as it pertains to Indigenous peoples, pointing out the violation of Indigenous territories in the Amazon. The capitalist system in Ecuador has exploited Indigenous territories to reach "global

markets” and “development”. Indeed, the production of commodities in Indigenous territories immerses violence in Indigenous communities. Indigenous peoples experience territorial struggles to flee capitalist production in the forest. In fact, its culture is threatened by companies in the Amazon (Gilbert, 2018). The Amazon is a touristic place in Ecuador. The companies that "exploit" the Amazon are not only related to mining and oil but also tourism (Films Media Group,2002). Under this framework, where capitalist interests want to earn large amounts of profit, there is no space for the safe participation of Indigenous communities in tourism.

Gudynas (2019), remarks on the paradigms of capitalism that remained during the government of "Socialism of the 21st century". This new socialism sought economic growth through the promotion of expansive economic activities, most of them carried out by corporations and large companies. The alternative to capitalist policies is the Indigenous concept of "Living Well" and the concept of "degrowth". They are grounded in ecology, bio-economics, and anti-utilitarianism (Fierro, 2017). In Ecuador, it is important to reformulate the conception of development to achieve authentic well-being for the population. The Western concept of development implies the loss, or indeed the deliberate extermination of Indigenous culture (ethnocide), and other psychologically and environmentally rich and rewarding modes of life. As a result, formerly satisfactory ways of life become dissatisfying because development changes people's perception of themselves (Wickstrom, 2003). On a national and international level, the challenge would be to end competition in the global capitalist market. In this sense, Sumak Kawsay arises as an alternative to the idea of development, questioning its essence, thus communicating directly with the reasoning of the eco-socialist critique of development addressed by authors such as Löwy (2005) and Foster (2018).

Subtheme: Indigenous Governance and protected areas

In Ecuador, conflicts over land ownership are exacerbated by the fact that ancestral lands and Indigenous territories overlap with protected areas (Rights and Resources Initiative, 2015). Sillitoe and Stevens (2015) point out that Indigenous peoples inhabit most countryside territories in the world and, often, they have the inherent responsibility for Nature's conservation.

Territories of Life (2021) reports that 40% of Ecuadorian Protected Areas are in Indigenous territories. Some policies on biodiversity conservation had a colonial approach in which National Parks and reserves were established and Indigenous peoples were often forcibly expelled (Sillitoe and Stevens, 2015). Furthermore, Indigenous peoples do not have legal title over their lands within protected areas. As a result, Indigenous peoples lack legal support that would allow for their participation in economic activities carried out in their traditional lands that are declared National Parks (Cisneros & McBreen, 2010). Harmful impacts on biodiversity conservation, Indigenous communities, and the relationship between these communities with the dominant society commonly occur when dominant societies do not allow the participation of Indigenous peoples (Sillitoe and Stevens, 2015).

Honey (2008) observes that regardless of the mutual interdependence between Indigenous communities and Nature, colonial politics has dispossessed Indigenous communities from their ancestral territories in the name of development as well as in the name of the environment. Indigenous peoples are removed from their ancestral territories to make way for extractivism, protected areas, and tourism. Indigenous peoples expelled from National Parks view tourism, including ecotourism, as another form of exploitation. Not only Indigenous tourism but "real" ecotourism could

empower local people and provide financial benefits (Honey, 2008). Facing land dispossession and capitalist invasion of Indigenous territories, Indigenous tourism involves controlled tourist access to cultural sites, natural resources, and tribal lands (Zeppel, 2006).

The Ecuadorian Indigenous peoples have a historical role of defending Nature, not only to preserve balanced ecosystems but also to protect Indigenous cultures associated with them. Indeed, there is a decolonization process through Indigenous environmental activism. According to Mansbridge (2018), the concept of 'Anthropocene,' first used by ecologist Eugene Stroemer and by Nobel Prize-winning chemist Paul Crutzen in 2002, means that humans have become a geological force that affects the future and composition of the planet. Anthropogenic climate change is based on the human-centred projects of colonialization as well as the material basis of waste systems. Despite ongoing neocolonial development practices around the world, Indigenous peoples are actively adapting to the current conditions, shaping politics, and formulating new strategies of resistance (Mansbridge, 2018). As evidenced by the 2008 Constitution, Indigenous peoples in Ecuador impact Ecuadorian legislation. Moreover, the Indigenous National Party (Pachacutik) proposes an ecological agenda to protect Nature and Indigenous territories.

Furthermore, Latip et al. (2018) acknowledge the significance of the participation of Indigenous peoples in tourism. Their study, exemplified through the conservation process and tourism development in Sabah, Malaysia, utilizes the Motivation, Opportunity, and Ability model (MAO model). Conclusively, the researchers assert that tourism has the potential to transform the lives of Indigenous peoples. Therefore, considering the perspectives and involvement of Indigenous

communities becomes crucial in the tourism context. Active engagement in the planning, implementation, and regulation of tourism activities is vital for fostering Indigenous interest. Additionally, the establishment of mechanisms ensuring the equitable distribution of benefits remains an essential aspect, as emphasized by Latip et al. (2018).

In Ecuador, the Plurinational Federation of Community Tourism of Ecuador (FEPTCE), established in 2002, actively supports community-based tourism entrepreneurship. This initiative, led by diverse Indigenous peoples and nationalities across the four natural regions of Ecuador, is aimed at empowering Indigenous and local communities to perceive tourist activities as cultural encounters rather than mere attractions. Emphasizing an active role and rejecting a passive representation as folkloric attractions, the organization's fundamental objective is to foster and fortify Community-Based Tourism (CBT) initiatives. The central mission of FEPTCE is to enhance the quality of life for Indigenous and local communities (Maldonado et al. 2020). The International Regulations on Access on Benefit Sharing (IRABS) is suitable for Indigenous communities as long as they preserve their Indigenous knowledge (Bavikatte and Jonas, 2010). Furthermore, the Nagoya Protocol, through Articles 5, 6, 7, and 15, actively upholds the principle of benefit-sharing by establishing a framework for the ethical and equitable utilization of genetic resources and associated Indigenous knowledge (Nagoya Protocol, 2014). Similarly, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIPs) and the American Declaration on the Rights of Indigenous Peoples (ADRIP) recognize the principle of prior and informed consent. Specifically, Articles 10, 11(2), 19, 28(1), and 29(2) of the UNDRIPs (UNDRIPs, 2007), along with Articles 23(2), 28(3), and 29(4) of the ADRIP (ADRIP, 2016), affirm

the critical importance of prior and informed consent in issues affecting Indigenous peoples' lands, territories, and resources. Therefore, it is imperative to engage in prior consultation with Indigenous peoples before initiating any tourist activity that may impact their communities, livelihoods, culture, and Nature. While it is true that the Nagoya Protocol intricately addresses technical and transnational commerce issues, Indigenous communities should actively participate in and benefit from the development of activities on their traditional lands. (Teran, 2016). Activities such as logging, mining, oil drilling, or ranching are typically conducted by transnational companies that have the economic and political power to establish businesses and solve problems according to their interests. These capitalist modes of land exploitation pose threats to Indigenous territories, natural resources, and the Indigenous "in situ" knowledge. On the contrary, Indigenous ecotourism seeks to assert Indigenous rights to the land and benefit sharing, maintaining cultural knowledge, and Nature protection while providing employment. Indigenous tourism could represent more than a means of subsistence for Indigenous peoples since their traditional livelihood is affected by deforestation or hunting reduction. Subsistence living for Indigenous peoples involves everyday cultural, spiritual, and social interactions (Corntassel & Bryce, 2018).

Theme Gaps:

Throughout this investigation, a critical absence has come to light: the lack of regulations mandating companies to actively involve Indigenous communities in the development of tourism activities within protected areas and Indigenous territories. Despite the importance of fostering inclusive practices, the Ecuadorian current legal framework does not explicitly address the necessity for companies to engage in such

partnerships, potentially leaving Indigenous communities marginalized in decisions affecting their lands and cultural heritage.

Moreover, this research has revealed a gap in Ecuadorian legislation concerning the protection of Indigenous knowledge within the tourism industry. The absence of specific measures addressing this crucial aspect may expose Indigenous communities to potential exploitation and cultural appropriation, emphasizing the need for legal provisions that actively safeguard their Indigenous knowledge and practices.

Furthermore, this report highlights a notable oversight in Ecuadorian legislation regarding the role of Indigenous tourism in environmental protection and the preservation of Indigenous knowledge. The lack of acknowledgment within the Ecuadorian legal framework raises concerns about the sustainability and respect for Indigenous cultures in the context of tourism. A more comprehensive legal approach is essential to recognize the unique contributions of Indigenous communities and ensure the long-term preservation of their cultural and environmental heritage.

Having identified crucial gaps in Ecuadorian legislation concerning Indigenous participation in tourism, the protection of Indigenous knowledge, and the role of Indigenous tourism in environmental conservation, we now shift our focus to Chapter 2, where we delve into the research methods and design employed to explore these legal and cultural aspects.

Chapter 2: Research Design and Methods

1. Overview of Research Design

This research employed a transformative inquiry method that skillfully integrates politics and a political change agenda to address social oppression. (Mertens 2010). The Qualitative Design analyses human opinions, themes, and motivations (Creswell, 2009). Through analysis, the strategy will focus on the production and relations of tourism policies, legislation, and Indigenous peoples, giving importance to grey literature produced by Indigenous organizations and authors (Chilisa 2010). The analysis will encompass various aspects, including:

- a) Literature review: analysis of the legislation and analysis that jurists and scholars have regarding the research questions, themes, and sub-themes.
- b) Legal hermeneutics: this method will allow the interpretation of the law through its spirit according to the purpose for which it was enacted.
- c) Officials and Indigenous peoples will address inquiries designed to clarify the content of official documents, policies, and legislation. The aim is to follow up on themes or topics identified within official sources.

The main question for these interviews is about the measures that the institutions they represent have taken to protect Indigenous knowledge and culture from Western tourism practices that use Indigenous communities and culture as tourist attractions. The following officials and Indigenous persons were contacted:

1. Ana Tasiguano, an Indigenous person from the Llano Grande commune of the ancestral Kitu Kara people. She is a technician of the Ecuadorian Council for the Equity of Peoples and Nationalities

- What is the goal that the National Plan of Development has in relation to tourism

- In what way does the National Plan of Development establish protection measures for Indigenous knowledge against Western tourism practices?

2. Ana Garcia, Deputy Minister of Tourism

- How is the responsibility of the Tourism Ministry expressed in the law in regard to agreements between Indigenous communities and tourist operators to ensure equity, participation, and protection of Indigenous knowledge?

- How does the National Plan of Development address tourism concerning Indigenous knowledge.

3. Lauro Guailas, Indigenous Shuar from the Amazon, former President of the Ecuadorian Pluricultural Federation of Community Tourism and community Shuar tourist operator manager.

- In your experience as the former President of the Ecuadorian Pluricultural Federation of Community Tourism, have you noticed any projects intended to protect the Indigenous knowledge against Western tourism practices?

- How does the Ecuadorian Pluricultural Federation of Community Tourism operate regarding the protection of Indigenous knowledge?

- What is the difference between the Shuar community tour operator and the Shuar community tourism center?

4. Angel Ramirez, Vice Chancellor of the Ecuadorian Indigenous University Amawtsy Wasi.

- What programs does the University have regarding the protection of Indigenous knowledge in relation to tourism?

- Is the University working with the government institutions to protect Indigenous knowledge in relation to tourism?

5. Margarita Hernandez, the Ecuadorian Superintendent of popular and solidarity economy.

- How does Ecuadorian law protect the use of cultural assets, such as Indigenous knowledge, of Indigenous communities against Western tourism practices?

- Are there current plans to enhance the protection of cultural assets from Western tourism practices?

6. Doris Solis, sociologist, university professor and former Tourism Minister (2003), former Regional Coordinator for the Andean and South American countries of the Sustainable Tourism and Poverty Reduction Program (STEP) of the World Tourism Organization (2005), former Minister of Cultural and Natural Heritage (2007), secretary of peoples and social movements (2009) former Minister of Politics and Decentralized Autonomous Governments (2010), former Minister of Economic and Social Inclusion (2012), member of the National Assembly for the Azuay province (2017).

- How does Ecuadorian legislation protect Indigenous knowledge against Western tourism practices?

7. Aldo Salvador, tourism expert lawyer.

- Can you provide examples within the law and legislation of how the Ecuadorian laws and the Ecuadorian state protect Indigenous communities' Indigenous knowledge against Western tourism practices?

- Are there instances in the relationship between Indigenous communities and Western tourism companies where one or the other is not acting within the laws and legislation?

8. Paulina Mosquera, Ecuadorian National Director of Biological access and Indigenous knowledge.

- How does the legislation protect Indigenous knowledge against Western tourism practices?

- Has the institution that you represent received complaints about the misappropriation of Indigenous knowledge by tourism operators? If so, please explain the context of those complaints and how they were addressed.

9. Remigio Rivera, formerly, 29 years with oil company experience as an Indigenous social issues manager regarding the Waorani community in the Yasuni protected area of the Amazon:

- In your work experience, how did the oil companies address issues of concern for the Waorani Indigenous peoples in the Yasuni?

- In your work experience was there a working relationship between the oil companies, the Waorani Indigenous peoples in the Yasuni, and the Western tourism companies?

10. Maria Manta, member of the Indigenous community Agua Blanca in Machalilla manufacturer and seller of handicrafts in the community

- Are the handicraft seller's businesses for the benefit of the whole community as part of the community's management of tourism?

11. Tingo Maldonado member of the Indigenous community of Agua Blanca in Machalilla. tour guide at the community museum.

- How does the community manage the profit that is earned from the museum's tourism?

12. Marco, a worker at the restaurant in the community

- Is this restaurant part of the community tourism project?

1.2 Research Sources

In the exploration of Indigenous participation in Ecuadorian tourism, it is imperative to consider various aspects, including:

a) Ecuadorian legislation in relation to Indigenous knowledge protection, focusing on the relationship of Indigenous knowledge and tourism to determine if the Ecuadorian legislation protects Indigenous knowledge in relation to tourism

b) International legislation regarding the protection of Indigenous knowledge in relation to tourist activities. Observing international law in relation to the protection of Indigenous knowledge in tourism

c) Government policies: analyzing policies related to tourism, protected areas, and Indigenous peoples since the 2008 Constitution.

d) Indigenous members participating in community tourism.

e) Communications with Ecuadorian peoples and familiars with Ecuadorian tourism

f) Communications with officials from the Ecuadorian government and organizations regarding the participation of Indigenous peoples in tourist activities.

g) Experienced government authorities

2. Data collection procedures

2.1. The Literature Review

Outstanding literature involves in this project the Ecuadorian policies and legislation as relevant according to the research questions (themes and sub-themes).

2.2. Hermeneutics method

In line with this method, the analysis of the law was conducted considering its spirit and the purpose for which it was enacted, implying a commitment to social justice (Beuchot, 2013). Ecuadorian policies and legislation were examined based on the intention of justice and equity that the legislative institution sought through the creation of law.

2.3. Inquiries regarding legislation and policies

The criteria for selecting sources were based on the representative position in the government and Indigenous organizations. Given the potential sensitivity surrounding information requests via email, a key concern was the lack of trust among Indigenous leaders and government authorities. To overcome this situation, initial contact was made through acquaintances who could facilitate introductions to appropriate government and Indigenous organizations personnel, while bearing in mind institutional and community protocols for requesting information.

3. Ethical issues

Throughout the research process, careful attention was given to monitoring and mitigating bias, and methods were diligently developed to ensure accuracy in data collection, analysis, and the presentation of findings. The dissemination of findings to Indigenous and governmental institutions will be conducted, thereby emphasizing the ethical commitment inherent in this study. Margarita Hernandez, the Ecuadorian Superintendent of the Popular and Solidarity Economy, requested that I prepare guidelines based on my thesis findings. The Superintendence of Popular and Solidarity Economy (SEPS) will circulate this document as an ethical guideline to tourism stakeholders, including Indigenous communities.

This mechanism aims to not only share findings but also actively involve important Ecuadorian institutions, such as the SEPS for its acronyms in Spanish, in the socialization process, thereby ensuring that my search is transformative and directly beneficial to those it concerns.

4. Analysis

I conducted a thorough analysis of themes and sub-themes, extracting information from literature, policies, and legislation. I then examined and interpreted the findings, incorporating insights from the practical experiences of government officials, Indigenous individuals, and leaders in the tourism sector. These insights were

derived from individuals who either applied the law, policies, and legislation or were directly impacted by them.

Chapter 3: Protection of Indigenous knowledge in relation to Western tourism within the Legislation

1. Intangible cultural heritage protection in Ecuador

Intangible and tangible Indigenous culture is safeguarded by the Ecuadorian constitution, as explicitly outlined in Article 379. This article establishes that: "tangible and intangible cultural heritage relevant to the memory and identity of individuals and collectives, and object of safeguarding by the State, among others, includes: 1) Languages, forms of expression, oral tradition, and various cultural manifestations and creations, including those of a ritual, festive, and productive nature." Additionally, Article 380 of the Constitution outlines the State's responsibilities: 1. "To ensure, through permanent policies, the identification, protection, defense, conservation, restoration, dissemination, and enhancement of tangible and intangible cultural heritage, the historical, artistic, linguistic, and archaeological wealth, the collective memory, and the set of values and manifestations that shape the plurinational, pluricultural, and multiethnic identity of Ecuador." (Ecuadorian Constitution, 2008). The Constitution explicitly mandates the protection of intangible cultural heritage by the State, emphasizing its status as a valuable asset safeguarded under the principle of legality. In essence, this means that the Constitution recognizes and ensures the safeguarding of intangible cultural heritage as a fundamental right, with the State assuming the responsibility of upholding and preserving it (Ynsfran, 2020). Thus, even if there is no legislation establishing the need for permits for the use of intangible cultural heritage, it should not be used in the tourism market by those who are not its rightful owners. Furthermore, Article 15 of the Ecuadorian Tourism Law establishes

one of the Ministry of Tourism's duties to promote tourism in Indigenous and peasant communities, while Article 3 establishes the principle of Indigenous community participation with their culture and traditions in the tourism activity, preserving Indigenous people's identity. These legal provisions show how the Ecuadorian State gives importance to Indigenous participation in tourism but does not establish concrete measures to preserve Indigenous identity and culture, as well as their fair participation in the tourism industry.

Indeed, Article 12 of the Tourism Law states that: "When organized and trained local communities wish to provide tourism services, they will receive from the Ministry of Tourism or its delegates, under equal conditions, all the necessary facilities for the development of these activities." (Tourism Law, 2014, p.3). Specifically, the article identifies a position on "equality of conditions," with the intent of the law to mitigate the inequality of conditions between the parties in a relationship. This has been achieved, for instance, through leasing laws, designed to safeguard tenants, considered the most vulnerable in the relationship, by establishing regulations and protections in their favor. The fact that Indigenous communities do not have a special legal framework according to their nature and vulnerability within the Ecuadorian tourism law makes it very difficult for Indigenous communities to meet all the technical and legal requirements to provide services as Tour Operators. Therefore, Indigenous communities are at the mercy of Western tourist operators who use them as third-party providers of tourism services without recognition or protection of their intangible cultural heritage. "Western" here refers to the cultural, economic, and political systems associated with Western Europe and North America (Tourism Law, 2014: Regulation of Community Tourism Centers of Ecuador, 2022; L. Guailas, community Shuar

tourist operator manager, communication, November 6th, 2022). Furthermore, neither the Tourism Law nor the Community Tourism Centers Regulation regulates the protection of Indigenous knowledge related to tourism. Ultimately, national legislation has left the use of intangible cultural heritage vulnerable to private companies' use driven mainly by the pursuit of profits. In the National Development Plan or Government Plan 2021-2025, the national government links tourism incentives to the protection of natural heritage but not to the protection of cultural heritage. Although the Ecuadorian National Government Plan talks about the revaluation of ancestral culture (National Planning Secretariat, 2021) revaluing is not the same as protecting. In fact, tourism operators could argue that they are revaluing ancestral culture when they use it as part of their tourist packages.

The Organic Code of the Social Economy of Knowledge, Creativity, and Innovation (COESI) serves as the legal framework for protecting intellectual rights and Indigenous knowledge in Ecuador. Article 512 of COESI specifically states, "The recognition of rights over Indigenous knowledge includes the expression of its culture." (Organic Code of the Social Economy of Knowledge, Creativity, and Innovation, 2016, p.137). Article 511 of the same legal body discusses cultural expression and the intangible component of culture, stating, "the recognition and protection of collective rights over the intangible component and traditional cultural expressions shall be complementary to rules on access to genetic resources, cultural heritage, and other related norms. The spirit of exercising these rights is to preserve and perpetuate Indigenous knowledge of communities, peoples, nationalities, and communes, seeking its expansion and protecting it from illegitimate commercial appropriation" (Organic Code of Social Economy of Knowledge, Creativity, and Innovation 2016, p.136). This

article does not specifically address the protection of intangible culture and cultural expressions; rather, it considers them as complementary to other legal frameworks. However, there is no other legal framework in Ecuador that specifically safeguards intangible culture in relation to tourism. Moreover, article 521 of the COESI establishes as part of the collective heritage of an Indigenous community worthy of protection the tangible and intangible forms of cultural expressions. Intangible forms of cultural expressions, as identified in article 521 describe traditional cultural expressions as “myths or legends, symbols, dances, traditional games, traditional songs and phonographic interpretations, Indigenous names, and ritual ceremonies, regardless of whether they are fixed on any type of support” (Organic Code of the Social Economy of Knowledge, Creativity, and Innovation 2016, p.139). Neither this article nor any other Ecuadorian legislation specifically safeguards intangible culture in the context of tourism. Furthermore, according to the National Director of Plant Varieties and Indigenous knowledge of Ecuador, Paulina Mosquera, there have been no complaints related to access to the use and exploitation of Indigenous knowledge since 2016 (P. Mosquera, Communication, August 9, 2022). This data suggests that there is a lack of active protection of Indigenous knowledge. Later on, we will explore how tourist agencies exploit Indigenous knowledge and cultures for financial gain. Despite this reality, there are no documented legal claims for the protection of Indigenous knowledge.

Another noteworthy aspect of the Organic Code of the Social Economy of Knowledge, Creativity, and Innovation (COESI) is that it explicitly recognizes Indigenous communities, peoples, and nationalities as legitimate actors who can assert their rights to access, use, and protect ancestral knowledge. It is important to note that

associations or other entities cannot demand these rights on behalf of Indigenous peoples. Additionally, the demand must prove the access, use, or misuse of their ancestral knowledge (Organic Code of the Social Economy of Knowledge, Creativity, and Innovation 2016; P. Mosquera, Ecuadorian National Director of Biological Access and Indigenous knowledge, communication, August 9, 2022). The fact that the law does not allow associations to demand access, use, or misuse of ancestral knowledge leaves non-governmental organizations out as actors in the protection of ancestral knowledge. Moreover, this restriction may limit the ability of Indigenous communities to access justice, particularly if they lack the resources or legal expertise to navigate the legal system on their own. Indeed, this restriction may perpetuate existing power imbalances by limiting the ability of marginalized communities to challenge the actions of more powerful actors, such as corporations or the state. Given this important limitation in representation to demand rights on behalf of Indigenous Communities, it is urgent to strengthen Indigenous Communities so that they can protect their ancestral knowledge. On the other hand, the COESI requires that Indigenous Communities provide evidence of access, use, or improper exploitation of ancestral knowledge. However, obtaining such evidence presents significant challenges, particularly in cases involving intangible cultural heritage. Intangible cultural heritage includes traditions, rituals, and knowledge passed down orally through generations, making it inherently difficult to document and prove instances of undue access or exploitation. Furthermore, cultural tourism often seeks to access precisely this type of heritage, further complicating the identification and verification of unauthorized use. Therefore, Indigenous communities face a significant challenge in collecting tangible evidence of the misappropriation of intangible assets, such as their cultural heritage.

In fact, the hosting Indigenous Community may grant permission for visitors to enter their territory, but it is practically impossible to trace what these visitors do with the intangible culture they have experienced, including any photographs or videos they may have taken. While Article 161 of the COESI mandates that no photograph depicting a person's likeness can be used without their explicit authorization, the final clause of the same article stipulates that authorization is not necessary when the photographed individual is a secondary element of the image (COESI, 2016). This scenario could occur in photographs of Indigenous communities where individuals are part of the composition, but none are the focal point. Notably, COESI does not address the filming of individuals or Indigenous communities. This serves as an example of the absence in Ecuadorian legislation of specific norms and processes that defend Indigenous intangible culture in relation to visitors or tourists. According to George (2010), it is recommended to introduce fees for visitors to pay to the host community. These fees can be used to establish a development fund that is managed by the community and can be utilized for various development projects. An exemplary instance of this can be observed in Ecuador's Agua Blanca community, where fees are levied on tourists who visit to immerse themselves in the community's intangible cultural heritage, such as their way of life, beliefs, values, and practices. George (2010) observes that although certain aspects of a culture may be protected by copyrights, intangible aspects, such as intangible cultural heritage, cannot be copyrighted. For cases like these, it is necessary for legislation to establish new mechanisms for protecting and ensuring equitable sharing of benefits. The Superintendent of Popular and Solidarity Economy in Ecuador, Margarita Hernandez, confirms that there is currently no law or competent authority regulating the use of intangible cultural assets belonging to

Indigenous Communities (M. Hernandez, communication, August 19, 2023). The Ecuadorian State offers protection through permit requirements, however, if permits are not required for the touristic use of intangible cultural assets belonging to an Indigenous Community, it indicates that they do not have legal protection. The absence of a law or competent authority mandating permit requirements means that the intangible culture of an Indigenous community is available for unrestricted use by tour operators. Therefore, tourism operators in Ecuador have the freedom to bring tourists to Indigenous communities and exploit their intangible culture without any oversight or permits. (M. Hernandez, the Ecuadorian Superintendent of popular and solidarity economy, communication, August 19, 2022). Although Ecuador has general laws protecting intangible culture, there is a lack of established authorities overseeing it through concrete processes of permits or licenses. While general regulations exist, their specific enforcement is not defined.

According to Article 4 of the Tourism Law, its primary objectives are to promote the development of the tourism industry, protect tourists, and safeguard tourist goods and services. This ensures that both the industry and visitors are protected while maintaining the quality and safety of the tourism experience. These points were reiterated by both Ana Garcia, Vice Minister of Tourism during a Communication on November 17, 2022, and Aldo Salvador, tourism expert lawyer, during a Communication on October 20, 2022. The Ministry of Tourism, in conjunction with the Tourism Law, aims to protect the interests of tourists while also promoting tourism as a profitable Western enterprise that brings substantial economic benefits to the State. The Tourism Law (2014) and the National Planning Secretariat (2021) provide a framework for ensuring that tourists are safeguarded while facilitating the growth and

development of the tourism industry. This sentiment was echoed by Ana Tasiguano, Technician of the Ecuadorian Council for the Equity of Peoples and Nationalities (Communication on September 8, 2022)–Although the Ecuadorian Constitution indeed declares the protection of intangible cultural heritage, in practice, neither the Ministry of Tourism, the Tourism Law nor the Organic Code of Social Economy of Knowledge, Creativity, and Innovation (COESI) have a designated role or authority in protecting the intangible cultural heritage used in tourism. Certainly, the absence of defined processes and designated authorities obstruct the application of the intangible culture heritage protection legal framework. The current lack of protection for intangible cultural heritage poses a significant threat, as it enables the exploitation of Indigenous communities' rich cultural heritage within the tourism industry. This pressing concern requires prompt attention and decisive action from relevant authorities. Furthermore, it is crucial to acknowledge that intangible cultural heritage, including traditional cultural expressions (TCEs), necessitates strong safeguards within the tourism industry. Addressing these issues is pivotal in promoting sustainable and respectful tourism practices that effectively preserve the invaluable cultural legacy of Indigenous communities.

2. Traditional Cultural Expressions and Tourism

UNESCO recognizes the significance of safeguarding traditional cultural expressions, categorizing them into four types of expressions considered as TCEs: verbal expressions (folktales, folk poetry, and riddles), musical expressions (folksongs and instrumental music), expressions by actions (dances, plays, and artistic forms or rituals), and tangible expressions (Cruz, 2006; Convention for the Safeguarding of the

Intangible Cultural Heritage, 2003). The World Intellectual Property Organization (WIPO) states that “the traditional cultural expressions (TCEs), also called ‘expressions of folklore’, may include music, dance, art, designs, names, signs and symbols, performances, ceremonies, architectural forms, handicrafts, and narratives, or many other artistic or cultural expressions. WIPO defines the importance of protection of TCEs as they relate “to the promotion of creativity, enhanced cultural diversity and the preservation of cultural heritage. TCEs are integral to the cultural and social identities of Indigenous and local communities, embody know-how and skills, and transmit core values and beliefs” (World Intellectual Property Organization, Documentation and Management of TCEs, p.1). Despite the crucial need to safeguard the cultural and social identities of Indigenous and local communities, as well as their valuable knowledge and skills, Ecuadorian legislation currently lacks defined processes or specific authorities to protect them from exploitation as mere cultural commodities within the tourism industry.

Moreover, the UNESCO Universal Declaration on Cultural Diversity (2001), recognizes culture as spiritual, material, intellectual, and emotional features of society or a social group, and that it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs (Declaration on Cultural Diversity, 2001). Furthermore, Indigenous knowledge and culture are transformed, adapted, and transmitted as a way of life. Despite the significant importance of safeguarding Traditional Cultural Expressions (TCE) and Indigenous ways of life from tourism exploitation, it is concerning that current international regulations lack specific references to their protection within the context of tourism. Indeed, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) protects

TCEs from general trade but not from tourism. (Setyaguining et al. 2013). The principles for safeguarding cultural expressions could potentially be extended to cover tourism cases. However, it is evident that tourism is not regarded as an activity that could significantly impact Indigenous rights to the same extent as general trade, which is explicitly addressed in the norm. Moreover, Article 20.1(b) mandates that signatory parties, such as Ecuador, actively consider the relevant provisions of the Convention when interpreting or applying other treaties. (Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005). This implies that the protection of Traditional Cultural Expressions (TCEs) as stated in the Convention, regarding general trade, should be considered when applying other treaties, including those related to the tourism industry.

Furthermore, UNESCO's Intangible Cultural Heritage (1992) and the Yamato Declaration on Integrated Approaches for Safeguarding Tangible and Intangible Cultural Heritage (2004) also recognize cultural heritage as composed of both tangible and intangible cultural heritage. In the context of cultural tourism, it is mainly Indigenous peoples' cultures that are accessed. According to the World Tourism Organization of the United Nations (UNWTO), cultural tourism is:

A type of tourism activity in which the visitor's essential motivation is to learn, discover, experience, and consume the tangible and intangible cultural attractions/products in a tourism destination. These attractions/products relate to a set of distinctive material, intellectual, spiritual, and emotional features of a society that encompasses arts and architecture, historical and cultural heritage, culinary heritage, literature, music, creative industries, and

the living cultures with their lifestyles, value systems, beliefs, and traditions (UNWTO 22nd General Assembly, 2017).

Furthermore, the Global Code of Ethics for Tourism's Article 3 asserts that tourism ought to promote and respect the cultural heritage of Indigenous Peoples (Global Code of Ethics for Tourism, 1999). Therefore, relying solely on business interests to manage Indigenous peoples' cultural heritage is risky. Instead, the "triple elixir" approach, as proposed by Setyaguing et al. (2013), involves collaboration among academia, government, and the business sector (tourism) to safeguard Intangible Cultural Heritage shared in tourism, incorporating principles for protecting Indigenous knowledge, including Traditional Cultural Expressions. In Ecuador, adopting the "triple elixir" approach has the potential to strengthen the effectiveness of cultural heritage protection. This can be accomplished by promoting collaboration among academia, government entities, and businesses engaged in tourism, thus establishing a more comprehensive and cooperative framework. This approach is crucial for strengthening the enforcement of legislation dedicated to safeguarding Indigenous Cultural Heritage. Implementing measures to protect intangible cultural heritage as Indigenous ways of life are crucial for states to prevent the Western tourism industry from exploiting or appropriating Indigenous knowledge and cultural practices. This is essential to ensure that Indigenous peoples' cultural heritage is protected and preserved for future generations.

3. Cultural Heritage and tourism

UNESCO, in its history, has defined cultural heritage twice. The initial definition was in 1972, followed by another one in 2003 (World Dance Heritage, 2023).

The 1972 definition considered cultural heritage as aesthetic vestiges of monuments, groups of buildings, and sites "of outstanding universal value from the historical, aesthetic, ethnological, or anthropological point of view" (World Heritage Convention, 2021, p.1). It was in 2003 when UNESCO, for the first time in its history, introduced the concept of 'Intangible Cultural Heritage.' Indeed, Article 2 of the 2003 Convention establishes that intangible cultural heritage includes:

“The practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artifacts, and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature, and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity” (UNESCO, Intangible Cultural Heritage, 2003).

The difference in the definition of Cultural Heritage from 1972 and 2003 is pivotal in the shift from a static and materialistic view of heritage to one that includes intangible elements and in which people are central. These definitions are in the word ‘conventions’ meaning that they define rules to which UNESCO’s member states, such as Ecuador, should adhere to them as legal obligations (World Dance Heritage, 2023). In addition, the growing emphasis on the preservation of cultural heritage is presently a topic of extensive discussion in academic circles and is starting to influence preservation practices. This development has consequences for how conservationists and preservationists undertake their projects. Cultural heritage encompasses both tangible and intangible elements of a culture. In fact, the intangible aspects of cultural

objects are now being recognized and valued on an equal footing with, and sometimes even more than, their tangible counterparts (Ogden,2007).

In Ecuador, it is the State's responsibility, as outlined in Article 379 of the Constitution, to protect the 'intangible cultural heritage.' However, as noted by Margarita Hernandez, the Ecuadorian Superintendent of Popular and Solidarity Economy, the use of cultural assets within an Indigenous community is not protected by Ecuadorian legislation because they do not require a usage permit. The legal system does not assign it sufficient value since its use is not recognized as an officially indexed economic activity. Indeed, Margarita Hernandez notes that the transmission of intangible cultural heritage by an Indigenous Community in tourism or, in other words, the cultural experience provided to tourists is not categorized in the International Standard Industrial Classification of All Economic Activities (ISIC) or the Clasificación Industrial Internacional Uniforme (CIIU) in Spanish. As a result, it cannot be considered an economic activity (M. Hernandez, the Ecuadorian Superintendent of popular and solidarity economy, Communication, August 19, 2022). The absence of this provision in the legislation can be traced back to the initial version of the International Standard Industrial Classification (ISIC) approved by the United Nations in 1948. This classification system has since served as a benchmark for member countries in categorizing their economic activities (United Nations, 2023). Teran (2016) points out that various aspects of Indigenous knowledge ownership involve the entitlements of Indigenous knowledge holders to fair and equitable benefit-sharing, the realization of prior and informed consent (PIC), and the establishment of mutually agreed terms (MAT). The intent is to formulate a comprehensive national access and benefit-sharing legal framework that outlines Indigenous people's and local

communities' roles, responsibilities, and active involvement in the decision-making process. (Teran, 2016). Tour operators have the freedom to bring tourists to Indigenous communities and promote the intangible Indigenous culture that stems from these cultural experiences, with no control or oversight. Essentially, there is presently no designated Ecuadorian authority responsible for safeguarding the "intangible cultural heritage" accessed within the tourism industry. As highlighted by Ashworth (2013) the local culture serves as a paramount resource for cultural tourism within a community. Furthermore, Ecuador has demonstrated its commitment to promoting responsible tourism practices by signing the Global Code of Ethics for Tourism in 1999. Article 5 of the Code emphasizes the importance of involving local populations in tourism activities and ensuring they receive fair and equitable shares of the economic, social, and cultural benefits generated by tourism (Global Code of Ethics for Tourism, 1999). However, within the context of Ecuadorian legislation, there is a lack of processes and designated authorities to protect Indigenous intangible cultural heritage utilized within the tourism industry.

4. Customary Law and protection of intangible cultural heritage

Many Indigenous peoples in the Andean region have made statements supporting the strengthening of the role of customary law for the protection of Indigenous knowledge and Traditional Cultural Expressions (TCE). Indigenous fora in the region, such as the Andean Community (CAN), give voice to the collective and integral Indigenous knowledge of Indigenous peoples. They recommend that for the protection of such knowledge, a choice be made of the specific ancestral systems of Indigenous peoples based on customary law and specific cultural practices, allowing communities to have greater consolidation of their traditional internal structures (Cruz,

2006). The Ecuadorian Constitution has taken this into account, recognizing and guaranteeing the rights of Indigenous peoples, including their institutions. It acknowledges their right to exercise their ancestral jurisdictions, which may include mechanisms of their own justice system, in accordance with national law and human rights. The Constitution affirms the application of Indigenous justice to their own members within their territorial scope, as long as it does not contravene the fundamental rights established in the Constitution and the law (Ecuadorian Constitution, 2008).

Customary law will be effective to protect TCE and Indigenous ways of life from misappropriation by tourism companies as long as the states support the enforceable practices of Indigenous customary law within the national legislation. Indigenous peoples could establish the terms of access to their TCE and traditional ways of life in relation to tourism through Community Protocols. According to Paulina Mosquera, the National Director of Plant Varieties and Indigenous Knowledge of Ecuador, since 2017, Ecuador has been conducting workshops with Indigenous communities to help them develop their community protocols and protect the access, use, and benefit-sharing of their Indigenous knowledge. These workshops aim to safeguard Indigenous knowledge in accordance with Article 12 of the Nagoya Protocol, which focuses on the protection of Indigenous knowledge associated with the use of biodiversity (P. Mosquera, Ecuadorian National Director of Biological Access and Indigenous Knowledge, Communication, August 9, 2022). It is worth considering that these workshops are being conducted in order to implement Article 12 of the Nagoya Protocol, which specifically addresses the protection of Indigenous knowledge associated with the use of genetic resources. However, it does not cover access to intangible cultural heritage, which is utilized in cultural tourism.

The development of Biocultural Community Protocols (BCPs) by Indigenous and Local Communities (ILCs) is one way in which communities can implement national and international laws to protect their Indigenous knowledge and foster their self-determination. BCPs represent a protocol developed after a community undertakes a consultative process and are intended to reflect customary laws related to their Indigenous knowledge and resources (Bavikatte and Jonas, 2010). In this sense, it is important to emphasize that Article 57 of the Ecuadorian Constitution recognizes the collective right of Indigenous peoples to strengthen their traditions and institutions, including the “creation, development, application, and practice of their own customary law.” Additionally, Article 171 of Ecuador’s 2008 Constitution acknowledges the jurisdiction of Indigenous justice, which applies to Indigenous peoples according to their ancestral traditions and their own customary law. While it is true that Ecuador is one of the few countries in the region that has introduced Community Protocols (Nemoga and Amaris-Alvarez, 2023), the Ecuadorian state should establish a mechanism that not only assists certain Indigenous communities in developing Community Protocols, as it currently does but also implements a system to empower each Indigenous community to formulate its unique Biocultural Community Protocol (BCP). This is imperative due to the diverse Traditional Cultural Expressions (TCEs) and Indigenous ways of life that vary from one Indigenous community to another.

Chapter 4: Participation of Indigenous communities in tourism while safeguarding their Indigenous knowledge within the Ecuadorian Legislation

1. Internalized racism and ventriloquism

Colonization has been a long and painful process in Ecuador that continues to this day. Currently, we find an Ecuadorian population with Indigenous roots that identify as Mestizo while relating more to their Spanish heritage rather than their Indigenous ancestors. This tendency responds to an attempt to be free from the racist violence and oppression that Indigenous peoples continue to suffer in Ecuador. In fact, being identified as Indigenous makes them vulnerable to oppression, seeking to be seen like their oppressors they prefer to identify themselves as Mestizos. The oppression can affect the relationship between oppressors and the oppressed, alienating the oppressed who want to resemble the oppressors (Freire, 2005). In this regard, it is common to find visible Indigenous individuals in Ecuadorian cities, like Quito, rejecting their Indigenous roots, calling to each other as 'you are more Indian than me'. Some Indigenous individuals actively reject their identity as Indigenous peoples due to the negative connotations and historical oppression associated with it. Moreover, the effects of colonization have contributed to the degradation of natural resources, posing a threat to the survival of their traditions and livelihoods. As a result, many Indigenous peoples choose to emigrate from rural areas to urban centers. (Farrell et al., 2021), assuming a Mestizo identity instead of their original Indigenous one due to the extensive consequences of severe racism, the hierarchic society, and the loss of their way of life (Springerová and Picková, 2018).

The prevailing self-identification of the Ecuadorian population as Mestizo, despite their Indigenous ancestry, underscores the critical need to examine and understand the enduring effects of colonization and oppression on Ecuadorian society. This apparent discrepancy between ancestral heritage and present-day identification highlights the profound and intricate influence of colonization and Indigenous oppression in shaping the country's racial identification. In the 2010 census, Ecuadorians self-identified as “Mestizos” 71.9%, “Montubios” 7.4%, Afro-Ecuadorians 7.2%, “Indígenas” 7% and “Blancos” 6.1%. However, a study of 240 Ecuadorian samples divided into three continental regions (Coast, Highlands, and the Amazonian) revealed that genetically, Native American ancestry is the main composition of the Mestizo Ecuadorian population with values higher than 51% (Zambrano et al., 2019). In fact, Native American genetic composition is 66.7% in the Amazonian Mestizo population, 64.7% in the Highlands Mestizo population, and 51.7% in the Coastal Mestizo population (Zambrano et al., 2019). This data agrees with history. Amazonia exhibits greater proportions of Native American origin (66.7%) than the other two regions which is explained by the number of different indigenous nationalities in the regional populations. Furthermore, the coast has a greater proportion of African ancestry (16.3%) than other Ecuadorian regions because African slaves arrived on the coast of Esmeraldas in 1553 and due to the group of African slaves that was brought from Colombia in the 18th century (Zambrano et al., 2019). The Ecuadorian Census of 2010 and the 2019 genetic research confirms that the Ecuadorian population prefers to self-identify as Mestizo despite their Indigenous ancestry. Moreover, research on racism in Ecuador has emerged from an acknowledgment that the state's Mestizo discourse has historically erased Afro-Ecuadorians and repressed Indigenous

identities, presenting the latter as ancestral vestiges to be ‘cleansed’ (Martinez-Echazabal, 1998; Almeida Vinueza, 1999; Rahier, 2011; Cervone, 2010). Centuries of exploitation and discrimination against Indigenous communities have given rise to a form of ventriloquism rooted in a history of colonization that employs paternalistic protective measures. In this context, the term "ventriloquism" implies a type of representation where external entities speak on behalf of Indigenous communities, possibly distorting or controlling their narratives. The role of Indigenous protectors was justified because Indigenous peoples were classified as ‘miserable’ and not able to represent themselves. Therefore, ventriloquism is a product of inequality, and it actively supports its continued existence. Moreover, when Indigenous people try to express themselves, they are confronted with brutal repression, resulting in their confinement within paternalistic structures (Martínez, 2018).

2. Community participation and the 2008 Pluricultural Ecuadorian Constitution.

In Ecuador, ventriloquism is evident in the tourism sector as the participation of Indigenous peoples in tourism has only been legally permitted for the past 20 years. Before this, Indigenous individuals involved in tourism were seen as intruders within the tourism industry (D. Solis, former Tourism Minister, communication, November 6, 2022; L. Guailas, community Shuar tourist operator manager, communication, November 6th). Currently, Indigenous communities engage in tourism through Community Tourism Centers, which are subject to strict limitations that confine their operations exclusively within their own communities, prohibiting any expansion beyond their boundaries (Regulation of Community Tourism Centers of Ecuador, 2022; A. Garcia, Deputy Minister of Tourism, communication, November 17, 2022). This

prohibition results in Community Tourism Centers being unable to offer tourist packages that include places outside their community's territory. In other words, to provide tourism services outside their communities, Community Tourism Centers must collaborate with Tour Operators who can offer diverse tourist packages and directly negotiate with tourists (L. Guailas, community Shuar tourist operator manager, communication, November 6th, 2022). In this context, Community Tourism Centers do not directly receive payment from tourists for their services, including accommodation, meals, and intangible cultural experiences like hunting or fishing within the community. Instead, it is the tour operators who receive payment from tourists and allocate a small portion to the Indigenous community, regardless of whether they are affiliated with a Community Tourism Center. It is widely recognized that the Indigenous community, as the provider of tourism services and the transmitter of intangible cultural experiences to tourists, receives an inadequate share compared to the tour operator's earnings (L. Guailas, Community Shuar tourist operator manager, communication, November 6th, 2022). The justification for this inequality stems from the disparity in investment. While it may appear that the Tour Operator invests primarily in logistics, the undeniable reality is that the Indigenous host community has devoted countless millennia to cultivating rich traditions that captivate tourists. It is these very traditions that serve as the driving force behind tourists' willingness to compensate the Tour Operator, who acts as the bridge connecting them to the Indigenous Community. According to George (2010), communities that engage in culture-based tourism usually lack the tools necessary to effectively manage, safeguard, and preserve their cultural heritage assets. Building a longer-lasting, more equitable policy that benefits all parties is therefore essential. Recognizing that communities

developed and are the rightful owners of their cultural assets is essential. As a result, they ought to get a fair share of the money made by the tourism industry (George, 2010).

Ecuador has undergone transformative constitutional changes that reflect a profound commitment to inclusivity, Indigenous values, and environmental consciousness. The 2008 Ecuadorian Constitution recognizes Indigenous collective rights (Muteba, 2012) and embraces the concept of "sumak kawsay," known as 'living well' in the Kichwa language (Acosta, 2017). It also acknowledges the inherent rights of Nature (Wolff, 2012). Moreover, Ecuadorian Indigenous peoples have formed a National Indigenous Confederation whose political arm is the Pachacutic Party which promotes the 'living well' concept as a critique of the Western unsustainable industrial model. This concept can lead to a solution to the environmental, economic, and social crisis in Latin America (Thomson, 2011). In Ecuador, as an alternative to the capitalist system, the 2008 Constitution presents the Indigenous concept of Sumak Kawsay. This concept excludes the notion of seeking Western economic development only for one's own continual personal growth or to outperform one's peers (Lalander, 2016). For instance, Indigenous peoples in Ladakh used to live self-sufficiently with respect for the natural environment on which they were dependent. Francis (1993), points out that over the past two decades, they have experienced the shift from a dependence on local resources to imported products. The conversion to a cash economy has undermined community interdependence and created a desire to accumulate wealth. This situation makes youth dissatisfied with farming, village isolation, and traditional family values. (Francis, 1993). An illustrative instance of community engagement in tourism within Ecuador is evident in the efforts of the Indigenous Community of Agua Blanca. Striving to preserve their rich culture and traditions, the community actively involves itself in

interactions with tourists who visit them. It is the same community that manages the museum and the sale of handicrafts (Tingo Maldonado, member of the Agua Blanca Indigenous community and tourist guide at the community museum, August 17, 2022; Maria Manta, member of the Agua Blanca Indigenous community and manufacturer and seller of handicrafts in the community museum hall, August 17, 2022). By engaging in tourism activities, young people not only contribute to the prosperity of their community but also establish a meaningful connection with Western culture while preserving and safeguarding their own cultural heritage. This symbiotic relationship allows them to both embrace the benefits of tourism and safeguard the essence of their traditions. (Endere, M., and Zulaica, M., 2015; Ruiz-Ballesteros and Hernández-Ramírez, 2010). Another impactful initiative dedicated to safeguarding Indigenous culture within its territory while actively participating in tourism is the Ecuadorian Indigenous University, Amawtsy Wasi, where professors mobilize to the communities and territories where their students are located in order to promote local development. In this way, students manage virtual platforms while having five visits per semester from their professors to the place where they live (Angel Ramirez, Vice Chancellor of the Ecuadorian Indigenous University Amawtsy Wasi, Communication, December 12, 2022). In summary, young people who participate in tourism not only help their communities to explore new economic activity, but they also have a significant impact on protecting and preserving their own cultural heritage.

3. Compilation and presentation of Indigenous knowledge to tourism

Most of the time, it is not indigenous communities but rather people who work in the tourism industry who introduce tourists to indigenous culture. The Vice

Chancellor of the Indigenous University explains that the Ecuadorian Indigenous University Amawtsy Wasi will open a tourism program with a cultural and ecological focus based on research. Students will receive classes on tourism entrepreneurship, and researching the culture of their own communities. The idea is for students, upon completing their studies, to be capable of starting tourism ventures within their communities and territories. According to the Vice Chancellor of the Indigenous University, the tourism students of this Indigenous University will be responsible for synthesizing information from Indigenous communities that have tourism potential in order to present it as an attraction to tourists. Concerning the procedures by which students will gather, synthesize, and incorporate information about the cultural heritage of the Indigenous community into tourism projects. The Vice-Chancellor emphasizes that despite the non-Indigenous majority among the students, the execution of the process will involve close collaboration with and active participation from the concerned Indigenous community (Angel Ramirez, Vice Chancellor of the Ecuadorian Indigenous University Amawtsy Wasi, Communication, December 12, 2022). This collaborative approach seeks to address concerns about the potential outcome of training non-Indigenous personnel for the tourist industry. The challenge lies in prioritizing the genuine interests and priorities of the Indigenous communities. Achieving a balance that respects Indigenous perspectives, promotes cultural preservation, and ensures equitable benefits for all involved parties will be crucial to developing a fair tourist industry in collaboration with Indigenous communities and the Indigenous University Amawtsy Wasi.

Whitin Ecuadorian legislation, there is also no procedure or authorities responsible for supervising the intangible cultural heritage of an Indigenous community

and its transmission to consumers (tourists) in this field. This situation jeopardizes Indigenous communities with George (2004) observing the commercialization and profit-driven nature of modern tourism as transforming community social establishments, including cultural heritage resources, into commodities. Within this context, it is of paramount importance that the synthesis process undertaken by tourism students be conducted with the complete and well-informed consent, as well as active participation, of the concerned Indigenous community. The Indigenous community, as the sole owners of the culture to be transmitted, should actively participate in the process. On the other hand, Aldo Salvador, a tourism expert lawyer, considers the synthesis and pedagogical presentation made by tourism operators about Indigenous communities to be important so that they can be known by tourists (A. Salvador, tourism expert lawyer, communication, October 20, 2022). In this regard, it is important to consider what George (2010) observes regarding how through marketing strategies, fraudulent tourist endeavours, and the inappropriate exploitation of cultural resources—the majority of which are beyond the community's control—consumer values can alter the Indigenous culture of a community.

Furthermore, the fact that tourism students or tour operators are responsible for organizing and presenting the culture of Indigenous Communities to tourists creates a relationship of dependency, as it is not the Indigenous Communities themselves who present their culture to tourists. Undoubtedly, dependency reflects a power relationship. Schmid (2015) observes the power relationship in cultural tourism as the possibility for one party to achieve cultural capital accumulation. This accumulated cultural capital will generate economic profit for those who have been able to produce such accumulation, similar to how the accumulation of any other type of capital works in a

capitalist society. In the case of cultural capital accumulation, it allows some to benefit from the contributions of others (Schmid, 2015). George (2004) observes that findings also suggest that local culture, as capital, may be a community's most valuable asset and warrants inclusion into community asset-based models of sustainability. According to Ziff and Rao (1997), when individuals external to a culture exploit cultural assets for their financial benefit, they infringe upon the legal rights of the owners to utilize those assets and/or receive an equitable portion of the financial gains. Balancing the involvement of non-Indigenous operators must be approached carefully to ensure the rightful protection and acknowledgment of Indigenous cultural assets and their associated benefits. In the case of Ecuador, outsiders from the Indigenous communities, such as tourist operators or other stakeholders interested in promoting tourism projects, are the ones who engage in cultural capital accumulation. They collect, organize, and synthesize the intangible cultural heritage of an Indigenous community to present it to the consumer, in this instance, a tourist. They are the ones who are engaging in the accumulation of cultural capital, even if this collection, organization, or synthesis of the cultural heritage of an Indigenous community is done with the consent of the Indigenous community. George (2010) posits that rural cultural heritage is being exploited for profit by artists, filmmakers, governments, merchants, photographers, tour guides, and businesses, with little benefit to the local population. Tour operators capitalize on tourism opportunities to generate economic profit from intangible cultural heritage and the sense that culture gives to landscapes. Little, if any, of the income made by these tour operators goes to the locals who are the real producers and proprietors of this cultural heritage (George, 2010). Ecuadorian legislation lacks specific regulations concerning the percentage of funds designated for the Indigenous Community from the

fees tourists pay to tour operators for utilizing the Community's intangible cultural heritage. Furthermore, beyond monetary gains, there are other crucial aspects of benefit-sharing, including cultural preservation, community development, and the overall well-being of the Indigenous community. The absence of regulations on profit distribution underscores a potential gap in addressing a more comprehensive range of benefits that should be considered within the context of Indigenous intangible cultural heritage. In this regard, George (2010) observes that the operator is not charged for the unique cultural element of his trip package; rather, it is a "freebie" that contributes to the cultural "essence" of the tour offering.

4. Indigenous tourism as protection of Indigenous knowledge, lands, and the environment

Indigenous tourism could help Indigenous peoples to defend their territories ownership self-sufficiency, spiritual life, and traditional wisdom since Indigenous traditional livelihood has been affected by deforestation and hunting reduction. Sempertegui (2020) explains how traditional practices secure the Amazon as a live woodland. Indigenous women use traditional practices to defend Indigenous territories. For instance, farming practices, making pottery from clay, talking about dreams after bedtime, or singing with a motive. Indigenous peoples believe that these practices build relationships between humans and non-humans, ensuring the forest is a living entity. At the same time, traditional practices are used by women to defend their rights and territories; for instance, when they perform songs at events attended by oil industry officials and representatives, they are engaging in an act of decolonization against the influences of Western capitalism and authority (Sempertegui, 2020). The territorial struggle of Amazonian women is challenging and reshaping the conventional

environmental perceptions of the Amazon as an untouched land that emerged without the involvement of Indigenous communities. Non-Western alternatives to neocolonial and neoliberal capitalism, such as the South American concept of ‘Living Well’ (*buen vivir*), can shift priorities away from economic growth towards greater social and environmental wellbeing (Everingham and Chassagne 2020). The way to decolonize the Ecuadorian economy and tourism is to involve Indigenous communities in actions to protect Nature, their culture, and their communities. They should not be viewed as just objects of political discourses but active agents in a transformative process to defend their culture, communities, and the environment. The Anishinaabe philosophy referred to as *mino-bimadiziiwin*, ‘living well’ or ‘the good life,’ is common to several Indigenous epistemologies that consider the critical importance of a respectful relationship between humans and Nature. It is suggested that *mino- bimadiziiwin*, be a key component in creating a new ethical framework that is necessary for creating a world that is both sustainable and egalitarian. (McGregor, 2018). The Ecuadorian Indigenous peoples have the historical role to defend Nature, not only to preserve sensible ecosystems but also to defend Indigenous cultures associated with them. A decolonization process is underway through Indigenous environmental activism, which surpasses the boundaries of Indigenous communities (Mansbridge, 2018). It can decolonize the Ecuadorian state, its economy, policies, and legislation while protecting the environment and Indigenous cultures.

Zepper observes that the 2020 report submitted by Ecuador to the International Convention on the Elimination of All Forms of Racial Discrimination indicates that the Ecuadorian Human Rights Secretariat, in partnership with Waorani and Kichwa communities, established participatory monitoring and development of community

ecotourism to protect the Tagaeri-Taromenane territories. While the expansion of tourism brings opportunities, it also raises concerns for Indigenous communities and their lands. This is particularly true as tourism often takes place in regions that are historically Indigenous territories. In the realm of tourism, tourists and tour operators engage in negotiations to gain access to Indigenous lands, resources, and wisdom. (Zeppel, 2006). Moreover, guide number 45 of the United Nations Report for the Protection of the Heritage of Indigenous Peoples states that “all forms of tourism based on Indigenous peoples’ heritage must be restricted to activities which have the approval of the peoples and communities concerned, and which are conducted under their supervision and control” (United Nations, 1995, p.14). The control that Indigenous communities must have over the transmission of their intangible cultural heritage should be exercised regarding how their culture is transmitted and the costs associated with that transmission. In the context of tourism, this would involve not only control over the fee that the tourism operator charges tourists for the intangible experience of Indigenous cultural heritage but also a holistic approach encompassing cultural preservation, community well-being, and adherence to Indigenous philosophies such as Sumak Kawsay

Chapter 5: Dichotomy between the Constitutional Sumak Kawsay principle (Living Well) and the Ecuadorean economic expansive policies regarding tourism and Indigenous Knowledge

1. The Sumak Kawsay and the critic of Western development and progress

Indigenous Peoples' environmentally rich and rewarding way of life may become unsatisfying as Western development consumerism changes people's perceptions of themselves (Wickstrom, 2003). Indeed, Western consumerism implies having more than the other in an unlimited desire to always have more (Passini, 2013). Consumerism leads to filling global markets through natural resources exploitation (Mittal and Gupta, 2015). On the other side, Sumak Kawsay includes alternative economic activities to the neoliberal growth economy based on natural resources exploitation and global market competition (Löwy, 2005; Foster, 2018). For instance, tourist initiatives in Cotachi-Ecuador are based on the needs of the community, rather than to satisfy a Western ideal of development supported by a policy of extractivism. The Cotacachi community practices consider the well-being of the people and the environment, having the elimination of the development ideal under extractivism policies, as a consequence of living well, rather than an objective (Chassagne and Everingham 2019). Finding alternatives to development like Sumak Kawsay (Living Well) could be essential to preserve Indigenous cultures. In the name of development, Indigenous cultures have been attacked. Decolonization in Ecuador needs a different

alternative to Western development. The whole concept and practice of development is a reflection of Western-Northern hegemony over the rest of the world. In contrast, Global Alliance of the Rights of Nature explains that Sumak Kawsay comes from the Kichwa words 'Sumak' for good, beautiful, pleasurable, and 'Kawsay' for collective life. The term translates very loosely to 'buen vivir' in Spanish or 'living well' in English. Westerners must exercise caution with reference to Sumak Kawsay (living well). It does not refer to a life of abundant money and accumulation of material possessions while striving for more. For Indigenous peoples, the reference to *Sumak Kawsay* is to a much deeper meaning, living in harmony with Nature and living secure and peaceful lifestyles that are fulfilled based on a set of values that give meaning to life for the individual and the collective (Global Alliance of the Rights of Nature, 2016).

2. Nature's rights and the Ecuadorian colonial extractive practices and policies

Community and Nature are the fundamentals on which the Sumak Kawsay or 'living well' concept is built (Acosta, 2017). Furthermore, the new Ecuadorian Constitution provides a new articulation of Indigenous knowledge by referring to both Nature and Pachamama while proposing new kinds of development strategies (Gudynas, 2009). In addition, authors such as economist Alberto Acosta and social ecologist Eduardo Gudynas speak of the Ecuadorian 2008 Constitution in terms of post-development and dissolution of the notion of progress. Acosta was previously an Ecuadorian Minister for Energy and Mining in the Correa administration. He was also the President of the Constitutional Assembly that drafted the Constitution of 2008. Gudynas was involved in the constitutional reform in Ecuador and assisted Acosta in the Assembly (Lalander, 2014). Furthermore, in the Ecuadorian Constitution, the term

"Pachamama" is utilized, drawing from the Indigenous language Kichwa, where it translates to "Nature." Unfortunately, Pachamama is significantly impacted by the exploitative practices of capitalist Ecuadorian policies that seek to extract and deplete natural resources. The Ecuadorian Constitution is the most progressive in the world making nature a subject of constitutional rights. This is a bio-centric notion that challenges the modernist vision of Nature as resources subject to human use (Laastad, 2020). Nature is not just an object for use, but a subject with rights. Human beings and Nature need to start a harmonic relationship between subjects with rights. In this context, Melo, (2011) said that Nature is not something; it is someone who procreates us, nurtures us, and welcomes us, someone who interacts with us and with whom the Indigenous communities have a spiritual relationship. This is a truth that comes from the deepest Indigenous ancestral traditions. From this perspective, to honor the Ecuadorian Constitution, policies should address well-being as a high level of harmony between human beings and Nature, instead of pursuing economic growth from unsustainable activities and increased purchasing power (Melo, 2011). There is a clear dichotomy between what the Constitution promulgates and the economic model in Ecuadorian society. The Ecuadorian development model, based on intense extractive activities, is not compatible with the rights of Nature.

However, the 2008 Constitution, while addressing Indigenous and Nature rights, did not modify government policies about natural resources exploitation (Gudynas, 2019; Laastad, 2020). The Ecuadorian Constitution has an explicit Indigenous approach regarding Sumak Kawsay or Living Well and Nature's rights while the Ecuadorian Western anthropocentric discourse lends itself to the reality of Ecuadorian politics and legislation. Moreover, the anthropocentric discourse rift

humans and Nature, unaware of its consequences. The interconnection between nature's systems is not emphasized; nature is mostly seen as a sum of its parts, encompassing resources, goods, and services. Ecuador is represented as a poor country with many needs that can be solved by revenues from natural resource exploitation (Laastad, 2020). The consequences of not honoring the people's will as expressed by the Constitution have had a negative impact on the environment and Indigenous communities. Indeed, there is an incompatibility between Sumak Kawsay and extractivism (Villalba-Eguiluz and Extrano 2017). There is also a contradiction in what the 2008 Constitution contemplates regarding Nature's rights and what in fact has been done in the Ecuadorian Amazon. Rodriguez, Goyes, and South (2019) point out that the Amazon Indigenous communities of Tagaeri, Taromenane, and Waorani used to live apart from each other before the conquest of the vast Western Amazon. This conquest began with the arrival of European explorers and settlers in the Americas during the late 15th and early 16th centuries. The diverse colonial extractive practices in search of valuable resources such as gold, silver, and other natural riches, forced them into a smaller area of rainforest labelled Yasuní. Of the three groups, the Taromenane and Tagaeri decided to live in voluntary isolation from the external, global society. Rodriguez et al., inform that these Indigenous communities have had contact with colonizers but have preferred to maintain a separate existence and reject the enticements of Western goods and customs. In 1989, Yasuní Park was recognized by the United Nations Educational, Scientific and Cultural Organization as a World Biosphere Reserve. Subsequently, in 2006, the area of the park where the Tagaeri and Taromenane Indigenous communities live was classified as a 'no-go-zone' or 'intangible zone' by the Ecuadorian government, meaning that no extractive practices

could take place within the demarcated area. However, Yasuni Park, an intact area that had been managed purely by local Indigenous customs and the laws of nature for millennia, received authorization from the Ecuadorian government to produce oil in 2013. The goal was to turn this untapped natural "treasure" into economic profit (Rodriguez Goyes, and South, 2019).

The Taromenade and Tagaeri Indigenous communities living in the Ecuadorian Yasuni National Park were unable to exercise their right to self-determination because of the oil exploitation in their territories due to capitalist expansive policies to reach 'development'. Fierro (2017) informs that the Ecuadorian government launched an international proposal to keep the oil underground in exchange for economic compensation. Despite the international cooperation to the Yasuni proposal, the government's economic expectation was not fulfilled. Therefore, the Yasuni-ITT fields were exploited regardless of the Tagaeri and Taromenade peoples, they were not reason enough to reconsider exploiting Yasuni's protected area.

Given this context, the Yasunidos movement, dedicated to defending the rights of indigenous peoples and their environment in the Yasuni region, called for a popular referendum in 2013. This referendum was meant to decide whether the oil reserves beneath the Yasuni National Park (ITT, referred to as Block 43) should be left untapped. However, the proposal was shelved by the former constitutional judges and dismissed by the electoral council members. (Primicias, 2023). Since then, the Yasunidos movement has maintained its activism against oil exploitation. Finally, after 10 years of struggle, on May 13, 2023, the Constitutional Court granted permission for a referendum to occur on August 20, 2023. During this referendum, Ecuadorians were asked the following question: "Do you support the Ecuadorian government retaining

the oil from the ITT, referred to as Block 43, indefinitely underground?" The outcome of the referendum is nothing short of historic. A significant majority of Ecuadorians have voiced their support for preserving the oil beneath the ground to safeguard both the environment and the Indigenous communities residing within the Yasuni Reserv, one of the most fragile and diverse ecosystems on the planet. This resolute stance against extractive practices has been taken by the people of Ecuador, even though that Block 45 in the Yasuni has been producing 55,000 barrels of oil per day, equivalent to 20 million barrels annually, since 2016. A decade ago, President Rafael Correa approved the exploitation of the Yasuni National Park due to the international community's failure to provide \$3.6 billion to maintain the oil underground. Remarkably, the Ecuadorian people have now chosen to forego \$13.8 billion by keeping these resources untapped beneath the Yasuni's surface. According to the state-owned oil company Petroecuador's assessment, ceasing drilling operations will result in the country missing out on 13.8 billion American dollars. over the next two decades. It's worth noting that this calculation excludes expenses associated with equipment removal and compensation for contractors. Furthermore, there has already been an investment of more than 1.8 billion American dollars dedicated to safeguarding the surrounding ecosystem. (Constitution net, 2023). As Ecuador is a developing country with numerous unmet needs among its population, it raises the question of why Ecuadorians voted against extractivism in the August 2021 referendum. It is evident that the extractive economic model of mineral and oil exploitation that Venezuela and Ecuador have employed in recent decades has not effectively enhanced the quality of life for their population. (Accion y Reaccion, 2016; Chiasson-LeBel, 2016)

Challenging extractivism and capitalism's principles, the Indigenous concept of Sumak Kawsay (Living Well) is an alternative proposal to the Western concept of development (Fierro, 2017). "Sumak Kawsay" (Living Well) for Indigenous communities is a comprehensive concept that encompasses a harmonious relationship with both nature and human beings. In contrast, the Western concept of "wealth" is achieved through the exploitation of natural resources in a framework of capitalist accumulation. The 2013 Ecuadorian decision to exploit the Yasuni'-ITT was based on environmental and oil rent dependency considerations and not grounded in the Indigenous cultures living in the Yasuni National Park. This is not the first time that Indigenous communities in the Amazon have suffered the impact of capitalist expansion activities to reach 'global markets' and 'development.' The Waorani people had two forced migrations due to capitalist violence. The first was in the 1950s when slave hunters attacked their communities to force the Waorani to work in rubber plants. The second was in the 1970s when they were threatened with death by oil companies and forced to leave their land (Gilbert, 2018). Ecuador is a country with the largest absolute area covered by oil blocks in extraction in the Western Amazon basin. In addition, it has most of its Amazon, 68% (68,196 km²), compromised by oil operations (Morley, 2017). The oil exploitation in the Amazon not only violates Nature's constitutional rights but also the Indigenous constitutional status. The Ecuadorian Constitution expressly outlines in Article 57 that the ancestral homelands of peoples in voluntary isolation are "irreducible and untouchable, and off-limits to all extractive activities." Furthermore, "the State will take measures to guarantee their lives, ensure respect for their self-determination and desire to remain in isolation, and safeguard the observance of their rights." The penultimate clause of Article 57 specifies that "the

violation of these rights will be considered ethnocide offense, to be categorized by the law.” (Ecuadorian Constitution, 2008, p.27). Despite Article 57 establishing the fundamental right of Indigenous Communities to grant their prior and informed consent for the utilization of non-renewable resources within their territories, it is crucial to emphasize that, while this consent holds great importance, the exploitation of such resources may still take place even without the agreement of the Indigenous Community. As a result, Article 57 concludes by stating that in cases where the community's consent is not obtained, actions will be pursued according to the provisions stipulated by the constitution and the law (Ecuadorian Constitution, 2008: R. Aguilar, communication, October 1st, 2022). In essence, the activity can proceed even without the community's consent if authorized by law (Ecuadorian Constitution, 2008, p.27). This was evident in the oil exploration of block 83, jeopardizing the right of voluntary isolation for the Tagaeri and the Taromenane peoples (Morley, 2017). Whyte's 2018 underscores a correlation between settler colonialism, environmental injustice, and violence. This relationship becomes evident in the exploitation of Block 83. The exploitation of Block 83 constitutes an act of colonialism, as external entities are invading ancestral territories, potentially disrupting or displacing the Indigenous Tagaeri and Taromenane peoples. This situation further exemplifies environmental injustice, given that the resulting degradation, pollution, or other adverse impacts disproportionately affect the Tagaeri and Taromenane Indigenous communities, who rely closely on natural resources for their livelihoods. Ultimately, it manifests as an act of violence, posing a threat to the fundamental right of these Indigenous communities to live in voluntary isolation.

The capitalist exploitation, driven by coercion over Indigenous communities, has persisted in Yasuni, up to the present day. (Gilbert, 2018). Nonetheless, the result of the August 2023 referendum has the potential to alter the trajectory of a history marked by capitalist exploitation inflicted upon the Indigenous communities of Yasuni National Park.

The drilling policy in the Amazon provoked the protest of the Waorani Indigenous community. Their claim was backed by Hollywood stars Mark Ruffalo and Leonardo DiCaprio who have publicly supported the Waorani people to protect their ancestral lands while also participating in tourism within their communities (Telesur, 2019; DiCaprio video-tweet, 2019).

3. Indigenous Heritage Exploitation in Tourism: A Divergence from Guidelines and Principles.

Tourism is one of the most important economic activities in Ecuador. It represents more than 5 percent of the country's GDP (González Lara, 2022). This reality encroaches on Indigenous knowledge, land, and environment. Meethan (2001) emphasizes that a typical tour package goes beyond showcasing scenic locations and includes visits to cultural and symbolic landscapes that hold deep values and meaning for Indigenous Peoples. My own experience has confirmed that part of the tourist package offered by some lodges in Ecuador includes tours of the surroundings where they explain the cultural significance of these places through stories about Indigenous communities living nearby. Clearly, what the tourism operators do is give a cultural meaning to the natural environment to make it appealing to tourists. Additionally, there are no regulations in Ecuador over the use of intangible cultural heritage, such as Indigenous stories, as part of the tourist package offered by hostels and lodges. As

George (2010) observes, tour operators do not compensate anyone for including this culturally remarkable element in their tour package. For instance, the Ecuadorian newspaper, "El Comercio," reported on September 14, 2022, that, with the assistance of tour operator Haorani Expeditions, the renowned actor William Smith visited Yasuni National Park where he spent four days with the Waorani Indigenous community of Bamenó. As stated on the Haorani Expeditions English website, they offer cultural immersion with the Waorani community (also known as the Haorani Community). A key part of their advertisement is a video showcasing the everyday life and traditions of the Waorani community (Haorani Expeditions, 2022). However, there are no reports on what the community receives for the cultural experience shared with Smith or others who visit the community for this cultural experience. George (2010) observes that a specific market segment, which seems to be growing within the flourishing global tourism industry, is attracted primarily by culture with both demand and supply on the rise although it does not appear that those communities who provide the cultural experience are compensated, let alone fairly compensated.

The advertising video of Huaorani Expeditions tour operator shows family moments in a Waorani community where children, young people, and adults are naked while engaging in hunting activities, playing, and sharing moments in the kitchen of their home. In this regard, it is worth considering that guidance 50 of the United Nations Report for the Protection of the Heritage of Indigenous Peoples states that “journalists should respect the privacy of Indigenous peoples, in particular concerning traditional religious, cultural and ceremonial activities, and refrain from exploiting or sensationalizing Indigenous peoples’ heritage” (United Nations, 1995, p.14). Certainly, the promotional video by Haorani Expeditions is evidently sensationalizing the cultural

heritage of Indigenous peoples to entice tourists and offer them an intangible cultural experience within the Waorani community. Again, we are not aware of the Prior, free, and informed consent (UNDRIPs, 2007; The American Declaration on the Rights of Indigenous Peoples, 2016), and benefit sharing of the Waorani community. This is just one example, among, many tour operators engaged in tourism in Ecuador that use images or videos of Indigenous communities as part of their advertising and offer visits to Indigenous communities as the main attraction of their tour packages. Of course, this presupposes an agreement between Indigenous communities and tour operators. Agreements that, according to Ana Garcia, Deputy Minister of Tourism, and Aldo Salvador, a tourism expert lawyer, are not regulated by Ecuadorian legislation or by any governmental body or institution (A. Salvador, tourism expert lawyer, personal communication, October 20, 2022; A. Garcia, Deputy Minister of Tourism, communication, November 17, 2022). In other words, the transmission of Indigenous culture through tourism has been left to the free play of the market, where the most powerful entity sets the rules. This type of behaviour goes against what guide number 26 of the United Nations Report for the Protection of the Heritage of Indigenous Peoples states: “National laws should deny to any person or corporation the right to obtain a patent, copyright or other legal protection for any element of Indigenous peoples’ heritage without adequate documentation of the free and informed consent of the traditional owners to an arrangement for the sharing of ownership, control, use and benefits” (United Nations, 1995, p.12). In addition, the Ecuadorian Constitution in Art. 57 #12, states that “any form of appropriation of their knowledge, innovations, and practices is prohibited” (Ecuadorian Constitution, 2008). This provision of the Ecuadorian Constitution is not put into practice when it comes to tourism. For instance,

the Tourism Law, in Article 45, regarding compensation for damages and losses, in section 6 penalizes tourism entrepreneurs who, through their advertising or other means, harm tourists but not Indigenous communities. Indigenous communities are considered just another link in the tourism industry, serving tourism without the protection of their ancestral knowledge or equitable participation in the economic benefits of the tourism industry. Indeed, the Regulation of Community Tourism within its considerations establishes that community tourism is a management model in which "communities, peoples, and Indigenous, Montubio, Afro-Ecuadorian, and Mestizo nationalities take advantage of the cultural and/or natural heritage of their territory" (Regulation of Community Tourism Centers, 2022, p. 4). Article 4 of this regulation states that community tourism centers may provide accommodation, food and beverages, and community tourism operations according to the terms of the Regulation. None of the articles in the Regulation recognize the cultural value that will be transmitted by Indigenous communities as an added value in the tourist experience beyond the logistical services provided by the host community. Community tourism centers are prohibited from operating outside the territory of their community (Regulation of Community Tourism Centers, 2022). Only tour operators are allowed to operate throughout the national territory, and there is no special provision in the law for an Indigenous community to establish a tour operator that would enable them to operate nationwide. This is a serious limitation for Indigenous communities because, by not being able to operate outside their territory, they cannot attract tourists who wish to visit destinations other than their own community. As a result of this limitation, Community Tourism Centers, as well as Indigenous communities, depend on tour operators who are the ones that connect with tourists at a national and international level. The reality is

that the tour operator captures the tourists and takes them to Indigenous communities that offer the services indicated in Article 4 of the Regulation of Community Tourism, which include accommodation, food, and tourism operations, as well as experiences such as hunting, dancing, traditional cuisine, and other culturally value-added experiences that are part of the tourism packages offered by tour operators but are not being considered by the Regulation. Tourists pay the tour operator, and the tour operator pays the Indigenous community for the services indicated in Article 4 of the Regulation of Community Tourism, namely accommodation and food, without considering the cultural experience that the community provides to the tourist, which involves the transmission of their intangible culture. In addition, the Regulation does not establish transparency mechanisms to know the difference between what the tour operator receives as payment from tourists, mostly foreigners, and what the Indigenous community receives from the tour operator as payment for their services (Regulation of Community Tourism Centers, 2022; Guailas, L., Shuar community tourist operator manager, communication, November 6th, 2022). The prohibition on Indigenous Communities and Community Tourism Centers operating beyond their community's territory is reminiscent of the challenges Indigenous Communities faced before the enactment of the Tourism Law in 2002. Back then, their involvement in tourism was met with skepticism by the Ministry of Tourism itself (Solis D., former Minister of Tourism, communication, November 6th, 2022). On the other hand, the enactment of the Regulation of Community Tourism Centers in 2022 has sought to regulate the tourism activities conducted by Indigenous communities. Prior to the implementation of this regulation, private tourism companies regarded these communities as opportunistic, alleging that they took advantage of tourists without any rightful

participation in the private tourism sector (Guailas, L., community Shuar tourist operator manager, communication, November 6th, 2022).

The Ecuadorian State does not regulate the requirement of free and informed consent that Indigenous communities must provide before a tourism operator can access their "intangible cultural heritage," neither through the Organic Code of the Social Economy of Knowledge, Creativity, and Innovation (COESI) nor through the Tourism Law or its Regulations. In this regard we have guidance number 31 of the United Nations Report for the Protection of the Heritage of Indigenous Peoples that states: "Governments should take immediate steps, in cooperation with the Indigenous peoples concerned, to identify sacred and ceremonial sites, including burials, healing places, and traditional places of teaching, and to protect them from unauthorized entry or use." In Ecuador, there is currently no national legislation regulating the tourist use of sites that Indigenous communities consider sacred.

According to an article in *Diario El Comercio* the renowned film artist Will Smith had the opportunity to engage with the Waorani community in Yasuni, sharing "fun moments" as he attempted to communicate with and embrace community members (*Diario El Comercio*, 2022). Indeed, in a Facebook video, the actor can be seen engaging in the everyday life and traditions of the Waorani people ('Watch Video,' n.d.). In other words, the actor was receiving an intangible cultural asset that is not protected by Ecuadorian legislation when used in tourism. Ecuadorian legislation also does not provide a process for obtaining consent or economic compensation for the use of the name, images, or videos of an Indigenous community in the advertising of a tourist company. Furthermore, the TripAdvisor website showcases an advertisement by Henry Eco Tours, which incorporates the following statement as promotional content

regarding visits to a Waorani community: Furthermore, the TripAdvisor website showcases an advertisement by Henry Eco Tours, which incorporates the following statement as promotional content regarding visits to a Waorani community. "We stopped at the Amaru Yaya community for a demonstration of the use of blow guns and spears, and a little garden of traditional medicine plants" (Trip Advisor, p. 1, 2019). The legal lack of protection makes Indigenous communities unable to claim fair compensation for the use of their intangible culture in the form of tourism experiences. As a result, the community receives only the payment for accommodation and meals from the tour operator, without the added value of the lived experience.

George (2010) opines that for rural and distant communities, the commodification of intangible cultural heritage in contemporary tourism industries creates serious unsolved problems relating to intellectual property, Indigenous knowledge, copyrights, and the preservation of cultural heritage. Tour operators frequently use photos, videos, or other materials taken during community visits for their marketing promotions, although this benefit is unlikely to be obtained without the community's permission or fair compensation. While tourism operators argue that communities benefit from tourism expenditures, the current business model appropriates and exploits local cultural resources for commercial gain without adequately benefiting the community responsible for producing the valued culture. Consequently, this situation could deprive the community of the material advantages they are entitled to (George, 2010).

In the promotional video by Huarani Expeditions, a young man serves as a translator, conveying in Spanish what his father narrates in the Waorani language. The narrative centers around the struggles faced by his father and their community, who had

to wield spears and take the lives of invaders who were logging and exploiting the jungle for timber and oil, ultimately destroying their habitat. In the past, they were forced to engage in warfare and resort to killing in order to protect their territory. However, their perspective has now shifted, and they no longer want to suffer from war. Instead, they are formally requesting the government to respect their territory and keep it free from the exploitation of timber and oil (Huarani Expeditions, 2022). At present, the Waorani community is engaging in a "cooperative" relationship with tourism. However, for this new dynamic with Western society to be truly fair, it requires legislative safeguards and informed consent regarding the inherent value of their intangible cultural heritage. This heritage is transmitted by the community and exploited by tour operators. We are facing a new form of profiting at the expense of Indigenous communities, which may be less evident than mining, oil, and timber exploitation, but equally unjust.

Understanding the present requires delving into history. In the context of exploiting the Amazon, one approach has been to establish agreements with Indigenous communities living in close proximity to the targeted oil wells. When oil extraction commenced in Ecuador, the narrative promoted the idea that it would lead to prosperity for these Indigenous communities, much like the current portrayal of tourism operated by Western tour operators. In relation to this matter, Attorney Remigio Rivera, who has spent 29 years working with the Waorani people and oil companies, provides insight. He explains that in 1993, the oil company Naxus entered the "Cooperation and Respect Agreement" with the Waorani people to exploit wells 31 and 43 situated in Waorani territory, which is also a protected area within the Yasuni National Park. Over time, this Agreement underwent certain modifications and eventually expired simultaneously

with the Petroleum Exploitation Contract that Nexus signed with the Ecuadorian State, granting authorization for the oil exploitation of wells 31 and 43 until December 31, 2022 (Remigio Rivera, former 29 years Indigenous social issues manager with oil companies, communication, October 1st, 2022). Just like the present, tourism brings hope for better days for Indigenous communities, Oil companies offered similar ‘deals’ to Indigenous communities. The "Cooperation and Respect Agreement" signed by Nexus with the Waorani people allowed the oil operator to access Waorani territory for oil exploitation. In return, the agreement included provisions for cooperation in healthcare and economic support for social, educational, and productive projects (Jochnick, 1993; Freeman et al., 2008; Remigio Rivera, former 29 years Indigenous social issues manager with oil companies, communication, October 1st, 2022).

Hance (2016) highlights that the critique of the Well 31 exploitation goes beyond the drilling process and extends to the construction of roads associated with oil extraction. These roads, designed to accommodate 2 or 3 bulldozers comfortably, have resulted in habitat fragmentation, increased noise levels, alterations in wind and light patterns, and soil erosion.

Dr. Rivera points out that Ecuadorian legislation imposes minimal obligations on oil companies in relation to Indigenous communities. Hence, the Cooperation and Respect Agreement between Nexus Company and the Waorani Community held great significance. This is particularly significant because, at the time of the Agreement in 1993, the ILO Convention 169—where Article 16 recognizes the right of Indigenous communities to provide their consent for activities that may affect them—had not yet been ratified (Remigio Rivera, former 29 years Indigenous social issues manager with

oil companies, communication, October 1st, 2022). Indeed, it wasn't until 1998 that Ecuador ratified ILO Convention 169.

There is a parallel between the initiation of agreements between oil companies and the Waorani People and the emerging agreements between tourism operators and Indigenous Communities, whom they bring their tourists. It is recognized that the state should intervene in situations where there is an imbalance of power during agreement negotiations. For example, lease contracts are regulated by the state. In both cases, negotiations between oil or tourism operators and the Indigenous communities are marked by an unequal distribution of power. The communities contribute their natural resources to benefit oil companies, while tourism operators capitalize on their intangible cultural heritage. Unfortunately, the existing Ecuadorian legislation lacks provisions that address this power imbalance and ensure just compensation for Indigenous communities while safeguarding their intangible cultural heritage.

Chapter 6: Conclusion

The Ecuadorian legislation does not protect the Indigenous communities' right to give their free, prior, and informed consent regarding the use of their Indigenous knowledge by tourist agents or to participate in the benefits derived from the use of their knowledge in the tourism industry. These rights are recognized by the UNDRIP and the American Declaration on the Rights of Indigenous Peoples (UNDRIPs, 2007; American Declaration on the Rights of Indigenous Peoples, 2016). The absence of recognition for these international parameters in Ecuadorian legislation not only jeopardizes Indigenous knowledge but also poses a threat to Indigenous self-determination. While the Ecuadorian Constitution, in Article 57, establishes the requirement for prior and informed consent regarding the utilization of non-renewable resources within Indigenous territories, it also acknowledges that exploitation can proceed even in the absence of such consent. The utilization of non-renewable resources within their territories may still occur without the consent of the Indigenous community. In addition, Article 57 mandates that Indigenous Communities must be involved in the benefits arising from the exploitation of non-renewable resources within their territory. This constitutional provision aligns with Article 328, which ensures that private-sector workers are entitled to participate in company profits as determined by the law (Ecuadorian Constitution, 2008). However, Ecuadorian legislation does not specifically regulate the participation of Indigenous Communities in the benefits derived from tourism that utilizes their Indigenous knowledge and intangible cultural heritage within tourist operators' packages. This emphasizes how external entities primarily drive the accumulation of cultural capital. Tourist operators or stakeholders seeking to promote

tourism initiatives collect, organize, and showcase the intangible cultural heritage of Indigenous communities to tourists. This process, even when carried out with Indigenous consent, underscores the external accumulation of cultural capital.

The absence of regulation can be seen within both the Tourism Law and the Regulation of Community Tourism Centers. One could argue that Indigenous Communities involved in tourism are not employees of tourism companies. However, it is important to acknowledge that Indigenous communities face unique challenges. Similar to workers, they require a dedicated framework that protects their intangible cultural heritage and ensures fair treatment within the tourism industry. In the case of Community Tourism Centers, the benefits they receive rely on the discretion of the tour operators involved in the tourism activity with the Community. There is a lack of transparency that prevents Indigenous Communities from knowing the exact amount tourists paid the tour operator for the use of their intangible cultural heritage, as highlighted by Lauro Guailas, a Shuar community tourist operator manager, in communication from November 2022. The State does not oversight the agreements between tour operators and Indigenous Communities. These agreements underscore a significant power imbalance between the tour operators, who typically possess more substantial economic resources, and the Indigenous Communities or Community Tourism Centers. While tour operators manage logistics and directly interact with tourists, Indigenous communities primarily provide essential services such as food, accommodation, and cultural experiences within their communities. This dynamic often results in the tour operators exerting control over various aspects of tourism, while Indigenous Communities may find themselves in a subordinate position, despite being the guardians and purveyors of the cultural heritage that attracts tourists in the first

place. This disparity underscores the need for fairer arrangements that empower Indigenous Communities to protect their cultural heritage and to have a more equitable share in the benefits derived from tourism activities on their lands. For tourists, this represents an opportunity to immerse themselves in the intangible cultural heritage of the Community, surpassing the mere provision of hospitality services as perceived by tour operators and Ecuadorian legislation. Along with experiencing traditional accommodations and cuisine in the Indigenous Community, tourists also engage in community activities such as hunting and fishing. These experiences are pivotal for tourists, however, there is no regulation surrounding their utilization by tour operators. Article 4 of the Ecuadorian Community Tourism Regulation reduces the commitment of Indigenous Communities to food services, accommodation, and guidance. However, it overlooks the invaluable contribution made by these communities over countless generations in their traditions and culture, which is precisely what attracts tourists and for which they are willing to pay the tour operators who facilitate their interaction with the community.

The Ecuadorian national development plan prioritizes entrepreneurial tourism expansion without adequately considering the Indigenous Communities whose territories are the focal point of tourism. Instead of promoting the well-being and involvement of these communities, the plan emphasizes investment growth in the tourism industry. This practice exhibits similarities to key elements of the Western development model that have been incorporated into the Ecuadorian economy. However, Indigenous culture practises the concept of Sumak Kawsay, an alternative to the concept of Western development. Sumak Kawsay, meaning "living in harmony with one another and with nature," stands in stark contrast to consumerism and the

exploitation of natural resources driven by the competition of capitalist markets. Sumak Kawsay rejects the Western notion of well-being associated with the accumulation of material goods. Instead, it embodies the harmony between individuals, communities, and nature (Acosta, 2017).

The Constitution of Ecuador reflects the desire of the Ecuadorian population to be governed by the principle of "Sumak Kawsay." According to Article 275, the Ecuadorian development system has the responsibility to guarantee the achievement of Sumak Kawsay (Living Well). Moreover, the preamble of the Ecuadorian Constitution explicitly states the decision of the sovereign people of Ecuador to construct "a new form of citizen coexistence, characterized by diversity and harmony with nature, in order to attain good living, Sumak Kawsay." (Ecuadorian Constitution, 2008). However, the Ecuadorian government's policies disregard these constitutional principles while actively perpetuating a system of exploiting natural resources that inflict harm upon both the environment and the Indigenous communities closely tied to it. Moreover, their policies adhere to a capitalist approach aimed at favouring major investors, specifically within the tourism sector where tour operators are given priority while failing to ensure sufficient protection for Indigenous communities who are merely regarded as service providers within the tourism industry. The services provided by Indigenous communities within the tourism industry entail a cultural experience for the tourists, the intangible content of which is neither considered for economic compensation nor for heritage protection. Consequently, Community Tourism Centers receive a very meager payment from tour operators for accommodation, food, or guiding services without considering the added value of millennia of culture and

traditions that make tourists seek connections with Indigenous communities through tour operators that allow to experience Indigenous culture and traditional activities.

The Ecuadorian Constitution, in Article 379, establishes the State's responsibility to protect both tangible and intangible cultural heritage. Moreover, Article 380 emphasizes the Ecuadorian State's commitment to ensuring the safeguarding of this heritage through permanent policies. However, despite the existence of these regulations, legislation aimed at protecting Indigenous communities' intangible culture from tour operators' access is notably absent. This lack of protection becomes evident when examining Article 4 of the Tourism Law, which primarily focuses on safeguarding the interests of tourists and the Western tourism industry. Furthermore, both the Community Tourism Regulation and the Organic Code of Social Economy of Knowledge, Creativity, and Innovation (COESI) fail to include provisions that specifically protect Indigenous Indigenous knowledge and their intangible cultural heritage within the context of tourism. Certainly, Article 511 of the COESI emphasizes the importance of recognizing and protecting collective rights to the intangible aspects and traditional cultural expressions, alongside regulations on genetic resources, cultural heritage, and related matters. However, the Ecuadorian legal framework does not sufficiently embody this principle as it lacks consistent protection for Indigenous intangible culture. It is crucial to ensure that the safeguarding of intangible cultural heritage is addressed comprehensively across all Ecuadorian legislation, with a particular focus on the tourism sector. Ecuadorian legislation should play a crucial role in safeguarding Indigenous knowledge and culture by implementing a permit system. Upholding the principle of self-determination for Indigenous peoples, these permits should be issued by the Indigenous communities themselves, accompanied by fees that

tourists are required to pay upon entering Indigenous territories. Such fees would serve as a form of acknowledgment for the invaluable intangible cultural heritage that Indigenous communities graciously share with tourists. Currently, when an Indigenous community offers accommodation services to tourists, the value of the service is solely determined by the material aspects provided, such as beds or rooms. Unfortunately, the intangible cultural experience that the Indigenous community imparts is often overlooked and unappreciated. Consequently, tour operators benefit from the exploitation of these cultural and intangible experiences provided by the Indigenous communities (George, 2004; 2010). Ecuador requires a legal framework that ensures the minimum involvement of Indigenous communities in the holistic benefits generated by tour operators visiting their territory, all the while safeguarding its intangible cultural heritage. This participation should be based not only on material provisions such as accommodation and food but, as highlighted by the World Tourism Organization (UNWTO), primarily on the intangible service of transmitting the "intangible cultural heritage" provided by the Indigenous community.

Unfortunately, Indigenous people's sharing of their intangible heritage and culture with tourist operators has not even been raised theoretically in Ecuador which denotes the transmission of intangible cultural heritage in the tourism chain as "being the main attraction, is the least compensated" (R. Rivera, former Indigenous social issues manager, communication, October 1st, 2022). At this point, it is worth considering the observation made by George (2010) that local intangible cultural heritage undoubtedly brings significant economic benefits to the tourism industry. The refusal of the tourism industry to recognize the monetary value of local intangible cultural heritage and provide compensation to the local producers and creators

(communities) is a matter of great moral and ethical concern (George, 2010). In the Ecuadorian legislation, there is also a notable absence of protection regarding the use of videos and photographs taken by tour operators of Indigenous communities to attract tourism, often targeting foreign visitors. Additionally, the legislation fails to establish safeguards for the preservation of sacred sites that hold significance for Indigenous communities in the context of tourism. It is crucial to establish regulations that govern access to these sites in collaboration with the Indigenous communities involved. Furthermore, a significant gap in the legislation lies in the lack of protection for the collection, organization, and synthesis of the Indigenous communities' intangible cultural heritage conducted by tour operators for their profit. Indigenous culture should never be treated as a mere commodity for sale; rather, it should be respectfully passed down by its rightful owners. Throughout the entire process of cultural transmission, Indigenous people and communities should retain their ownership rights and the opportunity to share in the benefits that may arise from sharing their culture with others, as a way to uphold the principle of Sumak Kawsay.

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