University of South-Eastern Norway
Faculty of Humanities, Sports and Educational Science
Department of Culture, Religion and Social Studies

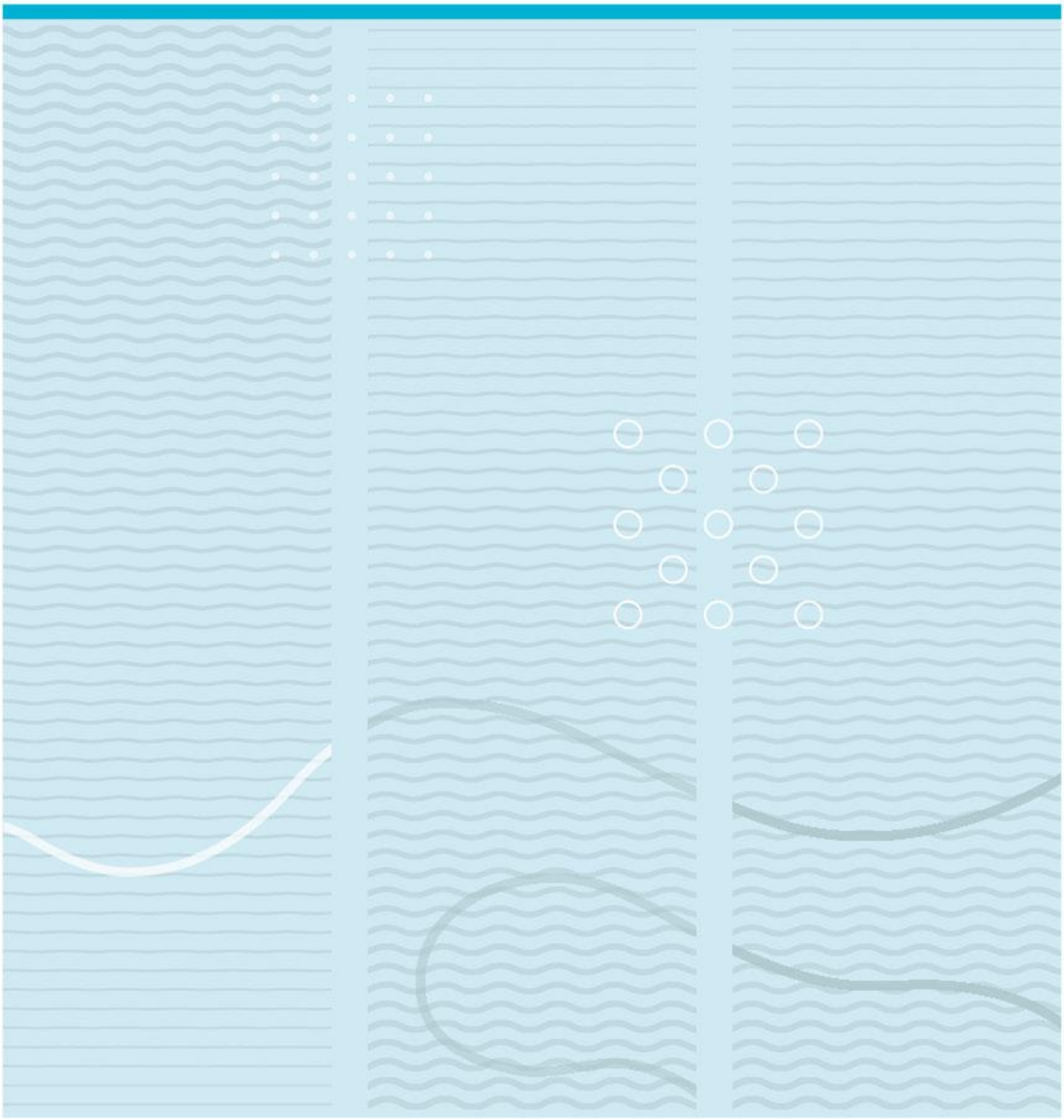
–

Master's Thesis
Study programme: Human Rights and Multiculturalism |CN 9009
Spring 2023

Piyumani Panchali Ranasinghe

Towards Pluriversal Approaches to Rights of Nature and the Human Right to a Healthy Environment?

A Critical Discourse Analysis of Selected Judicial Decisions from Ecuador, Kenya and India



University of South-Eastern Norway
Faculty of Humanities, Sports and Educational Science
Department of Culture, Religion and Social Sciences
PO Box 235
NO-3603 Kongsberg, Norway

http://www.usn.no

This thesis is worth 45 study points
Candidate Number: 9009

Abstract

Transitional Discourses, such as those on the "Rights of Nature", have shed light on the anthropocentric framing of the Right to a Healthy Environment and the universalising effect of "human rights" which dominates patterns of historical, ideological, and other forms of marginalization of various groups and results in the neglect of Nature. This prompts the need for critical reflection on the power relations and ideology underlying legal discourses in the global South, particularly those interpreting the Rights of Nature and the Right to a Healthy Environment. As such, this thesis critically analyses structural power relations and ideologies fragmenting the human-nonhuman-Nature continuum through three selected judicial decisions from Ecuador, Kenya and India. To serve the study's primary objective of uncovering power relations and ideology veiled within the judicial discourses, this thesis departs from a conventional legal interpretation of case law and adopts a transdisciplinary critical approach through Fairclough's theory of Critical Discourse Analysis (CDA). Theories of Power, Ideology, Hegemony, Pluriversality and Transitional Discourses are used to pose meaningful questions about the interpretation of the Right to a Healthy Environment and Rights of Nature in judicial discourses in the selected cases. The findings derived through the CDA of the selected cases unveil the power relations and anthropocentric ideologies hidden in judicial discourses, particularly attempts to universalise the discourses on the Rights of Nature and the Right to a Healthy Environment. Such power relations and ideologies constrain the Pluriversal realisation of the said rights by controlling the relationality envisaged in Pluriversal ontologies. Premised on the findings, I argue that the appearance of the Rights of Nature in judicial discourses signals the transitions occurring within the environmental discursive frame. However, to transcend anthropocentric ideologies and power relations, the judicial approaches should seek to Pluriversally translate as opposed to homogenize the discourses on the Rights of Nature and the Right to a Healthy Environment.

Key Words: Right to a Healthy Environment, Rights of Nature, judicial discourses, Pluriversal, Transitional Discourses

Acknowledgements

This thesis would not have materialised without the multifaceted support of many people in my life, whose conversations, care and constructive critique remain indispensable for my work. I name a few here, with deep gratitude and exceeding love. To begin with, Prof. Gabriella Mezzanotti, my supervisor and mentor for introducing Critical Discourse Analysis to me, which in many ways has transformed my relationship with legal language and the law as an aspiring scholar. Her guidance, support and probing intellect played a key role in the pages that follow and made the experience of writing a thesis over the past year an endearing endeavour. To all my mentors, present and past, whose thinking has inspired my work widely throughout my academic journey. To my family at home, particularly my parents, sister and brothers for being life-long companions and supporting my work in every way even from afar. To Dr. Kalana Senaratne, Agana Gunawardana, Justine Wild and Shannon Razack for their assistance in reviewing, proofreading and sharing feedback despite their busy schedules. To Dhanushka Silva, whose kindness, insightful conversations and largeness of love have and continue to inspire my work in profound ways. To my family in Norway, my flatmates and friends, especially Eleni Kelaraki, for her academic camaraderie, friendship and sustaining sisterhood throughout the process of writing this thesis. To the faculty, staff and the library at the University of South-Eastern Norway for enabling an intellectually nuanced academic environment. The generous financial support of the NORPART scholarship gave me the privilege of fully immersing myself in academia for two whole years - an opportunity of a lifetime.

Lastly, I reflect on the judicial decisions discussed in this thesis from the understanding that they are the result of prolonged judicial processes and the arduous work of many individuals, communities and Peoples who struggle against environmental injustice in various parts of the global South. Their efforts towards a Pluriversal world resonates with me in many ways and played a pivotal role in formulating and bringing this study to life.

Dedicated to
Seeya, Achchi and Aththamma,
your struggles towards justice and community live with and through me…

Contents

List of Figures

Foreword

This thesis assumes some knowledge of legal Judgments, environmental and human rights law. The scope of this thesis is largely theoretical and embodies technicalities pertaining to Fairclough's theory of Critical Discourse Analysis. I capitalise the terms Indigenous, Nature, and Peoples throughout the study as a sign of respect for the struggles of relational ontologies and worlds. Further, I refer to the judicial decisions by the names of the ecological environments - the Los Cedros Forest, Nairobi-Athi rivers and, the Ganga-Yamuna rivers - instead of the official name of the cases. I have chosen to do this to refer to cases consistently and succinctly throughout the thesis.

Drammen, 15 May 2023

Piyumani Panchali Ranasinghe

Abbreviations and Acronyms

AG	Attorney-General
CDA	Critical Discourse Analysis
CDS	Critical Discourse Studies
CLS	Critical Language Studies
EDS	Environment Discourse Studies
EMCA	Environment Management and Coordination Act
GARN	Global Alliance for Rights of Nature
MR	Members' Resources
RHE	Right to a Healthy Environment
RON	Rights of Nature
TDs	Transitional Discourses
UN	United Nations
UDHR	Universal Declaration of Human Rights
UDRME	Universal Declaration of Rights of Mother Earth
WCED	World Commission on Environment and Development

1 Introduction

1.1 Background

During recent decades, the propitious convergence between the human rights movement and the environmental rights movements resulted in the widespread recognition of the Right to a Healthy Environment (RHE). Whilst the RHE has taken various linguistic formulations in contemporary legal frameworks, debates and environmental discourses, the United Nations (UN) define it as the "Right to a Clean, Healthy and Sustainable Environment" (General Assembly Resolution 48/L.23/Rev.1, 2021).[1] In October 2021 and July 2022, the UN Human Rights Council and the UN General Assembly respectively adopted the RHE through resolutions marking a significant development at the level of international law and policy (*UN News*, 2022). Interestingly, at the time of such recognition, about 155 states had already either recognized the RHE as a constitutional right or had guaranteed the right through environmental legislation (Boyd, 2019, pp. 32-33). The judiciary is at the crux of converging spheres of human rights and the environment given its prominent role in promoting environmental compliance, enforcing environmental regulations and environmental human rights such as access to justice, right to information and public participation (Markowitz & Gerardu, 2012, pp. 543-544). As a key participant in environmental justice processes particularly in public interest litigation suits (van Geel, 2017, pp. 58, 63), the judicial contribution is widely celebrated for enforcing rights affecting communities in dire need of protection from environmental harm and rights violations (Atapattu, 2018, p. 444; Kamardeen, 2015, p. 74).

In recent years, legal recognition and enforcement of "Rights of Nature" (RON) in national courts of the global South has marked a shift in the judicial approaches to the environment and the broader idea of rights (*Rights of Nature in Practice*, 2021, pp. 26-27). Moving beyond the anthropocentric dualism of the human as distinct to Nature, such developments have conceived a "biocentric shift" within environmental discourses, particularly in RHE discourses (Bogojević & Rayfuse, 2018, p. 13; Borrás, 2017, p. 128). The conception of RHE has received criticism for its anthropocentricity and attempts of "greening" the human rights discourse (Rossi, 2019, p. 135). Notwithstanding the applause it has received, even the UN recognition of the RHE receives criticism

[1] In this study, I use the abbreviated form "RHE" for the purposes of remaining concise and succinct. It is by no means is an endorsement of the linguistic formulation, given the ongoing debate on framing the human right.

for its anthropocentric framing (Jones, 2021, p. 101). For some scholars, the biocentric transitions emerging from the global South indicate "Transitional Discourses". Transitional Discourses seek to reconnect humans with the nonhuman/Natural worlds to transcend the 'Anthropos' (Escobar, 2018, p. 71). I use the term "global South" here, in line with the reconfigured definition of the global South as "a transnational and evolving place where solidarity can be built between lower class and caste communities in poor and rich states, Indigenous communities, and poor [P]eoples of color" (Natarajan, 2021, p. 46). This definition ensures a multi-dimensional understanding of the global South beyond the geographical global North-South divide, where if one is to conceive the idea of the global South, one should consider the existence of the North in the South and vice versa. Notably, the aforesaid recognition of RON is commended for deconstructing the anthropocentric human-environment and Nature-culture dichotomy, a foundational character of legal systems defined by "modernity" - a colonial legacy of the global North civilizational model (Escobar, 2018). Broadly put, "modernity" is the established worldview which distinguishes between Euro-western and the "non-modern" Indigenous Peoples and communities of the global South. Distinctions are made based on the idea of progress characterized by the unidirectional, linear path of homogenizing efforts promoting a Cartesian science of objectivity and rationality as the valid form of knowledge (Quijano, 2007, p. 172; Rodriguez, 2021, p. 90). Therefore, a key characteristic of modernity is its anthropocentric approach to the environment, particularly through its legal systems which instrumentalize the environment as an object/resource (Bosselmann, 2004, p. 62; Grear, 2015). In conventional legal paradigms, the "Anthropocene" serves as an analytical lens to "renegotiate" the existing legal systems and tools to gear towards ecocentrism (Kotzé, 2015, p. 126; 2019, p. 6798).

However, scholars have cautioned against the strict reliance on legal and judicial approaches to promoting environmental rights (and justice). Some highlight that it is in reality "a reflection of a legal system that is tardy and lacks effective solutions" (Kamardeen, 2015, p. 91). Critical Environmental Justice studies have also critiqued the conventionally monopolized understandings of the state and its legal systems as the forebearers of environmental rights and justice, and the reliance on state organs such as the judiciary to police, regulate the industry and deliver justice to marginalized Peoples, species and environs (Pellow, 2017). The critique extends to the dilemmas encountered in seeking justice through systems that were inherently designed to exclude certain Peoples and nonhuman Nature (Benford, 2005; Lester, 2021, p. 132). This view also pinpoints at the dialectical interrelations between the emerging biocentric discourses on environmental rights at the judicial level, and the discursive practices at the social level. In other words, the shifting discourses

of RHE and RON which occur within the legal sphere transcends the law and interrelates to the broader socio-political and economic order(s). Therefore, even if the judiciary set out to transform environmental human rights discourses, such transformations meet with and are constrained by underlying power relations, ideology and hegemonic structures within and outside of the law. Judicial decisions and the meanings of words therein are discursively constructed where like any other text, they are embedded within the existing social power relations (Cheng & Machin, 2022; Fairclough, 1992, p. 4; Rajah, 2018).

Against this backdrop, this thesis dwells on the hidden power relations and ideologies underlying judicial discourses on RHE and RON emerging from the global South, scrutinizing the path to justice via the legal system. I argue that judicial discourses should be critically reflected upon and rethought to: firstly, situate current discursive tendencies within a critical framework and; secondly, to discursively investigate whether the judicial approaches enable or disables the Pluriversal realization of RHE and RON. "Pluriversal", here, is the breaking away from universalising structures of the anthropocene to envision "a world where many worlds fit"[2]. To be considered 'critical', a study has to reflect on hierarchies of power submerged within its operational ambit (Wodak & Meyer, 2016, p. 6). To this end, following Fairclough's theory of Critical Discourse Analysis (1989) (CDA), I consider selected judicial decisions from Ecuador, Kenya and India. In this exercise, I purposely embrace a transdisciplinary methodological and epistemological approach (Fairclough, 2010, p. 164) to question the power, ideology and control hidden in the legal texts.

1.2 Objectives of the Research and the Research Questions

The primary objective of this thesis is to critically examine the selected judicial decisions from Ecuador, Kenya and India to identify 'common-sense', 'presumed' and take-as-read ascriptions to unveil underlying power relations and ideologies embedded within the legal text. In doing so, I aim to digress from conventional legal interpretation to outline that case law too can be critically examined through CDA. Moreover, in this attempt to unearth power relations and ideology embedded within judicial texts, the overall goal is to equip readers as the audience to develop capacities to understand the relevance and applicability of Pluriversal approaches to RHE and RON. To achieve the said objectives this study seeks to answer three key research questions:

[2] Pluriversality connotes a key theoretical conception of my study. A comprehensive review of Pluriversality and Pluriversal approaches environmental-human rights is provided in section 3.3, under the theoretical framework Chapter.

I. How does the judiciary interpret RHE and RON in the selected cases?
II. What are the conceptions of power relations hidden in the judicial discourses in the selected cases and how do they influence RHE and RON?
III. How do the selected cases enable/disable Pluriversal approaches to RHE and RON?

1.3 Methodological Framework

The aforesaid research questions are answered through a qualitative study based on primary sources of law (Scheinin, 2017, p. 19) – three Judgments from Ecuador, Kenya and India. Based on Fairclough's three-dimensional model of CDA (1989), I analyse the cases to unveil the underlying conceptions of power relations and ideology.[3]

1.4 Structure of the Thesis

This thesis contains seven main chapters, with each chapter examining the existing scholarship on judicial discourses on RHE and RON, to lead a critical discussion on the implicit ideological power relations embedded within such discourses. In Chapter 1, I laid down the roadmap of the thesis to acquaint and prepare the reader with the study's point of departure *vis-a-vis* the CDA approach. Chapter 2 reviews the preponderant scholarly debates on the legal approaches to RHE and RON. The chapter explores the anthropocentric closures of environmental law, and international human rights law and outlines the biocentric shift to RON within legal regimes, prompting the need to study the conceptions of power and ideology embedded within judicial discourses. Chapter 3 is dedicated to framing the theoretical lens of the study, with a succinct account of Fairclough's theory of CDA, Power, Ideology and Hegemony. The chapter concludes with an account of Transitional Discourses and Pluriversality. Chapter 4 stipulates the methodology of the study comprehending the onto-epistemological foundation, the selection of the Judgments, the CDA framework predominantly inspired by Fairclough's Three-dimensional model of CDA, my positionality, ethical considerations and methodological tensions. Chapter 5 considers the CDA of each Judgement, where I begin by briefly introducing each Judgment and thereafter engaging in the descriptive and interpretative analysis of the cases. Chapter 6 closes the CDA loop by explaining the effects of power relations and the ideology underlying judicial discourses. Chapter 7 concludes the study with insights on reimagining approaches to RHE and RON within the judicial frame.

[3] The rationale behind the selection of cases and the onto-epistemological foundations of the methodology are explored comprehensively in Chapter 4

2 Literature Review

Critical environmental justice studies critique state organs, such as the judiciary, for recasting pre-existing ideological and power structures, with little scope for emancipatory transformations (Laituri et al., 2021; Pellow, 2017). Albeit the international, constitutional and/or legislative recognition of RON and the RHE, at the local implementation level of the law, the question of whether justice is realized by human as well as nonhuman Nature is a critical concern. Existing literature on the origins and the development of RHE and RON panoramically locates the transitional shift of rights discourses from predominantly anthropocentric framing to a biocentric understanding of rights. These developments are theorized under environmental rights frameworks, which explain and critique the limitations of the RHE and RON discourses, and the underlying power relations and ideologies mitigating the path to justice.

In this chapter, I explore the multi-faceted scholarly work on the evolution and implementation of RHE and RON. In any critical discussion about the judicial discourses of RHE and RON, international environmental law cannot be overlooked. Particularly in exploring the convergences between environmental law and human rights, scholars have shed light on the anthropocentric limitations of environmental law and its impact on the development of the RHE and RON. I begin the literature survey from this facet.

2.1 The Anthropocentric Closures of International Environmental Law[4]

The foundations of international EL are laid by principles such as state sovereignty over natural resources; responsibility to prevent transboundary environmental pollution; preventive action; cooperation; sustainable development; precautionary principle; polluter pays principles; and the principles of common but differentiated responsibility (Sands et al., 2018, p. 198). Despite their omnipresence in case law, these principles are critiqued to be "stubbornly anthropocentric", due to the centripetal role played by states in law-making and the fragmented approach to environmental protection as conservation, sustainable use, protection and reducing pollution (Jones, 2021, pp. 79-80). Legal subjectivity remains exclusive to states and transnational actors, such as Corporations (Blanco & Grear, 2019, p. 86). The precautionary principle is critiqued for not challenging the "owner-

[4] I burrow the term "closures" from Anna Grear's work on the anthropocentric closures of the liberal legal order which is discussed comprehensively in section 2.3 of this thesis.

object" paradigm and instead placing limits to "exploiting" Nature (Mariqueo-Russell, 2017, p. 25). The issue of locating the "environment", amidst the fragmented disarray of modern, Western environmental law instruments is considered a pressing problem (Natarajan & Dehm, 2019). However, the Draft Global Pact for Environment (2017), formulated under the auspices of the UN General Assembly, is an initiative aimed at developing an integrative approach to the environment by consolidating environmental law principles (Aguila & Viñuales, 2019, p. 6). The Pact seeks to overcome aforesaid gaps by devising far-reaching solutions to environmental complexities setting out holistic and binding legal principles. Nevertheless, Grear raises three critical questions regarding the anthropocentricity of environmental law: (1) the ability to exceed the "centripetal impulse of neoliberal governmentality?"; (2) the ability to "respond to alternative modes of knowing and coordination?" and; (3) the ability to "respect multiple forms of sharing the world?" (Grear, 2017, p. 90). Critical environmental law scholars have propounded the need to move beyond the debate on anthro/ecocentrism, to identify ontological drawbacks (Philippopoulos-Mihalopoulos, 2011a). Whilst international law has attempted to advance an integrative approach to environmental complexities, conservation and protection through the international human rights law (Jones, 2021, p. 81); whether environmental law principles are inherently capable of viewing and knowing the natural world, beyond the 'state-centric' 'natural resource' model persists. Hence, new ontological frameworks recognizing existing limitations is proposed to overcome the political co-optation of environmental law principles (Philippopoulos-Mihalopoulos, 2011b, p. 5). Further, the re-distribution of environmental hazards by power relations underlying environmental law has raised demands for "fairness and genuine sustainability" as opposed to simply "moving problems around" (Natarajan, 2021, p. 47).

2.2 The Emergence of Human Rights to the Environment

Accordingly, the legal convergence between human rights and the environment stems from environmental abuse and victims resorting to sophisticated human rights-based remedies to seek redress to environmental complexities (Atapattu, 2018, p. 440; Borrás, 2017, p. 115). The earliest signs of convergence were seen at the national level, in environmental policy and law as well as social movements advocating for environmental justice (Atapattu, 2018, p. 441; Borrás, 2017, p. 614). Carson suggested as early as 1962 that the Bill of Rights should contain guarantees to secure citizens "against lethal poisons distributed by private individuals or by public officials" (Carson, 1962, pp. 12-13). At a policy-legal level, Environmental Impact Assessment solidified the linkage between human

rights and the environment (Atapattu, 2018, p. 441) by incorporating procedural rights prevalent in international human rights law such as "access to information", "public participation" and "access to remedies" (Rodriguez-Rivera, 2001, p. 15). As such, in 1998 the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environment Matters (also known as the Aarhus Convention) was entered into force at the UN, which marked a milestone in international law in incorporating the "access rights" to mitigate environmental issues.[5] The convention also linked procedural rights to the substantive RHE (Atapattu, 2018, p. 442). The scholarship on the RHE underpins different legal stages of recognizing the right by national, regional, and international legal institutions and legal instruments (Rossi, 2019, p. 130). However, RHE should not be credited solely to socio-legal development as it precedes the law, given that the environment is vital for the existence of humans, society and the law (Gormley, 1990, p. 97).

2.2.1 International Recognition of the RHE

Human rights and the environment share a complex relationship within the international legal regime, although the interconnections may seem self-evident (Boyle, 2012, p. 614). The Universal Declaration of Human Rights of 1948 (UDHR) stipulates one of the first international-level legal foundations for the RHE (Borrás, 2017, p. 116).[6] Article 25 of the UDHR denotes "[e]veryone has the right to a standard of living adequate for himself and his family, health, and well-being". Further, the International Covenant on Civil and Political Rights (1966) in Article 6, and the International Covenant on Economic, Social and Cultural Rights (1966) in Article 12 provide the context for the right to the environment under the right to life and the enjoyment of highest attainable physical and mental health (Borrás, 2017, p. 116). The Stockholm Declaration (United Nations Declaration on the Human Environment, 1972) stipulates in its preamble that the human environment, natural and human-made, remains vital to human well-being and the enjoyment of basic human rights, including the right to life. Further, Principle 1 iterates that every "[person] has the fundamental right to freedom, equality and adequate condition of life, in an environment of a quality that permits a life of dignity and well-being. Since the Stockholm Declaration, there has been a "rapid 'greening' of human rights law", where human rights bodies have broadly interpreted the right to life and health to include environmental rights (Borrás, 2017, p. 117; Rossi, 2019, p. 134). Similarly, the proposal for the World

[5] The aforementioned procedural rights were termed "environmental democracy" or "access rights" once they were incorporated into environmental discourses.

[6] The UDHR does not explicitly recognize the RHE. See Rossi (2019) at p. 128 for a discussion about the international legal discourse on the environment as a public good at the time.

Commission on Environment and Development (WCED, 1987) incorporated the fundamental right to an environment adequate for the health and welfare of human beings. The Rio Declaration of the UN Conference on Environment and Development (1992) also positioned human beings at the centre of sustainable development and connoted that humans are entitled to a healthy and productive life in harmony with Nature. The linkages between human rights, environment and development were further strengthened at the World Conference on Human Rights (1993) through the Vienna Declaration and Programme of Action. In Article 11, the Declaration recognized the fundamental right to development in connection to the environment and further stipulated that the illegal dumping of poisonous substances into the environment violated the right to life and health. As such, human rights relating to the environment were linked to substantive rights such as the right to life, health and development, and procedural rights such as public participation and access to redress (Shelton, 2008, p. 42). Interestingly, the UN Economic and Social Council's Sub-Commission on the Prevention of Discrimination and Protection of Minorities was also renamed the "Sub-Commission on the Promotion and Protection of Human Rights" in 1999 due to the Sub-Commission's work on human rights and environmental issues relating to vulnerable groups such as minorities (Borrás, 2017, p. 118).

With the adoption of the UN Declaration on the Rights of Indigenous Peoples (2007), the environmental human rights discourse shifted to recognizing the rights of marginalized groups, shedding light on collective rights to the environment. Article 29 of the said Declaration underpins that "[I]ndigenous [P]eoples have the right to the conservation and protection of the environment". The UN Millennium Developmental Goals (MDGs) and its successor the Sustainable Development Goals (SDGs) are further developments in the RHE trajectory (Atapattu & Schapper, 2019, p. 343). However, in the context of MDGs, the seventh goal promoting environmental sustainability was isolated from the other goals, a drawback that SDGs attempted to overcome (Borrás, 2017, p. 120). Notably, the MDGs and SDGs did not recognize a stand-alone right to the environment. If at all, SDGs sought to improve on the experience of MDGs to lay the "foundation for a green economy" (Borrás, 2017, p. 120). The adoption of the RHE at the UN international level depicts the near-unanimous consensus on the need for such a right (Aguila, 2021). However, there is no scholarly consensus on the linguistic formulation of the right or the adjectives (Rossi, 2019, p. 128). Different adjectives and terminology of the RHE imply different levels of protection (Boyd, 2019). For instance, if the denomination carries terms such as "safe", the focus is on a "non-harming environment" for the

benefit of human beings. On the contrary, the use of the word "healthy" may imply the protection of the ecological health of Nature (Aguila, 2021).

2.2.2 Regional Recognition of the RHE

The absence of a globally overarching legal regime on RHE has not hindered the proliferation of regional human rights approaches to environmental protection. The African regional human rights mechanism is one of the unique legally binding legal instruments that explicitly recognizes the RHE. The African Charter on Human and Peoples' Rights (1981) recognizes the "right to all [P]eoples to enjoy an average general satisfactory environment favourable to their development" in Article 24. The Charter also adopted the Maputo Protocol (2003), which in Article 18 recognized the rights of women to live in a healthy, sustainable environment. Further, in the broader 'American' region, the right to the environment has been affirmed by protocols alongside the work of the Inter-American Commission of Human Rights, and the Inter-American Court of Human Rights. Article 11 of the Protocol of San Salvador (1988) adopted by the Organization of American States recognizes the RHE and affirms the obligation of the states to promote, preserve and improve the environment. Whilst, the right to the environment was not explicitly recognized in Europe, the existing human rights framework of the European Union was used to interpret the realization of the RHE such as in the 1994 *Lopez Ostra* v. *Spain case* (Boyle, 2012, p. 614). The Aarhus Convention discussed above marked a watershed moment in the environmental human rights trajectory in Europe (Atapattu, 2018, p. 442). Prior to the Convention, however, the path to building momentum around the recognition of the RHE witnessed several developments. For instance, the Council of Europe proclaimed 1970 as the "year of Nature" to expand public support for the outcomes of the Stockholm Conference (*Nature in Focus*, 1970). The discourse conceived policy ideas to add a new protocol for the European Convention on Human Rights, ensuring the right to a "pure and a clean environment" (Gormley, 1976, pp. 76-83).

The significance of regional developments lies in the holistic approaches taken to address environmental issues through human rights, particularly through the Inter-American Court of Human Rights and the African Court of Human Rights (Atapattu, 2018, p. 433; Cima, 2022, p. 45; Pepper & Hobbs, 2020, p. 645). Such holistic developments have considered specific relational understandings of the environment such as Indigenous rights and connection to the land in approaching environmental protection through a rights-based approach (Pepper & Hobbs, 2020, p. 645). The impact of regional/national courts and tribunals in defining the meaning(s), scope and content of the

RHE has momentously influenced its discursive developments in human rights and environmental fields (Cima, 2022, p. 44).

2.2.3 National Recognition of the RHE in Ecuador, Kenya and India

RHE is among the few rights that have been incorporated into national constitutions, notwithstanding the lack of explicit recognition in the UDHR and a claim to an "ancestral" link to the human rights covenants (May & Daly, 2014, p. 27). The convergences between multiple fields of law have resulted in the "new environmental constitutionalism" seeking to connect the legal bridges between human rights law, public international law, and constitutional law (Kotzé, 2012, p. 199; May & Daly, 2014, p. 32). Quantifying the exact number of states recognizing environmental rights is an arduous task given the varying legal formulations of constitutional provisions and the uncertainty created by certain legal framings at the national level (Hayward, 2005, p. 22). Environmental constitutionalism refers to an array of rights which include rights beyond the human right to health, life, and dignity or the quality of the earth's environs (May & Daly, 2014, p. 18). It also covers a range of matters affecting the human condition such as "…food, housing, education, work, poverty, culture, non-discrimination, peace, children's health, and general well-being…" (May & Daly, 2014, p. 18). The Ecuadorian constitution has constitutionalised environmental human rights since 1987. This includes the right to live in a pollution-free environment and the state obligation to promote the conservation of Nature in 1987; and the precautionary principle and individuals' right to protect the environment in 1998 (Borrás, 2017, pp. 133-134). In 2008, the Ecuadorian Constitution recognized the RHE under Article 67(27) ("Constitution of Ecuador," 2008). The Kenyan Constitution in Article 42 recognizes the "right to a clean and healthy environment" ("Constitution of Kenya," 2010). In India, the RHE is interpreted within Article 21 on the right to life ("Constitution of India," 1950; Gill, 2012, p. 204). Notably, the Indian judicial institutions have significantly influenced the environmental rights adjudication in Kenya (Boyd, 2012, p. 108). In this way, environmental constitutionalism has emerged as a gap-filler in the interaction between different legal regimes and domestic regulatory mechanisms which enables "a worldwide, yet locally grounded agenda" for environmental rights (May & Daly, 2014, p. 19). The "normative and symbolic value" of bestowing environmental rights *vis-à-vis* the constitution is highlighted in this regard (Pepper & Hobbs, 2020, p. 660).

Whilst constitutionalising environmental rights does not necessarily reveal effectivity in reaching environmental outcomes (Weis, 2018, p. 841), the argument for constitutionalising environmental rights is justified by its contribution of a "new way of thinking about the relationship

among individuals, sovereign governments, and the environment…prompting governments to …protect environmental resources for the benefit both of humans, present and future, and of the environment itself" (May & Daly, 2014, p. 49). Environmental constitutionalism is also underpinned as a mandatory intervention to address the Anthropocene's socio-ecological crisis (Kotzé, 2016, p. 17). Here, "Anthropocene" is viewed as an "analytical lens" to better present the issues and urgent measures ahead of constitutional interventions (Kotzé, 2016, p. 17).

Further, constitutionalism is also linked to judicial processes, where apex courts are considered the most formidable voice amidst multiple actors in environmental issues (May & Daly, 2014, p. 50). An independent judiciary through its rational argumentation according to law is uniquely placed "to speak beyond the confines of the dispute at hand and confront the major environmental challenges of our time" (Stephens, 2009, p. 116). Here, judicial activism is celebrated as "judges pushing the boundaries of existing law for political purposes" (van Geel, 2017, p. 58). Judicial activism, includes (1) invalidation of the arguably constitutional actions of other branches, (2) failure to adhere to precedent, (3) judicial "legislations", (4) departures from accepted interpretive methodology, and (5) result-oriented judging" (Kmiec, 2004, p. 1444). It is considered the bridging force between "what was needed and what the law could offer" (Kamardeen, 2015, p. 73). However, perspectives differ on the functioning of the judiciary within constitutional frameworks, particularly given the diverse structural, practical and philosophical contexts in which judicial entities operate (van Geel, 2017, p. 58; Pierdominici, 2012, pp. 214-215). The classical view recognizes the judiciary as the branch of the government that is vested with the "power to resolve legal disputes by applying existing law and superior parameters, and – in advance and facing different degrees of complexity – by determining which laws and parameters are applicable" (Pierdominici, p. 215). In contrast, others argue that the judiciary is located within the "public sphere as a participant in a network of actors comprising other government branches, individual and civic bodies…"(Pierdominici, p. 215). However, a singular broadly accepted definition for judicial activism does not exist (Kmiec, 2004, p. 1441). Notably, in enforcing environmental rights judiciaries have also received criticism for activism foregoing the constitutional design and drafting techniques and embracing a fully rights-based approach to what should have been "primarily constitutional law matters" (Weis, 2018, p. 852). However, despite critique, in the context of constitutional recognition of environmental rights, the judiciary, as the legal arbiter remains critical to the environmental and rights discourse amidst multiple other voices (Boyd, 2012, p. 53; May & Daly, 2014). To address environmental issues, states have also resorted to courts and tribunals such as "green courts", which specialise in environmental and intertwined socio-

economic issues (Markowitz & Gerardu, 2012, p. 545). Judges also tend to follow suit, once they become aware of the enforcement of environmental rights in other jurisdictions (Weis, 2018, p. 842).

2.3 The Anthropocentric Closures of the RHE

Nonetheless, whether the constitutional incorporation of RHE has concretely affirmed environmental protection and human rights remains contentious (Borrás, 2017, p. 127; May & Kelly, 2013, pp. 13, 23). The heavy emphasis on legal/constitutional interventions for the RHE is critiqued for at times undermining basic human rights including the right to life, health, food, water, and shelter where constitutions embody contrasting claims (Borrás, 2017, p. 127). The effectiveness of conceiving environmental protection through a human rights lens is equally uncertain (Gearty, 2010, pp. 7-9; Pepper & Hobbs, 2020, p. 639). Particularly, framing the RHE in relation to the idea of inherent human dignity and environmental utility is appraised for its anthropocentricity (Kotzé, 2014, pp. 259, 263; Wisadha & Widyaningsih, 2018, p. 74).

The mainstream debates on environmental rights are centred around the protection of environmental goods due to human dependency on such environmental goods. The intrinsic value of the environment is overlooked in such debates (Connor & Kenter, 2019, p. 1252). For some, the very existence of environmental human rights fortifies the ideology that the environment exists for the benefit of human beings (Birnie & Boyle, 1992, p. 192). This view also imparts the primary obligation of protecting the environment to states, who are to ensure its citizens and legal subjects the full access to and enjoyment of human rights (Kotzé, 2014, p. 260). For Grear, the anthropocentricity of human rights stems from its origins within the liberal legal order (Grear, 2011, p. 35). The liberal legal regime contains three "closures": (1) firstly, the historical feminization of Nature and subjugation of Nature to an exploitative, "masculinist rational agenda of 'progress'"; (2) secondly, construction of the "human" as a "real person" *vis-a-vis* "corporate form" than co-existing materiality within the living tissue and; (3) lastly, the anthropocentrism ingrained in the international human rights framework, and its preoccupation on the "universal bearing" - which also relates to the first and second closures (Grear, 2011, p. 35). The implications of these closures create the human-nonhuman/Nature-culture dichotomies which structurally stilts human societies on an agenda of environmental appropriation (Alier, 2003, p. 132). This is identified as "capitalist social metabolism", the root cause of the present ecological crisis (Alier, 2003, p. 132). In addition to the dualist worldview, liberal legal subjectivity also results in the "corporate colonization of international human rights" to serve capitalist, market-oriented interests (Grear, 2011, p. 35). Given the legal

anthropomorphism of private corporations, the law that recognizes human rights also constructs industrial corporations as rights holders, victims of rights violations and even human rights actors (Baxi, 2008). Accordingly, the notion of liberal legal personhood is "a conduit for the receptivity of law to the 'human rights' of personified capital" (Grear, 2011, p. 35). The selectivity of the law's archetype of personhood is arbitrary as it excludes other human/non-human entities (Grear, 2017). The modern liberal legal order considers humans as masters entitled to control the environment (Bosselmann, 2004, p. 63). Therefore, despite the links between human rights and environmental discourses, the inherent idea of human rights is critiqued for consolidating an anthropocentric view (Borrás, 2017, p. 127). Some scholars argue that humans are better placed to protect the environment since they possess the consciousness to recognise and respect the morality of rights. Borràs goes so far as to say that "a degree of anthropocentrism may be necessary" but, not because humans occupy the centre stage within the biosphere (Borrás, 2017, p. 128). However, there is a need to employ a critical view of the idea of rights to consider alternative rights-based approaches to environmental protection (*Rights of Nature in Practice*, 2021, pp. 16-18).

2.4 Towards Biocentrism and RON

Existing literature presents a view of biocentric approaches to environmental protection as a viable alternative to overriding the afore-discussed anthropocentric closures within the environmental-human rights paradigm (Carrales & Krabbe, 2021, p. 6). Biocentrism is defined as "the idea that humans are part of [N]ature and that the conservation of [N]ature is, above all, a duty of human beings" (Borrás, 2017, p. 129). Thus, it is premised on non-developmental and non-exploitative approaches to Nature (Carrales & Krabbe, 2021, p. 6) and focuses on the ecological integrity (Bosselmann, 2004, p. 63). The biocentric shift towards the environment witnessed several milestone developments at the international level, which includes the adoption of the UN World Charter for Nature (1982) by over 100 UN members. In its Preamble, the Charter outlined humanity as a part of Nature and recognized the intrinsic value of Nature in contrast to the mainstream resource-utility approach to the environment by stating "[E]very form of life is unique, warranting respect regardless of its worth to [hu]man, and, to accord other organisms such recognition" (UN World Charter for Nature, 1982). However, this biocentric shift should be credited to an array of national-level developments that politically (largely through Indigenous movements) and legally (through legal and policy reform) invoked the discourse on RON in places such as Ecuador and Bolivia

(Escobar, 2018, pp. 71-72). RON is the recognition of all lives and ecosystems for their intrinsic value (Borrás, 2017, p. 129).

In legal discourses, RON is conventionally defined as Nature gaining legal subjecthood, premised on all living entities having the right to "exist, persist, maintain and regenerate their vital cycles" (Borrás, 2017, p. 129). A useful critique is offered by Tănăsescu about this 'orthodox view of RON' where rights are viewed as positivist and benign constructions with the potential to save the environment (Tănăsescu, 2022, p. 15). Such a view also aligns with the legal approaches seeking to renegotiate systems to address ecological challenges in the Anthropocene (Jolly & Menon, 2021, p. 473). The conferral of legal personality is seen as the judicial fleshing out the practical implementation of RON approaches within the existing system (Berros, 2019, p. 21). However, Tănăsescu stresses five indispensable propositions to define RON (Tănăsescu, 2022, pp. 16-17). Firstly, understanding that RON is both "theoretical and practical possible" (p.16). Secondly, despite being an internationally diffused idea, RON does not embody a monolithic character, and as such the internal diversity of the paradigm, and its practical implications should be closely observed. Thirdly, the need to frame the understanding of the RON outside of a strictly legal realm, taking into account the political processes and power relations underlying rights recognition. Fourthly, the conception that RON denotes Nature as well as other environs. This propels a vital understanding that RON is "not primarily about the environment at all, but about creating new relations through which environmental concerns may be differently expressed" (Tănăsescu, 2022, p. 17). Lastly, understanding the legal framing of RON remains a critical consideration, as the variations in legal texts do not represent "legal minutiae", but constitute important considerations for the relationship between humans, the environment and the application of RON (Tănăsescu, 2022, p. 17). Therefore, to understand the constituting elements of the RON it is imperative to study the domestic application of the RON in different legal contexts (Jones, 2021, p. 88). However, critical environmental justice scholars iterate the "promise and the limitations" of the legal approaches pursuing justice *vis-à-vis* the state system (Pellow, 2017), emphasizing any claims on the indispensability of non-human Nature requires addressing tensions from both states, industries and other political factors (Pellow, 2016, p. 223).

2.4.1 The Shift in the Legal Personality

Nonetheless, the shift to biocentrism in the Western legal tradition emerged with cases such as *Sierra Club* v. *Morton* (1972), which considered the question of granting legal personality to trees

in Redwoods, California (Borrás, 2017, pp. 129-130). In a dissenting opinion, Justice Douglas had expressed the need to confer, “environmental objects to sue for their own preservation” ("Sierra Club v. Morton," 1972, pp. 741-742). The judge further noted,

> [I]nanimate objects are sometimes parties in litigation. A ship has a legal personality…The corporation sole – a creature of ecclesiastical law – is an acceptable adversary and large fortunes ride on its cases…So it should be as respects valleys, alpine meadows, rivers, lakes, estuaries, beaches, ridges, groves of trees, swampland, or even air that feels the destructive pressures of modern technology and modern life. ("Sierra Club v. Morton," p. 743)

Whilst Borrás appraises this statement made by the judge to outline the shift to biocentrism and the recognition of the RON in litigation, the author does not dwell critically on the terminology used by the Judge to differentiate the legal standing attributed to corporations in contrast to the natural bodies. As seen in the anthropocentric closures of the liberal legal order, the question of “who is seen as a subject” is heavily critiqued by posthuman theories of new materialism which “re-situate the importance of the matter in Western thought” (Jones, 2021, p. 84). According to Jones, posthuman theories advocate for,

> …an entanglement-responsive approach recognizing the juridical implications of distributed agency and interconnection. Seeing [N]ature as agentic, and accounting for the intimate connections between human and non-human lives and ‘environments’… (Jones, 2021, p. 89)

Commenting on the ‘shift’ of legal personality in the context of the Te Awa Tupua Act of New Zealand, where the Whanganui River was granted legal personality, Kauffman and Sheehan underpin that when Nature is set out as another legal person within the legal system alongside individuals and corporations, the resulting question is on “how to balance the rights of ecosystems against the rights of other legal persons” (Kauffman & Sheehan, 2019, p. 354). The objective of RON legal developments is to exert a challenge to the dominant political-economic system that distinguishes between humans and non-human Nature, where the latter is objectified and exploited to drive economic growth over the ecosystem’s well-being and health (Kauffman & Sheehan, 2019, p. 343). Notably, the debate on “Ecocide”, founded on Nature as a subject of law, classifies extractivist industries such as mining - a crime (Higgins et al., 2013). The conventional idea of the legal person is traced to the development of converging collective interests in law and economic factors (Jolly & Menon, 2021, p. 471). Whilst there is renewed legal understanding of RON as substantively and procedurally different to humans, there is a question of whether the judicial decisions capture the same (O’Donnell, 2018, p. 139). The

Uttarakhand High Court which decided on the Ganga-Yamuna Rivers case is critiqued for its anthropocentric conflation of Nature under legal personality (O'Donnell, 2018, p. 139).

2.4.2 Incorporating RON

In Bolivia and Ecuador, Indigenous worldviews have been incorporated in the formation of plurinational states, where the Constitution adopts cultural values that locates Nature as a subject of rights within the legal system (Acosta & Abarca, 2018, p. 133). The rationale for such subjectivity is based on cultural expressions of *suma qamaña, sumak kawsay* and *buen vivir* (Borrás, 2017, pp. 135-136). *Buen vivir* advocates for civilizational transformation mandating a "socio-bio-centric" vision (Acosta & Abarca, 2018, p. 134). The Preamble of the Ecuadorian Constitution specifies that development should be based on *buen vivir* to fulfil the rights of *Pachamama* (translated as Mother Earth)("Constitution of Ecuador," 2008). Constitutionalising the rights of *Pachamama* in Ecuador is a result of the momentum of social, cultural and political movements that peaked in advocating for relational ontologies (Escobar, 2018, p. 72; Walsh, 2010, p. 18). It is a "conceptual rupture" within the existing Ecuadorian legal system (Escobar, 2018, p. 72; Kotzé & Calzadilla, 2017, p. 404). The biocentric shift in the constitution is evinced through the intrinsic recognition of RON (Gudynas, 2011, p. 443). These non-Western Indigenous ontologies have underpinned that "a multiplicity of beings cast as human and nonhuman – people, plants, animals, energies, technological objects – participate in the coproduction of socio-political collectives" (Sundberg, 2014, p. 33). Post-human legal theorists have welcomed the legal developments of RON, originating from the Global South with open arms, specifically critiquing the limiting character of legal recognition of RON within bounded areas alone, as it denies the interconnected Nature of the environment beyond human-made territories (Jones, 2021, p. 89). The recognition of 'Pachamama' in the 2008 Ecuadorian Constitution, the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, and the Te Urewera Act 2014 of the Māori Peoples in New Zealand are seen as examples where recasting Indigenous worldviews were recast as legal concepts (Jones, 2021, pp. 88-89). It is worth mentioning that, in India "Indigeneity" remains contested and Indigenous Peoples are not guaranteed legal rights (Chakraborty, 2004, p. 20). In Kenya, the constitution recognizes Indigenous groups, however, through a marginalized lens (Kibugi, 2021, p. 20).

Despite the support for the rights of Pachamama, studies have explored the 'mainstreaming' of Indigenous cosmologies during the Ecuadorian 2008 Constitutional moment, particularly the "conservationist bent that overlooked local communities and their connection to Nature (Akchurin,

2015, pp. 955-956). Whether the legal conceptions would cause tensions for the long-standing political demands of Indigenous movements was another concern (p. 956). The implementation challenges of RON pose questions about the traditional way of organizing and implementing the law (Berros, 2021, p. 200). Conventionally, contradictions are considered inevitable in constitutions due to their pragmatism, vague nature and long-term visions. However, in Ecuador, this has been a key implementation challenge of RON, particularly because contradictory claims are supported by the constitution (Lalander, 2016, p. 626). The discursive fluidity of concepts such as *buen vivir* and RON may result in the co-option of these discourses by dominant ideologies (Laastad, 2016, p. 16). Co-option transforms prior meanings to incorporate a discourse into a different discourse entailing distinct purposes (p. 16).

Albeit the lack of an overarching international legal instrument, there has been momentum internationally to promote RON. After the adoption of the Universal Declaration of Rights of Mother Earth (UDRME, 2010), the "People's Agreement of Cochabamba" or the "Declaration for the Rights of Mother Earth" was formulated by citizens from over 140 states (Borrás, 2017, p. 88). The Declaration raised several key concerns including the power relations in climate change, the need to decolonize the discourse on climate change, and the intersections of capitalism and patriarchy in exploiting the environment ("People's Agreement of Cochabamba," 2010). The work of the International Rights of Nature Tribunal is critical in understanding the jurisprudence of RON at an international level. Despite the Tribunal being led by people, its operational work in applying the UDRME is useful to understand RON considerations (Jones, 2021, p. 88). At the UN Level, the UN Harmony with Nature initiative has spearheaded the call for recognition of RON (*UN Harmony with Nature*, n.d.). As such, the formulation of an expert group on "Earth Jurisprudence" in 2015, and the subsequent recognition of "fundamental legal rights of ecosystems" evinces the UN dialogue on promoting RON (General Assembly Resolution A/71/266, 2016). By 2017, the UNGA considered the application of Earth Jurisprudence to the Sustainable Development Goals (*UN Harmony with Nature*, n.d.). By 2020, the UNGA adopted a resolution to urge experts of the Harmony with Nature Knowledge Network to conduct a study on the evolution of regional, local and national initiatives on the protection of Mother Earth (*UN Harmony with Nature*, n.d.). Critical environmental justice perspectives recentre the discussion on the question of justice – envisioning it within the struggles that endeavour to transform power structures that produce environmental injustices (Pellow, 2016).

2.5 Critical Environmental Justice

The environmental justice movement in the 1970s in the United States was "a direct response to the practice of locating polluting and hazardous activities in areas of low-income and minority communities" (Atapattu, 2018, p. 443). It is the "language of resistance", where the movement's origins in grassroots activism signalled the disproportionate impact of environmental harm on minority groups and considered environmental justice relevant to all social contexts (Natarajan, 2021, p. 43).[7] The struggles reveal the flow and hierarchy of power between multi-species relationships within the planetary tissue (Bennett, 2010).[8] For Pellow, the question of "the expendability of human and non-human populations facing socioecological threats from states, industries, and other political-economic forces" is a crucial concern for any environmental justice debate (Pellow, 2016, p. 223). Further, such debates should confront social inequality and state power as opposed to embracing (Pellow, 2017). Whilst procedural recognition or inclusion are vital to advance grassroots efforts pursuing justice, there is a vital need to remain critical of underlying power relations that diffuse efforts into "differential inclusion", "co-optation", "assimilation", and "strengthening of dominant groups" (Pellow, 2017). What the critical environmental justice perspective offers is two-fold. Firstly, it entails a colligated discussion about RHE and RON, placing both within the realm of debates in environmental justice. Secondly, it is a departure from moving environmental injustices around and confronting hidden power relations within socio-legal orders to navigate into a transformative vision of justice that embodies Pluriversality. This is precisely what this study sets out to explore. An array of scholars discusses the anthropocentric closures within the environment-human rights legal orders. The issues raised by such work largely centre around the evolution, recognition and implementation

[7] Natarajan elaborates on the four-pronged environmental justice framework, inspired by David Scholsberg's work -distributive, procedural, corrective, and social justice – brings together the broader idea of implementing the substantive and procedural rights within a predominantly RHE paradigm. Distributive justice is identified as a useful aspect of justice, especially to recognize the transnationality as well as the correlation of environmental issues to complex social stratifications such as "race, culture, class, gender and other possible markers of inequality". Procedural justice is outlined in the perspective of participation in decision-making, specifically concerning different discriminations ahead of communities owing to various preconditions imposed on participation in decision-making. These include independent statehood, the ability to comprehend the needs of communities within the confines of Western (and White) governance models, contradistinctions in the understandings of environmentalism as well as the Western selectivity in implementing environmental principles such as sustainable development and common but differentiated responsibility. Corrective justice is outlined as the redress mechanisms for the environmental suffering of the global South, endured in the past, present, and possibly in the future. Natarajan highlights that corrective justice is resorted to easily in comparison to distributive and procedural demands, due to redress mechanisms fitting neatly within existing legal structures. Lastly, social justice is discussed particularly in relation to the exploitative patterns reinforced by colonialism in the global South.

[8] Bennet explores the idea of non-human matter such as fossil fuels exerting power over the entire world influencing politics.

(or lack thereof) of RHE and the RON. However, there only a limited number of scholarly debates dwell comprehensively on power relations and ideology veiled in judicial discourses (Rajah, 2018, p. 480), especially in legal discourses on environmental rights (Aston & Aydos, 2019). However, even then such interpretations are at times limited to legal dogmatics and principles (Ervo, 2016, p. 210). Seldom have academics embarked on discourse studies to unveil conceptions of power and ideology hidden in judicial discourses on RHE and RON. Even rare are studies based on Critical Discourse Analysis (CDA). The present study seeks to fulfil this research gap by embracing a transdisciplinary perspective to analyse the judicial discourse on RHE and RON.

2.6 Chapter Summary

The discourse around RHE has emerged in national, regional and international realms resulting in the recognition of the right as a constitutional/legal right and as a human right. However, the RHE carries anthropocentric limitations, which are increasingly challenged by biocentric counter-hegemonic discourses. RON emerges in this context, particularly due to national-level movements and Indigenous struggles. However, the critique of legalising RON signals an anthropocentric appropriation of the paradigm. Thus, a critical view of legal discourse is essential to initiate dialogue from the margins of the law to better understand the transformative visions for Justice.

3 Theoretical and Conceptual Framework

Underlying power relations produce, re-conceptualize and may reinstate dominant, hegemonic regimes, limiting emancipatory visions for RHE and RON. This chapter presents Fairclough's notion of CDA (1989) as a theoretical and analytical framework for uncovering conceptions of power, ideology and hegemony embedded in judicial discourses. I begin by briefly introducing the core tenants of Critical Discourse Studies (CDS), particularly the understanding of the law 'as discourse'. Thereafter, I will explore theorizations of environmental discourses as an entry point to uncovering different discourses in environmental debates and their effect on shaping and propositioning legal-policy discourses in a given time frame. Next, an account of Fairclough's theory of CDA is provided, with a brief outline of Foucault's theory of Hegemony and discourses. Lastly, I refer to Transitional Discourses as a paradigm to understand the occurrence of Pluriversal and relational ontologies such as RON.

3.1 Critical Language Studies

Critical Language Studies (CLS), out of which CDA emerges, aim at describing the existing sociolinguistic conventions and their role in distributing unequal power relations in society. Language and power share a complex relationship. Critical theorists emphasize subjugated forms of knowledge over the dominant knowledge, where "critical" indicates making connections hidden from people (Fairclough, 1989, pp. 5-6). Sociolinguistic conventions, which constitute how language is used in social contexts, share a binate relation to power: firstly in incorporating differences of power; and secondly arising out of – and giving rise to – particular relations of power (pp. 1-2). Therefore, premised upon critical theoretical principles of examining interests, power, and control, CLS has also influenced the law, a predominantly linguistic field (Gellers, 2015, p. 484).

3.1.1 Critical Discourse Studies of Law

According to Mertz, the law constitutes "the locus of a powerful act of linguistic appropriation, where the translation of everyday categories into legal language effects powerful changes" (Mertz, 1994, p. 441). Legal language does this by classifying the world into various identities and defining the character of human agency (Cheng & Machin, 2022, p. 2). In the eyes of CLS and CDS, the law, as in any other language embodies ideas and values, and the language of the law is a 'legitimizer' of discourses disseminated by government institutions in a particular society

(Cheng & Machin, 2022, pp. 2-3). Whilst such language may appear to be "neutral", it connotes values and ideas and is "shaped by the prevailing discursive frames" at a point in time (Cheng & Machin, 2022, p. 7). Moreover, despite its neutral appearance and distracting obscurity, legal language "represents persons, events, causalities, priorities, and responsibilities in words and grammar" (p. 3). Legal settings are exemplary of the exercise of power relations (Gellers, 2015, p. 484; Shuy, 2001). As such as a site of linguistic contestation and change, there is an increasing interest in studying the law through CDS and/or CDA methods (Statham, 2022, p. 59). Notably, environmental law scholars have gained momentum in CDS in recent years, due to their efforts in assessing the impact of prevailing discourses and their implications on shaping laws and legal decision-making at a particular time frame (Cheng & Machin, 2022, p. 6). Studies have unveiled that environmental legal decision-making is propelled by not only rational scientific processes but also the dominant discourse collationed by competing interest groups wielding power over environmental issues at a given point in time (Jessup & Rubenstein, 2012, p. 4). The concept of "Nature" itself remains deeply contested within legal contexts, where interpretative processes define acceptable ontological positions and policy prescriptions (Dryzek, 2013, p. 12; Hajer & Versteeg, 2005, p. 177)[9].

Environmental Discourse Studies (EDS) explore the incidence and authority of environmental discourses within environmental policy and legal regimes and emphasise that discourses are penetrable fields (Dryzek, 2013, p. 10). Whilst they underpin a shared way of apprehending the world, where subscribing participants can build upon information and formulate stories and accounts of understanding the environment (Jessup & Rubenstein, 2012, p. 7), there are also continued interchanges at the margins of discourses (Dryzek, 2013, p. 22). Further, since discourses rest on presumptions or judgements, they can enable or constrain actors and what is being said (Dryzek, 2013, pp. 9-10). Sustainable development as a discourse showcases how environmental efforts are globally organized according to the discourse (Dryzek, 2013, p. 147). The judiciary is viewed also as a participant in this process as an authoritative interpreter in establishing discourses within a discursive framework (Dryzek, 2013, p. 11). For instance, the discourse of "public interest", and the relationship constructed between law, Nature and development is an example of such discoursal effect (Aston & Aydos, 2019). EDS has revealed how discourses carry and embody political practices and power, particularly in terms of the use of language in formulating environmental issues, policies,

[9] It is important to note that Hajer and Versteeg comprehensively reviews the linguistically intelligible character of "Nature". The distinction between the linguistic construction of Nature and Wilderness is explored by Dryzek.

and laws which unveils the interrelation between the acceptability of policy prescriptions and the dominant socio-political project of the time (Hajer & Versteeg, 2005, p. 175). Therefore, exploring the contours of ideology and power within the field of environmental discourses is encouraged (Gellers, 2015, p. 488). Moreover, in applying CDA to Human Rights and Environmental law milieus, Fairclough's theory of CDA has received attention (Gellers, 2015; Laastad, 2016; Susan, 2022).

3.2 Fairclough's Theory of Critical Discourse Analysis

Fairclough's theorization of CDA is a "Relational, Dialectical, and Transdisciplinary" theory (Fairclough, 2010, p. 3). The relational nature of CDA renders it a systematic and transdisciplinary analysis of the relationships between discourses and elements of social processes. In addition, due to its dialectical character, CDA extends beyond a generalized commentary on discourse to an analysis of socio-political realities and relations that exist in societies beyond texts (Fairclough, 2010, p. 10). Correspondingly, CDA also transpires a valuable evaluative framework to study how language and discourse function in processes of social change and the linguistic determination of society, a critical consideration for my thesis due to its focus on case law interpretations of RHE and RON. In the preceding section, I observe scholarly perspectives which increasingly advocate for the study of legal language as a discourse to discover underlying aspects of power and ideology. Inspired by these perspectives, I lay down the key conceptions of Fairclough's theory to develop the theoretical foundation for my study.

3.2.1 Social Determination of Language and Discourse as Social Practice

Common-sense Assumptions. In Fairclough's influential work "Language and Power" (1989), the author hypothesizes that there are "common sense assumptions" implicitly embedded in linguistic conventions, which are hidden from the conscious awareness of social actors (Fairclough, 1989, p. 2). In other words, these assumptions formulate the basis of discourse, almost involuntarily, where the delivering actor is consciously unaware of the assumptions implicit in the discourse (Mezzanotti & Ranasinghe, 2022, p. 114). As discussed, not only is the use of language socially determined, the society too is linguistically determined (Fairclough, 1989, p. 19). Common sense assumptions, albeit not entirely ideological, within linguistic conventions are points of inquiry to uncover the ideological dimensions of the given discourse. CDA undertakes the arduous task of analysing linguistic elements such as words, texts, and documents to probe into the interpretation, reception, and social effects of such elements (Fairclough, 1992, p. 9). Fairclough considers CDA to

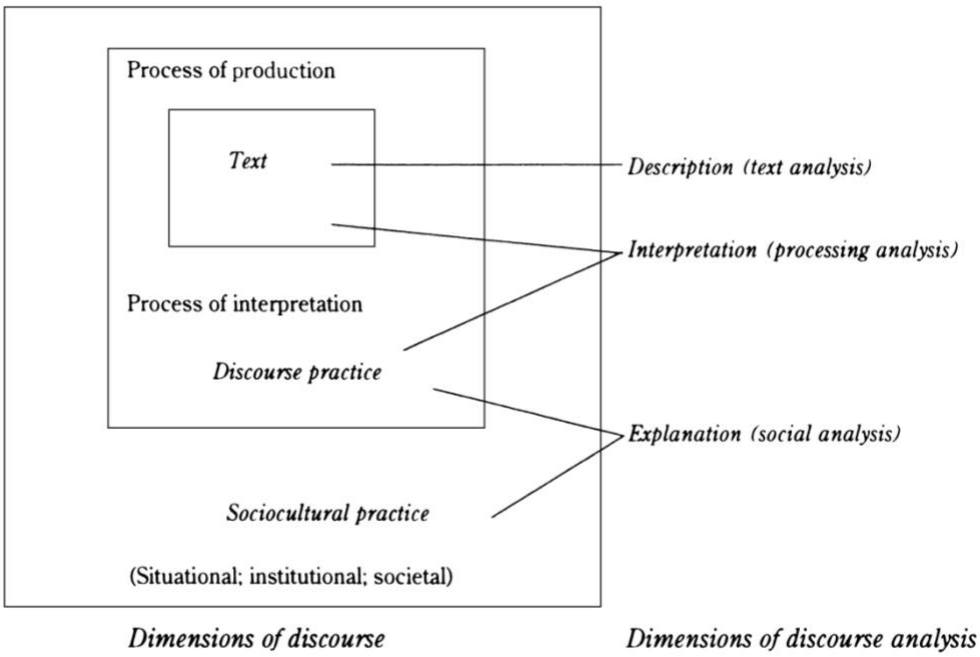
be crucial for social critique from both a theoretical as well as a practical perspective. Theoretically, CDA is helpful to debunk the underestimation of the role of language in the "production, maintenance, and change of social relations of power" (Fairclough, 1989, p. 1). From a practical standpoint, to understand the role of language in dominating some groups over others (p. 1). Thus, to embrace CDA as a theoretical frame in any study is to understand that the exercise of power is the exercise of ideology. In the present linguistic epoch, power is exercised through the linguistic exercise of ideology (Mezzanotti & Ranasinghe, 2022, p. 114).

Members' Resources. For Fairclough, discourse is the entire process of "social interaction", where a text would constitute a part of the discourse (p. 24). Here, the understanding is that discourse in its essence is a salient and cogent feature of social life. As such, for Fairclough, changes in discourse also inaugurate and steer social changes, forming a dynamic relationship between discourse and society (Fairclough, 2010, p. 11). In this regard, CDA is premised on understanding discursive activity as social practice and thereby analysing the social and ideological repercussions of discourse (2010, pp. 65-66). It is imperative to study the processes of producing and interpreting texts, in addition to the text itself, primarily because such processes are also socially determined, and exist with prevailing social conventions (Fairclough, 1989, p. 19). Therefore, in Fairclough's theory, a text is "a product rather than a process – a product of the process of text production" (Fairclough, 1989, p. 24). This also renders the text a resource for interpretation. Simply put, CDA involves analysing the formal properties of the text firstly, for its "traces" of the productive process, and secondly for the "cues" in the interpretative process. Interpretation extends into a range of social conditions that have a significant impact on the discourse (p. 24). These social conditions, determine the properties of discourse as well as the processes used to produce and interpret discourses (Fairclough, 1989, p. 19). This is what Fairclough considers to be "Members' Resources" (MR), which includes a range of considerations interplaying in the production and interpretation processes. MR includes the actors' "knowledge of language, representations of the natural and social worlds they inhabit, values, beliefs, [and] assumptions" (p. 24). In sum, when people are producing and interpreting discourses, they draw from social conditions around them, which in return mould how texts are produced and interpreted.

As such, CDA is not merely analysing texts, the processes of production, or interpretation. Rather, it is "analysing the relationship between texts, processes, and their social conditions, both the immediate conditions of the situational context and the more remote conditions of institutional

and social structures" (Fairclough, 1989, p. 26). Correspondingly, CDA involves three discursive instances or dimensions: Description; Interpretation, and Explanation. At the Description level, the text's formal properties are identified and categorized. Interpretation is the second stage of the analysis, where the text is seen both as a result of production and a resource of interpretation. At the Explanation stage, CDA considers both transient and enduring social conditions that influence and are influenced by the discourse (Fairclough, 1989, pp. 26-27). Figure 1 provides a diagrammatic outline of this CDA approach. I elaborate on the discursive levels comprehensively in Chapter 4.

Figure 1: *A Diagrammatic Outline of the CDA approach*



Note. From Critical Discourse Analysis: The Critical Study of Language (p. 133), by N. Fairclough, 2010, Routledge. Copyright 1995, 2010, Taylor & Francis.

3.2.2 Orders of Discourse

Drawing upon Foucault's (1971) theorization of "orders of discourse" Fairclough underpins that discourse is determined by underlying social structures and conventions (Fairclough, 1989, p. 28). A clustered network of social conventions forms orders of discourse, and often these conventions and orders house specific ideologies (p. 28). To illustrate the ambiguous relation of discourse to social convention, and practice to action, Fairclough draws parallels between what people usually do on a particular occasion 'x' and what they are habitually used to doing on occasions such as 'x' (p. 28). Given the social nature of discourse and practice, individual occasions are usually

parcelled within conventional discourses and practices, placing an individual incident within the broader social convention and vice-versa. Social conventions and actions go hand in hand, in the sense that they can impose constraints on types of practice or discourse. However, such constraints are not rigid and there is space for "creative" inferences Fairclough (1989, p. 28). A social order structures a specific social space and stipulates the types of practices allowed within it (p. 29). In a CDA lens, orders of discourse constitute the social order which dictates which discoursal types/actions are permitted. The actual practice of writing or speech thus is also discoursal action (p. 29). Orders of discourse vary based on the discourse types and the structure of a given order. For example, Fairclough refers to "conversation" as a discourse type in legal proceedings and a classroom setting, Fairclough stresses that there is a significant difference between discourse types in different social institutions. Such differences arise based on the relationship of different discourse types within the order. As such, Fairclough stresses that,

> …conversation has no 'on-stage' role in legal proceedings, but it may have a significant 'off-stage' role in, for example, informal bargaining between prosecution and defence lawyers. In education, on the other hand, the conversation may have approved roles not only before and after classes are formally initiated by teachers, but also as a form of activity embedded within the discourse of the lesson. (Fairclough, 1989, p. 30)

Notably, the structure of a given discourse and the changes within the structure occur over time and are determined by the changing relationships of power at specific social institutions or society at large. Power entails the "capacity to control orders of discourse" and one way of operationalizing control is through ideology (p. 30). Ideology here plays the role of "harmonizing" the orders of discourse (p. 30). As discussed in the preceding section, common sense assumptions embedded in discourse are expressions of ideologies. What interests my study is how both Fairclough and Foucault understood discourse to be able to shape and be shaped by the social order, leading the discourse to be susceptible to power relations and/or power struggles prevailing within the social order. Therefore, a discourse is "a place where relations of power are actually exercised and enacted" (p. 43). This understanding of discourse strengthens the idea of discourse being a linguistic determination of power. It is imperative to bear in mind that, power is not only repressive, exclusionary, oppressive, censoring, or abstractive forces of control but also includes power that produces domains of objects and rituals of truths (Foucault, 1980, p. 92).

3.2.3 Power "In" and "Behind" Discourse

Power In. Power, in Fairclough's view, is visible in all social domains and is embedded in social practice (Fairclough, 1992, p. 50). It is exercised "in" and "behind" the discourse (Fairclough, 1989, p. 43). In CDA, one of the key objectives is to understand and discover the underlying relations of power and/or power struggles in linguistic conventions. Power "in" discourse construes that the powerful participants impose various restrictions on non-powerful participants, which are typically constraints on a) the contents of what can be said or done; b) the categories of social relations entered into through the discourse, and c) the subjects, the positions that individuals can hold within the discourse (p.46). For example, in face-to-face social action, "unequal encounters" between powerful and non-powerful participants from varying cultural and linguistic backgrounds may lead to the domination of "minority" communities and of "institutionalized racism" (p. 49). In written contexts, the nature of power relations is hidden. Whilst Fairclough's conception of power in discourse heavily focuses on mass media, this notion of power is of relevance and significance to legal contexts as well. This is because power in discourse often stipulates specific causes and actions in ways of legitimizing dominant social practices as knowledge. As seen above, power is not limited to oppressive control. It can be productive. In legal orders, the law influences societies to a "relatively homogenous output", exercising pervasive control over discourses.

Power Behind. The "power behind" discourse is a useful analytical tool in this regard as it explains power exercised through efforts of "standardization" (Fairclough, 1989, p. 56). Fairclough iterates that power "in" and "behind" discourses construe a cyclical struggle for power where dominant actors are reasserting power and dominant groups are bidding for power. This is what construes the "social struggle" (p. 68). I will conclude this section by summarising the three types of constraints that powerful systems exert on other dominated groupings. These are constraints on: contents; relations; and subjects (p. 74). The long-term structural effect of such constraints entails power over what is considered knowledge and beliefs; social relationships and social identities. As such, power is exercised in creating a sense of standardized commonality of practice and coordinated efforts by creating what is knowledge. This is the desire of creating "universality" or "naturalizations". It leads to coordinated efforts that seek to universalize and standardize practices, beliefs and identities (Fairclough, 1989, p. 75). Such inculcation efforts are achieved through communications, through processes of interaction. Communication is the longstanding focus of the power struggle, given that it is a mode for both inculcating dominant regimes and struggling for emancipation against

domination (p. 75). In both cases, the role of a CDA analyst is to identify the constraints over contents, relations and subjects to identify systems of domination and the struggle for power.

3.2.4 Ideology and Hegemony

The constraints imposed by power "in" and "behind" discourses are ideological in Fairclough's eyes. As seen above, ideology was understood to connote the "common sense" assumptions that contribute to sustaining prevailing power relations (Fairclough, 1989, p. 77). These common-sense assumptions are taken for granted and the effectiveness of ideology is primarily based on the degree to which ideology merges with social action as "common sense" and exists invisible (Fairclough, 1989, p. 77). Ideology as such is hidden in discourse and seeks to constrain the discourse to fit a specific worldview (van Dijk, 1993, p. 258). This prevents any participant (as an interpreter) from taking an alternative to the hidden ideology in interpreting the discourse (Fairclough, 1989, p. 85; Wodak & Meyer, 2016, p. 9). This mandates the interpreter to reproduce ideology. Further, the linkages between ideology and hegemony are explored by Fairclough to underpin that hegemony constitutes domination in political-economic and ideological spheres. Developing his argument from the Gramscian theory of power in modern societies, Fairclough argues that "[d]iscourse conventions embody naturalized ideologies which make them an effective mechanism for sustaining hegemonies" (Fairclough, 2010, p. 126). The relationship between discourse and hegemony is dualistic. Firstly, hegemonic practice and hegemonic struggle substantially take the form of discursive practice. Given that the naturalization of discourse conventions is the most effective mechanism of both "sustaining and reproducing cultural and ideological dimensions of hegemony" (Fairclough, 1989, p. 129), hegemonic struggle connotes the struggle to denaturalize the prevailing ideological and cultural conventions by dominated others. On the other hand, discourse is a sphere of the cultural hegemony of a class or group over society/ies either in parts or on a transnational scale, and the capacity of the class to shape discursive practices and the orders of discourse. In this context, as far as discourse is concerned, the dominant forces strive to preserve, restructure and renew their hegemony as a part of the hegemonic struggle. This renders hegemony interlinked with social action and an unstable (Fairclough, 1989, p. 130). Therefore, it is to be understood and examined based on its social effects. A vital consideration here is "discourse co-optation" concerning hegemony and discursivity. Discourse co-optation is "how one discourse burrows into the heart of a counter-discourse, turns its logic upside down and puts it to work to re-establish hegemony and re-gain political support" (Jensen,

2012, pp. 36-37). The result would be a new discursive complex which drives social change (Jensen, 2012, p. 36).

Fairclough considers knowledge to be the power underlying social practices. Resorting to Foucault, Fairclough further expounds on how discourses shape knowledge by arguing that knowledge offers both avenues for social transformation as well as social critique. In this context, discourses function as "tactical elements" in "the field of force relations" (Foucault cited in Fairclough, 2010, p. 66). Hence, there can be varying or even contradictory discourses operating within the same strategical approaches, and in others, discourses may remain the same from one strategy to another. Further, given the reciprocity between discourses and social reality, discursive practices ingrained within social structures aid in producing, reproducing, and modifying unequal power relations. Foucault frames discourse as a driving force in the organization of society and the formation of social structures. In other words, aggregated discursive practices can emerge as conventional and institutionalized frameworks which foster systematic rules and values. The said rule-value conventional mould shapes social actions as well as social actors, rendering some actors and actions to emerge "dominant or dominated" or "included or excluded".

3.3 Discourses in Transition: Pluriversality and Relationality

Transitional Discourses (TDs) emerge within the hegemonic struggle as epistemic and ontological analyses enabling a sense of deeper questioning and critique about established and dominant structures, particularly those constructing a dualist world (Escobar, 2018, p. 63). The "Anthropocene", the geological epoch dominated by human impact on the earth (Crutzen, 2006, p. 13), is constructed on the dualist ontology of exploitation of non-human and Natural worlds (Steffan et al., 2007, p. 614). Whilst, anthropocentrism "places humans and their concerns at the centre stage", the conception of Attenuated anthropocentrism indicates the historically, racially, ethnically, culturally and/or otherwise marginalized positions reducing humanity to states of sub-humanity (Fox & Alldred, 2021, p. 59).

Transcending the Anthropocene, TDs stem from the broader need of embracing a style of transformation that envisions an interwoven transformation that binds ecology with others in designing a Pluriversal proposal for Earth. The hallmark of TDs is the radical proposal of "cultural and institutional transformations…*a transition to an altogether different world*" (Escobar, 2011, p. 138). TDs are not underscored by any generalized theory, and they propose the translation of "complex

epistemological processes – intercultural and inter-epistemic – which require a type of cognitive justice that has yet to be recognized" (Escobar, 2018, pp. 65-66). Importantly, TDs envision a radical transformation to a world with multiple ontologies, which opposes "pre-existing universals" (Escobar, 2018, p. 66). The politics of Relationality is such a transitional ontology, particularly given its praxis of an integral vision of understanding the world in relation to others (Escobar, 2018, p. 74). Converging varying philosophical, biological and Indigenous ontologies, the practice of relationality asserts that the world is Pluriversal, "ceaselessly in movement, an ever-changing web of interrelations involving humans and nonhumans" (Escobar, 2018, p. 74). In other words, relational ontologies "eschew the divisions between Nature and culture, between individual and community, and between us and them that are central to modern ontology" (Escobar, 2018, p. 74). In his conception of TDs, Escobar presents various discourses that are in transition in the global North as well as the South (Escobar, 2018, p. 67). In the North, transition initiatives, degrowth, UN processes and the Anthropocene are TDs, seeking to pervade the hegemonic ontological politics (Escobar, 2015, p. 452). In the South, transitions include visions for alternatives to development such as *buen vivir*, the practice of relationality and the idea of the Pluriverse (Escobar, 2015, p. 458).

From an Indigenous perspective, the Pluriverse moves beyond modernity's legitimization of "universality" and acknowledges multiple ways of being and knowing the world, for lasting sustainability for people and the planet (Rodriguez, 2021, p. 84). Rooted in the cosmologies of the Indigenous Zapatista movement, Pluriversality underpins the broader idea of "a world where many worlds fit" (Escobar, 2018, p. 75)[10]. Here, the emphasis is on the cosmocentric relationality between people, Nature and land (Mignolo, 2018, pp. ix-xvi, x). In the writings of Santos (2016), Escobar (2018), and Mignolo and Walsh (2018), Pluriversality is the decolonial response to the universal, North-centred worldview. As such, considering Pluriversal approaches to human rights entails "transforming human rights into emancipatory ones" where there is space for "new forms of thinking, feeling, experiencing, and knowing that exceed North-centred epistemologies (Mezzanotti & Kvalvaag, 2022, p. 476). *Pachamama, sumak kawsay*, and *buen vivir* are a few Pluriversal concepts that occur within the judicial discourses examined in this thesis. Pachamama is the Andean Mother Earth deity. *Sumak kawsay* (in Quencha) and *suma qamaña* (in Aymara) or *buen vivir* (in Spanish) refers to the conception of "living well" (Escobar, 2018, p. 72). This constitutional understanding of *buen vivir* is related to the

[10] Zapatista movement uses "*Un Mundo Donde Quepan Muchos Mundos*", which is translated into English as "a world where many worlds fit".

Ecuadorian development model. Notably, the usage of Pluriversal concepts by legal discourses is critiqued for its "productivist" understanding of the idea of "progress" (Acosta & Abarca, 2018, p. 132). This critique is a potent reminder to inquire whether Pluriversal notions such as *buen vivir* is being co-opted[11] by the legal discourse, in instances where judicial discourses attempt to interpret them. Broadly, the question is at the crux of the present study.

I draw on Pluriversality to bridge the "critical" angle foundational to this thesis, particularly concerning the social construction of environmental rights. In the context of my study, I find the conception of relationality useful in three regards. Firstly, to understand that humans are "critters" within the larger planetary "living" tissue alongside other "critters" and non-human Nature (Grear, 2018, p. 130). Secondly, to reflect on the critique against "human subjectivity" in Western legal philosophies of human rights and the environment (Jones, 2021, p. 83). Lastly, to critically analyse the RHE and RON discourses, to identify transitions from hegemonic dualist worldviews to Pluriversal contexts. Notably, the occurrence of relationality within the 'modern liberal laws' perturbs the archetype Euro-Western modernity and signals the realities of the postliberal social orders struggling for power within the discourses.

3.4 Chapter Summary

The purpose of this chapter was to lay down the theoretical underpinnings of Fairclough's model of CDA, particularly in light of the conceptions of "Power", "Ideology" and "Hegemony". In addition, TDs were analysed as a new theoretical lens for critiquing power relations and the ideology underlying modern legal ontologies. Here, the focus was on relationality and Pluriversality, as a theoretical frame to question the anthropocentric legal ideologies. In the following chapter, I contextualise CDA as a methodology to explore selected case law on RHE and RON.

[11] I discuss "discourse co-optation" as an analytical concept in chapter 4.

4 Methodology

The methodological framework of this study was driven by the three research questions: how does the judiciary interpret RHE and RON in the selected cases; what are the conceptions of power relations hidden in the judicial discourses of the selected cases and how do they influence RHE and RON; how do the selected cases enable/disable Pluriversal approaches to RHE and RON. In the context of interpreting legal texts, conventional legal research methods involve specific interpretative rules and legal principles largely confined to the legal discipline (Baude & Sachs, 2017, p. 1081; Fallon, 2015, p. 1237; Sivakumar, 2016, pp. 299-300; Soames, 2014, p. 300). However, my approach to this study is premised on the critical legal methodology (Minkkinen, 2013, p. 120). Critical legal methods study power relations underlying the legal discourses, texts, language and knowledge (Grear, 2015, p. 241; Philippopoulos-Mihalopoulos, 2009, p. 44; Rajah, 2018, p. 480). Therefore, to critically examine the legal discourses I opted to use Fairclough's CDA (1989) as my primary interpretative tool in the present research. CDA instils a strong foundation to unveil how legal language is shaped by prevailing discourses, even if the law appears to be a value-neutral (Cheng & Machin, 2022, pp. 3, 6). I use this chapter to map out the overview of my epistemological and methodological choices, particularly my epistemological foundation; the reasons underlying the selection of the cases; the analytical framework of the study; ethical considerations; methodological tensions encountered and my positionality within the study.

4.1 Epistemological Foundations and Research Design

The epistemological foundation of my study rests on the critical paradigm and adopting a critical lens to case law, its linguistic formulations and more broadly legal knowledge. Critical research is concerned with self-reflection, where the underlying interest in knowledge stems from the interest in emancipation from "hypostatized forces" (Habermas cited in Minkkinen, 2013, p. 119). The self-critical view considers the law's foundational premises but leaves room for reflexive critique and considers power and interest over legal knowledge (Bhatt, 2019, p. 502). Therefore, my study moves beyond the positivist understanding of the law and the conventional legal ontologies employed to read and analyse Judgments. My concern primarily is the legal language, especially the power-ideology dimensions hidden in seemingly objective and value-neutral judicial inferences. Law, the main subject of this thesis, is broadly understood either as an exclusive, autonomous and objective entity separated from other forms of existence or as an integral aspect of social life, shaped by various

spheres of existence (Davies, 2002, pp. 4-5). Whilst the former position relates largely to the positivist understanding of the law, which takes legal language in its 'black letter' form. The latter understanding of the law is embedded within critical legal theories, populated by interdisciplinary approaches reconceptualising the law beyond positivist standpoints (Philippopoulos-Mihalopoulos, 2017, p. 131). "Critical" in CDS relates to questioning ideological, power and cultural bases within a study (Bryman, 2012, p. 577). Thus, in determining my methodology, I chose Fairclough's CDA model within the CDS scholarship as it equipped me with a "critical" lens to probe into the ideological basis of judicial discourses, in comparison to other hermeneutical style methods. This approach also enables the repudiation of positivist tendencies of interpreting the law, a crucial consideration, given the decolonial onto-epistemologies at the crux of this study.

4.2 Selection of Cases

Given the vast body of cases adjudicating RHE in the Global South, it was challenging at the initial stage of the study to finalize three specific cases. A key consideration was the overall objectives of my study – to locate emerging case law from the Global South interpreting the intrinsic value of Nature and the non-human world. To streamline my choices, I considered the "Rights of Nature in Practice" report compiled by the Anima Mundi Law Initiative of the Global Alliance for the Rights of Nature (*GARN*, 2023; *Rights of Nature in Practice*, 2021)[12]. The Report details RON enforcement in practice, which included the landmark developments such as the Los Cedros protected forest case in Ecuador and the Ganga-Yamuna Rivers case[13] in India. The Los Cedros Case was adjudicated at the Constitutional Court of Ecuador in 2021, and the Ganga-Yamuna Rivers case was decided by the Federal High Court of Uttarakhand in India in 2017. These cases are considered landmark developments due to distinct reasons. In the Los Cedros Case, the Ecuadorian Constitutional Court was implementing its constitutionally guaranteed rights of Mother Nature or "Pachamama", and recognized the Los Cedros protected forest as a subject of rights. The case was preceded by Indigenous movements which were advocating for the rights of Pachamama. However, in the Ganga-Yamuna Rivers case, the judiciary unilaterally invoked RON discourses for the first time in the Indian

[12] GARN is a pioneer global network working on eco-jurisprudential issues.

[13] The Report details the legal developments of the High Court of Uttarakhand in March 2017, referring to the cases which granted legal personality to Ganga-Yamuna Rivers and the Gangotri-Yamunotri Glaciers, river, streams rivulets, lakes, air, meadows, dales, jungles, forests wetlands, grasslands, springs and waterfalls, with all corresponding rights, duties and liabilities of a living person, in order to preserve and conserve them. In this thesis, I refer to the case as the "Ganga-Yamuna Rivers" case.

legal context – a notable peculiarity from Ecuador. This unilateral activism on the part of the judiciary interested me, specifically given the limited involvement of grassroots movements, particularly Indigenous movements, within the judicial discourses.

Bearing this distinction between the Ecuadorian and Indian legal contexts in mind, I further researched emerging cases on judiciary activism and RON discourses within environmental case law. This is when I came across the Nairobi-Athi Rivers case decided by the Kenyan Environment and Land Court in 2021. The "matter of fact" statement made by the judges, in attributing legal personality to the rivers indicates the judiciary's role in propelling biocentric discourses in implementing environmental human rights within the Kenyan legal system (Preston, 2023, p. 23; Wambua & Nyaga, 2022). Thus, this case was selected as the most suitable third option for the CDA.

All three cases emerge from upper-level courts in the respective countries, albeit the relevance of the judicial hierarchy remains marginal to my thesis.[14] The case reports were official documents made publicly available. Both the Kenyan and Indian Courts delivered the Judgments in English. With regard to the Ecuadorian Constitutional Court, the original Judgment is in Spanish. However, the English version of the Judgment endorsed by the Court is available for legal scholars. I use the English version for my study[15]. In the selection of the cases, I did also research prominent cases such as the Whanganui River/Te Awa Tupua case in New Zealand (2017), the Atrato River case in Ecuador (2016) and the Colombian Amazon case (2018). However, the final decision was based on the ability to panoramically map out and understand the emerging RON judicial discourses from the Global South, particularly: the nuances underlying the Indian and Kenyan Judiciaries' unilateral references to RON discourses; and the judicial implementation of existing RON discourses in Ecuador.

4.3 Developing the Framework for CDA

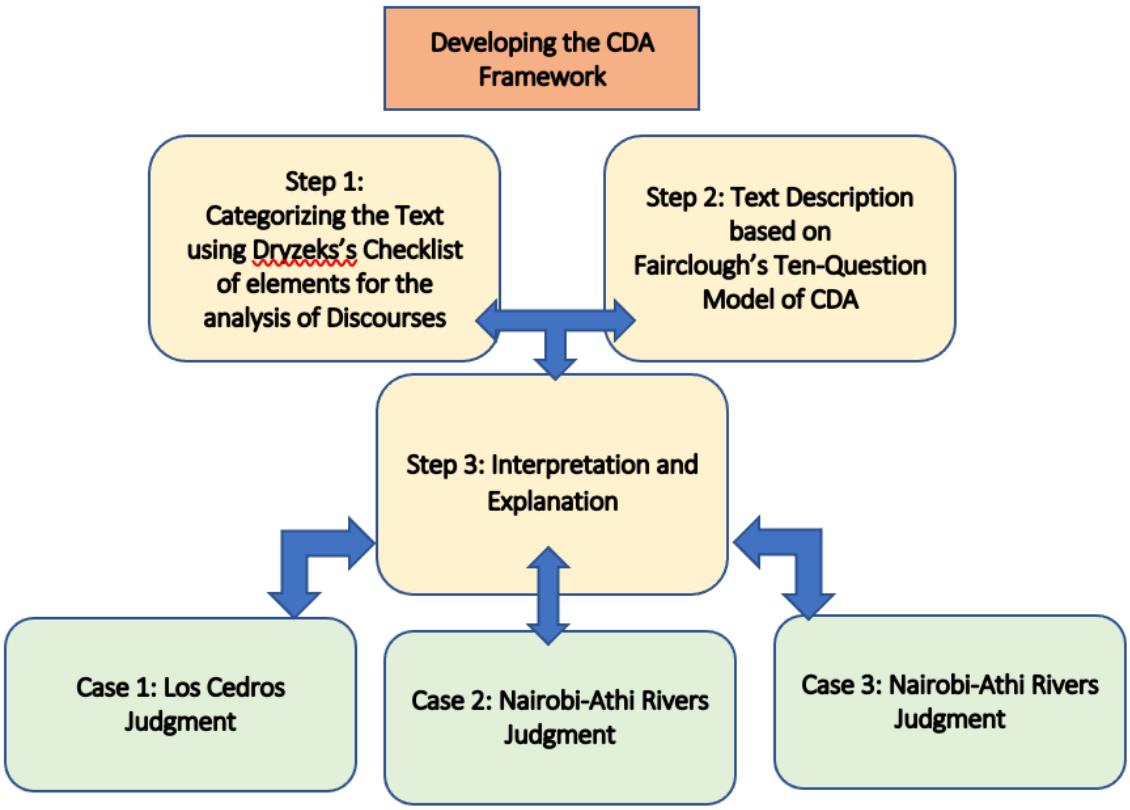
In applying Fairclough's three-dimensional framework of CDA, I depart slightly from Fairclough's conventional model of CDA given the nature of my study. In Fairclough's method of CDA, the first step is the description stage, where the purpose is to identify the textual formal properties and categorize the usage of terms within the text using a Ten-Questions model (Fairclough, 1989, pp.

[14] The Constitutional Court is the highest Court within the judicial hierarchy in Ecuador. The Environment and Land Court in Kenya is the apex judicial body for environmental matters in Kenya. In India, the Uttarakhand High Court is the upper-level judicial body in the Federal state of Uttarakhand.

[15] I reflect on the crucial methodological challenge of conducting CDA, particularly inspired by Fairclough's three-dimensional model, in the context of a translated Judgment in section 4.5.

26, 110-111). However, the Ten-Questions model of CDA is referred to as a guide instead of a blueprint (p. 110). Thus, given the scope of this thesis concerning Judgments and their positioning within environmental discourses, I use John S. Dryzek's checklist of elements of discourse analysis (Dryzek, 2013, pp. 17-19), a practically applicable method of Fairclough's CDA, particularly to ask meaningful questions about distinctive environmental discourses (Susan, 2022, p. 16). In this regard, Dryzek's checklist is useful primarily as a toolkit to navigate each Judgment, and to extract and categorise texts according to the scope of the thesis. The categorised texts are then analysed under Fairclough's Ten Questions. The three key steps followed within the CDA framework are detailed in the following sections and Figure 2. It should be noted that these steps overlap due to the fluidity of CDA as a method.

Figure 2: Developing the CDA Framework (Author's creation)



4.3.1 Step 1: Using Dryzek's Checklist

Question 1: The Recognition or Construction of Basic Entities. This question centres around the ontology of discourse, particularly about how a discourse views the world (Dryzek, 2013, p. 17). I

use this question to extract texts within each case, where the judiciary interprets the human and non-human entities and their place and role in the world.

Question 2: Assumptions made about Natural Relationships. The assumptions made about what constitutes "natural" in terms of relationships between particular entities entail critical questions on how certain discourses are formed (Dryzek, 2013, p. 18). This prompt is used to extract sentences/textual elements that make general assumptions between human and non-human entities. This entails general assumptions about human relationships with 'other' humans, human-non-human entities, and human-Nature relationships.

Question 3: Agents in the Storyline and their Motives. This question rests on identifying and understanding the kind of agents and actors present within the discourse. The engagement of multiple stakeholders in an environmental problem warrants the need to understand the complexity of the given issue (Kudo & Mino, 2020, p. 10).[16] I use this question to extract sentences/sections or other textual elements which reveal actors and motives within the Judgment.[17]

Question 4: The Use of Metaphors and Other Rhetorical Devices. I used this question to identify rhetorical devices used by the Judges to convince the audience. Apart from metaphors, the references to rhetorical terms such as fundamental freedoms, rights, constitutional law, and culture indicate micro-level analytical dimensions within a discourse (Dryzek, 2013, p. 19). The usage of rhetorical language may signal comparative judgment, or in the case of appeals problematizes the present and signal deeper, romanticized pasts (Dryzek, 2013, p. 19).

[16] complexities include a number of dynamics, worldviews, perspectives, temporalities, legal, political, and other institutional dimensions of actors making appearances within the environmental discourses.

[17] It was evident to me that in Fairclough's three-dimensional model of CDA, and the Ten-Questions at the description level, agents and motives within a discourse are not explicitly recognized. However, given the fact that the selected cases are dealing with complex environmental issues with multiple litigating parties, I consider the aspect of agents and their motives useful to reflect on the underlying motivations of various entities engaging within the judicial discourse, especially the power imbalances between different litigating parties.

4.3.2 Step 2: Applying Fairclough's Three-dimensional Framework of CDA – Description

The Ten-Questions Model. For Fairclough the choice of vocabulary or grammar in a text, accounts for the formal features of the text -chosen among other available options – which are also indicative of the discourse types the text draws upon (Fairclough, 1989, p. 110). In interpreting formal features present within a text, the analyst considers the choices within the larger discursive frame and the discourses that construct the said features. In essence, analysing texts is a juggling act, where the focus alternates between "what is 'there' in the text, and the discourse type(s) which the text is drawing upon" (p.110). The formal features of a text intrinsically carry experiential, relational and expressive values. Experiential values signify the experience of the text producer in representing the natural or the social world. Thus, it is related to content within the structure, *i.e.* knowledge and beliefs. Relational values as the term suggests focus on social relations that the text enforces. Expressive values connote the 'subjects' or the social identities expressed within the text, a cue (in a broader sense) to the text producer's evaluation of reality (p.112). Fairclough also underpins "connective values", which are values that connect segments of the text. I use Fairclough's Ten-Question model to critically analyse the texts extracted under Step 1.

Question 1: What Experiential Values Do Words Have? I considered the usage of certain vocabularies, particularly those belonging to specific ideological frames, to locate the text's ideological origins. In addition, I observed the co-occurrence or collocation of certain words. The occurrence of ideologically contested words, rewording or overwording indicates the ideological struggles present within the text. In addition, words may also constitute ideologically significant meaning relations through the use of synonyms, hyponyms or antonyms.

Question 2: What Relational Values of Words Have? The choice of words used in a text is not only derived from the social relationships that exist between the participants, but it also creates relations between participants. I particularly considered euphemisms to identify the text producer's strategies in constructing relationality.[18]

[18] Formality, is also relational value. Depending on the level of formality or informality that a situation demands, the vocabularies also transform to opt for formal or informal terminologies. However, given that the case law in itself are formal legal texts, my concern was largely on other relational values.

Question 3: What Expressive Values Do Words Have? Expressive values of words indicate different discourse types present within the text. The clash of expressive values is notable in texts, which Fairclough contends to be a source of frustration for the reader. That is to say, when the producer of a text draws upon various classification schemes to evaluate social realities, they are susceptible to utilising ideologically contrasting schemes representing varying values in different schemes (Fairclough, 1989, p. 119). My emphasis is on contrasting schemes to identify ideological struggle.

Question 4: What Metaphors are Used? The use of metaphors, specifically in representing social problems construes the tensions between the dominant interests of society and, alternative/non-dominant social interests.

Question 5: What Experiential Value Do Grammatical Features Have? The choice of process signifies the ideological possibilities of any given text. Often choices regarding processes are dictated by the need to highlight "agency". The clarity in terms of agency, imparted by the text is ideologically motivated. As such, a critical consideration is to be mindful of the possibilities of obfuscating agency, by ideologically motivated text producers (Fairclough, 1989, pp. 123-124).[19] Fairclough illustrates a detailed account of grammatical structures, consisting of subject(S), verb (V), object (O), complement (C), and Adjunct(A) elements, to outline that grammar indicates processes or participants. Processes here are threefold: actions(SVO); events(SV); and attributions(SVC). Actions are composed of "agents" and "patients", where generally the agent is animate and the patient may embody either an animated or inanimate state. An event on the other hand only involves one participant, which could take either an animated or an inanimate form. Fairclough notes that there is a significant distinction between events and non-directed action, where the latter involves patient-less actions. It is vital to distinguish between 'something that has happened' from 'something the subject did'. In contrast, attribution considers an attribute of the subject, often positioned after the verb. Attributes can appear to be possessive or non-possessive (Fairclough, 1989, p. 122).[20]

Question 6: What Relational Values Do Grammatical Features Have? The question of modality is critical to this discussion. Fairclough notes that modality is largely two-fold. On the one hand,

[19] It should be noted that Fairclough sensitizes the analyst to the ideologically motivated clouding of agency as well as causality and responsibility.

[20] A possessive attribute accompanies the word "have", whereas non-possessive attributes may appear with other verbs, or as adjectives and at times as nouns.

Relational modality underpins the Subject's authority over other participants. On the other, Expressive modality deals with matters of truth, especially in establishing the text producer's authority in evaluating the reality or "truth". "Modal auxiliary verbs" are essential markers in this regard. Fairclough provides several "*verbs* like *may, might, must, should, can, can't, ought*" and pinpoints that "*must*" signals "obligation in contrast to "*may*" which indicates permission (Fairclough, 1989, p. 127).[21] Relational modality is crucial due to the implicit power relations and authority claims hidden in the text symptomatic of ideological interest within the discourse. In addition, the usage of pronouns "we" or "you" and the manner through which they are used is quintessential at the description stage of CDA, particularly to locate ideological solidarity or strains within and between groups.

Question 7: What Expressive Values Do Grammatical Features Have? In the issue of expressive modalities, a key concern is the claims made to knowledge, truths or authenticity, which consists of an ideological bearing. The grammatical significance of the verb "are" in the sentience "parties agree that we are facing major challenges related to climate change" signifies a truth of the given proposition. These modalities uphold ideologically embedded views, simplifying complex and often messy realities within assumptions and interpretations.

Question 8: How are (Simple) Sentences Linked Together? The key focus here is the connective value of a text, where formal features of the text either connect the text with other parts or with other external texts. Fairclough highlights that "logical connectors" are hues of ideological assumptions, which symbolizes "causal or consequential relationships between things" as commonsensical. The question is whether such relationships are truly consequential or presumed upon ideology. The use of complex sentences within a text is also crucial in this regard. Complex sentences are characterized by coordination and subordination. That is to say that a text may "commonsensically divide information into relatively prominent and relatively backgrounded "tending to mean relatively important and relatively unimportant parts" (Fairclough, 1989, p. 132). Often, subordinate clauses of a complex sentence are "presupposed", connoting that it is already

[21] Fairclough introduces three "modes" - declarative, grammatical question and imperative – that places Subjects in different positions of power. In declarative modes, the author of the text is "a giver (of information)" rendering the addressee as the "receiver". In imperative modes, the producer of the text demands action from the addressee, locating the addressee as a compliant actor. In grammatical questions, the addressee is placed in the position of an information giver, as the author of the text asks a question of the addressee.

established or existing knowledge. Thus, as a CDA analyst, the question is to problematize the very existence of such presuppositions.

Question 9: What Interactional Conventions Are Used? Broadly, the concern here is whether there are dominant participants within the discourse controlling the voice of other participants.[22] This question is not directly relevant to my study given that the judicial decisions do not embody explicit interactional conventions between actors. However, I will consider this question indirectly in my analysis, particularly relating to the struggle for power between actors, particularly in cases such as the Nairobi-Athi case whether the Judges explore different positions and interactions between parties involved in the matter.

Question 10: What Larger-scale Structures Does the Text Have? The issue of larger-scale structure relates to the global-scale structuring (Fairclough, 1989, p. 138). When a set of events are structured according to a predictable order it executes a routine, particularly on social practices. Such routines are symbolic of ideological closures or agendas that naturalize established social conventions or power. What is interesting here is that such structuring eliminates social elements that stand outside a given order, specifically if such elements do not concur with the larger structural formatting. Such disappearances are to be noted, especially as the disappearance is driven by ideological interference of formatting worldview and consciousness.

4.3.3 Step 3: Applying Fairclough's Three-dimensional Framework of CDA – Interpretation and Explanation

Interpretation. Text interpretation in Fairclough's theory considers ideological and hegemonic struggles as integrated with discourses. Therefore, at the interpretation stage, the primary concern is to identify the context within which the text is produced and the interlinkages and influences between the context and the text. Here I follow three prompts: (1) Context - What interpretations are Courts giving to the situational and intertextual contexts? (2) Discourse types - What discourse types are being drawn upon, specifically what schemata, frames and scripts? (3) Difference and change -Are the answers for questions 1 and 2 different for each Court and do they change during the course of the interaction? (Fairclough, 1989, p. 162).

[22] Interactional conventions focus on the effect of class-power divisions on the dialogue between participants in a given social context and the consequences of such interactions in reproducing ideology. The question is also whether there are participants that have overt control over others' social interactions.

Explanation. At this stage, I intently examine the ideological assumptions of the text. As understood in Chapter 3, ideological-hegemonic conceptions are often unintentionally reproduced by participants of the text. The "critical" in CDA comes to the foreground in this instance, as the goal is to extract and critically analyse the assumptions. Notably, when a discourse is a result of a power struggle, the subject of the discourse calls to the past to make ideological-hegemonic assumptions to secure power in the present. In contrast, when a discourse is understood to be part of an ongoing power struggle, the ideological-hegemonic assumptions call to the future, where assumptions are made about the intended future consequences of the present struggle. Therefore, text explanation does not only enable the identification of hidden ideologies and the relations of power structuring a particular discourse, but it also allows the analyst to identify whether there is a pursuit to sustain or transform prevailing power structures. In the explanation stage, my investigation of the judicial discourse is based on: (1) Social determinants – what power relations at situational, institutional and societal levels influence the discourse? (2) Ideologies – what elements of Members' Resources used by the Judges have an ideological character? (3) Effects – how are the judicial discourses positioned in relation to power struggles? Are the Members' Resources used by the Judges normative or "creative"? Does the discourse contribute to existing power relations or transform them? (Fairclough, 1989, p. 166).

4.4 Positionality and Ethical Considerations

My positionality within this study is vital, particularly given its critical view of power relations and the ideology underlying discourses and its participants. I am a Sri Lankan legal scholar and an Attorney-at-Law with a background in environmental public-interest litigation. This background has accustomed me to professionally rely on the legal system as the predominant path to justice in environmental issues. Legal language is criticized for creating law as a mystical domain and often legitimizing the power of the legal system as well as the legal profession (Cotterrell, 1984; Galanter, 1974). As such, my position within the legal field, as an insider, not only influences the selection of cases in this study but also equips me with the technical knowledge and capabilities to navigate Judgments in comparison to a researcher without formal legal training. Prior knowledge shapes a study's problem and its operationalization (Bryman, 2012, pp. 149-150; Fairclough, 1992, p. 162). Thus, as a legal professional, the discourses I draw upon when I am engaging with judicial decisions are influenced by my positionality. In legal academia, conventional legal research may reaffirm the power structures of the law depending on its onto-epistemological foundations. Therefore,

throughout the study, it was vital to reflect on the underlying ideological and power relations of my position and approach to the law and reading judicial decisions. Moreover, I have access to the law, an ideologically dominant social order, which may exert power over social struggles, especially in environmental issues. Whereas my professional inclination is to resort to the law as the viable path to justice, social struggles driven by Pluriversal, Indigenous, post-development, and post-anthropocentric worldviews have critiqued the law for producing and sustaining power relations which marginalize human-nonhuman Nature (Pellow, 2017, p. 32). Therefore, in the process of analysing the judicial decisions, there was a strong sense of critiquing, unlearning and reimagining the foundations, purpose and future of the law in relation to the Pluriversal understandings of rights.

4.5 Trustworthiness and Relevance of the Research

Notions of reliability and the measurement of validity form the conventional positivist criterion for scientific rigour in quantitative research. Broadly these notions seek to affirm the soundness of findings based on causal connection (Bryman, 2012, p. 48). In qualitative studies, the research departs from this linear understanding of causality by questioning the existence of one reality (Bryman, 2016, p. 41). Discourse analysis particularly opposes objectivist demands of reliability and validity (Jørgensen & Phillips, 2002, p. 117). However, the relevance of these notions to qualitative research cannot be overlooked (p.117). In interpretative practices in fields of jurisprudence and policy analysis, a critical determination is "whether an interpretation is credible and truthful and whether one interpretation is better than another" (Schwandt et al., 2007, p. 11) As such, there are alternative criteria developed in the place of rigour. Trustworthiness is an alternative consideration, where the credibility[23], transferability[24], dependability[25] and confirmability[26] of the research are deemed vital to ascertain its methodological validity and reliability (p. 12). Relevance is also considered important in terms of the contribution of the present study to the broader academic debate (Bryman, 2012, p. 49).

In section 4.1, I briefly elaborated on my point of departure from a positivist standpoint of understanding the law. In employing Fairclough's three-dimensional model of CDA, I am strictly self-

[23] Concerned with the believability of findings, which is an alternative to internal validity.
[24] Questions whether findings can be applied to other contexts, which relates to external validity.
[25] This aspect considers whether findings can be repeated, a parallel to reliability.
[26] The question of the investigator's values influencing the study to a higher degree affecting the objectivity of the study.

conscious about the "rootedness of discourse in common-sense assumptions" (Fairclough, 1989, p. 167). Therefore, as the analyst, I engaged with each case for a prolonged period to understand, assess and identify the saliencies of each case and the presumptions it embodies. This required acute and in-depth observations of each Judgment and cross-checking findings with existing theoretical and empirical work on environmental discourses. In this process, I developed my own sense of 'research humility' in coming to terms with the impossibility of complete objectivity in any research, and the contextual limitations of conducting a predominantly theoretical study. I have taken conscious efforts to reassess my work through uninterested peer reviews to eschew personal inclinations or values swaying the interpretative practices of the CDA. Given the innovative nature of this study in providing a timely and relevant critique of the ideological dimensions of judicial discourses on RHE and RON, the parameter of relevance strengthens my research method. It is imperative to note that the present study remains significant to the field of Human Rights and Multiculturalism, as it provides a useful analysis of human rights and its anthropocentric critique. Moreover, the Pluriversal approaches examined in this thesis seek to break away from human/Nature, Nature/culture divisions to reimagine human rights in emancipatory ways. These visions strengthen the idea of collective rights in RHE and RON bridging this study to human rights and multiculturalism discourses.

4.6 Methodological Challenges and Limitations

Nevertheless, applying Fairclough's three-dimensional model of CDA to the present study was a laborious undertaking. The stylistic features of the Judgments, lengthy convoluted sentence structures embodying broad as well as precise definitions, repetitions, and extensive technical descriptions discourage CDS, such as Fairclough's CDA being applied to the law (Cheng & Machin, 2022, p. 3). Scholars have critiqued legal language for creating a mystified realm of authority legitimising power (Cotterrell, 1984; Galanter, 1974). To overcome these challenges, my approach was to devise a CDA framework using existing literature on environmental discourses, which supplements Fairclough's theory.

Apart from the technical aspects of extensive Judgments, there was also a methodological challenge in selecting a Spanish Judgment for the CDA in the Los Cedros case.[27] Whilst the English version of the case report, endorsed by the Constitutional Court was accessible for my study, in

[27] In the section 4.2 on the selection of cases I elaborate more on the reasoning behind the choice of judicial decisions for my study.

applying a linguistic methodology such as CDA, the implications of potential translation gaps from the language of the original delivery (Spanish) to English cannot be overlooked. However, RON cases from Ecuador, Bolivia and Colombia are referred to as persuasive legal sources in emerging environmental Judgments on the RHE and RON across the globe. The Nairobi-Athi Rivers case analysed in this thesis also refers to Colombian case law in the RON context. Further, the Supreme Court of Pakistan in a recent environmental case referred to Ecuador and Columbia among others in its determination ("D. G. Khan Cement Company Ltd. v Government of Punjab," 2019). Boyd (2018, p. 16) refers to such judicial exchanges as "cross-pollination" of RON cases. An array of academic literature explores such trajectories (Borrás, 2017; Jolly & Menon, 2021; Jones, 2021; Kauffman & Martin, 2018). Therefore, to ensure relevance and analytical quality, it was imperative that a case implementing RON within a legal system, recognizing Pachamama, is used for the study. Moreover, in the interest of bridging Pluriversality with environmental discourses underlying RON, a case from *Abya Yala*[28] was a requisite.

I reflect on methodological limitations as a gateway into reimaging the future of my study. In applying CDA as a methodology, one key limitation is its culturally monological nature due to its Anglo-Saxon rootedness of linguistic theory (Shi-xu, 2016, p. 4). The result is the omission of dialogical aspects of people and culture as vital subjects within a discourse (Bolívar, 2010, p. 214). The emphasis on text overlooks dialogue and visibility of movements that drive social change. This critique can be extended to judicial decisions to a greater degree, given its hegemonic authority over social life. In this phase of my academic research, I have limited myself to textual analysis, attempting to understand the applicability of CDA as a methodology in interpreting the power relations and ideology underlying Judgments. However, as the limitation indicate, my study is a mere entry into a vast array of issues present within legal texts and their social interaction. In future research, I intend to develop the present work into incorporating dialogue into the judicial discourses in order to unveil the ideological enculturation processes. The present attempt is to understand the ideology-boundedness of judicial discourses and "re-discover, re-claim and re-invent" paradigms of research in the Global South (Shi-xu, 2016, p. 2).

[28] Abya Yala is used by many Indigenous groups as a rejection of the term "American" in referring to the broader American continent.

4.7 Chapter Summary

Based on the critical legal paradigm, this study conducts a CDA on three selected judicial decisions from Ecuador, Kenya and India following Fairclough's three-dimensional Model of CDA (1989). Fairclough's Ten-Questions model was adapted to aid the textual analysis. As such, key issue areas are identified based to the judicial construction of RON and the RHE and the assumptions made within the discourse. These issue areas are explored based on the interaction between the text and the context in the following chapter on findings and analysis.

5 Findings and Analysis

5.1 Brief Introduction to the Judgments

5.1.1 Los Cedros Protected Forest Case in Ecuador

In May 2021, Guillermo Lasso's regime ascended to power in Ecuador frontrunning an agenda of foreign direct investment (Reuters, 2021). Lasso's regime pledged to explore and expand mineral resources in Ecuador as a means of promoting the development of the country (Leathley et al., 2021). The Los Cedros Judgement emerges at a peculiar time in the Ecuadorian politico-legal structure underlying industrial mining ventures, where the Lasso regime had announced the commencement of fourteen mining ventures with the potential for foreign investment (Stott, 2021). In a landmark judgment in 2021, the Ecuadorian Constitutional Court declared that the RON embedded in the Constitution is applicable to safeguard the *Los Cedros* Forest against mining activities (GARN, 2021). In the 119-page case report, the Judges deliberate on various considerations relating to the RON and RHE. Celebrated for implementing "non-anthropocentric standards" on RON, the case is "[a] new legal paradigm" where "Nature is being granted legal status and substantive rights, marking the law of the future" (Cueva, 2020; Prieto, 2021).

Los Cedros, located in the North-West of Ecuador, is a lower montane rainforest/cloud forest (Roy et al., 2018, pp. 6-7). In 2017, two mining concessions, including the required environmental clearance permits were granted to Empresa Nacional Minera, a state-owned mining company in Ecuador, who later entered into several agreements with private entities (including foreign corporations) to explore the protected reserve for mining (*Los Cedros court case date announced*, 2020). When the case was first brought before the primary Courts, the issue was adjudicated primarily on legal grounds of the authorities failing to guarantee the constitutional right to prior environmental consultation ("Los Cedros Opinion," 2021, p. 9). However, the Constitutional Court interpreted the issue to be a violation of three sets of rights, including the RON, the right to water and the RHE, and the right to participation and environmental consultation. The bench that decided on the case comprised nine Judges, where seven Judges formulated the Majority opinion on the violations of RON and RHE in Los Cedros. The two dissenting Judges disagreed on the application of

the constitutional norms. I observe both opinions as an entry point revealing the underlying power relations and ideological struggles within the judicial discourse.[29]

5.1.2 Nairobi-Athi Rivers Case in Kenya

This case concerning the pollution in the Nairobi and Athi Rivers in Kenya came before the Environment and Land Court in Nairobi in 2019 when two representatives of the Ufansi Centre in Nairobi Kenya sued the National Environment Management Authority and the Cabinet Secretaries for their rights to environment, water and sanitation ("Isaiah Luyara Odando & Another v. National Management Environmental Authority & Others," 2021)(hereinafter referred to as Nairobi-Athi Rivers case). The Ufansi Centre is an environmental community-based organization, and its Chairperson Isaiah Luyara headed a public-interest class action environmental lawsuit on behalf of the community that was suffering the drastic effects of environmental pollution in the Nairobi-Athi rivers. Luyara highlighted two predominant concerns in the petition. Firstly, the water pollution caused both upstream and downstream in the Nairobi and Athi rivers. Secondly, the air pollution caused by the lack of waste management in the Dandora dumpsite. The parties affected by pollution were the inhabitants of the Korogocho and Mukuru kwa Reuben “slum” and the “Nairobi environs” (para. 5). The Court held that the National Environment Management Authority and other agencies of the state have failed to prevent the processes that polluted the rivers, which violated the right to a clean and healthy environment of the petitioners. The respondents were ordered to take all practical measures to prevent pollution, clean the rivers and file quarterly reports on water quality in the court. The Judgement is a 21-page Ruling, which begins with the arguments raised by the Petitioner and the counter-claims of the Respondents. This structure is distinct from that of the Ecuadorian Constitutional Court and involves an additional layer of interest for the CDA, particularly the interaction between litigating parties and the discourses the Court draws upon in interpreting the issues.

5.1.3 Ganga-Yamuna Rivers Case in India

The Federal High Court of the state of Uttarakhand, in the Northern region of India, has received scholarly attention due to several Orders that it has issued concerning two distinctive cases. The first case, a public interest lawsuit, *Mohd. Salim* v. *State of Uttarakhand and Ors*. Writ Petition

[29] In my view, dissenting opinions are similar to interactional activity between different subjects of the judicial discourse.

(PIL) No.126 of 2014 granted legal personhood to the Ganga and Yamuna Rivers and their tributaries by way of two orders issued by the Court. The same judges adjudicated the second case, *Lalit Miglani* v. *State of Uttarakhand* Writ Petition (PIL) No.140 of 2015, which initially set out to interpret the violation of rights caused by the pollution in the Ganges and the Yamuna rivers and ended up issuing a miscellaneous judgment declaring that the Himalayan Mountain Ranges, Glaciers, rivers, streams, rivulets, lakes, jungles, air, forests, meadows, dales, wetlands, grasslands and springs as living and legal entities with the rights of survival, safety, sustenance and resurgence. In the first order issued by the case, the judges comprehend the extensive levels of pollution in the Ganga and the Yamuna rivers and iterated that it inhibits the right to clean water under Article 21 of the Constitution of India and violated the rivers' right to exist ("Lalit Miglani v. State of Uttarakhand & Others," 2016). The second order was issued after the *Mohd. Salim* judgments and extended the legal personhood granted to the Ganga and Yamuna rivers to the Himalayan mountains, the Glaciers, rivers and the interrelated riverine system ("Lalit Miglani v. State of Uttarakhand & Others," 2017).

Whilst, the *Mohd. Salim* and the *Lalit Miglani* cases were unrelated lawsuits, the onto-epistemological foundation of the cases overlaps in several regards, particularly in the judicial interpretation of the natural environment and rights violations caused by environmental pollution. For the CDA, I primarily use the *Lalit Miglani* case, which consists of two case reports: the first Order constituting a 79-paged case report (hereinafter referred to as Order 1 of the Ganga-Yamuna Rivers case); and the second Order constituting a 66-paged case report (hereinafter cited as Order 2 of the Ganga-Yamuna Rivers case). The rationale for reading both cases together rests in the intersecting scope of both Orders, specifically the second Order being a miscellaneous Judgment to the first. Moreover, I find the case incomplete if one Order is read without the other. This is because, in Order 1 the Judges specifically underpin the violation of human rights and the issue of pollution in the Ganga and Yamuna rivers. In Order 2, the Judges interpret the entire ecological system of the rivers involving glacial bodies, forests and air as entities entitled to RON.

5.2 Los Cedros Protected Forest Case: Application of Fairclough's CDA Model

In applying the CDA framework, I present the Los Cedros case under the following key issues: (1) Nature as Pachamama and Intrinsic RON; (2) Transitions within the Law (3) Application of RHE.

5.2.1 Nature as Pachamama and Intrinsic RON

Synonyms for Nature. One key aspect of identifying experiential values of words entails the act of uncovering the meaning relations and discourse types implicit in a text. The goal here is to determine the ideological bases of the text through such identification (Fairclough, 1989, p. 116). In paragraphs 28, 29 and 30, the Majority Judges[30] use synonyms and related words to refer to "Nature". Accordingly, "Pachamama", and "universal archetype of mother" is used alongside mutually substitutable words such as "life" and "existence". In identifying "Pachamama" as a synonym for Nature, the Judges in paragraph 28, stipulate that, "[I]n its preamble, the Ecuadorian Constitution celebrates [N]ature or Pachamama…". Evidently, the conjunction "or" introduces the synonym for the preceding word, and the meaning relations construed by synonymy are ideologically significant. This is because, when a text uses synonyms, it also sets up meaning relations between the text and the different discourse types underlying it (Fairclough, 1989, p. 116). Pachamama cannot be directly translated into the social construction of Nature owing to its roots in the Indigenous cosmovisions (Gutmann, 2021, p. 39).[31] The meaning relations of the synonymous words either relate to ideologies rooted within the discourse type or could even generate ideology through the text itself (Fairclough, 1989, p. 116). In the context of the Los Cedros Judgement, the synonymous meaning relations signifies the ideological scheme used by the Majority Judges to position "Nature" in the realm of Pacha-centric Indigenous discourses and related ideologies, buttressing it as the established norm in Ecuador. In a way, the judiciary is not only drawing from a different discourse type here, but it is also engaging in an ideological struggle to generate Pluriversal legal reasoning on "Nature" and its essential relationship with humans.

[30] See section 5.1.1. on the description of the Judgment regarding the division of Judges in the final ruling.

[31] Gutmann explores the concept of the rights of Pachamama and argues that if *interculturalidad* is to be taken seriously, 'Pachamama' cannot be directly translated as '[N]ature'. Therefore, his study stresses the need to understand the Indigenous cosmologies behind the term Pachamama. 'Pacha' is defined as a broader term, which parallels to the idea of 'cosmos' as opposed to the simplified English term 'mother earth'.

Relational values of Pronouns. This is further apparent in the grammatical features of the sentences used to highlight the "essential relationship" between humans and Nature. Note the pronoun "we" and the determiner "our" in paragraph 28, where the Judges refer to Nature as being the "[the whole] of which **we** are a part and which is vital for **our** existence". As Fairclough underpins, pronouns composite relational values (1989, p. 127), and in the context of the Los Cedros case, the Judges foreground a sense of ideological solidarity in outlining the relationship to Nature as an established truth, as well as an implicit authority claim. The "we" here involves the author of the text (*i.e.* the Judges) and the addressees, which includes the parties involved in the case as well as a more inclusive "we", arguably, entailing the entire human species. One can even argue that the relational modality of the grammatical features indicates the struggle for power between dominant (anthropocentric) and 'alternative discourses' (Pluriversal) formatting the worldviews on how the human-Nature relationship exists or ought to exist.

Use of Metaphors. Further, interpreting Article 71 of the Constitution, the Judges assert "human beings as an inseparable part of the same, and of the life that it reproduces and forms in its bosom" (para. 28). The use of the metaphor "universal archetype of the mother" (para. 29) [32] and the attribute of maternal qualities to Nature's existence is ideological. The metaphor serves as an appeal to the audience, especially in invoking emotions to be persuaded by particular systems of belief. The ideological significance of the "femineity" metaphor lies in its implications on established systems of power, within as well as outside of the law. The discourse of the liberal legal order, for instance, is critiqued for historically feminizing Nature as means of exploiting Nature by the masculinist agenda of progress (Grear, 2011, p. 30). On the contrary, Indigenous Pacha-centric views in attributing the archetype of the "mother" to Nature draw from contrasting discourse types, ideologically distinct to the liberal law. The use of the term "Pachamama", and the emphasis on Indigeneity are strategies to position RON as an established way of viewing the world in Ecuador. This is further evident in the statement made by the Judges demanding that RON "is not a rhetorical lyricism, but rather a transcendent statement and a historical commitment" (para. 31). The conjunction "but" is ideologically significant here, as it propels the subordinate clause over the main clause struggling to establish power over dominant power structures and ideologies. The Pluriversal worldviews of Nature are laid out as transcendental and historical to the Ecuadorian society and thereby legal

[32] "This constituent declaration of the Ecuadorian people, weaving an intercultural convergence of the knowledge of Indigenous Peoples and modern Western science, draws upon the universal archetype of the mother and thus recalls the essential relationship between human beings and [N]ature." (para. 29).

system. The experiential, relational and expressive values of the adjectives "transcendental" and "historical" are ideologically significant as they draw from different discourse types and rhetoric, evincing the onto-epistemological power struggles within the text.

Nominalizations. Further, it is notable that the Judges use the adjective "intercultural" to create the nominalization of "intercultural convergence" in paragraph 29, particularly to underpin the required connectivity between Indigenous knowledges and Western scientific modernity in Ecuador. The terms "intercultural convergence", "knowledge of Indigenous [P]eoples" and "modern Western science" (para. 29) are used to distinguish the Ecuadorian Constitutional framework from other framings embodying a wholly "Western" and "scientific" idea of the human-Nature relationship. Ideologically, the judicial indication of convergence makes the presumption that the law is the conduit of intercultural translation to Pluriversality. It establishes that alternative systems of legal thinking exist within the Ecuadorian Constitutional structure.

Contrasting Discourse Types. Moreover, the emphasis on the "fundamental values" of the people of Ecuador as embodying the *"sumak kawsay*" or "right living"[33] models of development (para. 32), opens the discourse to a broad range of normative and moral discourses mobilized to convince RON as the inherent Ecuadorian way of living. However, the Judges also highlight that,

> [T]he rights of [N]ature propose that in order to harmonize relationships with [N]ature, it is the human being who must adequately adapt to natural processes and systems, hence the importance of having scientific knowledge and community knowledge, especially Indigenous knowledge due to their relationship with [N]ature regarding such processes and systems. (para. 52)

This analysis of the Judges is a critical example of the power struggle present within the judicial discourse. The struggle depicts the constraints imposed on the discourse contents, relations and subjects by subsuming scientific and non-scientific forms of knowledge such as community knowledge as forms of accepted knowledge. Arguably, the Judges are engaging in a balancing act between the legitimacy of scientific and community knowledge. However, the law continues to constrain itself to the scientific standpoint in construing the legal discourse on the environment and RON. This is evident in the emphasis on Indigenous knowledge as 'theirs' implying that 'they' have a better relationship with Nature which non-Indigenous societies do not ascribe to. This stance of the

[33] The Court uses the term "right living" in the English version of the Judgment. However, sumak kawsay is translated as "living well" in Pluriversal debates. See Escobar (2018) at p. 71.

Judges is contradictory to the initial view of the "fundamental values of Ecuadorians" as generally and historically embodying *Pachamama* and *sumak kawsay*, both rooted in non-scientific, Indigenous cosmovisions.

Modality and Contrasting Classification Schemes. In Los Cedros, Judges highlight two concerns demanding legal preponderance: the "rights of existence held by the animal and plant species" of Los Cedros; and the rights of the "ecosystem to maintain its cycles, structure, functions and evolutionary process" (para. 26). The legal interpretation of RON thus, connotes considering the rights for entities living within Nature as well as Nature in its own existence. Thus, RON is constructed not simply as Nature being a subject in its own right, but also where Nature is presented as an agent or entity embodying capabilities of existence, reproduction, and regeneration of its own cycles and evolutionary processes independent of human beings and anthropic interventions. In assessing the text, two definitions of RON are embraced by the Judges:

> [T]he central idea of the rights of [N]ature is that [N]ature has value in itself and that this should be expressed in the recognition of its own rights, regardless of the utility that [N]ature may have for human beings… It is a systemic perspective that protects natural processes for their own value. Thus, a river, a forest or other ecosystems are seen as life systems whose existence and biological processes merit the greatest possible legal protection that a Constitution can grant: the recognition of inherent rights to a subject. (para. 42-43)
>
> [T]he intrinsic valorization of [N]ature implies, therefore, a defined conception of the human being about himself, about [N]ature, and about the relations between the two. According to this conception, the human being should not be the only subject of rights, nor the center of environmental protection. On the contrary, while recognizing specificities and differences, a complementarity is proposed between human beings, other species, and natural systems, given that, they integrate common life systems (para. 50)

Note the modal auxiliary verbs "should", "may", "can" and "should not" and adverbs such as "nor" utilized by the Court to establish desired forms of action by way of legal obligation. Modality underpins authority and power over truths, especially the representation of reality. Evidently, the judiciary is engaging in a power struggle, in its attempt to persuade the addressees that Nature embodies intrinsic value. It is also critical to underpin the expressive value of the pronoun "himself" used above to identify humans. Given the feminine character attributed to Nature in the previous

sections of the case and the pronoun "itself" used in para. 42, the masculine identity of humans indicates the ideologically contrasting classification schemes implicit within the language of the Court.

Power Struggle of Rights Holders. The discourse on the inherent rights-holding capacity of Nature creates the assumption that the law sets aside the anthropocentric view of Nature in the question of rights. In a preceding section, the Judges reiterate that "[T]his vision of [N]ature as a simple source of resources to be exploited at will has been deeply questioned from various perspectives of the natural and human sciences. The rights of [N]ature represent this questioning in the world of law." (para. 49). This understanding of the legal conceptions underlying RON is critical for this thesis. The Judges are operating within the Constitutional frame, which also deals with other right holders, which includes humans and non-human entities such as mining corporations. To position Nature as an agent holding inherent rights in this regard constitutes a power struggle. The Court uses vocabularies and grammatical structures embodying experiential, relational and expressive values to rhetorically position RON as an established system. What is inherent is generally unquestioned within any discursive frame as it attributes a sense of universal value. In human rights, the idea of inherent rights relates to various conceptions such as dignity. In the Los Cedros case, the notion of inherent rights is explained as not having any socioeconomic value for humans. Following this analogy, the Majority judges dismiss mining activity as exploitative of Nature, and deeply detrimental to animals, and plant species as well as the ecosystem's health (para. 54). In doing so, the Judges are indicating the struggle for power within the legal discourse, which ideologically is geared to balance the interests of different rights-holders.

5.2.2 Transitions within the Law

Experiential Values of Words. It is evident from the discussion above that the Judges distinguish between scientific and Indigenous knowledge. This discussion on knowledge appears in several places within the text reflecting the power struggle between acceptable forms of knowledge within Ecuadorian law.[34] Due to the hegemonic nature of the law (Litowitz, 2000, p. 517), the sense of objectivity and value-free aspect it stipulates, the distinction made on what constitutes as standard forms of knowledge should be read in relation to each context. The meaning relations between the words used by Judges to distinguish between the historically established legal regime and the RON

[34] See paragraphs 29, 52, 62 in the Majority opinion.

paradigm reflect the incompatibility of the conventional law and RON. In paragraph 52, the words "instrumentalization", "appropriation", "exploitation", and "mere natural resource" is used to identify the law's historical function. In contrast, "harmonizing", "adapt" and "natural processes and systems" are used to outline the tenants of the proposed RON paradigm. The use of antonyms is an indication of incompatibility, where a word cannot be used within the meaning of another (Fairclough, 1989). This implies that the existing forms of legal knowledge and practices constrain RON discourses. Notably, the words describing the historic functioning of the law are nominalized, where the acts of instrumentalizing, appropriating or exploiting are connoted as a noun. Nominalization, as described in preceding sections obfuscates aspects of processes, especially hiding the agent, patient, the timing process or the modality. The Judges outline that "historically the law has functioned" to instrumentalize. However, the question of how, when and through whom such processes occurred is hidden within the nominalization. The past tense grammatical structure used to connote the historical functioning of the law strengthens the ideological character of nominalization.

Larger-scale Structures. Whilst the emphasis on Indigenous knowledges within the case is noted, such emphasis remains open-ended references to concepts such as *Pachamama* and *sumak kawsay*. In implementing RON in the Ecuadorian legal setting, the Court relies heavily on interpreting the precautionary principle[35], which in return emphasizes the need for "scientific information" in valuing a protected forest for its unique ecology and biodiversity. It is imperative to note that the precautionary principle is embedded in the Constitution of Ecuador and provides for precaution in the event of any uncertainty of environmental harm (Article 73). As Judges of the Constitutional Court, it is expected that the Judges interpret RON from existing environmental law principles in the Constitution. Constitutionally harm involves any "risk of species extinction and the destruction of ecosystems" and the Judges interpret this as directly violating RON (Para. 59). Accordingly, the Judges underpin a stricter standard for the precautionary principle and outline three aspects: (1)"[T]he potential risk of serious and irreversible damage to the rights of [N]ature, the right to water, to a healthy environment or to health"; (2)"scientific uncertainty" due to ongoing debates, lack of knowledge or the complexity of the issue; and (3) the adoption of "timely" and "effective" protected measures by the state. Interestingly, with the construction of the three standards of the precautionary principle, the Court is setting a higher threshold in comparison to Article 15 of the Rio

[35] See section 2.1 on environmental law principles, which includes a brief introduction to the precautionary principle.

Declaration, particularly to conclude that mining activity in itself leads to the destruction of the ecosystem and species in Los Cedros (para. 124). It is imperative to also reflect on the broader power struggle between the dominant development regimes and biocentric, Pacha-centric discourses evinced here. In the dissenting opinion, the dissenting Judges heavily criticize the strenuous standards imposed on precautionary measures for mining, and its implication of constructing mining as a detrimental industry (para. 10, 16).[36] Mining corporations are rights-holders entitled to persist in Ecuador (para. 25).[37] The standards applied under the precautionary principle in Los Cedros are "based on the scientific information" on "threatened, unique and rare species present in the ecosystem" (para. 70). With the initial emphasis on Pachamama, this higher standard of "scientific" proof in enforcing RON poses what value Indigenous and/or community knowledge has on legal dicta, even in the context of interculturally-cognizant 'celebrated' Constitutional frameworks such as in Ecuador.[38] The constraints imposed on the judiciary by way of content, relations and identities are evident here. The Judges are 'coordinating' the discourse with environmental compliance discourses, where the judicial reasoning rests primarily on stricter standards for environmental principles. Strengthening precautionary principles impliedly recognizes the rights of mining corporations to continue extractive industries within the legal system. In other words, the judicial discourse is attempting to homogenize the idea of RON within the dominant mining economic order.

5.2.3 Application of the Right to a Healthy Environment

The RHE is constitutionally recognized under Article 66, paragraph 27 of the Ecuadorian constitution, which encapsulates the right to live in a "healthy, ecologically balanced environment, free of contamination and in harmony with [N]ature". The Judges couple this right with the right of

[36] See para. 10 of the dissenting opinion where the mining industry is stipulated as a "strategic sector" where mining corporations embody rights, which emanate from the constitutional framework as well. A dissenting Judge highlights that environmental protection entails compliance with environmental standards as opposed to the complete halting of the "development of anthropic activities". The Judge iterates that mining as an industry has existed for time immemorial, and as such, the concern should be preventing negative environmental consequences as opposed to ceasing all mining activities.

[37] See para. 25 of the dissenting opinion: "Therefore, in this case, where concessions have been granted, investments have been made, permits have been granted and legal positions have been consolidated, the most appropriate thing to do is not to provide for an absolute prohibition of activities, but to apply the prevention principle so that within a reasonable period of time the managers of the activity can present serious environmental impact studies or evaluations to determine if it is feasible or not to continue with the development of other phases of the mining activity, without having to subvert the normative order contemplated in the legislation in force. The undersigned judge emphasizes that there must be due harmony between the principles of precaution and environmental prevention, without the former ending up displacing the latter, demanding, as in this case, a scientific rigor that may be foreseeable, but not exact or invariable."

[38] I use the term celebrated with caution here. As discussed in section 2… the incorporation of Indigenous cosmovisions to the 2008 Ecuadoran Constitution is viewed in a critical lens by different groups.

sumak kawsay guaranteed in Article 14 of the constitution, stressing that "the population" has the right "to live in a healthy and ecologically balanced environment, which guarantees sustainability and good living, *sumak kawsay*…" (para. 239). Therefore, the legal interpretation of the RHE guarantees it as an individual right as well as a collective right (para. 240). It is also significant that the Judges stress the need for an "ecologically balanced" environment and *sumak kawsay* in defining the RHE within the RON juridical tradition (para. 239), which implies the biocentric shift in interpreting RHE. In fact, the majority opinion stress on the "essential relationship" between humans and Nature emboldening a degree of the pre-eminence of Nature over humans (para. 28, 29, 44, 52). The human is placed within the broader Natural order as one among many organisms, for instance, using terminology as "the very existence of humanity is inevitably tied to that of [Na]ture since it conceives humanity as a part of [N]ature" (para. 30). The judges also stressed repeatedly that the "Court deems it necessary to develop criteria" for the RHE concerning RON (para. 239). In attempts to highlight the need for the said criteria, the Judges cite the 2021 UNHRC resolution on the recognition of the right to a safe, clean, healthy, and sustainable environment (para. 242). As such, arguably the Judges are not only positioning the RHE concerns of the Los Cedros case within the international discursive frame of RHE but are also bridging it to the emerging local implementational challenges of the RON discourse. Therefore, the discourse on the RHE is coordinated within RON orders of discourse, where the rights are not communicated as competing rights by the Judges. However, the aforenoted emphasis on the pre-eminence of Nature over humans evinces a conservation bent-discourse being drawn by the Judges. Conservation-bent ideologies in Ecuador have a history of disabling Pluriversal approaches to RHE, particularly for Indigenous groups (Akchurin, 2015, pp. 955-956). Thus, the contrasting discourse types are revealing of the underlying power relations, particularly given its implications on the rights of Indigenous groups and local autonomy over Nature.

The Judges use the terms "citizens", "people of Ecuador", and "the community" in different circumstances concerning the rights, duties, and obligations about RON and the RHE. The constitutional duty of "citizens", as underpinned by the Judges is to "respect…the rights of [N]ature, the preservation of a healthy environment and the rational, sustainable use of natural resources" (para. 37). However, the term "community" is used in the context of procedural environmental human rights, particularly concerning right to participation in environmental consultation. In instances where the environment is affected due to the actions of the state, "the community or communities" in that environment is considered to be the holders of the right to collective right to environmental consultation (para. 274). The requisite for a community to be eligible for

environmental consultation is based on whether the state's decision "affect the environment of community" (para. 275). The emphasis on communities signals the recognition of Indigenous Peoples in environmental rights. The Judges also stress that "it is not necessary for the communities to have a property title, nor state recognition by means of any registration" (para. 275). The recognition of the rights of the community exemplifies the power behind the discourse, particularly in enabling the Pluriversal dimension of communal participation in RHE. It is worth mentioning that environmental human rights, in the form of the right to participation, have superseded liberal property rights discourses in this context. The social identities of the RHE discourse also transcend the individual and the binary relationship human-environment divide envisioning Pluriversal relations. Notably, the struggle for power between collective environmental participatory rights on the one hand, and mining rights, on the other hand, is veiled behind the discourse on property rights.

5.2.4 Summary of the Los Cedros Case

In the Los Cedros case, the Judges are discursively engaging with the RON and RHE discourses, attempting to interpret the rights of *Pachamama* in holistic ways, as entrenched within the Ecuadorian constitution. As such, intertextual connections are made between the constitution and Indigenous conceptions, which recognizes relational ontologies about Nature as *Pachamama.* However, the experiential, relational and expressive values of the vocabularies, grammatical structures and key metaphors used by the Judges shed light on the power relations and ideology behind the discourse. The hegemonic power of the dominant developmental ideologies of the Ecuadorian state appears in the interpretation of RON and RHE, constraining the Pluriversal interpretation of the contents, relations and subjects of the discourses. The larger-scale structuring of the judicial discourse questions whether the RON discourse is being appropriated by the dominant anthropocentric legal ideologies, controlling the application of Pacha-centric, relational Indigenous conceptions.

5.3 Nairobi-Athi Rivers Case

In the Nairobi-Athi Rivers case, the Judgements provide a panoramic view of stakeholders involved in the petition voicing out their respective standpoints. Therefore, in analysing the judicial discourse, I also pay attention to the shifting experiential, relational and expressive values of vocabularies utilized by various actors. My analysis is presented under the following key issues: (1) The legal construction of the environment and the RHE; (2) the application of the polluter-pays principle; and (3) the role of Courts.

5.3.1 The Legal Construction of the Environment and the Right to a Healthy Environment

Experiential and Connective Values. The Court interprets the definition of "environment" under Section 2 of the Environment Management and Coordination Act (EMCA). I specifically focus on the experiential, relational and expressive values of the vocabulary used by the judges, within this definition. EMCA identifies the environment to include "the physical factors of the surroundings of human beings including land, water, atmosphere, climate, sound, odour, taste, the biological factors of animals and plants and the social factor of aesthetics and includes both the natural and the built environment." Drawing upon this definition, the Court in paragraph 77 states, "From this definition, it is clear that the environment goes beyond the physical settings to include issues such as social, economic and cultural conditions that influence the life of an individual or a community. People form part of the environment which is why it is critical to eliminate processes that pose danger to human health". The experiential value of the phrase "people as part of" the environment, signals the Court's intention to break away from the dominant anthropocentric legal understanding. However, the struggle for power between dominant anthropocentric discourses and alternative Pluriversal discourses reveals contrasting claims made by the Judges. For instance, the Judges stress that "it is critical to eliminate processes that pose danger to human health". Here, the omission of the term "environment" and the usage of the logical connecter "which is why" is ideologically significant. Omissions are indicative of the dominance of powerful discourses over alternative meaning relations about the human-environment continuum. The logical connecter treats the claim made by the Judge as the 'natural' understanding of the relationship between the environment and human life. However, in CDA, Fairclough stresses that consequential relationships which are portrayed as common sense have the potential of representing "ideological common sense" (Fairclough, 1989, p. 131).

Synonyms and Classification Schemes. The Court further interprets that the environment surpasses physical boundaries, and exists also in a socio-economic and cultural plane, which impacts the lives of individuals as a singular entity, and a community as a whole. The Court's choice of vocabulary is substantial in this regard. The word "human" is referred to by the Court with synonyms such as "people", "individuals" and "community". Notably, "human" as a word is also used in combination with the noun "health" to connote "human health". Whilst this is a tendency seen in several areas of the judgement, it is also indicative of the ideological struggle underlying the RHE and the debate on who or what constitutes the rights holder within the broader discursive frame of environmental human rights and environmental justice. In the case of excessive pollution of the Nairobi and Athi rivers, the judges recognize the vulnerability of communities suffering the effects of low socioeconomic means to access 'systematized' sanitation facilities and 'sound environmental' conditions. In para. 71, particularly, Judges refer to the petitioner's claim on the effect of pollution "mainly" on people living in the "informal settlements". Arguably, this rewording of 'human' is rooted in deconstructing the universal anthropocentric mould of the human, and the struggle for power within the judicial discourse in establishing claims of communities (or groups) marginalized by state action or inaction. It is noteworthy that the term "informal residents" is reworded as "illegal inhabitants" (para. 27), "culprits" (para. 56) and "polluters" (para. 56), "citizens" (para. 9), "highest proportion of the Nairobi population living in fragile areas" (para. 6) and "Kenyans" (para. 10) in the judgement. These words reflect the different classification schemes used within the judicial discourse as systems of evaluation. For instance, the experiential values of words such as "inhabitants of fragile areas" to connote the vulnerability of the population contrasts with the term "illegal inhabitants" which draws from criminalising discourses. The mobilization of expressive values through classification schemes is often done as means of persuading the audience (Fairclough, 1989, p. 119). In this context, whilst the narrative associated with state agencies depict the communities as "illegal", the Petitioner stress on the vulnerability of the communities and uses the word "informal inhabitants". Interestingly, both social representations are reworded by "citizens" in certain statements to connote the communities as entitled to legal rights. In CDA, more than the use of expressive values to persuade the audience, it is the ideologically contrastive classifications schemes established by the judiciary within the discourse that is critical. This is because they indicate the struggle for power between the dominant social ideologies and marginalized social groups within the discourse. This power struggle is also apparent in the use of pronouns within the text.

Use of Pronoun "We". The shared effect of environmental pollution is emphasized in para. 112 where the Judge states, "[T]he food grown with the contaminated water from this river inevitably finds its way to our tables whether it be vegetables we buy from the market or the Kenyan staple food, *ugali* made from maize which was probably grown in the *Galana* food project, sold to the national cereals board and milled for people's consumption". The use of the pronoun "we" and the determiner "our" in this context symbolizes that pollution affects 'everyone' including social elites, such as the Judge delivering the Judgement and the state officials vested with the legal mandate to prevent pollution. Upholding the narrative of the indeterminate effect of environmental degradation on all levels of society, the Judgement indicates the common interest in conserving the environment for dominant social groups, attempting to create a degree of ideological solidarity in pushing for environmental human rights. The underlying rationale is anthropocentric and rooted in the need to recognize the health risks for all levels of society. Ideologically, this depicts the struggle for power in establishing RHE as a priority for the state.

The Right to a Healthy Environment. The Attorney-General (AG) foregrounds that "…the realization of this principle [precautionary principle] was not an event but a process and that the rights the Petitioners seek to enforce were socio-economic rights which require resources" (para. 57). This is a complex sentence combining two sentences with the conjunction "and". Importantly, the content of the subordinate clause is backgrounded and outlined as an existing truth or in Fairclough's words "presupposed" information (1989, p. 132). I consider the mobilization of a multi-word compound noun such as "socio-economic rights" to be ideologically significant. It is a euphemism in a way, as it combines multiple rights claimed by the petitioners, underplaying the distinctive character of each right. Arguably, the said term also draws from dominant discourses considering environmental rights as rights to be 'progressively' realized or second and third-generation rights. This relates to the power-in and power-through discourses signalling the ideological struggles between different camps campaigning for different rights classifications. The struggle for power within the rights discourse is also evident in the Petitioner's claims, particularly through the use of metaphors within the text.

Use of Metaphors. The Court refers to how the Petitioners highlighted that "his group" desired to see "their environment" as "*enkare Nairobi*", a *Maasai* phrase which translates into English as "the place of cool waters" (para. 6). The use of the metaphor is ideological for two key reasons. Firstly, the metaphor appeals to a desired past, to which the group no longer has access. Secondly,

as Fairclough underpins, the use of metaphors especially in the case of social problems hints at the tensions between the dominant and alternative interests in a society (1989, p. 119). Notably, a sense of collective identity is collated by referring to the Petitioners using the pronoun "his", which is also a determiner of belonging and distinction, setting the group apart from the wider society. The group is identified as "members who reside in the informal settlements", and numbered as "the highest proportion of the Nairobi population". The use of expressive vocabularies and relational grammatical structures to outline the marginalization faced by the said group is significant. The living environment of the group is characterized as "fragile areas", "adjacent to sewers, river valleys and dumpsites" lacking access to basic needs. The use of words and phrases "informal settlements", "highest proportion of Nairobi population", "fragile areas" "sewers", "river valleys", "dumpsites", and "known to lack basic necessities" implicitly contain experiential, relational and expressive values that solidifies the social identity of the petitioner's community as a vulnerable group. Notably, the Court burrows the metaphor "a river of death" from the petitioner (para. 42), in its interpretation of intergenerational and intra-generational equity (para. 95). The metaphor signals the tensions that exist between the dominant discourse of progressive realization of "socio-economic" rights and the alternative discourse on addressing intragenerational injustice and vulnerability caused by environmental human rights violations - a claim taking centre stage in the petitioner's claims. Notably, the term "intragenerational" is underplayed by the Court's emphasis on "intergenerational" equity[39], indicating the attenuated anthropocentric ideology and power relations implicit within the discourse.

5.3.2 The Application of the Polluter-pays Principle

Oppositional Wording and Nominalization. The struggle for power between the environmental groups petitioning for their rights and the state Agencies legally vested with the administrative duties of guaranteeing the realization of such rights is evident within the judicial discourse, especially in terms of the experiential, relational and expressive vocabularies as well as grammatical features used to portray the "polluter" responsible for the pollution in the Nairobi and Athi rivers. The petitioners, who identify as an "environmental community based organisation" (para. 1), use the nouns "mishandling" (para. 5), "failure" (para. 9) and "poor management" (para. 15) to underpin the Respondent's causality in the genesis of the environmental problem. On the contrary,

[39] "A polluted river of death spewing poison is not what the principle of intergenerational equity expects the present generation to bequeath to future generations" (Para. 95).

the respondent's narrative of the cause of pollution is more nominalized and the vocabulary constitutes oppositional wording. Among several examples, I analysed the statements referring to the respondents' position, particularly in terms of imputing culpability to the petitioner's group for causing environmental pollution. The Court reports "…[NEMA] explained that river pollution was caused by unsustainable solid waste management, encroachment of the riparian reserve, illegal effluent discharges from industries, blockages and vandalism of sewerage reticulation system, non-adherence to physical development plans and zoning policies and the sanitation crisis in the informal settlements (para. 22). The multi-word compound nouns highlighted above are examples of nominalizations used by the Respondent. Fairclough underpins that the use nominalizations is ideologically significant as it obfuscates the causality or responsibility of an agent (1989, p. 124). This is because, in nominalizing, processes are presented as nouns thereby reducing the meanings, any indication of times of the processes, modality or the agents and patients within the discourse (p. 124). As such, in the nominalizations, the responsibility of state agencies is omitted purposely to project processes as events that has materialized automatically.

Experiential Values of Words. Further, the experiential values of words such as "sanitation crisis" indicates the ideology and power dynamics within the discourse, especially because pollution is foregrounded as "criminal acts" perpetrated by "informal settlements" using related or synonymous wording such as "offences" and "surveillance".[40] In paragraph 30, there is also reference to "ever increasing environmental offences by informal and formal residents". The distinction between informal and formal residents exemplifies the treatment of so-called "environmental offences" at two levels. Arguably, the formal residents here construe industries, licensed to operate by the state – another ideological dimension evinced through the text.

5.3.3 The Role of the Court

Expressive Values of Words and Metaphors. The role of the Court, as an adjudicator of environmental disputes on the one hand, and as an arbiter and participant in the power struggle between different stakeholders on the other hand, is outlined in several instances within the text. For instance, the AG, representing the position of the state Agencies, refer to the role of the court as

[40] The use of vocabulary relating to criminal liability including "encroachment" (para. 22), "ever increasing environmental offences" (para. 30) "culprit" (para. 56). Further, see paragraph 30, "[H]e emphasised that NMS was fully committed to strict compliance and enforcement initiatives to curb the ever increasing environmental offences by informal and formal residents by ensuring surveillance was carried out on a regular basis and that rivers are cleaned up"

"…promoting environmental governance, upholding the rule of law, and ensuring a fair balance between competing environmental, social, development, and commercial interests" (para. 55).[41] The AG also underpins that the Court is vested with the legal duty to apply the "principles of sustainable development" in environmental disputes (para. 56). For the petitioners, the issue should be adjudged "from a public policy consideration perspective claiming that it was intended to promote justice, efficiency and what they called prophylaxis which they explained as treatment or action to prevent disease" (para. 67). It is evident that the use of the metaphor "prophylaxis" by the petitioners' signals at the dire and urgent nature of the issue synonymous to a deadly disease requiring immediate and serious action. The metaphor is an ideological tool, used to persuade the Court. Further, the expressive values of the words used by both competing parties draw from contrasting classification schemes which embody different values in different discourse types. For instance, "fair[ness]" which correlates to "justice", emerges as an expressive value within the AG's vocabulary more or less drawing from development discourse. On the contrary, "justice" is defined as a public policy concern, drawing from the discourse of administrative efficiency and failure, in the Petitioners' claim.

Relational and Expressive Features of Grammar. In their final determination, the Judges underpin that the state agencies are liable for violating the petitioner's RHE (para. 90) and given its legal mandate the state possesses a "bigger burden" in environmental protection (para. 91). Here, the struggle to establish power over reality is reflected by not only the experiential value of words but also relational and expressive values of grammatical features used by the Court. I argue that the use of modal auxiliary verbs by the judiciary signals the power dynamics within environmental rights discourses in Kenya. Note the use of "must" and "should" in the following declarative statements made by the Court:

> Rather than presume that water and air pollution do not cause the diseases the Petitioners alluded to, the state should err towards protecting the environment and public health… The Petitioners and others who potentially will be affected by substances and activities regarding the pollution to the Nairobi and Athi River must

[41] Paragraph 55 in full reads as "[T]he AG was emphatic that the orders the Petitioners seek could not be granted because a court seized of an environmental dispute whether at the interlocutory stage or at the substantive hearing is to bear in mind that through its judgement or ruling, the courts play a crucial role in promoting environmental governance, upholding the rule of law, and ensuring a fair balance between competing environmental, social, development, and commercial interests. In essence, that if the court were to grant the prayers the Petitioners seek, it would cause a virtual collapse of the sectors targeted by the orders and will occasion a devastating, unquantifiable and irreparable loss to the affected sectors."

> have a say in the decision making process. The decision making process must be transparent and provide a structure for the involvement of citizens (para. 118)
>
> In managing the waste from Nairobi city, NMS should employ options that are least prone to environmental or health damage. Decisions taken regarding Nairobi waste management and the pollution of Nairobi and Athi River must protect health and the environment. The decision to be made will encompass new activities and must address potential hazards that already exist. (para. 119)

It is evident that "must" and "should" becomes a matter of ideological interest because these modal auxiliaries signal the implicit obligation and authority of the text producer (i.e., the judiciary) to impose power on administrative authorities and the broader social reality. Had they used "may", in contrast, it would have signified a completely different meaning altogether. The conjunction "and" is also significant in this context. It distinguished between two expressive values implicit within the terms "environment" and "public health". As seen above, in certain parts of the text, the Court had opted to only use "public health" or "health" eliminating "environment" as a specific term. However, in the aforementioned declarative statements, expressive values underlying the term "environment" signals the contrasting classification schemes that the Judges are drawing upon in interpreting the obligations of the state Agencies towards the environment. It also signifies the possibility of considering the environment in its own right, a potential claim of a future reality, which the judiciary is attempting to establish within the discourse. This is further evident in the obiter dicta remark made by the Judges immediately after the aforesaid statements.

Experiential Values of Words. The Court makes a critical remark in interpreting its role, especially in environmental matters, which is a vital consideration for the discussion of this thesis. In paragraphs 120 and 121[42], the Court in *obiter dicta* remarks,

[42] The full paragraphs read as follows:
"120. Other jurisdictions have come up with creative ways to deal with pollution of their rivers. One such innovation adopted for the conservation of rivers and lakes is by granting these bodies legal personality. New Zealand enacted the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (the Act) which stipulates that the Whanganui River is a living entity and a legal person. The Act establishes the river's guardian body to act and speak for the river and to promote and protect the environmental, social, cultural, and economic health and well-being of the river. The Act also establishes a strategy group comprising community representatives, local authorities, the government, commercial and recreational users and environmental groups whose purpose is to act collaboratively to advance the health and well-being of the river. The guardians administer a fund, Te Korotete, which provides financial support to the well-being of the Whanganui River.
121. Further afield in Colombia, that country's Supreme Court issued a decision in April 2018 in which it recognised the Amazon River ecosystem as having rights deserving protection in a case filed by a group of young people against the

> Other jurisdictions have come up with creative ways to deal with pollution of their rivers. One such innovation adopted for the conservation of rivers and lakes is by granting these bodies legal personality. (para. 120)
>
> Further afield in Colombia, that country's Supreme Court issued a decision in April 2018 in which it recognised the Amazon River ecosystem as having rights deserving protection in a case filed by a group of young people against the President, ministries, agencies and local governments claiming that the government had violated their rights to life, health and enjoyment of a healthy environment by failing to control deforestation in the Amazon region which contributed to environmental degradation and climate change. (para. 121)

The use of synonyms "creative" and "innovation" in this context is ideologically significant. Innovation by definition is changing established regimes specifically by introducing new methods and ideas. Creative as an adjective, refers to the act of creating new realities by envisioning or imagining newer worldviews or ideas. Arguably, the Court uses these terms to signal the crisis faced by the judges in interpreting environmental issues and the irrelevance of existing Members' Resources as interpretative aids. Therefore, the Judges are attempting to draw from discourses espousing rights for environmental bodies or ecosystems. It is evident that the judiciary itself is already struggling to establish power over the environmental justice discourse in Kenya, particularly given the competing interests of the litigants, the anthropocentric closures of the law and the need to consider the riverine environs in their own right. The indication of the crisis of Members' Resources situates this case within the broader Pluriversal discourse on RON.

Larger-scale Structural formatting and Disappearing Social Elements. However, I argue that the *obiter dicta* statements made by the judges, also reflect the ideological struggle and the power dynamics of broader established regimes beyond Kenya and its legal system. In answering the tenth question raised by Fairclough on larger-scale structures, I find that the vocabulary used by Judges eliminates key social elements that have driven the "creative" and "innovative" ways of "dealing with

---

President, ministries, agencies and local governments claiming that the government had violated their rights to life, health and enjoyment of a healthy environment by failing to control deforestation in the Amazon region which contributed to environmental degradation and climate change. The court declared that it would recognise the Colombian Amazon as an entity with rights and entitled to protection, conservation, maintenance and restoration, for the sake of protecting the vital ecosystem for the future of the planet (Future Generations v Ministry of Environment & Others; Radicacion no. 11001-22-03-000-2018-00319-01; STC 4360-2018) This decision followed an earlier one made in 2016 that granted legal rights to the Rio Atrato which empties into the Caribbean Sea near Colombia's border with Panama."

pollution". This is none other than the anti-colonial Indigenous movements that have driven settler-colonial or formerly colonised states to reform their legal systems to facilitate, in the least, the idea of RON. According to Fairclough, larger-scale structuring creates predictable orders which are symbolic of ideological closures or agendas (1989, p. 132). If any social element stands out within such an order, it is eliminated through the larger structural formatting. It is imperative to note these disappearances as it symbolizes ideological interferences in creating a specific worldview or ideological consciousness disabling the existence of relational struggles and Pluriversality.

5.3.4 Summary of the Nairobi-Athi Rivers Case

CDA reveals the underlying power relations and ideology of the Nairobi-Athi Rivers case, particularly concerning attenuated anthropocentrism. The criminalising discourse occurring within the case unveils the power 'behind' the discourse, where dominant social groups are struggling to interpret RHE in relation to the "sanitation crisis". As such, the Judges are drawing from different MR, which also leads to the invoking of RON cases emerging from other regions in the global South as a "creative" and "innovative" example for addressing complex environmental issues. The larger-scale structuring of the Judgment omits references to Indigenous struggles which reveal the power "behind" the judicial discourse. This is seen in the judicial gloss over the claims for "*enkare Nairobi*" and the omission of Indigenous struggles in RON discourses. Therefore, the question of whether the judicial discourses meaningfully capture the realities of implementing RHE in relation to the struggles advocating for relational worlds persists.

5.4 Ganga-Yamuna Rivers Case

Following the CDA framework I analyse the experiential, relational, expressive and connective values of the vocabulary and grammatical features utilized by the judiciary under the following issues of concern: (1) Legal construction of the Environment; (2) Legal person and legal rights; (3) Development and the Law.

5.4.1 The Legal Construction of the Environment

Classification Schemes. The Judges draw from cultural and legal rights-based discourses to frame the Environment. Within the cultural discourses, different classification schemes are used to relate the environment to transcendental and familial values. In the transcendental frame, the Judges use synonyms such as "deities", "pious", "goddess" and "Ganga ma" to refer to the Ganga-Yamuna riverine ecosystem.[43] In contrast, in using the term "Mother Earth"[44], the Judges identify humans as a part of Nature and the origins, existence and sustenance of humans bound to Nature. Notably, the term "Mother Earth" also occurs in the preceding cases from Ecuador. In this case, the Court uses "Mother Earth" to interpret the relationship between humans and Nature, particularly 'as a part of the whole'.[45] The distinction between drawing from transcendental and familial schemes relates to the recognition of different moral duties towards Nature. Under "Mother Earth" there is a rhetorical sense of vulnerability to Nature's existence, mandating its protection as that of an ancestor or a family member (Kauffman & Martin, 2019, p. 270).[46] In considering Nature as a deity, there is the transcendental rhetoric of something more than human coming to play (Dryzek, 2013, p. 19). In both instances, the Judges are drawing upon relational ontologies about the environs and non-human Nature. These Members' Resources digress from the conventional legal understanding of Nature as a resource or inanimate object.

Here, it is useful to observe the experiential and relational values of grammatical features used by the Court. The Judges stress, "Rivers, Forests, Lakes, Water Bodies, Air, Glaciers and Springs have a right to exist, persist, maintain, sustain and regenerate their own vital ecology system…Rivers

[43] See Page 6 in the Second Order, where the Judges state "Both Ganga and Yamuna Rivers are revered as deities by Hindus."
[44] See p. 61 of the Second Order, "Rivers are grasping for breath. We must recognize and bestow the Constitutional legal rights to the 'Mother Earth'."
[45] "The rivers, forests, lakes, water bodies, air, glaciers, human life are unified and are indivisible whole" (Order 2, p. 61)
[46] In certain Indigenous ontologies Nature is viewed an ancestor. The Māori considers the Whanganui River an ancestor and considers their relationship as one based on care.

are grasping for breath. We must recognize and bestow the Constitutional legal rights to the 'Mother Earth'" (Order 2, p. 61). Metaphorically, the statement relates Nature's struggle for 'life' to the human experience of breathing. The sentence structure used by the Court refers to what Fairclough identifies as an event. In Fairclough's categorization of the types of processes embedded in sentences, the choice of structuring a sentence as an event is ideological, as it automatically assumes agency (or lack of it) (Fairclough, 1989, p. 122). Here, the agency of causing environmental degradation is stipulated as the shared responsibility of humanity. Additionally, a common-sense assumption is made about legal rights as the solution to the problem at hand. The pronoun "we" and the modal auxiliary verb "must" are used to ground the moral, but most importantly the legal obligation of recognizing the legal rights of "Mother Earth".

Overwording Nature as a Legal Person. The Judges highlight "Thus, the Himalayan Mountain Ranges, Glaciers, rivers, streams, rivulets, lakes, jungles, air, forests, meadows, dales, wetlands, grasslands and springs are required to be declared as the legal entity/legal person/juristic person/ juridical person/moral person/artificial person for their survival, safety, sustenance and resurgence" (Order 2, p. 63). Evidently, the term "legal person" is overworded by the Court with synonyms and related words. Overwording of Nature as a legal person reveals the ideological struggle ahead of the Judges as officers of the Court. Overwording indicates the "preoccupation with some aspect of reality" (Fairclough, 1989, p. 115). This preoccupation with reality is also exhibited through the vocabulary and grammatical features used by the Judges to interpret Nature as a juristic entity entitled to legal rights, as an "inevitable" development in social progress (p. 62).[47] Vocabulary and passive voice sentence structures (such as "inevitable", "impel" and "are required to") are used to stipulate that the solution of considering Nature as a legal entity is an automatic development or the 'natural' progression, which evidently is another common-sense assumption made by the Judges. What this connotes is the underlying ideological relations persisting within judicial discourses. Notably, Indian judicial decisions have been critiqued for excessive use of passive voice to stipulate objectivity where legal language is rooted in India's colonial legacy (Abohadi, 2019, pp. 55, 57; Sagar, 2021). Therefore, despite the transcendental and familial schemes used by the Judges, it is the

[47] Note the following passive voice sentences in page 63: (a) "With the development of society where the interaction of individuals fell short to upsurge the social development, the concept of juristic person was devised and created by human laws for the purposes of the society"; (b) " For a bigger thrust of socio-political- scientific development, evolution of a fictional personality to be a juristic person becomes inevitable"; (c) "It may be a religious institution or any such useful unit which may impel the Courts to recognise it. This recognition is for subserving the needs and faith of the society" (p. 62-63).

jurisprudential structures of the liberal legal tradition that preside over the Court's approach to complex environmental issues, and broadly environmental justice. The overwording of the 'legal person' and the commonsensical derivation of legal rights as the inevitable reality of social progress constitute the dominance of legal classification schemes and discourses over other transcendental realities, notwithstanding the judicial references to such realities.

5.4.2 The Legal Person and Legal Rights

Synonymy between RON and Humans. To interpret 'legal rights', the Judges construct a relation of synonymy between humans and Nature using terms such as "equivalent" (p. 64)[48] and "akin" (p. 65). [49] To identify the ideological underpinnings of such synonymous meaning relations, it is vital to alternate the focus between the text and the specific discourse type that the text draws upon (Fairclough, 1989, p. 115). The construction of "a relation of synonymy" indicates the generation of ideology through the text (Fairclough, 1989, p. 116). Through meaning relations created by synonymy, it is apparent that the Court is persistently emphasizing legal personality and legal rights as the viable solution for the pollution in Ganga-Yamuna riverine systems. What is noteworthy here is the dominance of the liberal legal conception in interpreting RON, especially given the parallels drawn between Nature and Humans as rights-possessing entities. The Judges also draw from the liberal legal tradition to emphasize the power and the duty of the state as "parens patriae" (translated into English as the parent of the Nation) in granting RON and ensuring its protection (Order 2, p. 42). The understanding of Nature thus is not only tied to the idea of rights but the implementation of RON is also interpreted in relation to the state. The bedrock of the legal rights discourse is the state and state-centred solutions to environmental calamity. Ideologically, this is a conscious departure from implementing environmental rights in a Pluriversal manner.

Whilst, the environmental discourse of the Judges refers to relational interpretations of the environment, the power relations implicit in judicial discourses disable these onto-epistemologies to materialize in concrete ways. Even in the interpretations of the legal rights of humans, this power struggle is perceptible. In the first Order, the Judges recognize that pollution in the Ganga-Yamuna Rivers is a violation of every citizen's right to clean water under Article 21 of the Constitution,

[48] "They are also accorded the rights akin to fundamental rights/ legal rights." (Order 2, p. 64).
[49] "[T]he rights of these legal entities shall be equivalent to the rights of human beings and the injury/harm caused to these bodies shall be treated as harm/injury caused to the human beings" (Order 2, p. 65).

stressing on its implication on basic human rights.[50] This is significant since the pollution caused in the environment is also interpreted as disrupting cultural life and heritages of different groups in India.[51] It is important to note that the judicial emphasis on the Hindu civilizational heritage prompts another critical debate on the power 'behind' discourse and the ideology of the socially dominant group. However, I will not dwell on this issue comprehensively in this thesis. Instead, I observe the judicial interpretation of human rights in relation to the rights of socially marginalized groups – particularly the right to have their voices heard in environmental matters.

Modality. The modal auxiliary verb "should" is utilized by the Judges in several key instances to highlight the vitality of community participation in environmental decision-making.[52] Question 6 under Fairclough's Ten-questions model probes into the power relations hidden in relational values of grammatical structures such as modal auxiliary verbs. Whilst the 'human right to participation in environmental matters' is not explicitly mentioned in the text in these instances, the lack of it within the prevailing system is critiqued by the Court with the use of the modal auxiliary verb "should". "Should" not only indicates obligation, but it also implies a critique against existing reality. In addition, the Judges also use "must" in "[h]owever, we would hasten to observe that the local inhabitants living on the banks of rivers, lakes and whose lives are linked with rivers and lakes must have their voice too" (Order 2, p. 61). Here, "must" signifies insistence on a truth or a fact. Both modalities implicate ideological claims about acceptable reality or knowledge. Modality also evinces the power struggle between socio-politically dominant groups and their suppressed counterparts who are often marginalized in environmental matters. The expressive values of words used by the Judges in naming marginalized groups as "local communities", "forest dwellers" and "women" (Order 2, p. 40) are significant in this regard, primarily because such emphasis on the legal rights of marginalized groups

[50] "Water is one of the basic elements. Neither human beings nor any animals or aquatic life can survive without water. There cannot be any vegetation without water. Every citizen has a right to clean water under Article 21 of the Constitution of India to get clean water which is also the basic human right" (Order 1, para. 9).

[51] For instance, in the first Order, the Court comprehensively outlines the significance of the Ganga and Yamuna Rivers to the Hindu Civilization and cultural life. See broadly Jolly and Menon (2021) on the Court's interpretation of rights in relation to religion and faith; O'Donnell (2018) critiques the Court drawing from Hinduism to stipulate the Ganga-Yamuna Rivers as sacred entities, given the dominance of Hindu Nationalist discourses at the time of the Judgment.

[52] These statements are:
(a) "Forest resources and forest lands should be sustainably managed to meet the social, economic, ecological, cultural and spiritual human needs of present and future generations" (Order 2, p. 39);
(b) The provision of timely, reliable and accurate information on forests and forest ecosystems is essential for public understanding and informed decision-making and should be ensured" (p. 39-40);
(c) Governments should promote and provide opportunities for the participation of interested parties, including local communities and forest dwellers and women, in the development, implementation and planning of national forest policies (p. 40)

in environmental decision-making implicitly signals at the disproportionate access to environmental rights within the existing power structures of the state.

Accordingly, the Court struggles to broadly interpret the idea of legal rights within existing power structures which overtly subjugates the rights of Nature as well as 'some' humans in environmental matters affecting them. A key aspect of intertextuality within this case is the range of discourses that the Court draws upon. One such reference is the implementation of the "Te Urewera Act" in New Zealand.[53] Here, the Judges explicitly note the Act's purpose in preserving "Indigenous ecological systems". However, the struggle for power of dominant ideologies over the RON discourse is engraved within the judicial language because the Judges make the presumption that legislating legal personality is the path to preserve Nature and Indigenous cultural heritages. In a CDA lens, this Is an affirmation of the existing power structures as opposed to the Pluriversal reimaging of RON and RHE.

5.4.3 Development and the Law

In the first Order, the Judges state that "… industry is a must for the nation but the necessary precautions are required to be taken to save the environment. The focus is on sustainable development. It can be termed as 'precautionary principles'" (para. 51). The use of the modal auxiliary verb "must" signals both the 'necessity' of industry and its existence as the reality. Since "must" is placed in the first clause of the sentence the claim emerges dominant over the second clause which is struggling to establish power over the judicial discourse. The Judges draw from the dominant Sustainable Development discourse to underpin the need to balance economic, social and cultural needs with the environment. Evidently, as seen in the previous Judgments of this study, precaution appears within the judicial discourse of this Ruling as well. The common-sense assumptions made about industry and development are ideologically significant owing to the fact the discourse on development is also linked to the legal creation of the Juristic person. In the aforementioned discussion about legal personality, the judicial preoccupation with the idea of the legal person and the dominance of this interpretation over the environment was evident. Such preoccupation is extended to the idea of social development in the Second Order as well. Here, the evolution of the legal person is underpinned as both: arising out of the need for social development

[53] The New Zealand Parliament has enacted 'Te Urewera Act 2014' whereby the 'Urewera National Park' has been given the legal entity under Section 11 of the Act. The purpose of the Act is to preserve, as far as possible, Te Urewera in its natural state, the Indigenous ecological systems, biodiversity and its historical cultural heritage.

and signifying social development itself. The Judges use experiential and relational values to form passive voice grammatical structures to construct this ideological assumption as an event. In this context, the recognition of the environment as a legal person is seen as the role of the Court, "impelled" to do so out of such socio-developmental needs.[54] The occurrence of industry, sustainable development and legal personality are ideological cues within the judicial debate that also construes the power of the dominant ideology through the judicial discourse. This larger structuring of the discourse overpowers the 'alternative' schemes used by the Judges to posit the environment as a deity or Mother Earth. As such, to the eyes of a CDA analyst, the recognition of RON of the Ganga-Yamuna Riverine system is more limiting than enabling a Pluriversal transition to reimagine the idea of RON and RHE.

5.4.4 Summary of the Ganga-Yamuna Rivers Case

The Judges in the Ganga-Yamuna Rivers case draw from various relational ontologies, envisioning a Pluriversal understanding of RHE and RON. However, the experiential, relational and expressive values of the vocabularies and grammatical structures utilized by the Judges unveil homogenizing efforts of coordinating RON approaches to fit within the dominant legal realm, which inherently embodies the Nature/culture duality. This is particularly seen by the overwording of legal personhood in the discourse. Such naturalisations constrain the RON discourses, its content, relations and subjects, which lead to a critical question of whether judicial approaches to the RHE and RON are dominated by power relations and dominant ideologies.

[54] See Order 2, p. 62 "It may be a religious institution or any such useful unit which may impel the Courts to recognise it."

6 Understanding Transitions: Judicial Discourse as Social Practice

In the last stage of the CDA, I reflect on the findings analysed in the preceding section to answer the three research questions – (1) how does the judiciary interpret RHE and RON in the selected cases; (2) what are the conceptions of power relations hidden in judicial discourses in the selected cases and how do they influence RHE and RON; (3) how do the selected cases enable/disable Pluriversal approaches to RHE and RON. In Fairclough's CDA model (as explained in section 4.3) at the Interpretation level, three aspects of the discourse are considered: the Context; Discourse type(s); Difference and Change. The Context considered the discourse participants' interpretation of situational and intertextual contexts and explored the discourse types that are being drawn upon. Differences and Changes are then analysed based on the changes in each participant, during the course of the discoursal interaction (Fairclough, 1989, p. 162). At the stage of interpretation, the aim is to demystify the discourse by correcting the "delusions of autonomy" (Fairclough, 1989, p. 162). The main reflections of this study at the interpretation stage were premised on identifying and critically examining the ideological common-sense assumptions made by the judges. The aim was to explicate such assumptions and critically evaluate their effect on the judicial conception of RHE and RON. However, Interpretation is incomplete without the Explanation stage. Explanation enables the unveiling of the underlying power relations, domination and ideology implicit within the aforesaid naturalisations and common-sense assumptions. This entails questioning "What is built into the assumptions made by the Judges?" It is these reflexive processes that cumulatively enable a CDA analyst to assess how discourses form a part of a social process and a site of social struggle (Fairclough, 1989, pp. 162-163). Therefore, I use this chapter to interpret and explain the afore-analysed social determinants and ideologies underlying the judicial discourses on RON and RHE and reflect on their effect concerning the Pluriversal realisation of rights.

6.1 Recapitulating Judicial Discourses on the RHE and RON

In the CDA presented in the preceding chapter, the power relations and ideology underlying the situational, institutional and societal levels of the discourse were unveiled through the experiential, relational, expressive and connective values of the grammatical structures and vocabularies used by the judges in interpreting the conception of Nature, the RON and, the RHE. The

findings of the text description and interpretation revealed the power struggle between the dominant Anthropocentric ideology and other Pluriversal, Transitional Discourses that shape the legal interpretation of the RON and RHE. These dimensions constrain the contents, relations and subjects of the judicial discourses.

In the Los Cedros case, the interpretation of RON and RHE is premised on the judicial understanding of Nature as Pachamama. It was evident that the judiciary draws on the relational ontologies inculcated in the constitution of Ecuador and attempts to frame Nature and the human-environment relationship according to the Pluriversal understandings instilled within the broader legal framework. As such, the judges interpret RON by drawing upon discourses on the "intrinsic value" of Nature and the right to exist and maintain natural cycles. The struggle for power over the discourse is conspicuous in this instance, particularly given that the judiciary is striving to establish Nature as a rights-holder amidst other rights-holders within the existing legal order. The other rights-holders include humans and "legal persons" such as the mining corporations involved in the Los Cedros case. The judges draw from environmental law principles, particularly the precautionary principle to establish a stronger threshold against environmental degradation caused by extractivism. The emphasis on the precautionary principle cues the social struggle between powerful rights-holders, such as the mining corporations, and the others striving for emancipation in the power struggle. The judiciary is also an actor in the power struggle as it devises means to establish control over regulating Nature and corresponding rights. To interpret RHE, the judiciary explicitly draws from discourses promulgating harmonious relationships with Nature. In the procedural realization of RHE, collective rights guaranteed by the constitution are highlighted to underpin the dominated collectives and Peoples entitled to environmental rights. However, given the contrasting discourses that the judiciary draws upon, communal knowledge systems of Indigenous struggles remain overpowered by the emphasis on scientific criteria embedded within the precautionary discourses concerning industrial development.

In contrast, in the Nairobi-Athi Rivers case, the judges interpret the RHE by valorising the environment as means of guaranteeing human health. Whilst different levels of vulnerability between communities are highlighted, the dominant anthropocentric ideologies influence the judicial framing of environmental degradation as an indiscriminate issue affecting all levels of society. The ideology underlying this generalization reflects attenuated anthropocentrism, where the distinct vulnerabilities of marginalized communities are glossed over by the judicial discourse. In probing into

vulnerabilities, the judges draw from criminalising discourses and a heavily state-centric view, where the "bigger" burden of environmental protection and guaranteeing the RHE is placed on the state. The judges also draw on RON discourses from other regions to proclaim legal personhood as a "creative" solution in addressing complex environmental issues. The ideology underlying this assumption reflects homogenizing efforts of the judiciary in co-opting relational ontologies within the predominant legal order. In contrast, the Ganga-Yamuna Rivers case defines RON by personifying Nature as a legal person. As seen in the analysis, the judiciary draws from relational ontologies which departs from the dualist characterization of the humans-Nature relationship. However, the legal ideologies about legal personality dominate such relational discourses, going on to characterise the judicial interpretation of RON and RHE primarily under the legal personality discourse. The judiciary explicitly synonymises humans and Nature and grounds the rights discourse in a predominantly state-centric framework of guaranteeing rights. Whilst RHE is interpreted through human rights discourses, especially in emphasizing the right to participation of individuals and communities in environmental decision-making, the larger structuring of the judgment subsumes this aspect given the overwording of the legal person and the state-centric framework of protection promoted by the discourse.

In this way, the generalizations and common-sense assumptions made by the judiciary in interpreting RON and RHE serve as crevices which reveal the power relations and ideology underlying the judicial discourses. Against this backdrop, the TDs looming over the judicial discourses constructs a site of social struggle. In other words, TDs bearing Pluriversal and relational ontologies bespeak the shift and struggle for power over the broader environmental discursive frame between different groups. However, given the contrasting discourses being drawn upon by the judges and the hidden common-sense assumptions/naturalizations present within the judicial discourse, whether the mere occurrence of TDs truly 'translate' the relationality envisioned by Pluriversal struggles is a critical concern. This question welcomes an explanation regarding the appearances of TDs in judicial discourses confronted by environmental complexities. I use the ideological dimensions hidden in the Member's Resources, intertextuality and orders of discourse to explain the power relations underlying the occurrence of TDs.

6.2 Analysing Transitions in Judicial Discourses

Members' Resources (MR) in Crisis. In the ecological destruction of the Los Cedros Forest, the pollution in Nairobi-Athi or Ganga-Yamuna Rivers the situational realities ahead of the judiciary remain complex. Against such complexities, the existing MR could be inept in concretely applying the prevailing law to environmental rights. The substantial gap between the environmental problem, its impact on the human-Nature continuum and the familiar types of MR pushes the judges to take up "innovative" or "creative" MRs. For Fairclough, these are "moments of crisis…when the social struggle becomes overt, and when MR and the power relations which underlie them – the temporarily stabilized results of past struggles – therefore themselves come into crisis" (1989, p. 165). The ecological crisis is not a crisis on its own but is a conjecture of multiple crises including the crisis of capitalism, reason, meaning and also knowledge, which dominate and exert power over relational worlds (Escobar, 2018, p. 63). The consequence is a "crisis of hegemony" with frantic efforts seeking "better policies…new political projects and ways of living (Fraser, 2022, p. 77). Therefore, the crises faced by the judiciaries in this study echo the social struggles at situational, institutional and societal levels of the Global South bearing the brunt of the Anthropocentric closures in the legal systems. Palpably, the Judges in all three Rulings, to varying extents are drawing upon 'creative' MR to address "the crisis", averting from normative MR. In scholarly debates, such activism of the judiciary is understood as the "biocentric shift" or "ecocentric" juridical shift (Borrás, 2017, p. 21; Kotzé & Calzadilla, 2017, p. 404).

From a CDA standpoint, "the shift" showcases the conjecture of crises which disables the familiar MR pushing participants to find 'newer' and meaningful solutions for the human-nonhuman-Nature continuum. Consequently, RON discourses are drawn upon by the Judges as "creative" or "innovative" approaches in interpreting the environmental rights concerns of various agents within the discourse as seen in the Nairobi-Athi Rivers case.[55] However, such interpretation processes become ideological due to the common-sense assumptions made by judges. These assumptions are made in order to coordinate, inculcate and thereby homogenize "creative" MR into the prevailing

[55] For example, in paragraph 102 of the Nairobi-Athi Rivers case: 120. Other jurisdictions have come up with creative ways to deal with pollution of their rivers. One such innovation adopted for the conservation of rivers and lakes is by granting these bodies legal personality.

orders of discourse.[56] By and large, these assumptions reflect dualistic ontologies of anthropocentric legal ideologies and exert power over MR controlling the Pluriversal and relational understandings of RON discourses. The Power "in" and "behind" the anthropocentric orders of discourse constrain the content, relations and subjects allowed within the judicial interpretation of rights.

It is understood by now that RON is rooted in the praxis of relational ontologies, predominantly stemming from Indigenous cosmologies and other Pluriversal struggles in the global South. It is not a monolithic concept with a universal cast of application (Tănăsescu, 2022, p. 16). Relationality divagates from the Anthropocentric mould of legal modernity and development (Gudynas, 2011, p. 443). The rights of Pachamama "should not be described as a fashionable idea or a novelty created by Andean countries' twenty-first century political processes" (Acosta & Abarca, 2018, p. 133). *Buen Vivir* is "integral to a longstanding search for alternative ways of living" shaped by enduring Indigenous struggles (Acosta & Abarca, 2018, p. 133). Thus, interpreting RON as "creative solutions" to environmental complexities in juridical discourses requires shrewd scholarly attention. Judges are critiqued for replicating discourses on environmental rights from other jurisdictions, once they are aware of "newer" developments (Weis, 2018, p. 842). Therefore, the critical concern here is the ideological character of judicial efforts aiming to homogenise the legal application of a relational worldview, which inherently opposes such universalisation. The intertextuality of the cases also reveals the ideological naturalisations subverting the emancipatory understandings of Nature and environmental rights.

Intertextuality in Nairobi-Athi and Ganga-Yamuna cases. The intertextual context of the RON discourse in the Nairobi-Athi and Ganga-Yamuna cases reveals several ideological dimensions underlying the homogenizing efforts of Anthropocentric orders of discourse. Intertextuality reveals the historical trajectory of discourses, particularly in identifying which historical series a discourse belongs to through the texts and discourses that occur within the discourse (Fairclough, 1989, p. 152). It also unveils the presuppositions of the participants, particularly dominant participants who are able to determine the presuppositions in the discourse. Presupposition refers to "the text producers' interpretations of intertextual context" (Fairclough, 1989, p. 152). Intertextuality construes a larger element of each Judgment given the intertextual nature of the law as a linguistic

[56] For example, in paragraph 78 of the Second Order of the Ganga-Yamuna case: "The Court, though, cannot direct the Legislature to frame the laws, but since, there is an emergency to protect the river Ganga from extinction, the Court can, at least, make a suggestion to the Union of India to make national law to protect river Ganga."

field. However, in the CDA of the Nairobi- Athi Rivers case, it was evident that the larger-scale structuring of the discourse omits any references to Indigenous struggles underlying RON despite its explicit references to the Te Awa Tupua case and the Colombian Amazon cases. The power relations underlying the dominant Anthropocentric legal order subvert the existence of relational worlds and struggles as means of controlling the RON discourse. Further, the petitioners' metaphorical appeal to revert to "*enkare Nairobi*" is a glimpse of the relational worldviews struggling for power over the discourse, particularly worldviews dominated by attenuated Anthropocentrism. As theorised in section 3.3, attenuated anthropocentrism reduces Peoples and communities into marginalized positions often revealing the dominant power relations existing within hegemonic systems that undermine the emancipatory capacities of these Peoples. In the Ganga-Yamuna Rivers case, the judiciary draws upon multiple MR, where the discourse explores transcendental values of the Rivers indicating relationality through vocabularies and grammatical structures to evince sacredness and ancestral relations of Rivers. However, due to the underlying power relations and ideology, the judicial discourse is constrained by the dominant social groups. The result is the judicial naturalisation of RON under legal personality discourses. This reveals the constraints within the legal orders of discourse in terms of what is allowed by the discourse in structuring the idea of environmental rights. In the Los Cedros case, whilst homogenizing efforts do not mirror such naturalisation of legal personality, the dominant ideologies control the Pluriversal approaches to RON, through heavy emphasis on scientific and environmental law discourses, despite their anthropocentric closures.

Orders of discourse in Los Cedros. The judges in the Los Cedros case are interpreting RON within the constitutional framework of Ecuador. However, in the Los Cedros Judgment, the larger structuring of the Judgment, despite its merits in comprehensively interpreting RON and RHE, envisages the complex reality of implementing Pluriversal environmental rights, particularly given that the Indigenous ontologies remain subsumed within the dominant power relations defined by modernity and anthropocentrism. In interpreting RON and RHE, the discourses of relational ontologies remain overpowered by the dominant legal discourse promulgating rights for personified legal entities such as mining industrial actors. The emphasis on the precautionary principle as means of protecting the environment indicates the constraints on the Pluriversal praxis of relationality and Indigenous cosmovision(s) when implementing RON. As the dominant ideology, the legal discourse structures the interpretation of the accepted forms of knowledge, beliefs, social relationships and social identities (Fairclough, 1989, p. 140). The effect is felt in the state-centred, conservation-bent character of the RON interpretation rooted within environmental law principles, which exerts power

over relationality envisioned by the Indigenous struggles for RON and RHE. Thus, despite the judges drawing from Pacha-centric discourses, at the implementation stage of RON, discourse co-optation subverts the emancipatory potential of Pachamama.

In this regard, despite the occurrence of TDs in the judicial discourses on the Nature and environmental rights, where judicial actors are drawing from "creative" MR, the intertextuality and, the orders of discourse pose normative constraints over the subjects, contents and relations of TDs. One such constraint underscores the judicial efforts of homogenizing TDs into the existing legal order. Such homogenising efforts lead to discourse co-optation, aside from control in other ways, where the initial meanings of the discourse are lost due to the power "in" and "behind" the interpretations. Consequently, the effect of discourse homogenization and ideological naturalization dominates relational ontologies which struggle to break away from the dualist ontologies of anthropocentrism. As such the interpretation of RON and RHE is controlled by the power relations and ideology underlying the judicial discourses, which largely disables the initial Pluriversal and emancipatory readings of RON and RHE within the discursive frame.

7 Concluding Thoughts: Towards Pluriversal Realization of RHE and RON?

The broader purpose of this study was to contribute to the emerging discourses on RHE and RON, by critically identifying power relations and ideology underlying the judicial discourses in three judgements from the global South: Los Cedros protected forest case; Nairobi-Athi Rivers case and, the Ganga-Yamuna Rivers case. The main research questions considered: firstly, how the judiciary interprets the RHE and RON in the selected cases; secondly, the conceptions of power underlying the judicial discourses and the effect of such power relations on the interpretation of RHE and RON; and lastly, whether such interpretations enable or disable Pluriversal approaches to RHE and RON. Fairclough's theory of CDA (1989) and the three-dimensional CDA model was applied as the theoretical and analytical frame to analyse the cases. The conceptions of Discourse, Orders of discourse, Power "in" and "behind" discourse, Ideology, Hegemony, Pluriversality and TDs were used as key conceptions to appraise the findings of the selected cases. In applying CDA as a methodology, Fairclough's three-dimensional model was combined with Dryzek's checklist of environmental discourses to pose meaningful questions about power, domination and ideology underlying judicial discourses on the RHE and RON. The CDA entailed three parts: description of the judicial text, interpretation of the discourse and explanation of the ideological dimensions of the discourse.

At the text description stage, the study analysed the experiential, relational, expressive and connective values of the vocabularies and grammatical structures used by the judges within each judgement to unveil common-sense assumptions, naturalisations and efforts of ideologically homogenizing discourses. The text description was supplemented by the interpretation and explanation of the power relations and ideological dimensions hidden in the judicial language. The findings from the three cases unveiled legal discourses as social practice immersed within social struggles. Markedly, the occurrence of RON discourses within the broader environmental discursive frame of the law signalled the transitions permeating from the real-world relational struggles which advocate for Pluriversal understandings of Nature, the human-Nature relationship and rights relating to Nature. CDA of the discourses indicated the underlying power relations and ideology arising out of the dominant anthropocentric legal order, which constrains the contents, relations and subjects allowed within the judicial discourses and anthropocentric legal hegemony. As a consequence, the

common-sense assumptions and naturalisations made in the judgements in interpreting the conception of Nature, RON and RHE are viewed as attempts of universalising and/or homogenizing discourses within the existing legal orders of discourse. As CDA envisage the emancipatory potential of social struggles, it was vital to gaze at the hidden effects of power and ideology over discourses, to unearth their effect on diffusing struggles of dominated groups. Accordingly, through the findings, it was evident that the occurrence of TDs such as those on RON does not 'automatically' translate the Pluriversal interpretations of such conceptions, communicated in Indigenous and local movements, into the judicial discursive frame. In contrast, the RON discourses were largely diffused and/or appropriated by dominant anthropocentric legal ideologies through attempts to homogenize and universalise the discourse to better suit the dominant orders of the juridical discourse. Such constraints showcased heavily state-centric discourses to environmental protection, where RON and RHE are read and interpreted in light of conceptions such as "legal personality" and "development" under a predominantly anthropocentric legal order. Therefore, to meaningfully consider the gaps between the judicial reading and translation of relational ontologies and Pluriversal views in the interpretation of RON and RHE and, the Pluriversal struggles within the broader discursive frame, it is imperative to confront the constraints imposed by the anthropocentric legal order. Here, translation is meant from a Transitional, intercultural standpoint intending to overcome the anthropocentric dualism of humans and Nature within the legal order.

An important consideration in this regard is understanding the nuanced consanguinity between RHE and RON. Politics of relationality rooted in the decentered Indigenous and collective visions of the global South envisions a Pluriversal world which transcends dualistic onto-epistemologies (Escobar, 2018). Therefore, in translating the emancipatory struggles of the South it is crucial to emphasize and reflect on the right to meaningfully participate in environmental decision-making, particularly for social groups in Pluriversal struggles. A fundamental aspect of such emancipation mandates the recognition of attenuated positions of certain social groups by anthropocentric approaches to environmental rights. Thus, in interpreting RON and the RHE, it is imperative that the judiciary decenters from a heavily state-centric, universalizing discourse - in the least. Instead, the task is to empower social struggles to meaningfully advocate and translate relational ideas of Nature, RON and the RHE within the discursive frame. This entails not merely glossing over 'alternative' understandings of Nature and rights as "creative" or "innovative" solutions but practically emphasizing the imperative reforms required in environmental participation and decision-making for communities attenuated by anthropocentrism and their longstanding struggles

for environmental rights. In all three cases, RHE is discussed in various ways, where the Judges refer to the right to participation, prior informed consent and collective rights in environmental decision-making. However, the question of whether judicial interpretations adequately translate the need to bridge environmental human rights with relational struggles that advocate for RON persists. The judicial approaches prove to be reinforcing and overpowered by the state-centric solutions envisaged in the path to environmental justice. Therefore, in envisioning a meaningful "biocentric transition" towards realizing and implementing environmental rights by way of RON or RHE, it is imperative that rights are translated in relational ways to empower local struggles and communities to overcome the power relations and ideologies dominating environmental rights discourses. Unveiling the apertures caused by power and ideology, and enabling "alternative viewpoints are especially important if human rights are to have an emancipatory potential" (Mezzanotti & Kvalvaag, 2022, p. 480). Therefore, I propose a holistic interpretation of RON in connection to RHE and the collective rights to participate in environmental decision-making, particularly grounding rights in decentered/localized struggles advocating for relational worlds. Nature and environmental rights are better understood and realized without universalizing attempts thrust into dualistic ontologies. Hence, this prescription itself is not absolute. Rather, it seeks to root the notion of rights in TDs, particularly those enabling and amplifying the voices of relational struggles thereby strengthening the autonomy and empowerment of individuals, communities and Peoples in environmental decision-making.

In conclusion, the judiciary can facilitate RON and RHE discourses only by reimagining, re-envisioning and re-reading rights through a decentered lens seeking to scrutinize the power held by dominant groups, including itself, in relation to locally grounded movements that are struggling to uphold Pluriversal approaches to the environment. Hence, the legal reading of environmental rights in emancipatory ways mandates an ongoing critique of the judicial discourses on the human-nonhuman-Nature-culture continuum. Such critique entails a three-fold understanding. Firstly, that the occurrence of TDs does not form "creative" alternatives that can be easily merged into existing anthropocentric frameworks. Instead, relational ontologies are radical views seeking to transform approaches to RHE and RON. Secondly, such occurrences cannot be underpinned as the replacement of RHE by RON or vice versa. Rather, the "biocentric" shift should be understood for its nuanced, and decentred character, particularly its origins in Pluriversal movements and worldviews. Lastly, as Gutmann notes, echoing Derrida and Latour,

> Justice or harmony is always yet to come…and never be reached and maintained entirely. It is an ongoing task for the entire society, a society of which [N]ature is a part and where non-human entities [should] be heard. (Gutmann, 2021, p. 46)

Hence, the need for further research - within and beyond the law - which critically confronts power relations and ideology built into judicial discourses on environmental rights (or broadly justice) remains paramount.

Bibliography

International Conventions, Treaties and UN Resolutions

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Right, November 17, 1988, http://www.oas.org/en/sare/social-inclusion/protocol-ssv/docs/protocol-san-salvador-en.pdf

African Charter on Human and Peoples' Rights, June 27, 1981, https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf

Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environment Matters, June 25, 1998, https://unece.org/DAM/env/pp/documents/cep43e.pdf

General Assembly Resolution A/71/266, Harmony with Nature, A/71/266 (1 August 2016), https://sdgs.un.org/documents/a71266-harmony-nature-21981

General Assembly Resolution A/HRC/48/L.23/Rev.1, The human right to a safe, clean, healthy and sustainable environment, A/HRC/48/L.23/Rev.1 (5 October 2021), https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/48/L.23/Rev.1

International Covenant on Civil and Political Rights, December 16, 1966, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

International Covenant on Economic, Social and Cultural Rights, December 16, 1966, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights

Protocol to the African Charter on Human and People's Rights on the Rights of Woman in Africa, July 1, 2003, https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-women-africa

The Draft Global Pact for the Environment, 2017, https://globalpactenvironment.org/uploads/EN.pdf

Universal Declaration of Human Rights, December 10, 1948, https://www.un.org/en/about-us/universal-declaration-of-human-rights

Universal Declaration of Mother Earth, April 22, 2010, https://www.garn.org/universal-declaration-for-the-rights-of-mother-earth/

United Nations Conference on the Human Environment, June 16, 1972, https://www.un.org/en/conferences/environment/stockholm1972

United Nations Conference on Environment and Development, June 14, 1992, https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf

United Nations Declaration of the Rights of Indigenous Peoples, September 13, 2007, https://social.desa.un.org/issues/Indigenous-peoples/united-nations-declaration-on-the-rights-of-Indigenous-peoples

UN World Charter for Nature, October 28, 1982, https://digitallibrary.un.org/record/39295?ln=en

Vienna Declaration and Programme of Action, June 25, 1993, https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action

Books, Cases, Journals and Other Sources

Abohadi, K. H. A. (2019). A Review of the Legal Language Development with the Focus on its Lexicogrammatical Features. *International Journal of Creative and Innovative Research in All Studies 2*(6). http://ijciras.com/PublishedPaper/IJCIRAS1449.pdf

Acosta, A., & Abarca, M. M. (2018). Buen Vivir: An Alternative Perspective from the Peoples of the Global South to the Crisis of Capitalist Modernity. In V. Satgar (Ed.), *The Climate Crisis: South African and Global Democratic Eco-Socialist Alternatives*. Wits University Press. https://doi.org/https://doi.org/10.18772/22018020541

Aguila, Y. (2021). *The Right to a Healthy Environment*. IUCN. https://www.iucn.org/news/world-commission-environmental-law/202110/right-a-healthy-environment

Aguila, Y., & Viñuales, J. E. (2019). A Global Pact for the Environment: Conceptual Foundations. *Review of European Comparative and International Environmental Law*, *28*(1). https://doi.org/https://doi.org/10.1111/reel.12277

Akchurin, M. (2015). Constructing the Rights of Nature: Constitutional Reform, Mobilization, and Environmental Protection in Ecuador. *Law & Social Inquiry*, *40*, 937-968, Article 4. https://www.jstor.org/stable/24545781

Alier, J. M. (2003). *The Environmentalism of the Poor: A Study of Ecological Conflicts and Valuation*. Edward Elgar.

Aston, S., & Aydos, E. (2019). Environmental Discourses and Water Law: A case study of the regulation of the Murray-darling basin. *Sequencia*, *83*, 47-86. https://doi.org/https://doi.org/10.5007/2177-7055.2019v41n83p47

Atapattu, S. A. (2018). Extractive Industries and inequality: Intersections of Environmental Law, Human Rights, and Environmental Justice. *Arizona State Law Journal*, *50*, 431-454. https://arizonastatelawjournal.org/2018/08/30/extractive-industries-and-inequality-intersections-of-environmental-law-human-rights-and-environmental-justice/

Atapattu, S. A., & Schapper, A. (2019). Human rights and the environment: Square pegs in round holes? In *Human Rights and the Environment: Key Issues* (1st ed.). Routledge. https://www.taylorfrancis.com/chapters/mono/10.4324/9781315193397-16/human-rights-environment-atapattu-sumudu-schapper-andrea

Baude, W., & Sachs, S. E. (2017). The Law of Interpretation. *Harvard Law Review*, *130*(4), 1079-1147. http://www.jstor.org/stable/44865509

Baxi, U. (2008). *The Future of Human Rights* (3rd ed.). Oxford University Press. https://doi.org/https://doi.org/10.1093/acprof:oso/9780195690439.001.0001

Benford, R. (2005). The Half-Life of the Environmental Justice Frame: Innovation, Diffusion, and Stagnation. In D. N. Pellow & R. J. Brulle (Eds.), *Power, Justice, and the Environment: A Critical Appraisal of the Environmental Justice Movement*. MIT Press.

Bennett, J. (2010). *Vibrant Matter: A Political Ecology of Things*. Duke University Press.

Berros, M. V. (2019). Rights of Nature in the Anthropocene: Towards the Democratization of Environmental Law? In M. Lim (Ed.), *Charting Environmental Law Futures in the Anthropocene*. Springer.

Berros, M. V. (2021). Challenges for the Implementation of the Rights of Nature: Ecuador and Bolivia as the First Instances of an Expanding Movement. *Latin American Perspectives*, *48*(238), 192-205. https://doi.org/10.1177/0094582X211004898

Bhatt, P. I. (2019). *Idea and Methods of Legal Research*. Oxford University Press. https://doi.org/https://doi.org/10.1093/oso/9780199493098.001.0001

Birnie, P. W., & Boyle, A. E. (1992). *International Law and the Environment*. Oxford University Press.

Blanco, E., & Grear, A. (2019). Personhood, jurisdiction and injustice: law, colonialities and the global order. *Journal of Human Rights and the Environment*, *10*(1), 86-117. https://law.unimelb.edu.au/__data/assets/pdf_file/0003/3300294/7.1-Elena-Blanco-and-Anna-Grear,-Personhood,-Jurisdiction-and-Injustice-Law,-Colonialities-and-the-Global-Order-2019.pdf

Bogojević, S., & Rayfuse, R. (2018). Environmental Rights in Europe and Beyond: Setting the Scene. In S. Bogojević & R. Rayfuse (Eds.), *Environmental Rights in Europe and Beyond* (Vol. 11). Hart. https://ebookcentral.proquest.com/lib/ucsn-ebooks/detail.action?docID=5439810

Bolívar, A. (2010). A change in focus: from texts in contexts to people in events. *Journal of Multicultural Discourses*, *5*(3), 213-225. https://doi.org/10.1080/17447141003602312

Borrás, S. (2017). New Transitions from Human Rights to the Environment to the Rights of Nature. *Transnational Environmental Law*, *6*(3), 114-143. https://doi.org/http://dx.doi.org/10.1017/S204710251500028X

Bosselmann, K. (2004). In Search of Global Law: The Significance of the Earth Charter. *Worldviews*, *8*, 62-75, Article 1. https://www.jstor.org/stable/43809255

Boyd, D. (2012). *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* UBC Press.

Boyd, D. (2019). The Right to a Healthy and Sustainable Environment. In Y. Aguila & J. E. Viñuales (Eds.), *A Global Pact for the Environment: Legal Foundations* (pp. 30-36). Cambridge: C-EENRG. https://www.ceenrg.landecon.cam.ac.uk/system/files/documents/AguilaVinualesAGlobalPactfortheEnvironmentCambridgeReportMarch2019.pdf

Boyd, D. R. (2018). Recognizing the Rights of Nature: : Lofty Rhetoric or Legal Revolution? *Natural Resources & Environment*, *32*, Article 4. https://www.jstor.org/stable/10.2307/26418846

Boyle, A. (2012). Human Rights and the Environment: Where Next? *The European Journal of International Law 23*(3). https://doi.org/https://doi.org/10.1093/ejil/chs054

Bryman, A. (2012). *Social Research Methods* (Fourth Edition ed.)

Bryman, A. (2016). *Social Research Methods* (5th ed.). Oxford University Press.

Carrales, J. C. F., & Krabbe, J. S.-. (2021). Introduction: Horizons of possibility and scientific research: whose problems, whose solutions? In J. C. F. Carrales & J. S.-. Krabbe (Eds.), *Transdisciplinary Thinking from the Global South* (1st ed.). Routledge. https://doi.org/https://doi.org/10.4324/9781003172413

Carson, R. (1962). *Silent Spring*. Houghton Mifflin.

Chakraborty, P. (2004). Framing “Always Indigenize” beyond the Settler-Colony”:”Indigenizing” in India. *English Studies in Canada*, *30(3)*, 17-28.

Cheng, L., & Machin, D. (2022). The Law and Critical Discourse Studies. *Critical Discourse Studies*, 1-13. https://doi.org/10.1080/17405904.2022.2102520

Cima, E. (2022). The right to a healthy environment: Reconceptualizing human rights in the face of climate change. *Review of European, Comparative & International Environmental Law*, *31*, 38-49. https://doi.org/https://doi.org/10.1111/reel.12430

Connor, S. O., & Kenter, J. O. (2019). Making intrinsic values work; integrating intrinsic values of the more-than-human world through the Life Framework of Values. *Sustainability Science*(14), 1247-1265. https://doi.org/doi.org/10.1007/s11625-019-00715-7

The Constitution of India (rev. 2022), (1950). https://cdnbbsr.s3waas.gov.in/s380537a945c7aaa788ccfcdf1b99b5d8f/uploads/2023/05/2023050195.pdf

The Constitution of Kenya, (2010). http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=Const2010

The Constitution of the Republic of Ecuador (rev. 2021), (2008). https://www.constituteproject.org/constitution/Ecuador_2021?lang=en

Cotterrell, R. (1984). *The Sociology of Law* (2nd ed.). Butterworths.

Crutzen, P. J. (2006). The Anthropocene. In E. Ehlers & T. Krafft (Eds.), *Earth System Sicence in the Athropocene* (pp. 13-18). Springer. https://doi.org/https://doi.org/10.1007/3-540-26590-2_3

Cueva, J. (2020). *Los Cedros one of the most important cases this century*. Retrieved 16 February 2023 from https://loscedrosreserve.org/los-cedros-one-of-the-most-important-cases-this-century/

D. G. Khan Cement Company Ltd. v Government of Punjab, (Supreme Court of Pakistan 2019). http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2021/20210415_13410_judgment.pdf

Davies, M. (2002). *Asking the law question; The dissolution of legal theory* (2nd ed.). Lawbook Co.

Dijk, T. A. v. (1993). Principles of critical discourse analysis. *Discourse & Society*, *4*, 249-283, Article 2. https://www.jstor.org/stable/42888777

Dryzek, J. S. (2013). *The Politics of Earth: Environmental Discourses* (3rd ed.). Oxford University Press. (1997)

Ervo, L. (2016). The hidden meanings in the case law of the European Court for Human Rights. *Semiotica*, *209*, 209-230. https://doi.org/https://doi.org/10.1515/sem-2016-0009

Escobar, A. (2011). Sustainability: Design for the Pluriverse. *Development*, *54*(2), 137-140. https://doi.org/10.1057/dev.2011.28

Escobar, A. (2015). Degrowth, Postdevelopment, and Transitions: a Preliminary Conversation. *Sustain Sci*, *10*, 451-462. https://doi.org/https://doi.org/10.1007/s11625-015-0297-5

Escobar, A. (2018). Transition Discourses and the Politics of Relationality: Toward Designs for the Pluriverse. In B. Reiter (Ed.), *Constructing the pluriverse: The geopolitics of knowledge*. Duke University Press. https://ebookcentral.proquest.com/lib/ucsn-ebooks/detail.action?docID=5495919

Fairclough, N. (1989). *Language and Power*. Longman.

Fairclough, N. (1992). *Discourse and Social Change*. Polity Press.

Fairclough, N. (2010). *Critical Discourse Analysis: The Critical Study of Language* (2nd ed.). Routledge.

Fallon, R. H. (2015). The Meaning of Legal "Meaning" and Its Implications for Theories of Legal Interpretation. *The University of Chicago Law Review*, *82*(3), 1235-1308. http://www.jstor.org/stable/43575199

Foucault, M. (1980). *Power/Knowledge: Selected Interviews and Other Writings (New York: Pantheon Books*. Pantheon Books.

Fox, N. J., & Alldred, P. (2021). Climate change, environmental justice and the unusual capacities of posthumans. *Journal of Human Rights and the Environment 12*, 59-75. https://doi.org/10.4337/jhre.2021.00.03

Fraser, N. (2022). *Cannibal Capitalism: How Our System Is Devouring Democracy, Care, and the Planet-and What We Can Do about it*. Verso.

Galanter, M. (1974). Why the haves come out ahead: Speculations on the limits of legal change. *Law & Society Review*, *9*(1), 95-160. https://doi.org/10.2307/3053023

GARN. (2023). Glonal Alliance for Right of Nature. Retrieved 7 April from https://www.garn.org

GARN. (2021). *Ecuador's Constitutional Court enforced Rights of Nature to Safeguard Los Cedros Protected Forest* https://www.garn.org/wp-content/uploads/2021/12/Los-Cedros-PR-1.pdf

Gearty, C. (2010). Do Human Rights Help or Hinder Environmental Protection? *Journal of Human Rights and the Environment 1*(1), 7-22. https://conorgearty.co.uk/wp-content/uploads/2016/02/Do_human_rights_help_or_hinder_environmental_protection.pdf

Geel, O. v. (2017). Urgenda and Beyond: The past, present and future of climate change public interest litigation. *Maastricht University Journal of Sustainability Studies*, *3*, 56-72. https://openjournals.maastrichtuniversity.nl/SustainabilityStudies/article/view/508

Gellers, J. C. (2015). Greening Critical Discourse Analysis. *Critical Discourse Studies*, *12*(4), 482-493. https://doi.org/https://doi.org/10.1080/17405904.2015.1023326

Gill, G. N. (2012). Human Rights and the Environment in India: Access through Public Interest Litigation. *Environmental Law Review*, *14*(3), 200-218. https://doi.org/https://doi.org/10.1350/enlr.2012.14.3.158

Gormley, W. P. (1976). *Human Rights and Environment: The need for International Co-operation*. Sijthoff.

Gormley, W. P. (1990). The Legal Obligation of the International Community to Guarantee a Pure and Decent Environment: The Expansion of Human Rights Norms. *Georgetown Environmental Law Review*, *3*(1), 85-116. https://heinonline.org/HOL/LandingPage?handle=hein.journals/gintenlr3&div=8&id=&page=

Grear, A. (2011). The vulnerable living order: human rights and the environment in a critical and philosophical perspective. *Journal of Human Rights and the Environment*, *Vol. 2* (1), 23-44. https://doi.org/http://dx.doi.org/10.4337/jhre.2011.01.02

Grear, A. (2015). Deconstructing Anthropos: A Critical Legal Reflection on 'Anthropocentric' Law and Anthropocene 'Humanity'. *Law Critique*, *26*, 225-249. https://doi.org/10.1007/s10978-015-9161-0

Grear, A. (2017). 'Anthropocene, Capitalocene, Chthulucene': Re-encountering Environmental Law and its 'Subject' with Haraway and New Materialism. In L. Kotzé (Ed.), *Environmental Law and Governance for the Anthropocene* (pp. 77-96). Hart.

Grear, A. (2018). Human Rights and New Horizons? Thoughts toward a New Juridical Ontology. *Science, Technology, and Human Values*, *Vol. 43* (1), 129-145. https://doi.org/https://doi.org/10.1177/0162243917736140

Gudynas, E. (2011). Buen Vivir: Today's tomorrow. *Development*, *54*(4), 441-447. https://doi.org/10.1057/dev.2011.86

Gutmann, A. (2021). Pachamama as a Legal Person? Rights of Nature and Indigenous Thought in Ecuador. In D. P. Corrigan & M. Oksanen (Eds.), *Rights of Nature: A Re-examination* (pp. 36-50). Routledge.

Hajer, M., & Versteeg, W. (2005). A Decade of Discourse Analysis of Environmental Politics: Achievements, Challenges, Perspectives. *Journal of Environmental Policy and Planning*, *7*(3), 175-184. https://doi.org/10.1080/15239080500339646

Hayward, T. (2005). *Constitutional Environmental Rights*. Oxford University Press. https://doi.org/https://doi.org/10.1093/0199278687.001.0001

Higgins, P., Short, D., & South, N. (2013). Protecting the planet: A Proposal for a Law of Ecocide. *Crime Law and Social Change*, *59*(3), 251-266. https://doi.org/ https://doi.org/10.1007/s10611-013-9413-6

International Rights of Nature Tribunal. The Global Alliance for the Rights of Nature. https://www.rightsofnaturetribunal.org

Isaiah Luyara Odando & Another v. National Management Environmental Authority & 2 Others; County Government of Nairobi & 5 Others, eKLR (Environment and Land Court in Nairobi 2021). http://kenyalaw.org/caselaw/cases/view/217772/

Jensen, L. C. (2012). Norwegian petroleum extraction in Arctic waters to save the environment: introducing 'discourse co-optation' as a new analytical term. *Critical Discourse Studies*, *9*(1), 29-38. https://doi.org/10.1080/17405904.2011.632138

Jessup, B., & Rubenstein, K. (2012). Introduction: Using discourse theory to untangle public and international environmental law. In B. Jessup & K. Rubenstein (Eds.), *Environmental*

Discourses in Public and International Law (pp. 1-20). Cambridge University Press. https://ebookcentral.proquest.com/lib/ucsn-ebooks/detail.action?docID=862411

Jolly, S., & Menon, K. S. R. (2021). Of Ebbs and Flows: Understanding the Legal Consequences of Granting Personhood to Natural Entities in India. *Transnational Environmental Law*, *10*(3), 467-492. https://doi.org/10.1017/S2047102520000424

Jones, E. (2021). Posthuman international law and the rights of nature *Journal of Human Rights and the Environment*, *12*(Special Issue), 76-102. https://doi.org/https://doi.org/10.4337/9781802203349.00008

Jørgensen, M. W., & Phillips, L. P. (2002). *Discourse Analysis as Theory and Method*. Sage.

Kamardeen, N. (2015). The honeymoon is over: an assessment of judicial activism in environmental cases in Sri Lanka. *Jindal Global Law Review*, *6*(1), 73-91. https://doi.org/10.1007/s41020-015-0010-7

Kauffman, C., & Sheehan, L. (2019). The Rights of Nature: Guiding our Responsibilities through Standards. In Stephen J. Turner, Dinah L. Shelton, Jona Razzaque, Owen McIntyre, & J. R. May (Eds.), *Environmental Rights: The Development of Standards*. Cambridge University Press.

Kauffman, C. M., & Martin, P. L. (2018). Constructing Rights of Nature Norms in the US, Ecuador, and New Zealand. *Global Environmental Politics*, *18*(4), 43-62. https://doi.org/https://doi.org/10.1162/glep_a_00481

Kauffman, C. M., & Martin, P. L. (2019). How Courts are Developing River Rights Jurisprudence: Comparing Guardianship in New Zealand, Colombia, and India. *Vermont Journal of Environmental law*, *20*, 260-289. http://files.harmonywithnatureun.org/uploads/upload920.pdf

Kibugi, R. (2021). *Indicator 2: Evaluating the Legal Status and Protection of Indigenous Communities Tenure Rights* (Local communities' and indigenous peoples' land and forestry rights, Issue. https://www.jstor.org/stable/resrep34116.8

Kmiec, K. D. (2004). The Origin and Current Meanings of "Judicial Activism". *California Law Review*, *92*(5), 1441-1477. https://doi.org/https://doi.org/10.2307/3481421

Kotzé, L. J. (2012). Arguing Global Environmental Constitutionalism. *Transnational Environmental Law*, *1*(1), 199-233. https://doi.org/https://doi.org/10.1017/S2047102518000274

Kotzé, L. J. (2014). Human rights and the environment in the Anthropocene. *The Anthropocene Review*, *1*(3). https://doi.org/https://doi.org/10.1177/2053019614547741

Kotzé, L. J. (2015). Rethinking Global Environmental Law and Governance in the Anthropocene. *Journal of Energy & Natural Resources Law*, *32*(2), 121-156. https://doi.org/https://doi.org/10.1080/02646811.2014.11435355

Kotzé, L. J. (2016). *Global Environmental Constitutionalism in the Anthropocene*. Hart Publishing.

Kotzé, L. J. (2019). Earth System Law for the Anthropocene. *Sustainability 11*(23), 6796-7009. https://doi.org/https://doi.org/10.3390/su11236796

Kotzé, L. J., & Calzadilla, P. V. (2017). Somewhere between Rhetoric and Reality: Environmental Constitutionalism and the Rights of Nature in Ecuador. *Transnational Environmental Law*, *6*(3), 401-433. https://doi.org/https://doi.org/10.1017/S2047102517000061

Kudo, S., & Mino, T. (2020). Framing in Sustainability Science. In S. Kudo & T. Mino (Eds.), *Framing in Sustainability Science: Theoretical and Practical Approaches* (pp. 3-15). Springer Singapore. https://doi.org/https://doi.org/10.1007/978-981-13-9061-6_1

Laastad, S. G. (2016). *A Discourse Analysis on Ecuador's Constitutional Rights of Nature* University of Oslo]. Oslo. http://urn.nb.no/URN:NBN:no-55328

Laituri, M., Ryder, S., Powlen, K., Malin, S. A., Sbicca, J., & Stevis, D. (2021). Conclusion: The quest for environmental justice. In S. Ryder, K. Powlen, M. Laituri, S. A. Malin, J. Sbicca, & D. Stevis (Eds.), *Environmental Justice in the Anthropocene: From (Un)Just Presents to Just Futures* (pp. 322-327). Routledge. https://doi.org/https://doi.org/10.4324/9781003023609

Lalander, R. (2016). Lalander, R. (2014). The Ecuadorian Resource dilemma: Sumak Kawsay or development? Critical Sociology, 1-20. *Critical Sociology*, *42*(4-5), 623-642. https://doi.org/https://doi.org/10.1177/0896920514557959

Lalit Miglani v. State of Uttarakhand & Others, (High Court of Uttarakhand 2017). http://files.harmonywithnatureun.org/uploads/upload662.pdf

Lalit Miglani v. State of Uttarakhand & Others, (High Court of Uttarakhand 2016). https://ueppcb.uk.gov.in/upload/contents/File-77.pdf

Leathley, C., Villaggi, F., & Paez, D. (2021, 24 February). Ecuador's Got A New President: Now What? *Lain America Notes*. https://hsfnotes.com/latamlaw/2021/05/25/ecuadors-got-a-new-president-now-what/

Lester, J. A. (2021). Environmental Justice and the Sabal Trail Pipeline. In S. Ryder, K. Powlen, M. Laituri, S. A. Malin, J. Sbicca, & D. Stevis (Eds.), *Environmental Justice in the Anthropocene: From (Un)Just Presents to Just Futures*. Routledge. https://doi.org/https://doi.org/10.4324/9781003023609

Litowitz, D. (2000). Gramsci, Hegemony, and the Law. *Brigham Young University Law Review*, *2000*(2), 515-551. https://legalform.files.wordpress.com/2017/08/litowitz-gramsci-hegemony-and-the-law-2000.pdf

Los Cedros court case date announced. (2020). https://loscedrosreserve.org/los-cedros-court-case-date-announced/

Los Cedros Opinion No. 1149-19-JP/20, (The Constitutional Court of Ecuador 2021). http://celdf.org/wp-content/uploads/2015/08/Los-Cedros-Decision-ENGLISH-Final.pdf

Mariqueo-Russell, A. (2017). Rights of Nature and the Precautionary Principle. *RCC Perspectives*, 21-28, Article 6. http://www.jstor.org/stable/26268372

Markowitz, K. J., & Gerardu, J. J. A. (2012). The Importance of the Judiciary in Environmental Compliance and Enforcement. *Pace Environmental Law Review*, *29*(2), 538-554, Article 5. https://doi.org/https://doi.org/10.58948/0738-6206.1695

May, J. R., & Daly, E. (2014). *Global Environmental Constitutionalism*. Cambridge University Press. https://doi.org/https://doi.org/10.1017/CBO9781139135559

May, J. R., & Kelly, J. P. (2013). The Environment and International Society: Issues, Concepts and Context. In S. Alam, J. H. Bhuiyan, T. M. R. Chowdhury, & E. J. Techera (Eds.), *Routledge*

Handbook of International Environmental Law Routledge. https://doi.org/https://doi.org/10.4324/9780203093474

Mertz, E. (1994). Legal Langauge: Pragmatics, Poetics, and Social power. *Annual Review of Anthropology*, *23*, 435-455. https://www.jstor.org/stable/2156021

Mezzanotti, G., & Kvalvaag, A. M. (2022). Indigenous Peoples on the Move: Intersectional Invisibility and the Quest for Pluriversal Human Rights for Indigenous Migrants from Venezuela in Brazil. *Nordic Journal of Human Rights*, *40*(3), 461-480. https://doi.org/10.1080/18918131.2022.2139491

Mezzanotti, G., & Ranasinghe, P. P. (2022). Vistas of Prosperity and Splendour? A Critical Discourse Analysis of Sri Lanka's Challenges Implementing SDG16. In Å. Valen-Sendstad & J. S. Kumara (Eds.), *Human Rights and Reconciliation in the Post-Conflict Multicultural Society in Sri Lanka*. S. Godage & Brothers (Pvt.) Ltd. http://pgihs.ac.lk/downloads/books/5%20%20chapter.pdf

Mignolo, W. D. (2018). Forward. On Pluriversality and Multipolarity. In B. Reiter (Ed.), *Constructing the Pluriverse: The Geopolitics of Knowledge*. Duke University Press.

Minkkinen, P. (2013). Critical legal 'method' as attitude. In D. Watkins & M. Burton (Eds.), *Research Methods in Law* (pp. 119-138).

Mohd. Salim v. State of Uttarakhand and Others, (High Court of the State of Uttarakhand 2017). https://www.ielrc.org/content/e1704.pdf

Natarajan, U. (2021). Environmental Justice in the Global South. In S. A. Atapattu, C. G. Gonzalez, & S. L. Seck (Eds.), *The Cambridge Handbook of Environmental Justice and Sustainable Development* (pp. 39-57). Cambridge University Press.

Natarajan, U., & Dehm, J. (2019). *Where is the Environment? Locating Nature in International Law*. Third World Approaches to International Law Review (TWAILR). Retrieved 31 January from https://twailr.com/where-is-the-environment-locating-nature-in-international-law/

Nature in Focus: European Conservation Year. (1970). https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168069c88f

O'Donnell, E. L. (2018). At the Intersection of the Sacred and the Legal: Rights for Nature in Uttarakhand, India. *Journal of Environmental Law*, *30*, 135-144. https://doi.org/10.1093/jel/eqx026

Pellow, D. N. (2016). Toward a Critical Environmental Justice Studies. *Du Bois Review*, *13*(2), 221-236. https://doi.org/https://doi.org/10.1017/S1742058X1600014X

Pellow, D. N. (2017). *What is Critical Environmental Justice?* (1st ed.). Polity Press. https://globalbooks.site/?book=0745679374

People's Agreement of Cochabamba, (2010). http://pwccc.wordpress.com/2010/04/24/peoples-agreement/

Pepper, R., & Hobbs, H. (2020). The Environment is All RIghts: Human Rights, Constitutional Rights and Environmental Rights. *Melbourne University Law Review*, *44*(2), 634-678. https://www.proquest.com/scholarly-journals/environment-is-all-rights-human-constitutional/docview/2584778733/se-2

Philippopoulos-Mihalopoulos, A. (2009). The Successful Failing of Legal Theory. In A. Dhanda & A. Parashar (Eds.), *Decolonisation of Legal Knowledge*. Routledge. https://ebookcentral.proquest.com/lib/ucsn-ebooks/reader.action?docID=957618

Philippopoulos-Mihalopoulos, A. (2011a). '…the sound of a breaking string': Critical Environmental Law and Ontological vulnerability. *Journal of Human Rights and the Environment*, *2*(1), 5-22. https://doi.org/http://dx.doi.org/10.4337/jhre.2011.01.01

Philippopoulos-Mihalopoulos, A. (2011b). Looking for the Space between Law and Ecology. In A. Philippopoulos-Mihalopoulos (Ed.), *Law and Ecology: New Environmental Foundations* (pp. 1-17). Routledge.

Philippopoulos-Mihalopoulos, A. (2017). Critical environmental law as method in the Anthropocene. In A. Philippopoulos-Mihalopoulos & V. Brooks (Eds.), *Research Methods in Environmental*

Law: a Handbook. Edward Elgar Publishing Limited. https://doi.org/10.4337/9781784712570

Pierdominici, L. (2012). Constitutional Adjudication and the 'Dimensions' of Judicial Activism: Comparative Legal and Institutional Heuristics. *Transnational Legal Theory*, *3*(3), 207-242. https://doi.org/https://doi.org/10.5235/20414005.3.3.207

Preston, B. J. (2023). The right to a clean, healthy and sustainable environment: how to make it operational and effective. *Journal of Energy & Natural Resources Law*, 1-23. https://doi.org/10.1080/02646811.2023.2165310

Prieto, G. (2021, 24 Feburary). The Los Cedros Forest has Rights. https://verfassungsblog.de/the-los-cedros-forest-has-rights/

Quijano, A. (2007). Coloniality and Modernity/Rationality. *Cultural Studies*, *21*(3), 168-178. https://doi.org/10.1080/09502380601164353

Rajah, J. (2018). Legal discourse. In J. Flowerdrew & J. E. Richardson (Eds.), *The Routledge Handbook of Critical Discourse Studies*. https://search.ebscohost.com/login.aspx?direct=true&db=nlebk&AN=1549915&site=ehost-live

Reuters. (2021). *Ecuador's new president Guillermo Lasso, a conservative, vows to tackle economic crisis*. NBC News. https://www.nbcnews.com/news/latino/ecuadors-new-president-guillermo-lasso-conservative-vows-tackle-econom-rcna1020

Rights of Nature in Practice: Lessons from an emerging global movement. (2021). https://www.garn.org/wp-content/uploads/2022/08/AnimaMundiLawInitiative-GuidetoRightsofNatureinPractice.pdf

Rodriguez, I. (2021). Latin American decolonial environmental justice. In B. Coolsaet (Ed.), *Environmental Justice: Key Issues in Environment and Sustainability* (pp. 78-93). Routledge. https://lccn.loc.gov

Rodriguez-Rivera, L. E. (2001). Is the Human Right to Environment Recognized under International Law?- It Depends on the Source. *Colorado Journal of International Environmental Law and*

Policy, *12*(1). https://www.researchgate.net/publication/318106655_Is_the_Human_Right_to_Environment_Recognized_under_International_Law-_It_Depends_on_the_Source

Rossi, V. (2019). The Universal Right to a healthy Environment: “an Idea whose time has come?”. *Europa Ethnica*, *76*(128-137). https://www.proquest.com/scholarly-journals/universal-right-healthy-environment-idea-whose/docview/2371373056/se-2

Roy, B. A., Zorrilla, M., Endara, L., Thomas, D. C., Vandegrift, R., Rubenstein, J. M., Policha, T., Ríos-Touma, B., & Read, M. (2018). New Mining Concessions Could Severely Decrease Biodiversity and Ecosystem Services in Ecuador. *Tropical Conservation Science*, *11*, 1-20. https://doi.org/10.1177/1940082918780427

Sagar, J. (2021). *'Wherefore', 'Therein': Incomprehensible Writing, Thy Name Is Law*. The Wire. Retrieved 12 March from https://thewire.in/law/wherefore-therein-incomprehensible-writing-thy-name-is-law

Sands, P., Peel, J., Fabra, A., & MacKenzie, R. (2018). *Principles of International Environmental Law* (4th ed.). Cambridge University Press. https://doi.org/10.1017/9781108355728

Santos, B. d. S. (2016). *Epistemologies of the South: Justice against Epistemicide*. Routledge.

Scheinin, M. (2017). The art and science of interpretation in human rights law. In B. A. Andreassen, H.-O. Sano, & S. McInerney-Lankford (Eds.), *Research Methods in Human Rights: A Handbook*. Edward Elgar. https://search.ebscohost.com/login.aspx?direct=true&db=nlebk&AN=1526346&site=ehost-live

Schwandt, T. A., Lincoln, Y. S., & Guba, E. G. (2007). Judging interpretations: But is it rigorous? trustworthiness and authenticity in naturalistic evaluation. *New Directions for Evaluation*, *2007*(114), 11-25. https://doi.org/10.1002/ev.223

Shelton, D. (2008). Human Rights and the Environment: Problems and Possibilities. *Environmental Policy and Law*, *38*(2), 41-49. https://www.proquest.com/openview/aa488c4481481680ea6f127f2a66eab8/1?pq-

origsite=gscholar&parentSessionId=QqWCfDLp62WEpPXDAKGw6ghnyQ7cV%2FLkhAgOGnlcHP0%3D

Shi-xu. (2016). Cultural Discourse Studies through the Journal of Multicultural Discourses: 10 years on. *Journal of Multicultural Discourses*, *11*(1), 1-8. https://doi.org/10.1080/17447143.2016.1150936

Shuy, R. W. (2001). Discourse Analysis in the legal context. In D. Schiffrin, D. Tannen, & H. E. Hamilton (Eds.), *The Handbook of Discourse Analysis* (pp. 437-452). Blackwell.

Sierra Club v. Morton, 405 U.S. 727 (Supreme Court of the United States 1972). https://supreme.justia.com/cases/federal/us/405/727/

Sivakumar, S. (2016). Judgment or Judicial Opinion: How to Read and Analyse. *Journal of the Indian Law Institute*, *58*(3), 273-312. https://www.jstor.org/stable/45163393

Soames, S. (2014). Toward a Theory of Legal Interpretation (2012). In *Analytic Philosophy in America* (pp. 299-319). Princeton University Press. http://www.jstor.org/stable/j.ctt5hhq4w.18

Statham, S. (2022). *Critical Discourse Analysis: A Practical Introduction to Power in Language*. Routledge. https://doi.org/https://doi.org/10.4324/9780429026133

Steffan, W., Crutzen, P. J., & Mcneill, J. R. (2007). The Anthropocene: Are Humans Now Overwhelming the Great Forces of Nature? *Ambio*, *36*, 614-621, Article 8. https://www.jstor.org/stable/25547826

Stephens, T. (2009). *International Courts and Environmental Protection*. Cambridge University Press. https://assets.cambridge.org/97805218/81227/frontmatter/9780521881227_frontmatter.pdf

Stott, M. (2021). *Ecuador's president vows indigenous groups will not block mining projects*. Financial Times. Retrieved 24 February from https://www.ft.com/content/e7cf642b-6784-4d46-a38c-f8519e703b08

Sundberg, J. (2014). Decolonizing Posthumanist Geographies. *Cultural Geographies*, *24*(1), 33-47.

Susan, S. E. (2022). *A Call for Justice: A Critical Discourse Analysis of Climate Justice at the COP26* (Publication Number 2022/20) [Master, Uppsala University]. Uppsala. https://www.diva-portal.org/smash/get/diva2:1668688/FULLTEXT01.pdf

Tănăsescu, M. (2022). *Understanding the Rights of Nature: A Critical Introduction*. Majuskel Medienproduktion GmbH. https://doi.org/https://doi.org/10.14361/9783839454312

UN Harmony with Nature. (n.d.). United Nations. http://www.harmonywithnatureun.org/chronology/

UN News: UN General Assembly declares access to clean and healthy environment a universal human right. (2022, 29 July). UN News. https://www.un.org/africarenewal/magazine/july-2022/un-general-assembly-declares-access-clean-and-healthy-environment-universal-human

Walsh, C. (2010). Development as Buen Vivir: Institutional arrangements and (de)colonial entanglements. *Development*, *53*(1), 15-21. https://doi.org/10.1057/dev.2009.93

Wambua, C., & Nyaga, J. (2022, 6 September). When can a river sue you? Implementing a rights of nature approach in environmental management. *Environmental Law Alert*. https://www.cliffedekkerhofmeyr.com/en/news/publications/2022/Practice/Environmental/environmental-law-alert-15-june-2022-when-can-a-river-sue-you-implementing-a-rights-of-nature-approach-in-environmental-management-.html

WCED. (1987). *Report of the World Commission on Environment and Development: Our Common Future*. https://digitallibrary.un.org/record/139811?ln=en

Weis, L. K. (2018). Environmental constitutionalism: Aspiration or transformation? *International Journal of Constitutional Law*, *16*(3), 836-870. https://doi.org/https://doi.org/10.1093/icon/moy063

Wisadha, M. A. A., & Widyaningsih, G. A. (2018). Human Rights and the Environmental Protection: The Naïveté in Environmental Culture. *Udayana Journal of Law and Culture*, *2*, 73-96, Article 1. https://ojs.unud.ac.id/index.php/UJLC/article/view/35678/24217

Wodak, R., & Meyer, M. (2016). *Methods of Critical Discourse Studies* (3rd ed.). Sage.