

Sentencia Corte Provincial de Loja, Juicio N° 11121-2011-0010, *Wheeler c. Director de la Procuraduría General Del Estado de Loja*.

Vilcabamba river

- Plaintiffs are US citizen (Wheeler)
- Reversal of the burden of proof and application of the precautionary principle:
  - No conflict between public interest and nature's rights: the question is whether the road can be built without damage to nature, not whether it can even be built.
  - The public authorities must provide evidence that the work undertaken is not likely to damage the river.
  - The authorities must take into account the possible damage to future generations and provide a plan for repairing the damage in order to restore the river.

# Rights of Nature as Politics – Holistic Interpretation

- Corte constitucional de Ecuador, May 20th, 2015  
Sentencia N°166-15-SEP-CC caso N°0507-12-EP
  - Ministry of Environment asked the Constitutional Court “to establish a precedent that permits us to exercise fully the respect for Nature and for *buen vivir*, as issues like these concern the whole community and are . . . nationally relevant”
  - [Ecuador had adopted] “a **biocentric vision that prioritizes Nature** in contrast to the classic anthropocentric conception in which the human being is the center and measure of all things, and where Nature was considered a mere provider of resources”
  - «the conceptual change established by the new Ecuadorian constitutional system (...), in addition to considering nature as a subject of rights, gives the rights recognized to the Pacha Mama a **transversality on the whole legal system**. In other words, all the actions of the State, as well as those of the individuals, must be carried out in the observance and respect of the rights of the nature (...)
  - the constitutional character recognized to the rights of the nature **implicitly entails the obligation of the State to guarantee their effective enjoyment**, entrusting, concretely, to the judicial organs the task of assuring the **guardianship** (*tutela*) and the protection of these, in the cases submitted to their knowledge and where they can be infringed »

## Rights of Nature as Politics – Holistic Interpretation

- Corte constitucional de Ecuador, July 9th, 2015, Sentencia N°218-15-SEP-CC, Caso N°1281-12-EP
  - « before examining the case in question in relation to the circumstances presented by Article 71 of the Constitution, it should be noted that **the approach to environmental issues depends to a large extent on the type of “nature-society”** relationship that one intends to use as a category of analysis (...).
  - It is clear that the Ecuadorian Constitution tends towards **a biocentric perspective** of the “nature-society” relationship, in that it recognizes nature as a living being and as a giver of life, and therefore establishes the **respect that human beings owe to it in terms of its value as an entity with rights beyond its usefulness to people.** »

## Rights of Nature as Politics – Holistic Interpretation

- Corte constitucional de Ecuador, July 9th, 2015, Sentencia N°218-15-SEP-CC, Caso N°1281-12-EP
  - « Article 283 of the Constitution, which deals with Ecuador's social and solidarity-based economic system, emphasizes the importance of the **dynamic and balanced relationship of society, the State and the market with nature**, in accordance with the third paragraph of Article 275 of the Supreme Norm, which determines the duty of individuals, communities, peoples and nationalities to exercise their rights and responsibilities within the framework of a harmonious coexistence with nature.
  - In this way, **it is clear that the rights of nature are reflected in social relations as well as in each of the elements of the country's economic system, so that production and consumerism do not become predatory processes but, on the contrary, tend to respect its existence, maintenance and regeneration of its elements.**
  - In this order of ideas, **if we take as reference the articles of the Constitution that deal with the rights of the nature as well as those that regulate the economic, sociocultural and environmental systems**, it is clear that the allusion to the nature and to each one of its elements in the Constitution, corresponds to a being holder of rights whose respect must take precedence over any individual economic interest  
»

- Corte constitucional de Ecuador, April 27<sup>th</sup>, 2016, Sentencia N°034-16-SIN-CC, Caso N°0011-13-IN
  - “the **break with the traditional paradigm** of considering nature as a mere object of law, to consider it as a subject, insofar as it constitutes a living being [represents a] (...) shift from the traditional right to a healthy natural environment, whose holder is the human being, to the protection of **nature as an independent holder of rights**”,
  - “a move away from the classical anthropocentric conception, in which the human being is the center and the end of all things, and **brings us closer to a biocentric vision**, in which the relationship of necessity of the human being towards nature is claimed”.

Ecuador – Case No. 1149-19-JP/20  
*Los Cedros*, November 10th, 2021

The rights of nature as constitutional principles  
Towards a horizontal effect of the rights of nature

- 26. In order to address the case under analysis, the Court considers it essential to analyze the **rights to existence of the animal and plant species of Los Cedros, as well as the right of this ecosystem to maintain its cycles, structure, functions and evolutionary process.**
- 27. In order to carry out this analysis, **it is necessary to refer first to the rights of nature as constitutional values and principles**, and then to the normative force and scope of these rights, and then to elucidate the meaning of the **precautionary principle, entrenched in Article 73** of the Constitution, in relation to the rights of nature, specifically in relation to the existence of the ecosystem of the Los Cedros Protected Forest, as expressly claimed by the plaintiff.

Ecuador – Case No. 1149-19-JP/20  
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The rights of nature are legal mandates

- 34. This Court is very concerned that the rights of nature, to which the Constitution grants express recognition and guarantees, are not timely and adequately considered by some judges, other public authorities and individuals.
- 35. The rights of nature, like all the rights established in the Ecuadorian Constitution, have full normative force. **They are not just ideals or rhetorical statements, but legal mandates.** Thus, according to article 11 numeral 9, to respect and ensure respect for these rights integrally, along with the other constitutional rights, is the **highest duty of the State**. This duty of the State is reiterated by the Constitution in article 277, paragraph 1, when establishing the norms of the development regime.

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### Rights of nature and other constitutional rights and principles

- 36. In this line, respect for the rights of nature also includes the **duty of every body with normative power to formally and materially adapt such norms to these rights, as well as to the other constitutional rights**, as provided in Article 84 of the Constitution. Likewise, Article 85 of the Constitution provides that public policies shall be oriented to make effective the good living and all rights, including, therefore, the rights of nature.
- 37. The Court observes that the normative force of the Constitution applies **not only to the rights of nature, but also to all applicable guarantees and principles of constitutional interpretation**. Article 71, second paragraph of the Constitution establishes that « any person, community, people or nationality may demand from the public authority the fulfillment of the rights of nature. In order to apply and interpret these rights, the principles established in the Constitution shall be observed, as applicable ». **Among these principles, the Court highlights, for an effective protection of nature, the direct application and the *pro natura* principle.**



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Complementarity between human beings and other species and natural systems

- 50. The intrinsic valuation of nature thus **implies a defined conception of the human being about himself, about nature and about the relationship 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, it proposes **complementarity between human beings and other species and natural systems**, as they integrate common life systems.
- 51. The court refers to Corte IDH, Opinión Consultiva 23-17 (2017) sobre Medio Ambiente y Derechos Humanos, párr. 62 et Corte-IDH, Caso comunidades indígenas miembros de la Asociación Lhaka Honhat (Nuestra Tierra) vs Argentina. Sentencia del 6 de Febrero del 2020, especialmente párr. 203:
- « The aim is to protect nature and the environment not only because of its connection with a utility for human beings or the effects that its degradation could have on other human rights, such as health, life or personal integrity, but also because of its **importance for the other living organisms** with which the planet is shared, which also deserve to be protected. »

## *Los Cedros* – Case No. 1149-19-JP/20

### The reversal of the burden of proof

- 130. The Court observes that, assuming it is possible to determine the effects of metal mining in Los Cedros, **the defendants have not provided this Court with any specific and substantiated scientific information on the impacts of the mining activity on the rights of nature, which would demonstrate that this activity will not cause irreversible damage to the protected forest of Lo Cedros, such as the extinction of species and the destruction of the ecosystem.**
- 146. The Court finds that before issuing the environmental registration, the environmental authority should have examined the biological value and rights of Los Cedros and its species. On this basis, and in application of the precautionary principle, it should have required the defendants to comply with their obligation to present information on the impact on the rights of nature that their activity would produce

## Compatibility between the rights of nature and human rights & Risk of contradiction

- 337. The rights of nature protect ecosystems and natural processes for their intrinsic value, thus **complementing the human right to a healthy and ecologically balanced environment**. The rights of nature, like all constitutional rights, are fully justiciable and, therefore, judges are obliged to guarantee them. To this end, they must apply the relevant principles and rules of the Constitution and the law.
- 338. The right to water is closely related to the right to a healthy environment and to the rights of nature, **since it is an element that articulates life on the planet**. The precautionary principle, in accordance with the parameters mentioned above, is applicable in the context of the rules, public policies and judicial decisions that concern the exercise of this right.
- 339. The right to a healthy environment, according to the Ecuadorian constitutional framework and international instruments, aims not only to **guarantee adequate environmental conditions for human life, but also to protect the elements that make up nature from a biocentric approach, without losing its autonomy as a human right**. This right has an individual and collective dimension and obliges environmental authorities to adopt public policies and regulations that promote and strengthen the harmonious relationship between human activities and the environment in which they develop.

## Rights of nature and Rights of animal

- Sentencia N°253-20-JH/22 January 27th, 2022 - “Estrellita Monkey” case
  - This case originates from the filing of a habeas corpus action in favor of a chorongó monkey named "Estrellita", who had lived 18 years in a human home with a woman perceived as her mother; a situation that came to the attention of the public authorities and for which a procedure was initiated with the purpose of granting custody of the wildlife specimen to a Management Center authorized by the National Environmental Authority; finally, the habeas corpus that sought the wildlife possession license and return of the Chorongó monkey was denied because it was considered necessary to protect Nature through the Environmental Authority and because when it was presented, the Chorongó monkey had already died.
  - The court ruled that Ecuador's rights of nature laws apply to wild animals like Estrellita.
  - The court also found that Estrellita's rights had been violated and the government and that the government must develop new rules and procedures to ensure the constitutional rights of wild animals are respected.
  - Rights of nature can be used to benefit small groups or individual animals