

Rights of Nature Case Study

Nature / Pacha Mama (Ecuador)

In October 2008, Ecuador's redrafted national constitution entered into force, which included a chapter on the rights of nature. The Constitution recognised nature as a subject of rights, including the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.

Location	Ecuador
Date	October 2008
Source	Constitution – Constitución de la República del Ecuador 2008
Jurisdiction level	National
Context	<p>Ecuador is a country located in north-western South America, with a total area of 283,561 square kms, comprised of the coastal areas, the highlands, the Amazon region and the Galápagos Islands. It is bordered by Colombia on the north, Peru on the east and south, and the Pacific Ocean on the west. It is extremely diverse in its ecology, with purportedly the most biodiversity per square km globally. This includes over 1,600 bird species (15 per cent of the world's known bird species), over 16,000 species of plants, 106 endemic reptiles, 138 endemic amphibians, and 6,000 species of butterfly.</p> <p>Ecuador has a long history of exploitation by corporations engaged in natural gas extraction, oil drilling and banana growing, resulting in significant pollution and socio-economic damage. Notably, the country has been engaged in a 15-year-long battle against USA oil multinational, Chevron, which is accused of dumping billions of gallons of crude oil and toxic waste into the Amazonian rainforest over decades, resulting in high rates of child leukaemia and other cancers in people living nearby, as well as environmental devastation connected with deforestation, water pollution and soil contamination.</p> <p>Prior to the 2006 general election in Ecuador, the Confederación de Nacionalidades Indígenas de Ecuador (CONAIE) proposed the development of a new constitution that recognised Indigenous rights. This proposal was adopted by candidate Rafael Correa, which won him the crucial support of CONAIE and much of the Indigenous population of Ecuador. Following his election as President of Ecuador, Correa called for a referendum on establishing a Constituent Assembly to write a new constitution for the country. The assembly began this process in November 2007 and was given six months to draft a new constitution. In late July 2008, the assembly approved a draft constitution consisting of 494 articles, which was then approved in a constitutional referendum in September 2008.</p>

	<p>The process was supported by international allies. At the instigation of the Pachamama Alliance, a San Francisco-based citizen NGO dedicated to preserving the earth’s tropical rainforests by empowering local Indigenous people, the Constituent Assembly asked the Pennsylvania-based Community Environmental Law Defense Fund (CELDF) to help it draft environmental provisions, including rights of nature provisions, in the country’s new constitution.</p>
<p>Rights of Nature recognition</p>	<p>The Constitution includes a section on rights, with Chapter 7 specifically focusing on rights of nature, covering:</p> <ul style="list-style-type: none"> • The positioning of nature as a subject of rights, with guidance as to the enforcement of these rights, with Article 71 providing: <p style="margin-left: 40px;">Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes. All persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature. To enforce and interpret these rights, the principles set forth in the Constitution shall be observed, as appropriate. The State shall give incentives to natural persons and legal entities and to communities to protect nature and to promote respect for all the elements comprising an ecosystem.</p> • The right of nature to be restored, with Article 72 providing: <p style="margin-left: 40px;">Nature has the right to be restored. This restoration shall be apart from the obligation of the State and natural persons or legal entities to compensate individuals and communities that depend on affected natural systems. In those cases of severe or permanent environmental impact, including those caused by the exploitation of non-renewable natural resources, the State shall establish the most effective mechanisms to achieve the restoration and shall adopt adequate measures to eliminate or mitigate harmful environmental consequences.</p> • The measures required by the State to support the rights of nature, with Article 73 providing: <p style="margin-left: 40px;">The State shall apply preventive and restrictive measures on activities that might lead to the extinction of species, the destruction of ecosystems and the permanent alteration of natural cycles. The introduction of organisms and organic and inorganic material that might definitively alter the nation’s genetic assets is forbidden.</p> • The human right to benefit from the environment, for the purpose of enjoying <i>buen vivir</i> (good living), in the absence of commodification of nature, with Article 74 providing: <p style="margin-left: 40px;">Persons, communities, peoples, and nations shall have the right to benefit from the environment and the natural wealth enabling them to enjoy the good way of living. Environmental services shall not be subject to appropriation; their production, delivery, use and development shall be regulated by the State.</p>

	<p>Further, the Constitution confirms complementary duties of Ecuadorians to respect the rights of nature (Article 83) and the general State duty to guarantee the rights of nature (Article 277).</p>
<p>Significance</p>	<p>The Ecuadorian Constitution is the first in the world to enshrine the rights of nature or Pacha Mama – extending to the whole of nature and highlighting its rights to integral respect for its existence, maintenance and regeneration of its life cycles, structure, functions, evolutionary processes and restoration. Notably, the Constitution guarantees the right of nature to restoration in terms that are connected with its inherent value and explicitly not dependent on damage being suffered by humans. This marks a shift from anthropocentric legal systems which generally connect compensation to harm suffered by humans, for example, in relation to property destruction or violation of human rights as a result of environmental degradation.</p> <p>The Constitution represents a significant codification in a national legal system of Indigenous law and customs. Interpretation of the rights of nature and the constitution more broadly are to be guided by key principles, including the stated intention in the preamble to “...build a new form of public coexistence, in diversity and in harmony with nature, to achieve the good way of living, the <i>sumak kawsay</i>”. The term <i>sumak kawsay</i>, which comes from the Amerindian Quechua language, reflects a cosmivision of interconnection and harmony with self, community and, most importantly, the rest of the natural world. Its prominence in the Constitution illustrates both the centrality of Indigenous philosophy and the plurinationality of the state as made up of various Indigenous communities and others.</p> <p>This approach, in conjunction with ecological, socialist and feminist movements, rejects the neoliberal development model of extractivism, exploitation and commodification and signals a definite shift towards a way of living that prioritises ecological balance over the pursuit of profit and endless economic growth. As reflected by the Constituent Assembly, in relation to the inclusion of the good way of living concept, “only by imagining other worlds will this one be changed”.</p> <p>The Constitution also bolsters this approach through complementary provisions throughout its text, for example, in relation to the human right to a healthy environment (Articles 14 and 15), special protection for the Amazon ecosystem (Article 250), the relationship between the economic system, nature and the good way of living (Article 283), protection of internationally-recognised economic, social and cultural rights (various articles), as well as progressive concepts such as food sovereignty (Article 281), commitments focused on biodiversity, and the reiterated importance of participation and plurality, among others.</p> <p>In terms of standing to enforce the rights, the Constitution extends this ability to “[a]ll persons, communities, peoples and nations”, extending the</p>

	<p>guardianship role broadly and allowing anyone in Ecuador to take action to enforce and interpret the rights, regardless of their relationship to a particular part of land or ecosystem. This also supports the public legitimacy of environmental rights defenders, who – like in many parts of the world – have been subjected to intensive threats, violence and repression in connection with their activities.</p>
<p>Implementation</p>	<p>Tensions continue in Ecuador between the explicit constitutional vision of <i>sumak kawsay</i> and rights of nature, and an economy closely tied to the expansion of highly destructive practices related to oil extraction. Various laws <u>have been passed</u> which curtail the rights of nature, for example in connection to mining, water privatisation and the weakening of environmental protection areas.</p> <p>At the same time, it is clear from various court cases since 2008 that rights of nature are of practical application, rather than being only symbolic or visionary. Litigation contextualised such rights in concrete situations, offering examples of the roles played by different actors in enforcing and interpreting the rights (including the willingness of the courts themselves to be proactive in raising rights of nature) and the interaction between rights of nature and human rights and interests.</p> <p>Some examples of cases applying rights of nature in Ecuador include:</p> <ul style="list-style-type: none"> • Biodigester case (2009): Local community members challenged the pork processing activities of an agro-industrial company and requested the cessation of new biodigesting machinery, on the basis that such activities violated their constitutional rights to health and to a healthy environment due to the resulting water, soil and air contamination of surrounding areas. Upon appeal, the Constitutional Court of Colombia considered the case and, despite concluding that the construction of the biodigester alone could not affect the community’s environmental rights, ordered a multi-party commission to monitor the biodigester operation, environmental management and water and waste disposal operations. Significantly, the Court considered the holistic environmental context and the impact of rights of nature, although these had not been raised by the claimants. It emphasised that to deliver justice its role required the enforcement of the relevant rights of all parties to the case, including nature. • Vilcabamba River case (2011): Local landowners challenged the dumping of road construction debris into the Vilcabamba River, which was altering and increasing the natural river flow and causing flooding. Upon appeal, the Loja Provincial Court of Justice found for the river and ordered the local government to restore the riverine ecosystem in accordance with measures specified by the Ministry of Environment. Significantly, the Court in the case confirmed that the claimants did not have to establish that they had suffered damage, but only that nature itself had.

	<ul style="list-style-type: none"> • Cayapas-Mataje Ecological Reserve case (2012): The Ministry of Environment had sought the removal of shrimp companies operating in ecological reserves created to protect mangrove ecosystems. Following the a shrimp company’s initial successful attempts at lower courts to resist such removal, the case proceeded to consideration by the Constitutional Court. The Court ruled that the lower courts’ failure to examine whether there had been a violation of the rights of nature, focusing only on property and labour rights of the company, was a violation of the constitutional guarantee of due process. The case was remitted to the Provincial Court for retrial. <p>In a current example, the Constitutional Court heard arguments in October 2020 in a <u>case seeking to preserve the Los Cedros Protected Forest</u> (a Key Biodiversity Area), threatened by mining development. If successful this could set a precedent to protect over 2 million other hectares of protected forests being threatened by mining in Ecuador as well as the ability of mining companies to operate generally, given the attribution science now available to demonstrate the effect of mining on biodiversity levels.</p>
<p>Key documents and links</p>	<ul style="list-style-type: none"> ☀ <u>Constitution</u> of the Republic Ecuador 2008 (in English) ☀ <u>Constitucion</u> de la Republica del Ecuador 2008 (in Spanish) <p>See also:</p> <ul style="list-style-type: none"> ☀ <u>Confederación de Nacionalidades Indígenas de Ecuador</u> (CONAIE) (in Spanish) ☀ <u>Pachamama Alliance</u> ☀ <u>Community Environmental Law Defense Fund</u> (CELDF) ☀ Vilcabamba River case <u>constitutional injunction</u> (in Spanish) ☀ Cayapas-Mataje Ecological Reserve case <u>judgment No. 166-15-Sep-CC</u> (Constitutional Court) and <u>other case documents</u> (in Spanish) ☀ Los Cedros Protected Forest case No. 1149-19-JP hearing <u>livestream</u> (in Spanish)

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