

DOI: 10.5281/zenodo.11425239

# THE PRINCIPLES OF CONSTITUTIONAL INTERPRETATION THAT UNDERPIN THE NATURE OF THE SUBJECT: A STUDY OF ECUADORIAN CASE LAW

Pablo Andrés Paredes Coronel<sup>1\*</sup> and Maria Fernanda San Lucas Solorzano<sup>2</sup>

<sup>1</sup>Pontifical Catholic University of Ecuador, [pparedes@pucesa.edu.ec](mailto:pparedes@pucesa.edu.ec), <https://orcid.org/0009-0000-3200-5453>

<sup>2</sup>Pontifical Catholic University of Ecuador, Ambato Campus, [msanlucas@pucesa.edu.ec](mailto:msanlucas@pucesa.edu.ec),  
<https://orcid.org/0000-0002-1850-9345>

Received: 11/11/2025  
Accepted: 18/12/2025

Corresponding Author: Pablo Andrés Paredes Coronel  
([pparedes@pucesa.edu.ec](mailto:pparedes@pucesa.edu.ec))

## ABSTRACT

*This paper analyses the development of the rights of nature in Ecuadorian constitutional jurisprudence. Following the adoption of the 2008 Constitution, Ecuador became a guarantor of rights, including those of nature as a subject. In other words, the traditional approach to determining environmental liability for damage suffered by individuals was abandoned, and today, nature can be considered a victim of damage, even if no injury has been sustained to the individual or collective rights of persons. The article is based on extensive documentary research, including specialised literature, current legislation and, in particular, rulings No. 253-20-JH/22, No. 1149-19-JP/21, No. 2167-21-EP/22 and No. 22-18-IN/21 of the Constitutional Court. The deductive-analytical method was employed to understand the reasoning of judges in cases relating to the rights of nature.*

---

**KEYWORDS:** Rights of Nature, Animal Rights, Constitutional Principles, Liability, Damage, Responsibility.

---

## 1. INTRODUCTION

Given its importance, recognition of rights should not be viewed as a mere formal declaration or statement. It is not, nor should it be seen as, a manifestation of good intentions. Rather, it is the primary means by which the modern state enables its citizens to defend themselves against any form of arbitrariness, whether it originates from public authorities or the private sphere.

Although Ecuador has a long constitutional history, it was not until 1998 that the legislature made a valuable contribution to the country's legislation. On the one hand, this was the "right of the population to live in a healthy and ecologically balanced environment" (Art. 86), and on the other, the introduction of what were then called "rights guarantees"; actions whose sole function was to protect human rights, including the amparo action (Art. 95). A classic example would be a duly authorised person filing an amparo action on behalf of their community against a flower grower's anti-technical environmental practices affecting the area's air quality.

Since that time, both human rights and judicial remedies have evolved. In light of new social challenges, the scope and reach of specialised doctrine and comparative jurisprudence have developed, and new areas have been added. Indeed, with the arrival of the new millennium and its associated challenges (globalisation, the use of new technologies, climate change, etc.), Ecuador convened another constitutional process. Among its innovations, several scholars of law and natural sciences have described a particular aspect as a civilisational leap. And with good reason. A review of the Ecuadorian Constitution (EC) reveals the profound environmentalist doctrine underlying it. The country has moved from an anthropocentric social model, in which human beings are at the centre of concern, to a biocentric model, in which all species deserve respect and have the same right to exist and develop freely. The preamble states: 'Celebrating nature, Pachamama, of which we are a part and which is vital to our existence [...] we have decided to build a new form of civic coexistence, in diversity and harmony with nature, to achieve good living.' Further on, Article 71 states: 'Nature, or Pachamama, where life reproduces and flourishes, has the right to exist and for its vital cycles, structure, functions and evolutionary processes to be maintained and regenerated.'

These paragraphs demonstrate a deep respect for nature and revive the ancient beliefs of the first Andean populations. According to these beliefs,

natural resources and the environment were seen as a single entity – a deity. This is the Mother Goddess of creation. Consequently, nature emerges as a subject in legal discourse, representing the most significant and influential development in local, regional, and global environmental policy in the past century.

## 2. THE MONTECRISTI MILESTONE. NATURE, FROM OBJECT TO SUBJECT.

Focusing on our case study, answering the question of the nature of the subject would be straightforward. If we trace the history of this concept, for example, we are first taken to Rome, where the Digest established the responsibilities of those who affected the *res communis omnium*. Medieval law is not far behind. Just as certain animals were jealously protected because they were considered sacred, others could be brought to trial and convicted for attacking their owner, destroying crops, failing to provide assistance in times of distress or carrying disease. The *Sachsenspiegel* is an example of this.

In contemporary times, attention is focused on several developments. One of these is the emergence of 'deep ecology', a philosophical movement based on strict morality, as all living beings have intrinsic value, regardless of their usefulness in satisfying human needs. This is precisely the idea on which the rights of nature (DDNN) are based. In the words of Arne Naess: 'The well-being and flourishing of human and non-human life on Earth have value in themselves. These values are independent of the usefulness of the non-human world for human purposes.' Another significant event was Rachel Carson's research into the harmful effects of pesticides on birds in 1962. A third event to consider occurred in the *Sierra Club v. Morton* case (1972), when the parties involved asked themselves, amidst the litigation: 'Are the trees still standing?' Finally, we cannot forget the 'World Charter of the Rights of Nature' (1982), which states: 'All life is unique and deserves respect for its intrinsic value.'

In this way, the ideas of the judicious management of natural resources, intergenerational responsibility and nature as a subject were put forward. In developing the new Ecuadorian Constitution, the legislature embraced these ideas and incorporated them into the fundamental text, based on the concept of respect for an evolving living community. This is a significant innovation for two main reasons. Firstly, Ecuador was the first country to recognise nature as having rights. Secondly, the environment has historically received little attention

in constitutional law.

### 3. ANOTHER TYPE OF JUSTICE: ECOLOGICAL JUSTICE

The traditional conception of justice has remained largely unaltered for over two millennia. Philosophers, judges and university professors continue to cite Ulpian, the individual who coined the phrase "Justice is the constant and perpetual will to give everyone their due". However, could this expression also be applicable to nature? It would appear not to be the case. Since the dawn of humanity, human beings have viewed nature as a means to satisfy their human needs. However, the absence of limits and the lack of balance in what is now termed sustainability have resulted in the most significant ecological crisis in history, with evident consequences. The depletion of the ozone layer, global warming, and the extinction of some species are all evidence of human activity.

The SDGs, therefore, are not merely an expression of abstract concern for biodiversity and ecosystems. In contrast, they represent a strategy for regulating the uncontrolled exploitation of resources, an alternative to the prevailing development model, and, above all, a reminder that human beings are not an isolated, superior or unique species on the planet. Instead, we are part of a larger universe and, due to our cognitive development, we have an intergenerational responsibility to care for it. In summary, the NRIs are not mere rhetoric or abstract concepts; they are concrete and objective rights. These measures are a response to the serious ecological crisis facing the planet.

It is essential to analyse the substantive developments presented by the EC in relation to the recognition of NRIs. Firstly, it is important to distinguish between the environment and nature. The EC has incorporated the philosophy of *sumak kawsay*, a way of life that is characteristic of the indigenous peoples of the Andes. In contrast to individualistic European thinking, this philosophy places the community at the centre of attention and, in turn, as part of the natural environment. This approach encourages living in harmony and balance, since everything, in one way or another, is connected and related. The CE establishes eight *sumak kawsay* rights, including a healthy environment (art. 14 CE), a right that is later repeated in article 66.27 and corresponds to the rights of freedom.

In terms of human rights, this is presented as an independent, autonomous and exclusive institution for nature, separate from human issues regarding the damage it could suffer. Consequently, as in the case

of the Sierra Club, nature in Ecuador has standing before the courts and can sue for respect for its existence, maintenance, regeneration in its life cycles, functions, processes, and comprehensive restoration (Articles 71 and 72 of the Constitution). Secondly, the liability for damage is addressed. The Ecuadorian legal system has several ways of dealing with injustices. The traditional approach is governed by the provisions of civil liability law (Articles 2214 and 2229 of the Civil Code). A prime example of this would be damage caused during interactions with neighbours. An example of this would be the issue of smoke from a restaurant affecting the walls and ceilings of an adjoining house. In such cases, non-contractual civil liability is triggered to protect the individual interests of the affected party through fair compensation.

The second mechanism responds to what is known in doctrine as "pure ecological damage," which is when nature has been affected in one or more of its components. To summarise, the damage has been done to nature itself, and the process is being handled under the direction of administrative law because it involves a public good and a collective problem (Articles 10 and 11 COA). Cases of poaching or deforestation fall within this category, and the aim is to fully restore the functions that were affected to their status quo prior to the damage (Art. 72 CE, 292 COA, 118 COA).

It is important to note, however, that the law does not entirely preclude the possibility of compensation for damage, either because repair is simply impossible, as in the case of the loss of a thousand-year-old tree and the resulting impact on the landscape, or because of the extinction of an animal. Consequently, the most severe outcome that tort law can face is the disappearance of a species. Similarly, in cases where restoration costs are prohibitive and natural recovery is deemed preferable, despite the extended wait and the resulting interim damage, this approach is also valid. In the context of significant incidents, the term "rational apathy" is employed to describe a specialised doctrine. Thirdly, and equally crucial, the acknowledgement of the rights of nature restores our ancestral legacy. As outlined in the Ecuadorian Constitution, the *Sumak Kawsay* rights are only part of this. The rest revolve around the establishment of Ecuador as an intercultural and plurinational state. This results in a specific catalogue of rights for communities, peoples, and nationalities. These include ownership of their communal lands, free, prior, and informed consultation (art. 57), and the "indigenous justice" system. This is a model of adjudication based on the customary law of

indigenous peoples for the resolution of their internal conflicts (art. 171 CE). The legality of the DDNN is founded on these principles, which form the basis for the constitutional interpretation process in resolving environmental conflicts.

#### 4. THE PRINCIPLES OF CONSTITUTIONAL INTERPRETATION OF NATURE AS A SUBJECT IN ECUADORIAN CASE LAW.

In recent years, the CCE has paid special attention to environmental cases that have come to its attention. In this regard, the High Court has been developing a clear line of jurisprudence with regard to natural rights, which has established some interesting principles. **Namely**

##### 4.1. Principle of Open Clause

When discussing fundamental rights, the question of their scope is always raised. For instance, it is important to consider whether fundamental rights protect a domestic dog in the same way as they protect an Andean condor. With regard to other wild animals, small amphibians and insects, what measures are in place? Could you please clarify whether they are also subject to protection?

It is a well-established fact that all living things possess an innate capacity for sentience, meaning they are beings capable of perceiving and responding to internal or external stimuli such as pain or pleasure. Consequently, animals, plants and ecosystems have been granted special legal protection, albeit piecemeal. In the context of our legal system, there are various laws in place to ensure the welfare of animals. These include legislation for domestic animals, wildlife, and forestry. The purpose of these laws is to govern the exploitation, conservation, and sustainable use of forests and other natural resources. While some elements of nature are already subject to protection under special laws, a key challenge arises from the subjective nature of such laws, which can result in significant disparities. For instance, the protection of a species can be determined by the subjective opinion of individuals who have been legitimized by the judicial process, which contravenes the fundamental principle of equality and, consequently, human rights. To continue operating under the assumption that nature possesses inherent value yet disregards the significance of certain species is a significant misjudgement. It is crucial to acknowledge that every species plays a vital ecological role. Cockroaches and houseflies are important in the natural environment as they facilitate the breakdown of organic matter, release nitrogen into the soil, and provide food for

birds and other insects. To summarise, the open clause principle does not take exhaustiveness into account. Instead, it is based on the idea of an open catalogue, meaning that any right that is deemed suitable for the specific case in question is guaranteed, even if it is not explicitly included in a positive body of law.

##### 4.2. Ecological Principle of Tolerance

The concept of ecological tolerance refers to the right of nature to exist, to maintain its structure, and to regenerate in terms of its life cycles and evolutionary processes (Art. 71). In this sense, consider a tree that is exposed to carbon or electromagnetic pollution; it can adapt to these conditions, but only to a certain extent. When toxicity exceeds a moderate limit, the natural growth or reproduction functions of the species are affected to the point of death. In the most extreme cases, the species may become extinct. As will be outlined below, the abandonment of good environmental practices in the context of sustainable development constitutes serious damage to nature and a violation of human rights.

##### 4.3. Precautionary Principle

This principle was established in the Rio Declaration on the Environment (1992), and it aims to prevent unacceptable harm to people and undesirable harm to the environment due to the lack of technical and scientific certainty that human activities can cause.

Although the precautionary principle is well established in environmental legal literature, it has undergone significant development in recent years. In the field of climate jurisprudence, scientific studies have not yet been able to provide sufficient evidence to determine the extent of damage that greenhouse gases can cause over time. In this regard, courts of law have ordered emissions to be reduced to safe levels, climate commitments to be met, and a climate-neutral industry to be promoted. Another line of reasoning can be found in CCE ruling No. 1149-19-JP/21 (Los Cedros forest), which analysed Articles 73 and 396 of the EC under the following criteria: (I) The risk of extinction. As previously stated, the most severe form of liability under environmental law is the extinction of a species. (II) Permanent alteration of life cycles. It is evident that climate change has had a significant impact on atmospheric cycles. Consequently, while one region experiences prolonged periods of drought, another must contend with incessant rainfall, leading to flooding and associated challenges. (III) Destruction of

ecosystems. The effects of global warming have been so severe for the planet that several glaciers have disappeared and others are on their way to doing so. For the CCE, any of these situations constitutes a serious violation of human rights. Maintaining a safe distance is a metaphor for genocide and ecocide. In summary, the precautionary principle for the special case of the NRIs is based on the worst-case scenario, i.e. serious and irreversible damage to nature. Therefore, the State has a duty to take effective measures to prevent any undesirable harm in the context of sustainability and intergenerational responsibility.

#### 4.4. The "In Dubio Pro Natura" Principle

The study of pro natura or pro ambiente is a key element in the recognition of NRIs, given that the phrase "in dubio" has been linked to the protection of persons since Roman times.

Now, with nature as the subject, this principle retains its original quality. When there is tension between rules that can lead to broad interpretations and, therefore, environmentally harmful ones, judges have an obligation to rule in favour of nature, its existence, and its preservation (Articles 71 and 395.4 of the Spanish Constitution).

Judgment No. 22-18-IN/21 (mangroves) establishes a key criterion regarding the principle of "in dubio pro natura," which is distinct from the precautionary principle and the principle of environmental favourability. The former aims to avoid serious and irreversible damage due to a lack of scientific certainty or evidence, while the latter seeks to apply the most protective rule among several relevant ones. In contrast, "in dubio pro natura" seeks the meaning most favorable to the interests of nature, essentially ensuring full respect for its existence. Therefore, the expulsion of a rule from the current legal system for violating natural rights would be an appropriate example (art. 71 CE).

#### 4.5. Interspecies Principle and Ecological Interpretation

The interspecies and ecological interpretation principles are a recent addition to contemporary legal literature. The only reference we know of to date is found in ruling No. 253-20-JH/22 (Mona Estrellita) of the CCE, which analysed the legality of a habeas corpus in favour of a primate of the chorongó species. The interspecies principle is based on the unique characteristics of each animal. In other words, in order for their natural functions, reproduction, and survival to be successful and for the species to perpetuate itself, it is necessary to

conserve the ecosystems where they live to guarantee their right to exist (art. 71 CE). For instance, land use plans must include the non-urbanisation of land above 3,000 metres above sea level, given that we are dealing with a páramo ecosystem that is the habitat of a variety of mammals and birds, each with a predetermined function within a community of life.

Conversely, when considering the principle of ecological interpretation, this concept is specific to the natural sciences and was reinterpreted in light of the provisions of Article 71 of the Constitution. Therefore, the field of biological interaction is concerned with the reciprocal relationships between species. The aforementioned concepts refer to their amensalism, antagonism, neutralism, commensalism and mutualism. Constitutional jurisprudence reminds us that the existence and survival of wild animals is fundamental, not so much because of their intrinsic value or their right to live, but rather because in a free state, nature can achieve an ecological balance, such as that between predator and prey, giving rise to other rights, survival, and evolutionary processes.

### 5. CONCLUSION

A general principle of law states that it advances as society does. Just as women and people of African descent were recognised as full rights holders in the last century, it is nature's turn to be recognised in this century. Indeed, the impact of humans on the environment has been so significant that it was both appropriate and prudent to establish that species and ecosystems are entitled to rights, regardless of their civil capacity to assume obligations.

Indeed, DDNs are presented as a response to the serious ecological crisis facing the planet, and the principles of constitutional interpretation developed by the CCE and presented throughout this study (open clause, ecological tolerance, precaution, "in dubio pro natura," interspecies, and ecological interpretation) fill a legal void and clarify the scope that NRIs may have in the Ecuadorian legal system (Articles 71 and 72 of the Constitution).

In the specific case of "Estrellita," it is evident that this primate was a part of nature, and when she was separated from her natural habitat, a permanent and irreversible impact was left on that ecosystem. Each animal is unique and plays a specific role within its community of life, and this cannot be undone. Consequently, "Estrellita's" right to interact with her peers, to reproduce, and to die was interrupted. This is undoubtedly "pure" harm.

The same can be said of the Los Cedros forest and mangrove ecosystems. Due to their unique

characteristics, these areas are special and provide a habitat for countless species, each of which pursues its own life plan. Furthermore, they play a crucial role in human development due to the economic, tourist and social functions they provide. Furthermore, they offer benefits related to climate change, as they are powerful carbon sinks. Given the broad range of flora and fauna, which is significantly different from that of "estrellita" but equally important, it is challenging for the law to successfully protect each of these elements individually, as is certainly the case with animal welfare and wildlife laws. For this reason, the development of case law such as the open clause principle or the principle of favorability is of particular importance.

DDNN is not utopian, nor would it be appropriate to describe it as an alternative to the traditional model of distributive and commutative justice. Rather, it is a new and hybrid model of coexistence. A triptych between humans, non-humans and nature, in which respect, conservation, participation, intergenerational responsibilities and limits to growth coexist under the framework of sustainable development. The principles of open clause, ecological tolerance, "in dubio pro natura," and all the others that both specialised doctrine and comparative jurisprudence have developed are as useful as they are important in giving legal status to nature as a subject and ensuring that this continues to be reproduced in other legislations.

## REFERENCES

- Angela Fernández, *Environmental Law, Standing, and the History of Sierra Club v. Morton*, JOTWELL (March 2, 2023) (reviewing Daniel P. Selmi, *Dawn at Mineral King Valley: The Sierra Club, the Disney Company, and the Rise of Environmental Law* (2022)), <https://legalhist.jotwell.com/environmental-law-standing-and-the-history-of-sierra-club-v-morton/>
- Bacca, P. I. (2019). *Indigenizing International Law and Decolonizing the Anthropocene: Genocide by Ecological Means and Indigenous Nationhood in Contemporary Colombia*. *Maguaré*, 33(2), 139-169. <https://doi.org/10.15446/mag.v33n2.86199>
- Bachmann Fuentes, R. I., & Navarro Caro, V. (2022). *Rights of nature and legal personality of ecosystems: a new paradigm for environmental protection: A comparative approach*. *Revista Internacional De Pensamiento Político*, 16, 357-378. <https://doi.org/10.46661/revintpensampolit.6336>
- Bagni, Silvia. (2018). *The rights of nature in Colombian and Indian jurisprudence*. *Legal Journal*, 7(9), 33-53. Retrieved September 28, 2025, from [http://www.scielo.org/bo/scielo.php?script=sci\\_arttext&pid=S2413-28102018000200003&lng=es&tlng=es](http://www.scielo.org/bo/scielo.php?script=sci_arttext&pid=S2413-28102018000200003&lng=es&tlng=es).
- Chisaguano Maliquinga, S., & León Torres, L. M. (2025). *The Popular and Solidarity Economy as a Tool for Sustainability in Andean Indigenous Communities: An Approach from Sumak Kawsay*. *Studies and Perspectives Scientific and Academic Journal*, 5(3), 125-140. <https://doi.org/10.61384/r.c.a.v5i3.1335>
- Constitutional Court of Ecuador. Judgment No. 253-20-JH/22, January 23, 2022.
- Constitutional Court of Ecuador. Ruling No. 1149-19-JP/21, dated November 10, 2021.
- Constitutional Court of Ecuador. Ruling No. 2167-21-EP/2, dated January 19, 2022.
- Constitutional Court of Ecuador. Ruling No. 22-18-IN/21, dated September 8, 2021.
- Femenías, J. "Pure Environmental or Ecological Damage." 1st ed., Ed. Catholic University of Chile, Santiago, Chile, 2017. <https://doi.org/10.2307/j.ctt20fw88n.11>
- Galimberti, Cecilia. (2024). *From Genius Loci to Pachamama. A revaluation of the spirit of place in the face of neo-extractivism in Latin America*. *Andamios*, 21(56), 407-425. Epub February 25, 2025. <https://doi.org/10.29092/uacm.v21i56.1134>
- Harari, Y. N. *Sapiens. From Animals to Gods: A Brief History of Humanity*. Barcelona, Editorial Debate, 2015.
- IPCC, 2021: Summary for Policymakers. In: *Climate Change 2021: The Physical Science Basis*. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Masson-Delmotte, V., P. Zhai, A. Pirani, S. L. Connors, C. Péan, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M. I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J. B. R. Matthews, T. K. Maycock, T. Waterfield, O. Yelekçi, R. Yu and B. Zhou (eds.)]. Cambridge University Press. In Press.
- Javier Alfredo Molina Roa, "On animal trials and their influence on current animal law," *Bogotá: Universidad Externado de Colombia*, 2016., 2020. Accessed online at the Bogotá Digital Library (<https://www.bibliotecadigitaldebogota.gov.co/resources/3239391/>) on 2025-09-28.
- Neacșu, D. (2022). *The aesthetic ideology of Juliana v. United States and its impact on environmentally engaged citizenship*. *Journal of Environmental Studies and Sciences*, 12(1), 28-42. <https://doi.org/10.1007/s13412-021-00731-z>

- Paredes Coronel, P. (2024). "The responsibility of states and energy companies for climate change. Study of the elements of civil liability present in climate litigation." pp. 308–312. Doctoral thesis, University of Girona. Institutional repository of the UdG.  
[https://www.tesisenred.net/bitstream/handle/10803/692267/tppc\\_20240628.pdf?sequence=1&isAllowed=y](https://www.tesisenred.net/bitstream/handle/10803/692267/tppc_20240628.pdf?sequence=1&isAllowed=y)
- Perona, Ricardo, Melisa Caro, and Massimiliano Bin. "Legal Subjectivity of Nature in the New Andean Constitutionalism: The Cases of Ecuador, Bolivia, and Colombia." *Saber, Ciencia y Libertad* 18, no. 1 (2023): 126–141. doi.org/10.18041/2382-3240/saber.2023v18n1.10013.
- Rodríguez, Gloria Amparo. *Environmental conflicts in Colombia and their impact on indigenous territories*. Bogotá: Editorial Universidad del Rosario, 2016. DOI: dx.doi.org/10.12804/tj9789587387407
- Rodríguez, G. (2017). *Environmental conflicts in Colombia. In the exercise of Greater Law and the Law of Origin of Indigenous Peoples* (1st ed.). Editorial Universidad del Rosario.  
<http://doi.org/10.12804/tj9789587388992>
- Ruda González, A. *Pure ecological damage. Civil liability for environmental damage, with special attention to Law 26/2007, of October 23, on Environmental Liability*. Ed. Aranzadi, Barcelona, Spain, 2014.
- Simone Rosati. (2025). Nature and Law in Medieval Civilization. Towards a Transdisciplinary Dialogue on the Relationship between People and the Environment. *Revista Chilena De Derecho*, 52(1), 159–187.  
<https://doi.org/10.7764/R.521.6>
- Truyenque, M. C. (2023). An Analysis of the Estrellita Constitutional Case from an Animal Rights Perspective. *Journal of Animal & Natural Resource Law*, 19, 35–58. URL:  
<https://repositorio.flacsoandes.edu.ec/bitstream/10469/18847/1/REXTN-ED116-08-Morales.pdf>
- Villagómez, B., et al. *Guide to Constitutional Jurisprudence. Rights of Nature*. Ed. CEDEC, Quito-Ecuador, 2023, e-ISBN: 978-9942-8887-7-8.