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DERECHOS DE LA NATURALEZA Y DERECHO A UN MEDIOAMBIENTE SANO: JURISPRUDENCIA DE LA CORTE CONSTITUCIONAL DEL ECUADOR

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Rights of Nature and the right to a healthy environment: Jurisprudence of the Ecuadorian Constitutional Court

By Agustin Grijalva*

ABSTRACT

In this essay I analyze some relationships among the rights of nature and the human right to a healthy environment. I show these relationships describing several rulings of the Ecuadorian Constitutional Court, and specially the Los Cedros judgement, which is a ruling on mining concessions granted within a cloud forest located in a highly biodiverse area. Judges must impartially examine the arguments and evidence presented by the parties involved. However, to issue a ruling, they must ultimately adopt a position based on their own interpretation of the law and understanding of the facts. The author of this essay served as the rapporteur judge for the Los Cedros ruling when I was a member of Ecuador's Constitutional Court. During this judicial process and afterward, I have reflected on the relationship between the rights of nature and the right to a healthy environment. While drafting the ruling and later, after leaving the Court, analyzing it as an academic—considering its precedents, context, and consequences—I have developed several scholarly arguments that are expressed in this essay.

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I. BETWEEN COMPLEMENTARITY AND CONTRADICTION

Some Latin American constitutional jurisprudence shows that there are important points of contact between certain approaches to human rights to a healthy environment on the one hand, and the rights of nature on the other. However, there is an internal contradiction within environmental law when acknowledges the intrinsic value of nature and simultaneously tend to reject rights of nature. On the other hand, most of rights of nature literature is very critic of environmental law and the right to a healthy environment. Instead, I focus on the overlapping concepts and principles to advance possible complementarity.

I argue that the principle of the intrinsic value of nature has important implications not only for the rights of nature but also for how the right to a healthy environment should be conceived and its relationship to these rights. First, I present a synthetic description of the essential elements of the rights of nature and the right to a healthy environment. I then analyze these rights and their relationship in the Ecuadorian Constitution. The following section describes some of the most relevant rulings of the Constitutional Court of Ecuador on the rights of nature and their relationship with the environment, including, among other rulings, Los Cedros case. Finally, I develop some conclusions.

II. THE RIGHT TO A HEALTHY ENVIRONMENT

On October 8, 2021, news spread around the world: the ONU Human Rights Council declared for the first-time access to a healthy and sustainable environment as a human right. The news was celebrated worldwide. The rapporteur on human rights and environment, David Boyd, declared that 'it took literally millions of people, and years and years of work to achieve this resolution'.[1]

It is puzzling that this declaration took so long and so much effort. Indeed, it took 73 years since the Universal Declaration of Human Rights and almost 50 years since the Stockholm Declaration to recognize in a more universal way that people have a human right to live in a healthy environment.

How can we explain this profound reluctance and tardiness? It is obvious that we need clean air and water to live. It is also clear that human health depends on adequate food, healthy soils, seas, and rivers. Even human psychological and spiritual well-being and cultural creativity are deeply linked to nature.

This unified approach to the well-being of humans and nature, however, remains exceptional. The dominant notion of 'healthy environment' refers to the reduction of nature to a mere human environment or space. At the center of this 'environment' is the human being as the sole holder of rights.

Underlying this perspective is a dualistic conception of Cartesian roots that separates human beings and nature.[2] In

[1] United Nations, 'The Right to A Healthy Environment: 6 Things You Need to Know' (*UN News,* 15 October 2021) <https://news.un.org/en/story/2021/10/1103082>.

[2] The fundamental aspect of the Cartesian approach is the strict separation between subject (humans) and object (nature), as well as the progressive decomposition of the object into its parts to understand it through its analysis. See Fritjof Capra, Ugo Mattei, *The Ecology of Law – Toward a Legal System in Tune with Nature and Community* (Berrett-Koehler Publishers 2015) chapter 2.

this process, we have transformed nature into a mere source of 'natural resources', a collection of objects, of 'goods' characterized by not possessing the features supposedly exclusive to human beings.

Nowadays, to claim that human beings are part of a complex interwoven life is no longer a rhetorical statement, but a scientific observation, a more than a reasonable philosophical and even theological postulate. Systemic and relational perspectives are progressive prevailing over the view of the human being as an abstract subjectivity opposed to or isolated from its environment.[3]

For many cultures or civilizations around the world there is nothing new in this view. As sharp anthropological research has shown us, the way we conceive nature and human society, these concepts themselves, their division, and interrelationships, also respond to epistemic constructions that widely vary from one culture to another.[4]

The very concept of environment has evolved from the separation of human beings and nature to an inclusive and totalizing vision, including no human and human entities, which questions not only this separation but also the centrality and superiority of human beings.[5] Also in environmental law, the concept of environment has evolved towards more complex and systemic notions that include ecological, social and cultural dimensions.

However, because the right to a healthy environment is a 'human right', the only rights holder would be the human being. The fact that the human being is the sole holder of rights implies more demands than duties with respect to nature. It also implies an ontological superiority with ethical consequences. It clearly marks the human being as the center of attention and interest, and nature as means to meet such demands. Thus, the right to a healthy environment tends to maintain an anthropocentric root.

In any case, some environmental lawyers consider that nature can be adequately protected without recognizing it as a subject of rights.[6] For this it would be sufficient to conceive it legally as a public common good, as a good whose protection is of collective interest for human beings.[7]

3 Fritjof Capra, *The Web of Life: A New Scientific Understanding of Living Systems* (Anchor Books 1996)

4 Philippe Descola and Florencia Tola, *¿Qué es la Naturaleza?* (Teseo 2018); Adriana Rodríguez Caguana and Viviana Morales Naranjo, *Los Derechos de la Naturaleza desde una perspectiva intercultural en las Altas Cortes de Ecuador, la India y Colombia* (Universidad Andina y Huaponi Ediciones 2022); Alejandro Santamaria Ortiz, 'La Naturaleza como sujeto de derechos: ¿transformaciones del derecho para responder a sociedadedes pluriétnicas o a cambios en la ontología occidental?' (2022) 54 Revista Derecho del Estado 55; Rommel Patricio Lara Ponce, Jenny García Ruales and Alex Valle Franco, 'Derechos de la Naturaleza y Territorio en Ecuador: Diálogos Desde los Saberes, Quehaceres Jurídicos y Antropológicos' (Coordinación) (Editorial Abya Yala 2024).

5 Aníbal Faccendini, 'El ambiente. Distintas concepciones. Evolución hacia la totalidad ambiental' in Aníbal Faccendini, *La Nueva Humanización Del Agua: Una Lectura Desde El Ambientalismo Inclusivo* (CLACSO 2019) 31.

6 Mauricio Rueda, 'El ambiente no tiene Derechos' en Iván Vargas-Chaves, Andrés Gómez-Rey, Adolfo Ibáñez-Elam (eds), *Escuela de derecho ambiental. Homenaje a Gloria Amparo Rodríguez* (Editorial Universidad del Rosario 2020).

7 Ricardo Luis Lorenzetti and Pablo Lorenzetti, *Justicia y derecho ambiental en las Américas*/ [Preparado y publicado por la Secretaría General de la Organización de los Estados Americanos]. (OAS. Documentos oficiales; OEA/Ser.D/XV.25)

This latter approach, as we shall see, necessarily leads to obvious logical, conceptual and procedural contradictions. This can be seen in the examination of certain Latin American jurisprudence. For instance, In the *Laguna del Carpintero ruling by the Supreme Court of Mexico,*[8] it was determined that the human right to a healthy environment has both a biocentric (autonomous) dimension and an anthropocentric dimension. The autonomous dimension entails the protection of nature for its own sake, independent of harm to the human environment. Although this is a highly valuable ruling due to the paradigmatic protection it provides for mangroves, it remains debatable whether both dimensions of the environment can coexist within the same right. On the other hand, the jurisprudence also shows the successful possibility of integrating in a complementary manner the rights of nature and the human right to a healthy environment.

III. THE RIGHTS OF NATURE

The rights of nature is a growing trend, especially in comparative jurisprudence and legislation.[9] Although to date only Ecuador has established them in its Constitution, countries on several continents have recorded rulings or laws that develop them.

The main features of the rights of nature consist of 1) their vision of ecosystems and species as valuable by themselves, 2) their interdisciplinary perspective,[10] 3) their intercultural perspective, and 4) the recognition of the value of scientific knowledge.

The rights of nature argue that from an ethical and practical point of view it is necessary to recognize these rights. The reason is that the attribution of rights confers the highest legal standard of protection that can be assigned to ecosystems and species. This high standard is consistent with the safeguarding of life systems with intrinsic value. It is also necessary at a time of ecological cataclysm, such as the one we are living through.

The rights of nature propose to dissolve the dichotomy between humans and nature. Humans are part of nature and therefore our relations with nature must be regulated respecting the structures, cycles and functions of nature. Otherwise not only nature but humans themselves at some point are negatively affected.

Critics of the rights of nature claim that these are unnecessary. According to them, what is important is to effectively protect nature before attributing rights to it. They cite cases in which rights of nature have not provided sufficient protection to prevent, stop or repair environmental damages.[11]

The need for a paradigm shift to change practices is raised by the rights of nature. Successful cases are cited in which the rights of nature have contributed to greater

8 Case file number 148/2007. Available online at: https://www.scjn.gob.mx/

9 For an overview see: The Global Alliance on the Rights of Nature <https://www.garn.org/> and the Eco Jurisprudence Monitor <https://ecojurisprudence.org/>.

10 Jeremie Gilbert and others, 'Understanding the Rights of Nature: Working Together Across and Beyond Disciplines' (2023) 51 Human Ecology 363.

11 Angela María Amaya Arias [y otros]; María del Pilar García Pachón (editora), Reconocimiento de la naturaleza y de sus componentes como sujetos de derechos (Universidad Externado de Colombia 2020).

environmental protection. Environmental law is criticized for its anthropocentric core and its regulatory and administrative emphasis, which is often considered insufficient to protect nature.

IV. BRIDGES BETWEEN RIGHTS OF NATURE AND THE HUMAN RIGHT TO A HEALTHY ENVIRONMENT

The Ecuadorian Constitution is particularly interesting for exploring the relationship between rights of nature and the right to a healthy environment. This constitution is to date the only national constitution in the world that recognizes rights to nature: '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'.[12] On the other hand, this Constitution includes numerous environmental principles and rights, including the right to a healthy environment. This section analyses how the Ecuadorian Constitution develops and relates rights of nature and the right to a healthy environment.

The examples of relationships between the rights of nature and human rights in general are both numerous and interesting.[13] In fact, the Ecuadorian Constitution in several of its articles explicitly includes them, in a sort of ecologization or greening of human rights[14]. The first and most obvious relationship is between rights of nature and the human right to a healthy environment.

A first hermeneutic observation is the innovative way in which the Ecuadorian Constitution in its article 14 recognizes the right to a healthy environment: *'The right of the population to live in a healthy and ecologically balanced environment that ensures sustainability and good living, sumak kawsay, is recognized'.*

The right to a healthy environment which the Ecuadorian Constitution acknowledges refers to a human right, as it is among the rights of good living, but it introduces the ideas of *healthy and ecologically balanced environment*, which is clearly linked to the rights of nature. In other words, it does not restrict this right to a simple environment free of pollution, but goes beyond this, to an ecosystemic perspective of balance and natural health that allows sustainability and good living (sumak kawsay)

Sustainability, as we know, refers to the intergenerational continuity of resources, but here again the Ecuadorian Constitution has enriched the concept by relating it to good living *(sumak kawsay)*, which includes not only such continuity but also a balanced relationship between human beings and nature.

Thus, with the inclusion of sumak kawsay at the end of this article, the Constitution

[12] CONSTITUCIÓN DE LA REPÚBLICA DEL ECUADOR 2008 [CONSTITUTION], 20 October 2008, Art. 71 (Ecuador).

[13] See generally: Jérémie Gilbert, *Human Rights & the Rights of Nature: Friends or Foes?* (2024) 47(4) Fordham International Law Journal 447.

[14] The Ecuadorian Constitution relates environmental and nature rights with various human rights among which we can mention: property (arts 31; 66-26; 321), right to the city (art 31), right to health (art 32), prior consultation to Indigenous peoples (57-7), prior environmental consultation (398) housing (art 66), economic freedom (66-15, 278-2), participation (97; 395-3), dignified life (66-2), food sovereignty (282), right to water (282), right to free time (383), effective judicial protection (397-1), among others.

introduces not only an ecological dimension of nature's intrinsic value, but also an intercultural dimension.

However, such innovative approaches to the right to a healthy environment are not so common in comparative law. From the rights of nature side there are frequent strong criticisms to conventional Environmental Law, whose axis is the right to a healthy environment from an anthropocentric approach. In this way, there are also those who propose a transition from Environmental Law to the rights of nature.

The criticism is understandable because it cannot be denied that the initial developments and some trends of Environmental Law have reduced nature simply to a human environment, limiting itself ultimately to reducing or avoiding pollution that may affect people, and sometimes even legitimizing through insufficient regulations the destruction of ecosystems and species.

And yet, it is unfair, or at least misinformed, to ignore that within Environmental Law there are increasingly critical tendencies towards nature's intrinsic value, which emphasize both the social and complex dimension of the environment and the need not to consider the direct affectation of humans as a condition for environmental protection, damage, or sanction.[15] In other words, these environmental law views begin to downplay and even abandon the anthropocentrism in origin.[16]

These bifurcations and debates within Environmental Law make possible for the movement in favor of Rights of Nature to establish a dialogue, in a perspective of complementarity, with certain critical tendencies of Environmental Law.[17]

This dialogue is not only possible but also imperative, since the right to a healthy environment, the axis of Environmental Law, has been included in countless national constitutions and international declarations. It is therefore crucial to deepen this ecological reconceptualization of the human right to a healthy environment; and rights of nature have much to offer in this regard.

On the other hand, as portrayed by the Ecuadorian case where the rights of nature have a greater development in the Constitution, there are very valuable principles and concepts of Environmental Law that are very useful for the rights of nature. This is the case, for example, of the principle, the principle of prevention and restoration; the right to water, the ecological flow, and so many others that adequately conceptualized are already being used in jurisprudence of the rights of nature.

15 See Ingo Wolfgang Sarlet and Tiago Fensterseifer, *Direito Constitucional Ambiental: Constituição, Direitos Fundamentais e Proteção do Ambiente* (Thomson Reuters Revista dos Tribunais 2017). Also Ricardo Luis Lorenzetti, *Teoría del Derecho Ambiental* (Porrúa 2008). Néstor Cafferatta, *Introducción al derecho Ambiental* Secretaría del (Medio Ambiente y Recursos Naturales, Instituto Nacional de Ecología - Programa de las Naciones Unidas para el Medio Ambiente 2003).

16 See for example the overview on the rights of nature by David Boyd, former UN rapporteur for human rights and the environment. David Boyd, *The Rights of Nature : A Legal Revolution That Could Save the World* (ECW Press 2017); Cormac Cullinan, *Wild Law: A Manifesto for Earth Justice* (Green Books, 2011); Helena R Howe, 'Making Wild Law Work—The Role of "Connection with Nature" and Education in Developing an Ecocentric Property Law' (2017) 29 Journal of Environmental Law 19.

17 See for example: Everaldo Lamprea Montealegre, *El derecho de la naturaleza* (Siglo del Hombre Editores 2019).

The right to health shows another clear bridge between rights of nature and right to a healthy environment. Let's remember that because of the COVID-19 pandemic, the World Health Organization, along with other international organizations, posed the premise of a *single health.*[18] The idea is that due to the aforementioned systemic relationship between nature and humans, it is unrealistic for human beings to have health if nature does not have it, as COVID show us with genetic manipulations that probably caused the global zoonosis.[19]

If we continue to deteriorate the ecosystems with which we have direct and indirect relationships, these zoonoses will continue and perhaps worsen. In other words, our health undeniably relies on the health of nature. The human right to health thus requires the maintenance of ecosystem cycles and balances. The preservation of these cycles and balances is precisely one of the main rights of nature.

It will be said that to maintain healthy ecosystems is not necessary to recognize them as subjects of rights, and the human right to a healthy environment would be enough. But isn't recognizing rights the maximum protection that a legal system can provide? Is this maximum protection achieved only by acting when environmental harm affects humans directly and immediately? Or is nature, and therefore humans, more protected when we act with caution or regulate adequately, valuing nature as valuable by itself, without requiring direct human harm?

These ecosystems are in fact our environment, but they are also much more than that. We must protect them not only because their condition positively or negatively affects our health. But they also deserve the maximum legal protection because they are valuable life systems themselves, because life is valuable by itself and if we do not proceed according to ethics, law, and adequate ecological policies, we will continue destroying natural cycles and extinguishing species until we end up committing our own suicide as a species.

In fact, intrinsic valuation of nature, which implies its corresponding rights, expands internationally also towards legislation, jurisprudence and views of international organizations. Important examples are Advisory Opinion 23-17 of the Inter-American Court of Human Rights,[20] whose paragraph 62 establishes clear elements of nature's intrinsic value, as well as Resolution 3/21 of the Inter-American Commission on Human Rights and of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights, which precisely links these rights to the global problem of climate change.

[18] See Revista Ciencia <https://www.revista-ciencia.amc.edu.mx/images/revista/67_2/PDF/Animales.pdf>.

[19] The World Health Organization and other organizations of the United Nations have established that there is only one health. Human health and health of nature are totally linked to the point of requiring an integrated approach. Probably one of the clearest examples of this interdependence was the Coronavirus disease pandemic (COVID 19), in which a virus of animal origin attacked humans. This is also the case of other diseases such as HIV/AIDS, SARS and Ebola. See also WHO, Address by Dr Tedros Adhanom Ghebreyesus, Director-General, 73rd World Health Assembly (18 May 2020) <https://apps.who.int/gb/ebwha/pdf_files/WHA73/A73_3-en.pdf>.

[20] Inter-American Court, Advisory Opinion 23-17 on Environment and Human Rights, paragraph. 62. In this same sense: Court-IDH, Case of *Indigenous communities members of the Lhaka Honhat Association (Our Land) v Argentina* Judgment of 6 February 2020, especially paragraph 203.

Another human right in which we can very clearly see the relationship between the rights of nature and human rights is the right to water. Water is and has always been an essential condition for human life; even millenary civilizations have developed around seas, rivers, and lakes. The human right to water appears relatively parallel to the right to a healthy environment, highlighting the importance of human consumption of clean, accessible, sufficient water, followed by its countless economic uses.

However, I would like to emphasize here that the accessibility and services of water for human beings depends at the same time on respecting the rights of nature, that is the water courses and flows of rivers, and the hydrological cycles of the ecosystems. The maintenance of the biotic and abiotic processes that take place in them depend on these systems being able to reproduce their equilibrium and processes.

Therefore, the right to water becomes a two-dimensional and hinge right. It is a right of both human beings and nature, that shows us how both types of rights have significant intersections, not only conceptual but also practical, which must be considered at the normative and public policy levels.

But the most common criticism regarding the rights of nature is that they are opposed to economic activities,[21] as some argue the rights of nature must give way to human rights. In countless extractive exploitations throughout Latin America, the aim is to oppose or accommodate the rights of nature to the legitimate interests of marginalized human communities, forgotten by the State.

Once again, only immediatism could have led to this opposition: Mining in the medium and long term deteriorates not only health of whole human communities but also nature itself. Rather, the rights of nature allow for a systemic and sustained long-term view so that these communities can develop productive activities that sustain and not destroy the ecosystems from which they obtain water, air, food, and other ecological benefits that also imply sustainable work.

The idea that if human rights were involved in rights of nature that involvement necessarily implies anthropocentrism is a mistaken point of view. If we postulate a breakdown of the human being/nature dichotomy, the latter necessarily includes the former. In other words: the rights of nature include human beings as a necessarily integral part of nature, simply without conceiving humans as an excluding or superior part of nature.

An example of this concept of humans without nature are some protected area schemes. It is true that there may be intangible natural areas where human activity is very reduced, but what is more common is that even areas of high biodiversity and endemism interact with humans. In fact, *what is being discussed is not the existence of this interaction but the terms of it.*

This conservationist approach to national parks, for example, has served rather to justify the displacement from their lands of indigenous or traditional communities that coexisted adequately with and in those ecosystems.[22] Therefore, it is not a

[21] See for instance: 'How Recent Legal Decisions Could Affect Mining Risk in Ecuador' (*Americas Market Intelligence,* 8 April 2022) <https://americasmi.com/insights/how-recent-legal-decisions-could-affect-mining-risk-in-ecuador/>.

[22] Nigel Crawhall, 'Influencias Sociales y Económicas que Moldean las Áreas Protegidas' in G L Worboys and others (eds), *Gobernanza y Gestión de Areas Protegidas* (Editorial Universidad El Bosque – ANU Press 2019) 119.

matter of excluding human beings from these spaces, but rather of ensuring that they have an adequate relationship with other species and the whole ecosystems.

This *new form of equality* between human beings and other natural beings and processes within the context of the rights of nature is precisely what allows human beings to adapt, rather than impose, their own production and social processes to natural cycles and structures. In many cases, this leads to the preservation or generation, as has been said, of truly adequate health and working conditions for human beings as well.

In a related way, there is also a profound articulation between indigenous peoples' collective rights, which are also social and cultural human rights, and the rights of nature. These collective rights protect Indigenous cultures and territories evidencing the essential relationships between human beings and nature. Hence, indigenous peoples' and other ancestral peoples' rights appropriately correspond to the rights of nature. This link has generated a new type of rights, the *biocultural rights.*[23]

Finally, the absolute contraposition of rights of nature and human rights stands on the nature/human beings' dualism. Once both are re-conceptualized and the dualism is replaced by a systemic approach, the rights of nature and human rights can be conceived as complementary. In this way, the rights of nature create the conditions for a genuinely adequate exercise of human rights. To sum up, human rights once ecologised are important guides for human adaptation to ecosystems.

[23] Adriana Rodríguez Caguana and Viviana Morales Naranjo, *Los derechos de la naturaleza desde una perspectiva intercultural en las Altas Cortes de Ecuador, la India y Colombia* (Universidad Andina Simón Bolívar and Huaponi Editores, 2022).

V. RIGHTS OF NATURE JURISPRUDENCE IN ECUADOR

Jurisprudential precedents develop as a network of legal interpretations that bind the interpreter himself. Rights of Nature are no exception. In this section I outline a brief summary of the most relevant cases that the Constitutional Court of Ecuador has ruled on the rights of nature.[24] These cases constitute the jurisprudential context of the Los Cedros case, which I examine in the following section.

Most comparative jurisprudence on rights of nature around the world relates to ecosystems with which human beings have important material and/or symbolic relationships. These include rivers, forests, seas, and mangroves, areas that for different reasons have special significance in the economy and culture of various human communities.

This is not to say that the rights of nature can or should be reduced to the needs, interests, or rights of these communities. On the contrary, the rights of nature necessarily, by their intrinsic value parameter, go beyond the benefits these ecosystems provide to human beings. Nor do the rights of nature exclude these benefits under the condition that human beings understand themselves as part of such ecosystems and organize their social and productive life according to the structures and processes those ecosystems involve.

[24] Byron Ernesto Villagómez Moncayo, Rubén Fernando Calle Idrovo y Dayanna Carolina Ramírez Iza, 'Guía de jurisprudencia constitucional. Derechos de la naturaleza: actualizada a febrero de 2023' (Corte Constitucional; Centro de Estudios y Difusión del Derecho Constitucional (CEDEC) 2023).

In fact, much of the doctrine and jurisprudence on the rights of nature emphasizes the harmonious living with nature of indigenous and ancestral cultures around the world. This precisely illustrates the ethical, ecological, and legal ideal that enlightens the types of relationships with nature that are being postulated.

The Ecuadorian Constitution is currently the only national constitution that recognizes rights of nature. This means that natural entities such as ecosystems or animal and plant species are considered subjects of rights. Among these rights, the primary ones include the right to exist and to maintain their structures, functions, and cycles.

In the Ecuadorian case, the current Constitutional Court, during the last years, has developed jurisprudence that precisely seeks this synergy between human rights and the rights of nature. Like all jurisprudence, it allows this possibility of complementarity to be grounded in concrete cases that demonstrate how the protection of ecosystems results in the effective protection of human rights, such as the rights to a healthy environment, right to health and right to water.

This complementarity does not mean ignoring the intrinsic value that characterizes the rights of nature; it simply implies that this intrinsic value does not exclude the direct impact that the violation of such rights frequently has on human beings and their rights. In fact, there are cases in which this impact is directly visualized and other cases in which the intrinsic value is evidenced and emphasized without such a direct impact on humans.

Indeed, in a case on the redirection of rivers courses, the Court determined that their regulation could only be done by law.[25] This is very remarkable because in Ecuador the constitutional mandate that rights are only regulated by law had been applied until then exclusively to human rights. This constitutional ruling extends it to the rights of nature, granting them a constitutional status equal to human rights.

Another case in which the Ecuadorian Constitutional Court applies nature's intrinsic valuation without direct effect on humans is evidenced is the case of the monkey, Estrellita.[26] Despite the moral consequences that animal abuse has on human beings, this particular case is governed by the analysis of the sentience and intrinsic value of the animal, as well as its relationship with its own specie and its ecosystem. According to the ruling, the Ecuadorean Assembly must pass a law on the rights of wild animals.

These cases show that intrinsic value does not necessarily include in all cases the impact on human rights, at least in a direct and immediate way, because in the end we are all part of the earth's ecosystem. However, there are cases in which this direct and immediate impact on humans does exist, which demonstrates, as has been said, that intrinsic value does not exclude the links between the rights of nature and human rights.

For instance, in another ruling the Ecuadorian Constitutional Court reviewed the regulation of the Environmental Code regarding mangroves. For the Court is very clear how the traditional communities that live from fishing in these ecosystems contribute to the maintenance of that

[25] Corte Constitucional del Ecuador, Sentencia No. 32-17-IN/21.

[26] Corte Constitucional del Ecuador, Sentencia No.253-20-JH. English version available at <https://www.nonhumanrights.org/wp-content/uploads/Final-Judgment-Estrellita-w-Translation-Certification.pdf>.

natural system. Consequently, the preservation of mangroves is a condition for humans to exercise their human rights to work, to a healthy environment, as well as the right to food and even to culture.

The fragile nature of mangroves, on the other hand, makes it essential for the law to contain a limited list of economic activities that can be adapted to these ecosystems. In this case, the Constitutional Court ruled as unconstitutional some regulations that violated this list, leaving a margin of discretion, presumably regulated, to the environmental authority.

This relationship between rights of nature and other human rights, especially the right to a healthy environment, is also clear in the Aquepi[27] and Monjas[28] rivers cases. Water is a strong link between rights due to its relevance both for nature and for people.

In the Aquepi river case the Court underlines how important is the ecological flow for the river structure and cycles. In the Monjas River ruling, the articulation is also between the rights of nature and several human rights, including the right to the city.

Finally, this recent Constitutional Court jurisprudence portraits the importance of an interdisciplinary approach to the rights of nature. Indeed, these rulings make active use of specific scientific information on ecological issues, but at the same time articulate this information to the knowledge and wisdom of the human communities affected by the processes or risks of environmental damage.

A. The Los Cedros Rain Forest ruling

At its core, the Los Cedros case refers to a constitutional lawsuit initiated against medium- and large-scale metallic mining concessions in a cloud forest of high biodiversity located in the Choco Andino region. The Choco is one of the most biodiverse areas on the planet. The forest includes 178 endangered species such as the spectacled bear and the spider monkey, it is also the source of four rivers and a buffer zone of the Cotacachi Cayapas National Park, where mining activities are prohibited by the Ecuadorian Constitution.

Despite this high biodiversity, the Ecuadorian government granted the corresponding environmental registration for the state-owned company ENAMI and the Canadian company Cornerstone to proceed with their mining operations.

In response, the mayor of Cotacachi, the city closest to the forest, along with the rural communities of the area, and Ecuadorian and international environmental and human rights organizations,[29] filed a lawsuit for violations of the rights of nature, the right to a healthy environment, the right to water, and the right to environmental consultation.

The first judge to rule on the case dismissed the lawsuit. Later, an appeals court accepted the claim regarding the violation of the right to environmental consultation for the rural communities. These communities rely on rivers originating in the forest for their drinking

[27] Corte Constitucional del Ecuador, Sentencia No. 1185-20-JP/21.

[28] Corte Constitucional del Ecuador, Sentencia No. 2167-21-EP/22.

[29] For an overview of the political ecology of the Los Cedros case and its background see: Laura Affolter, 'The Responsibility to Prevent Future Harm: Anti-Mining Struggles, the State, and Constitutional Lawsuits in Ecuador' (2020) 4(2) Journal of Legal Anthropology 78-99.

water, agriculture, and livestock. Finally, the case reached the Constitutional Court of Ecuador,[30] which, in addition to the violation of environmental consultation, declared violations of the rights of nature, the right to a healthy environment, and the right to water.[31]

As the reporting judge for the Constitutional Court's ruling, I sought to explore the relationship between the rights of nature and the right to a healthy environment through the Los Cedros case.

The application of the precautionary principle is one of the clearest examples of this relationship.[32] The precautionary principle, as is well known, originated in Environmental Law. However, the Ecuadorian Constitution includes this principle among the rights of nature. For this reason, the Los Cedros ruling applied the precautionary principle to suspend mining activity in the forest. In this way, the Court sought to prevent mining from causing irreversible harm to the endemic or endangered plant and animal species in the forest.

The ruling of the Constitutional Court also establishes a jurisprudential precedent applicable to other fragile ecosystems expressly protected by the Ecuadorian Constitution, such as other protected forests where the government has granted mining concessions that could have a high environmental impact.[33]

This is a clear example of the potential for positive complementarity between the Rights of Nature and Environmental Law. The latter can provide conceptual tools to realise the intrinsic valuation inherent in the rights of nature.

Beyond the intrinsic value of the Los Cedros Forest due to its biodiversity, it is also a key ecosystem for the environment of the rural communities that obtain their water from the forest. In other words, the best way to protect the right to a healthy environment for these communities is to protect the rights of the Los Cedros Forest.

By safeguarding, through the rights of nature, the structure, functions, and hydrological cycles, the water sources that form in the cloud forest are preserved. These water sources give rise to four rivers that supply the surrounding rural communities. Conversely, mining activity would have a significant impact on both the highly biodiverse and fragile forest and the water—and thus the environment—of the human population.

30 Corte Constitucional del Ecuador, Sentencia No. 1149-19-JP/21. Full English version available at <http://celdf.org/wp-content/uploads/2015/08/Los-Cedros-Decision-ENGLISH-Final.pdf>.

31 The Guardian was one of the first communication media reporting the ruling, see: Patrick Greenfield 'Plans to Mine Ecuador Forest Violate Rights of Nature, Court Rules' *The Guardian* (2 December 2021) <https://www.theguardian.com/environment/2021/dec/02/plan-to-mine-in-ecuador-forest-violate-rights-of-nature-court-rules-aoe>. Then the case has been reported in other media such as BBC, CNN, and the New York Times.

32 Atus Mariqueo-Russell, 'Rights of Nature and the Precautionary Principle' (2017) 6 RCC Perspectives 21–28; Rosie Cooney and Barney Dickson (eds), *Biodiversity and the Precautionary Principle: Risk, Uncertainty and Practice in Conservation and Sustainable Use* (Earthscan 2005).

33 For a review of the jurisprudential projection of the Los Cedros case see: M R Peck and others, 'The Conflict between Rights of Nature and Mining in Ecuador – Implications of the Los Cedros Cloud Forest Case for Biodiversity Conservation' (2024) 6(3) People and Nature 1096. For an evaluation of the limits of Los Cedros as a precedent see, Lena Koehn and Julia Nassl, 'Judicial Backlash Against the Rights of Nature in Ecuador: The Constitutional Precedent of Los Cedros Disputed' (*VerfBlog,* 27 April 2023) <https://verfassungsblog.de/judicial-backlash-against-the-rights-of-nature-in-ecuador/>.

In contrast, the Ecuadorian government, the mining companies, and even the Ministry of the Environment argued that the mining concessions in the forest should be maintained for legal certainty. Their position was that all procedures established by Ecuadorian law had been followed. Moreover, they claimed no environmental damage had occurred, as the mining activity was still in its initial exploratory phase.

In fact, during the hearing before the Constitutional Court, some rural community members near the forest also appeared and requested that the mining concessions be upheld. From their perspective, mining is positive because it creates jobs, the companies even provide some public services like road maintenance, and it generally stimulates the local economy. Regarding environmental impacts, from the pro-mining perspective, the solution is simply to regulate the activity properly to minimize such impacts.

Thus, there are two opposing approaches. From the biocentric perspective, it is impossible to ensure health, dignified work, or a quality life for humans without also respecting the rights of the ecosystems on which their water, agriculture, livestock, and tourism—the livelihoods of these communities—depend.

From the other perspective, nature is primarily a source of resources to be exploited for economic gain. There is no connection between economy and ecology, except to reduce pollution. The endemic and endangered species of Los Cedros, and the ecosystem, have no intrinsic value—only instrumental value.

This dilemma highlights the weakness of the Ecuadorian state, which fails to provide sufficient public services or develop public policies beyond supporting mining to foster a sustainable local economy.

But what I want to underline is that this ruling postulate that a balanced and healthy environment is not only an environment for humans, but also an ecosystem, a system of life with its own structure, cycles and functions. Consequently, the balance and health of some environments requires a high standard of protection through the rights of nature, which also protects human rights. The ruling states:

> Human rights and the rights of nature converge within the right to a healthy environment. In essence, the necessary interrelation and complementarity between these rights becomes evident without losing their autonomy, since the preservation of the natural environment allows human beings to exercise other rights. As indicated in previous paragraphs, the right to a healthy environment is not only a function of human beings but also includes the elements of nature as such.
>
> This biocentric conception of the right to a healthy and ecologically balanced environment does not eliminate the ownership that human beings have with respect to this right, nor does it ignore the effects they may suffer in relation to other human rights because of environmental damage. What the Constitution does in its article 14 is to reconceptualize the health, balance and sustainability of the environment, understanding, correctly, the human being to be part of the same, and nature as intrinsically valuable, regardless of its utility.
>
> In this sense, the rights of individuals, peoples and communities are seriously compromised when the

> rights of nature have been affected in an arbitrary, disproportionate and unreasonable manner. Thus, for example, high levels of air, water and soil pollution, erosion, droughts or other anthropogenic impacts on nature, inevitably affect the exercise of the right to health, life, personal well-being, the right to water, food, and other economic, social, and cultural rights and, in general, to the different dimensions of human life.[34]

In fact, the Los Cedros ruling applies a principle originating in environmental law: the precautionary principle. This principle is included among the rights of nature in Article of the Ecuadorian Constitution:

> The state shall apply precautionary and restrictive measures for activities that may lead to the extinction of species, the destruction of ecosystems or the permanent alteration of natural cycles.

This was precisely the situation in the Los Cedros Forest, where mining activity was to take place in a fragile ecosystem inhabited by endangered and endemic species. Therefore, when the Court verified the presence of these species in Los Cedros Forest, based on empirical scientific reports, the IUCN red list and the lack of environmental impact studies, it applied the precautionary principle restricting mining activity in this forest.

To materialize this protection, the Court in its judgments, in addition to the legal arguments, has considered the analysis of relevant scientists, affected human communities and NGOs, and has also included in the judgments specific and concrete provisions to the public authorities to take effective action within specific deadlines to make this protection effective.

VI. RIGHTS OF NATURE AND NEO-EXTRACTIVISM

This new perspective of human beings and nature, and of the rights of both, implies not only a complementarity and equality in the perception of the rights of nature and human rights, but also the postulate of a different understanding of economic organization.

Not only law, but also economics, as disciplines, have been fundamentally built on the assumption that nature is a set of objects to be exploited supposedly in benefit of human beings. Economic benefits, in fact, are necessary and legitimate as established in Article 74 of the Ecuadorian Constitution. However, economic activity must not become destructive, but instead it must respect and maintain ecosystems and natural cycles, in a way that protects the various forms of life due to their intrinsic value, also generating an effect of real sustainability for the following generations of human beings.[35]

Nonetheless, the concept of nature only as a resource to be exploited is the basis of *neo-extractivism,* which implies intensive and extensive nature exploitation, especially of oil, minerals and agricultural goods. This exploitation has the purpose of exporting raw materials without any aggregated value. This is done under active State regulation to obtain state revenues for economic growth and income redistribution.

[34] Corte Constitucional del Ecuador, Sentencia No. 1149-19-JP/21, Paragraphs 242, 243, 244.

[35] Joan Martinez Alier y Jordi Roca Jusmet, *Economía Ecológica y Política Ambiental* (Fondo de Cultura Económica 2018).

The neo-extractivist view constitutes an extreme reification of nature and is therefore opposed to the rights of nature. Ignoring the cycles, functions, and structure of the ecosystems in which economic activity operates, neoextractivism develops productive processes that also ignores human rights to a healthy environment, water, participation and culture. To account for this simultaneous exploitation of nature and human beings, Eduardo Gudynas has developed the concept of *extrahección* (extrahection), whose Latin roots mean 'to extract with violence'.[36]

Paradoxically, neo-extractivism invokes human rights to legitimize its activity. It claims that the State needs income to finance public services, to satisfy the right to education, health, and other social rights, as well as the right to work. Additionally, according to neo-extractivism, by generating economic growth through exports of raw materials, the human right to development would be fulfilled. In this way, neo-extractivism tends to confront the rights of nature with human rights.

However, opposing the rights of nature and human rights does not fit with the international human rights law which integrates environmental rights as part of economic, social, and cultural rights.

As stated, if all these social rights are redefined in ecological terms, as briefly illustrated by the examples of the right to a healthy environment, to water, to health, to work, among others, we can realize human rights violations through neo-extractivism. These are violations not only of the rights of nature but also to several of the social, economic, cultural, and environmental human rights themselves.

In fact, and despite its pro-development discourse, neo-extractivism resorts to the flexibilization of environmental prohibitions and regulations, as well as labor regulations, to create incentives for foreign capital investments.

Furthermore, exploiting nature neo-extractivist policies may result in violations of both, rights of nature and human rights, such as destruction or severe damage of species and ecosystems, and rights violations to a healthy environment, environmental consultation of affected communities, and even criminalization of nature advocates.

VII. NEW FORMS OF EQUALITY

Rights of nature and human rights complementarity is grounded on an ontological, epistemological, and ethical change: a new underlying conception of equality.

Of course, human beings do have their own identity and dignity, but the anthropocentric approach understood these attributes as exclusive features granting only the human beings an intrinsic value. Therefore, in most of Western thought all other nature's beings and processes were reduced to instrumental conditions for satisfying human needs.

The rights of nature, rooted in biocentric worldviews and ethics, propose a new form of equality. It is not a question of denying human beings their dignity, their distinctiveness with regards to nature, rather it is about finding parameters around which we, as human beings, can revalue ourselves as part of these systems of life

[36] Eduardo Gudynas, Extracciones, 'Extractivismos y Extrahecciones – Un Marco Conceptual sobre la Apropiación de Recursos Naturales' (2013) 18 Observatorio del Desarrollo 1; Eduardo Gudynas, *Derechos de la Naturaleza: Ética Biocéntrica y Políticas Ambientales* (Editorial Abya Yala 2015).

Under this specific form of equality, the intrinsic value of the human being does not devaluate other beings and life processes. On the contrary, it generates the understanding that since humans and non-humans beings are interdependent within the framework of common ecosystems, it is vital to establish complementary relationships that preserve common health and existence.

CONCLUSION

Rights of nature may be complementary to the human right to a healthy environment if our conception of human beings about ourselves and about nature is shifted to adopt a genuinely ecological approach, which considers the deep and complex relationships between nature and human communities.

However, this does not mean that protecting the rights of nature requires the immediate detriment of the human environment. It is not about subordinating the rights of nature to the human right to a healthy environment. Rather, it is about recognizing that life, in its diverse expressions and organizational forms, holds intrinsic value. Within these systems of life, the human species is one that may or may not be *immediately and directly* impacted by affecting an ecosystem. Yet, since humanity is inseparable from nature, any long-term harm inflicted on nature will ultimately affect humans. In essence, this challenges the artificial separation between nature and culture.

This new understanding may arise from a dialogue with the most critical lines of Environmental Law, jurisprudence, and ecological legislation, as well as with the contributions of Western science and, of course, the sciences, knowledges, and ethics of numerous indigenous and traditional cultures around the world.

The Jurisprudence of the Ecuadorian Constitutional Court, especially since 2019, has launched a development of the rights of nature under this interdisciplinary and intercultural approach. The Court has sought to develop a complementary approach to the rights of nature and the right to a healthy environment. This orientation should be translated into relevant legislation and public policies.

In addition to the intrinsic value of nature, there are convergent concepts between the rights of nature and the right to a healthy environment that deserve to be analyzed in depth. For instance, the precautionary principle, the pure ecological damage, the notion of ecocide and different forms of environmental reparation are concepts of environmental law close to rights of nature.

The precautionary principle can prevent economic activities considering the possibility of irreversible ecological damage. Underlying this logic is the idea that in the face of scientific uncertainty, an environmental ethic of care should prevail. This ethical parameter reveals an intrinsic valuation of nature beyond any cost-benefit analysis. It is also a common ground of Rights of Nature and the right to a healthy environment.

The concept of pure ecological damage, developed by environmental law, also reveals an intrinsic valuation of nature. This concept implies that it is not indispensable that human beings are directly and immediately affected by an activity or product for there to be environmental damage. The latter is a fundamental principle of the rights of nature.

The notion of ecocide, coming from environmental criminal law, also reveals an intrinsic valuation of nature. Under this notion, serious ecological damage on a large scale and over long periods of time is punishable as a criminal offense.

Likewise, environmental restoration seeks to rebuild the natural structures, cycles and processes that the rights of nature rightly protect.

At a time when the common home of all species is being destroyed, it is necessary to join forces among all those who have the knowledge and wisdom to save it.

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