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## [The Rights of Nature: A balance, 10 years after its constitutional recognition in Ecuador](#)

Is it really possible to shift the dominant, colonial, Western paradigm—which sees nature and spaces as resources to be exploited, dominated and controlled—using a tool from a legal or judicial system that is intrinsically linked to thinking from the same paradigm?

The answer is NO. But legal tools do, in fact, open cracks in the dominant system and its legal apparatus—cracks through which social movements, which promote critical thinking or uphold libertarian praxis, can navigate. Moreover, the rights of nature challenge the legal world, which obviously is and has been anthropocentric; and they enable us confront a dominant system and dominant policies. (1)

When the rights of nature were recognized in Ecuador in 2008, there was a parallel debate about *sumak kawsay* ["buen vivir," or "living well"] and plurinationality, two complementary themes that help us understand and apply these new rights. The objective of the debate was to question a model based on the destruction of nature, which is profoundly colonial and ignores our indigenous fabric—hence, the use of indigenous Kichwa terms to help shift the vision.

*Sumak kawsay*, besides critiquing the idea of development, proposes organizing life under two central premises: harmony with nature, and community as a way to exercise social and political life.

The rights of nature articulated in the National Constitution are: the right to exist and be defended (Art. 71); the right to restoration, without ignoring the rights of communities to integral reparations (Art. 72); the right to precaution and the application of restrictions (Art. 73); the right not to be commodified and to allow human and community activities within the framework of *sumak kawsay* (Art. 74).

Article 71 says: Nature or Pachamama, where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its evolutionary processes...

These rights afford a broad degree of reflection and utility within the current context of the ecosystem destruction: they support the anti-mining and anti-oil struggle, wherein the structure of nature and the bio-geo metabolic processes of the earth are altered; and they enable debates against transgenics and mega-dams, which affect evolutionary processes and a river's right to flow, respectively.

In Ecuador, as in most countries in the region and probably the world, people who defend the earth, nature and territories are increasingly repressed and criminalized.

The rights of nature open up new areas of territorial defense, recognize the role of defenders and allow us to reflect on the activities that destroy nature. It is one thing to be a victim of criminalization; it is another to be a defender of rights. In fact, within the framework of recognizing the rights of nature, the Ecuadorian National Constituent Assembly of 2008 granted amnesty to 600 people who had been criminalized—recognizing that those leaders and communities who had been accused of

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terrorism and sabotage for resisting exploitative projects, were actually defending nature and their communities.

Capitalism managed to solidify the idea that economic projects of plunder were in the "general interest," and that those who opposed them were not only selfish, but terrorists. Nature with rights—including the right to be defended—helps change this idea of general interest, and cultivates citizens' consciousness that nature is, precisely, in our "general interest."

Despite Ecuador's magnificent Constitution, since its drafting, all the laws passed at the institutional level have curtailed the rights of nature: the Mining Law of 2009, which allows large-scale mining even in fragile areas; the Organic Law on Water Resources, Uses y Exploitation of 2014, which allows a kind of water privatization and does not respect the ecological flow of rivers; the Organic Law on Rural Lands and Ancestral Territories of 2016, which reduces nature to mere environmental services; the Seed Law of 2017, which opens the door to transgenics; and the Organic Environmental Code of 2017, which weakens protected areas and is quite lax with companies.

The judicial panorama is not good either. Generally speaking, the cases that appeal to the rights of nature and challenge activities that destroy it have not been accepted, due to a combination of judges' ignorance and a lack of judicial independence.

One of the few cases accepted was in defense of the Vilcabamba River in southern Ecuador, which has been affected by stone extraction to build a highway. In this case the judge said that, "given the undeniable, elemental and essential importance of nature, and taking into account the evident process of degradation, protecting nature is the only suitable and effective way to end and immediately remedy the environmental damage." (2)

Beyond the outcomes of courtroom lawsuits that demand respect for the rights of nature, the actions of society are important—as these actions propose new horizons and even new geographies. For example, when there was an oil spill and fire in the Gulf of Mexico, a lawsuit was filed in Ecuador against the responsible company—even though it does not operate in Ecuador, and the event did not take place within Ecuador's borders. Nevertheless, the argument presented was that all of nature is connected, that it has rights, and that it must be protected. (3)

The rights of nature have rapidly permeated social processes, and have become incorporated into the agendas of many movements, several academic analyses and society in general.

The "Path of Truth and Justice for Nature and Peoples," a process currently underway in Ecuador, seeks precisely to recover memory about nature and territories; and to analyze both what has happened over the past ten years, and measures that have not been taken to remediate earlier activities. (4) This process is already encouraging, as it is building bridges, weaving networks, and examining different territories' problems with a greater degree of complexity regarding the rights of humans and nature.

The Path's preliminary assessment is that nature is now more visible. Slowly, it is being incorporated into school programs and into the discourse of public administrations; it is more frequently expressed in art and in social networks; and most of all, it is very present in social movements. The mental shift caused by recognizing the rights of nature has had something to do with this.

In the stories peoples tell, it is clear that harmonious relationships with nature inspire and give breath to their struggles; and even though capitalism invades every corner of life, people still live, resist and

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reorganize. Therefore, the State should strengthen, protect and recognize these expressions of resistance and people's recovery of relationships with nature.

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(1) Anthropocentric: That which places human beings at the center, ignoring everything else and thus justifying the destruction of nature

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