



Center for Democratic and
Environmental Rights

INTER-AMERICAN COURT OF HUMAN RIGHTS

**Request for Advisory Opinion on Climate Emergency and Human Rights
to the Inter-American Court of Human Rights of the Republic of Colombia
and the Republic of Chile**

**WRITTEN OPINION PRESENTED BY *CENTER FOR DEMOCRATIC AND
ENVIRONMENTAL RIGHTS* ABOUT THE RIGHTS OF NATURE IN THE
FRAMEWORK OF THE CLIMATE EMERGENCY AND HUMAN RIGHTS**

December 15, 2023

Presented by:

Mari Margil – Executive Director, CDER
mmargil@centerforenvironmentalrights.org

Hugo Echeverría – CDER external lawyer in the Republic of Ecuador
hugo.echeverria@mail.mcgill.ca

All communications and notifications sent by the Court will be considered officially
received in:

Center for Democratic and Environmental Rights (CDER)
1320 N Hollis St
Spokane, Washington 99201
United States of America
509 474 9761
info@centerforenvironmentalrights.org

INDEX

1. INSTITUTIONAL PRESENTATION AND MANIFESTATION OF INTEREST	
1.1. Institutional presentation.....	
1.2. Interest manifestation.....	
2. OPINION OF THE CDER REGARDING THE INTEGRATION OF THE RIGHTS OF NATURE IN THE FRAMEWORK OF THE CLIMATE EMERGENCY	
2.1. A trend that is gaining global momentum	
2.2. Integration of the rights of nature.....	
3. THE RIGHTS OF NATURE: THE ECUADORIAN CASE	
3.1. Constitutional recognition.....	
3.2. Jurisprudential development.....	
3.2.1. State duty.....	
3.2.2. Case selection.....	
3.3. Characteristics of the rights of nature	
3.3.1. Autonomy based on ownership differentiated by the intrinsic value of nature: the rights of nature are distinguished from the human right to live in a healthy environment ...	
3.3.2. Full regulatory force, direct and effective application protection ..	
3.3.3. Subject to constitutional principles and rules.....	
3.4. Content of the rights of nature.....	
4. CONTRIBUTION OF THE RIGHTS OF NATURE TO THE CLARIFICATION OF THE SCOPE OF THE STATE OBLIGATIONS TO RESPOND TO THE CLIMATE EMERGENCY	
4.1. Complementary approaches: protection and respect for nature....	
4.2. Principles that support the approach of respect for nature and	

the rights of nature

4.2.1. The principle of ecological development as a bridge between protection and respect for nature.....

**5. THE OBLIGATION TO AVOID DAMAGE TO NATURE
WITHIN THE FRAMEWORK OF THE DUTIES OF PREVENTION AND
GUARANTEE IN HUMAN RIGHTS IN FACE OF
CLIMATE EMERGENCY**

6. RIGHTS OF NATURE AND CLIMATE CHANGE

7. CONCLUSIONS

8. PETITION

**9.RATIFICATION, SIGNATURE AND ANNEXES
.....**

1. INSTITUTIONAL PRESENTATION AND EXPRESSION OF INTEREST

This section includes the presentation of the *Center for Democratic and Environmental Rights* (hereinafter CDER) (1.1), as well as its expression of interest to make contributions to the Request for an Advisory Opinion on Climate Emergency and Human Rights to the Inter-American Court of Human Rights of the Republic of Colombia and the Republic of Chile (hereinafter Request for Advisory Opinion) (1.2).

1.1. Institutional presentation

The CDER is a non-profit organization established in the State of Washington, United States of America, to promote the legal recognition of the rights of nature.¹

To confront the **triple crisis** of climate change, species extinction and the collapse of ecosystems, the CDER advocates for a **substantial change** in the way we govern ourselves towards nature. To this end, the CDER collaborates with governments, Indigenous communities, civil society and activists in the United States, the United Kingdom, Ireland, the Philippines, Nepal and other countries. Likewise, in Ecuador, a country where our founders collaborated to establish the world's first legal norms on the rights of nature.

In 2008, the founders of the CDER met with delegates from the Constituent Assembly of Ecuador to advocate for the constitutional recognition of rights to nature. The Constitution came into force in 2008, by **referendum**. Since then, the CDER continues to contribute - through public participation - to the legislative debate, acting as *amicus curiae* in constitutional cases, and organizing outreach events on the rights of nature with Ecuadorian universities.² In Ecuador, the CDER has filed *amicus curiae* briefs in several cases before the Constitutional Court³, including three cases⁴ selected by the Court⁵ to issue binding jurisprudence on the rights of nature.⁶

¹ Center for Democratic and Environmental Rights. [What we do](#). The CDER also works to promote environmental rights.

² *Ibid.*

³ [Organic Law of Jurisdictional Guarantees and Constitutional Control](#), 2009, Ecuador. Article 12. In Ecuador, any person who has an interest in a constitutional case can present an *amicus curiae* brief. This law provides that, if they believe it necessary, judges may hear the person in a public hearing.

⁴The cases selected by the Constitutional Court of Ecuador are:

- Case No. 1632-19-JP. Protected Forest of the upper basin of the Nangaritzta River. Pending.
- Case No. 1149-19-JP. Los Cedros Protected Forest. Decided.
- Case No. 1754-19-JP. Piatúa River. Pending.

⁵ [Organic Law of Jurisdictional Guarantees and Constitutional Control](#), *Op. Cit.* Article 25.

The selection criteria are: seriousness of the matter, novelty of the case and lack of constitutional precedent, denial of judicial precedents established by the Constitutional Court and national relevance or significance of the matter resolved in a ruling.

⁶ [Constitution of the Republic of Ecuador](#), Ecuador, 2008. Article 436.- "The Constitutional Court will exercise, in addition to those conferred upon it by law, the following powers: [...] 6. Issue sentences that constitute binding jurisprudence regarding actions for protection, compliance,

The CDER was also heard in the hearing convened by the Constitutional Court of Ecuador in the case globally known as **Los Cedros**, in whose judgment the Court ruled - for the first time - on the essential content of the rights of nature.⁷

1.2. Interest in participating

For the reasons noted in the preceding section, the CDER expresses its interest to participate in this Request for an Advisory Opinion. The CDER opinion will refer **specifically to the effects of the climate emergency on nature**, a point that is raised in the introduction of the Request for Advisory Opinion.

Hence, the CDER will address the rights of nature in the context of the climate emergency and human rights, advocating for their legal integration.

2. OPINION OF THE CDER REGARDING THE INTEGRATION OF THE RIGHTS OF NATURE IN THE FRAMEWORK OF THE CLIMATE EMERGENCY

The CDER acknowledges that the Request for Advisory Opinion refers to environmental human rights; and, not to the rights of nature. However, the CDER considers that the climate emergency presents an opportunity to advance the study of the rights of nature - initiated in OC-23/17-⁸, integrating them into the legal analysis of the relationship between human rights and the environment (2.2), which will contribute to clarifying the scope of state obligations to respond to said climate emergency.

There are several countries in the Americas that have included the rights of nature in their legal systems, whether constitutionally, legislatively, or jurisprudentially. Decades earlier, these same States included the human right to a healthy environment. Panama, for example, inaugurated environmental constitutionalism in Latin America by recognizing the human right to live in a healthy environment in 1972.⁹ Five decades later, Panama also recognizes the rights of nature in law.¹⁰

The case of Ecuador is even more notable: in 1983, the State recognized the right of people to live in an environment free of pollution. A constitutional codification of 1996 integrated a supra-individual perspective, recognizing this right to the population. The 1998 Constitution recognized the collective

habeas corpus, habeas data, access to public information and other constitutional processes, as well as the **cases selected by the Court for review** . [...]”.

⁷ [Sentence No. 1149-19-JP/21](#), Constitutional Court of Ecuador, November 10, 2021.

See paragraph 4, footer 1, in which there is evidence of the CDER's intervention in the hearing.

⁸ [Advisory Opinion OC-23/17](#) requested by the Republic of Colombia, Environment and Human Rights, Inter-American Court of Human Rights, November 15, 2017.

⁹ Lorenzetti, Ricardo Luis and Lorenzetti, Pablo, [Justice and Environmental Law in the Americas](#), Organization of American States, 2021, p. 169.

¹⁰ [Law that Recognizes the Rights of Nature and the Obligations of the State related to these Rights](#), Panama, 2022.

environmental rights of Indigenous peoples, and the 2008 Constitution incorporated the rights of nature into the legal system of this Andean country.¹¹

This shows that countries in the Americas are already considering the importance of guaranteeing both rights, human environmental rights and those of nature, from a complementary perspective.

The **rights of nature are different from human environmental rights**. The latter are based on an anthropocentric vision, while the former are based on an ecocentric vision. Therefore, Environmental Law maintains the approach of protecting nature. In contrast, the rights of nature proposes a new approach of respect to nature: “it is not only a protected object, but a subject of law.”¹² It involves different rights that even belong to different legal spheres. Consequently, the trend of the rights of nature should not be confused with ecocentric approaches of Environmental Law.

This Request for an Advisory Opinion provides an opportunity for the Inter-American Court to evaluate this issue from the perspective of the human right to live in a healthy environment, but also to add the **trend of the rights of nature**, which is already included in the legal systems of several countries in the Americas (2.1).

2.1. A trend gaining global momentum

In 1982, the United Nations General Assembly approved the World Charter for Nature, which established the **principle of respect for nature**, based on the concept of intrinsic value.¹³ This issue had already been addressed by legal doctrine, a decade earlier.¹⁴

Although it is not a new issue, the rights of nature has recently gained global strength,¹⁵ especially in the Americas.¹⁶ Ecuador is the first country in the world to declare nature as a new subject of constitutional rights.¹⁷ Bolivia¹⁸ and

¹¹Echeverría, Hugo, [The Environment and Nature in the Ecuadorian Constitution. A jurisprudential approach from effective judicial protection](#), Quito, International Center for Research on Environment and Territory-Universidad de Los Hemisferios, 2019, pp. 9-12.

¹² Lorenzetti, Ricardo Luis and Lorenzetti, Pablo, *Op. Cit.*, p. 81.

¹³ A/RES/37/7, [World Charter for Nature](#), United Nations General Assembly, 28 October 1982.

¹⁴ Stone, Christopher D., “Should Trees Have Standing? Towards Legal Rights for Natural Objects,” *Southern California Law Review*, No. 45, 1972, pp. 450-501.

¹⁵ Boyd, David Richard, *The Rights of Nature: A Legal Revolution that Could Save the World*, Toronto, ECW Press, 2017.

¹⁶ Sozzo, Gonzalo, [“Nature as a constitutional object: Or how to constitutionalize the relationship with nature according to South America?”](#), *Constitutional Studies*, Special issue, 2021-2022, pp. 420-454.

¹⁷ Constitution of the Republic of Ecuador, *Op. Cit.* Article 10, second paragraph: “Nature will be subject to those rights recognized by the Constitution.”

¹⁸ [Framework Law of Mother Earth and Comprehensive Development to Live Well](#), Bolivia, 2012.

Panama¹⁹ have legislated on the matter. Colombian constitutional jurisprudence is a pioneer on the subject.²⁰ In 2022 Chile debated the constitutional recognition of rights of nature²¹; and Aruba is doing so today.²²

The rights of nature are also gaining momentum in Spain, Uganda and New Zealand, as well as with local laws in the United States, Canada and Brazil. First Nations, including the White Earth Chippewa, Yurok and Menominee, have adopted measures on rights of nature. Additionally, courts in Bangladesh and India have recognized rivers and other ecosystems as rights holders.

The rights of nature are a **trend**: this was stated by the Inter-American Court in 2017.²³ Likewise, the United Nations Environment Program recognized in 2023 that, in recent years, initiatives to recognize the rights of nature in national legal systems have gained momentum.²⁴

The foundations of the rights of nature have also been extended to International Environmental Law: the preamble of the Paris Agreement²⁵ takes note of the importance of guaranteeing the integrity of all ecosystems, including the oceans, and the protection of biodiversity, recognized by some cultures as Mother Earth; and, more explicitly, the Kunming-Montreal Global Biodiversity Framework states:

Nature represents different people's concepts, including biodiversity, ecosystems, Mother Earth, and living systems. Nature's contributions to people also represent different concepts, such as ecosystem goods and services and gifts of nature. Both the latter and its contributions to people are essential for the existence of human beings and the quality of life, among other things, for human well-being, to live in harmony with nature and to live well and in harmony with Mother Earth. The Framework recognizes and takes into account these diverse value systems and concepts, particularly those of those countries that recognize them, the rights of nature and the **rights of Mother Earth**, as part of its successful implementation.²⁶

2.2. Integration of the rights of nature

By virtue of the considerations expressed in the previous section, the CDER defends the integration of the trend of the rights of nature in the legal analysis concerning the climate emergency and human rights. To this end, the CDER will

¹⁹ [Law that Recognizes the Rights of Nature and the Obligations of the State related to these Rights](#), *Op. Cit.*

²⁰ [Sentence T-622/16](#), Constitutional Court of Colombia, November 10, 2016.

²¹ Durán Medina, Valentina, "[The rights of nature have already entered the 2022 Constitution](#)", Chile, Environmental Constitutional Observatory, 2023.

²² Surma, Katie, "[In Aruba, minister of nature initiates constitutional amendment to enshrine 'rights of nature' and human right to clean environment](#)", *Constitution Net*.

²³ Advisory Opinion OC-23/17 requested by the Republic of Colombia, *Op. Cit.* Series A No. 23, para. 62.

²⁴ United Nations Environment Program, [Environmental Rule of Law: Tracking Progress and Charting Future Directions](#), Nairobi, UNEP, 2023, p. 115.

²⁵ United Nations, [Treaty Series, Treaties and International Agreements Registered or Filed and Recorded with the Secretariat of the United Nations](#), New York, UN, 2023, Vol. 3156, p. 79.

²⁶ CBD/COP/15/L.25, Conference of the Parties to the Convention on Biological Diversity, 15th meeting-part II, [Kunming-Montreal Global Biodiversity Framework](#), p. 5. Section c, 9.

present in the following section the Ecuadorian case on the recognition and application of the rights of nature, which is the one of most significant constitutional developments in the world, to show that this trend **could** contribute to the clarification of the scope of state obligations to respond to the climate emergency.

The topics to be addressed are the ones raised in sections 1 and 2 of question A of the Request for Advisory Opinion, emphasizing the adverse impacts of climate change on biodiversity: Loss of ecosystems, alteration of water cycles and the negative impact of climate change on wild flora and fauna. Likewise, legislative references from other countries in the Americas recognizing nature as a new subject of rights will be referred to.

This written opinion will conclude that article 11, paragraph 2, of the San Salvador Protocol, applicable to this Request for Advisory Opinion, could be interpreted from a complementary perspective of environmental rights and rights of nature, in which the general principles of the World Charter for Nature are mentioned above.

3. THE RIGHTS OF NATURE: THE ECUADORIAN CASE

The model of rights of nature in Ecuador will be shown in this section to refer to: their recognition at the constitutional level (3.1), jurisprudence (3.2), characteristics (3.3) content (3.4).

3.1. Constitutional recognition

On October 20, 2008, the new Constitution of the Republic of Ecuador came into force, which is the only one in the world to recognize rights to nature.²⁷

The preamble of the Constitution states: “Celebrating nature, Pacha Mama, of which we are part and which is vital for our existence.”²⁸ The Constitutional Court of Ecuador has said that this preamble recognizes that the “very existence of humanity is inevitably tied to that of nature,” adding that “this is not rhetorical lyricism, but rather a transcendent statement and a historical commitment that [...] demands a new form of citizen coexistence, in diversity and harmony with nature.”²⁹

The CDER highlights the similarity between this constitutional preamble and that of the World Charter for Nature, which also recognizes that humans are “a part

²⁷ Epstein, Yaffa, [“Guest Editorial: Symposium on the Rights of Nature and Constitutional Law” Blog](#), International Association on Constitutional Law, 2022.

²⁸ Constitution of the Republic of Ecuador, *Op. Cit.* Preamble.

²⁹ Sentence No. 1149-19-JP/21, *Op. Cit.* Paragraphs 30-31.

of nature and life depends on the uninterrupted functioning of natural systems...”³⁰

The Ecuadorian Constitution declares nature as a new subject,³¹ recognizing three rights: a) comprehensive respect for its existence; b) the maintenance and regeneration of their life cycles, structure, functions and evolutionary processes; and c) the right to restoration.³²

To date, both the Ecuadorian legislature³³ and judges³⁴ have accepted this minimum configuration of the rights of nature.

However, the Ecuadorian Constitutional Court clarified - in its most recent binding jurisprudence ruling - that such configuration is not exhaustive:

95. Thus, having pointed out that the foundation of the rights of Nature lies in the recognition of its intrinsic value, it must be considered that the rights expressly recognized by the Constitution are not exhaustive, and therefore do not exclude other rights that are necessary for their full development.³⁵

96. In this sense, one of the main consequences caused by the non-exhaustive nature of the rights of Nature is the duty not to limit them to a closed catalog structure or *numerus clausus*, but rather to identify them in a form of open clause legal protection, that is, it is

³⁰ A/RES/37/7, *Op. Cit.*

³¹ Constitution of the Republic of Ecuador, *Op. Cit.* Article 10, second paragraph.

³² *Ibid.*

Article 71. - “Nature or Pacha Mama, where life is reproduced and realized, has the right to have its existence and the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes fully respected.

Any person, community, town or nationality may demand that the public authority comply with the rights of nature. To apply and interpret these rights, the principles established in the Constitution will be observed, where appropriate.

The State will encourage natural and legal persons, and groups, to protect nature, and will promote respect for all the elements that make up an ecosystem.”

Article. 72.- “Nature has the right to restoration. This restoration will be independent of the obligation that the State and natural or legal persons have to compensate individuals and groups that depend on the affected natural systems.

In cases of serious or permanent environmental impact, including those caused by the exploitation of non-renewable natural resources, the State will establish the most effective mechanisms to achieve restoration, and will adopt appropriate measures to eliminate or mitigate harmful environmental consequences.

³³ [Organic Code of the Environment](#), Ecuador, 2017.

Article 6.- “Rights of nature. The rights of nature are those recognized in the Constitution, which encompass comprehensive respect for its existence and the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes, as well as restoration.

To guarantee the exercise of their rights, in planning and territorial ordering, they will incorporate territorial environmental criteria based on ecosystems. The National Environmental Authority will define the territorial environmental criteria and develop the technical guidelines on the life cycles, structure, functions and evolutionary processes of nature.”

³⁴ [Sentence No. 32-17-IN/21](#), Constitutional Court of Ecuador, June 9, 2021.

Para. 71: “Article 71 of the Constitution establishes certain rights of which nature is entitled. The first is the right to have their existence fully respected and the second is the right to have their life cycles, structure, functions and evolutionary processes regenerated. For its part, article 72 of the Constitution establishes the right to restoration [...]”.

³⁵ [Sentence No. 253-20-JH/22](#), Constitutional Court of Ecuador, January 27, 2022.

not reduced to guaranteeing the rights stated in positive regulatory bodies and, instead, recognizes all those rights that, although not explicitly contemplated in a regulatory body, are suitable for the protection of Nature.³⁶

3.2. Jurisprudential development

Although there is a little legislative development, the content of the rights of nature is being provided through the jurisprudence issued by the Constitutional Court of Ecuador, which is the highest body for control, interpretation and administration of constitutional justice.³⁷

3.2.1. State duty

In 2009, the Constitutional Court of Ecuador issued a first ruling that upheld the state's duty to guarantee the "rights of nature."³⁸ Between 2015 and 2018, said Constitutional Court issued rulings accentuating the judicial dimension of this state duty. One of them establishes that "[...] the recognized constitutional nature of the rights of nature implicitly entails the obligation of the State to guarantee their effective enjoyment, specifically falling on the judicial bodies to ensure their protection [...]."³⁹

3.2.2. Case selection

Between 2019 and 2020, the Constitutional Court of Ecuador -ex officio- selected six cases to rule on the content of the rights of nature.⁴⁰ The selection was based on criteria included the seriousness of the matter, its novelty or national relevance.⁴¹ The chosen cases address complex legal issues related to the role of the State in the regulation and control of the environmental impact of hydroelectric and mining activities.

Table No. 1. Judgments issued in selected cases by the Constitutional Court of Ecuador on rights of nature.

CASE	NUMBER	DATE	MATTER OF CONCERN	STATUS
Dulcepamba River	502-19-JP	05/06/2019	Authorized diversion of riverbed for hydroelectric use, which causes overflow and flooding in the riverside population.	Pending

³⁶ *Ibid.*

³⁷ Constitution of the Republic of Ecuador, *Op. Cit.* Article 429.

³⁸ Resolution No. 0567-08-RA, Constitutional Court for the Transition Period, First Chamber, July 16, 2009.

³⁹ Sentence No. 166-15-SEP-CC, Constitutional Court of Ecuador, May 20, 2015.

⁴⁰ Constitution of the Republic of Ecuador, *Op. Cit.* Article 436

⁴¹ Organic Law of Jurisdictional Guarantees and Constitutional Control, *Op. Cit.* These criteria are provided for in article 25.

Protected Forest of the upper basin of the Nangaritza River	1632-19-JP	03/05/2020	Granting authorization for mining activities in forests adjacent to protected areas that make up a biosphere reserve and which is the habitat of species threatened with extinction.	Pending
Los Cedros Protected Forest	1149-19-JP	05/18/2020	Granting authorization for mining activities in a forest that is the habitat of species threatened with extinction.	Resolved
Piatúa River	1754-19-JP	07/09/2020	Authorized taking of 90% of the river water flow for hydroelectric use compromising the existence of the river and the species that inhabit it, 19 of which are threatened with extinction.	Pending
Primate	253-20-JH	12/22/2020	Writ of <i>Habeas corpus</i> on behalf of a monkey, which constitutes a discussion about whether it could be considered as a subject of rights.	Resolved
Aquepi River	1185-20-JP	04/06/2021	Excessive capture of river water flow compromising the existence of the river and the supply for human consumption of riverside populations.	Resolved

The Court has also ruled on other cases on the rights of nature, which came to its attention based on various jurisdictional guarantees provided by the Ecuadorian legal system. In 2023, the Center for Studies and Dissemination of Constitutional Law (Centro de Estudios y Difusión del Derecho Constitucional) identified a dozen relevant rulings regarding the rights of nature, from which the first guidelines are extracted to provide content to these new rights.⁴²

⁴² Villagómez Moncayo, Byron Ernesto *Et. al.*, [Guide to Constitutional Jurisprudence. Rights of Nature](#), Constitutional Jurisprudence Series, Quito, Center for Studies and Dissemination of Constitutional Law-Constitutional Court of Ecuador, 2023.

Table No. 2. Relevant rulings on rights of nature.⁴³

Tema central	Número de sentencia con link
Inconstitucionalidad del Acuerdo Ministerial No. 080 expedido por el Ministerio del Ambiente	20-12-IN/20
Vulneración al derecho a la seguridad jurídica dentro de un proceso sobre posesión de tierras comunitarias	065-15-SEP-CC
Vulneración a la garantía de la motivación en un proceso relacionado con un presunto daño ambiental provocado por actividades camaroneras	166-15-SEP-CC
Vulneración a derechos de la naturaleza por explotación de material pétreo	218-15-SEP-CC
Inconstitucionalidad de arts. 86 y 136 del Reglamento Ambiental de Actividades Mineras	32-17-IN/21
Inconstitucionalidad de varias normas del Código Orgánico del Ambiente y su reglamento	22-18-IN/21
Derechos de la naturaleza del Bosque Protector Los Cedros	1149-19-JP/21
Vulneración de derechos de la naturaleza por los hechos que terminaron en la muerte de la mona chorongu "Estrellita"	253-20-JH/22
Reconocimiento de titularidad de derechos de la naturaleza al río Aquepi y declaración de su vulneración por parte del Estado	1185-20-JP/21
Reconocimiento de titularidad de derechos de la naturaleza al río Monjas y declaración de su vulneración	2167-21-EP/22

Source: Screenshot of the box of relevant rulings on the rights of nature in the *Constitutional Jurisprudence Guide*.

3.3. Characteristics of the rights of nature

In this section the specific aspects of the rights of nature in the Ecuadorian model will be described.

3.3.1. Autonomy based on its ownership differentiated by the intrinsic value of nature: The rights of nature are different than the human right to live in a healthy environment

In Ecuador, the rights of nature are autonomous; and, therefore, they are different than the human right to live in a healthy environment or any other constitutional right: The ownership of these rights does not belong to persons, but to nature. This autonomy was early determined by jurisprudence⁴⁴ and has been reiterated since then.⁴⁵

⁴³ *Ibid*, p. 67.

⁴⁴ [Sentence No. 218-15-SEP-CC](#), Constitutional Court of Ecuador.

"In this sense, it is necessary to point out that the rights of nature -pacha mama- constitute one of the greatest novelties of the current Ecuadorian Constitution, by recognizing nature as a subject of rights, contrary to the traditional paradigm that considers it as an object property and mere source of natural resources."

⁴⁵ Sentence No. 32-17-IN/21, *Op. Cit.*

Para. 71. "Article 71 of the Constitution establishes certain rights of which nature is entitled [...]"

In recent years, the Constitutional Court also determined that nature is a **complex subject** of rights:

26. Nature has been recognized as a rights holder in the Constitution. Nature is not an abstract entity, a mere conceptual category, or a simple legal statement. Nor is it an inert or insensitive object. When the Constitution establishes that the existence of nature must be respected “comprehensively” and recognizes that it is “where life is reproduced and realized,” it indicates that it is a **complex subject that must be understood from a systemic perspective**.⁴⁶

27. Nature is made up of an interrelated, interdependent, and indivisible set of biotic and abiotic elements (ecosystems). Nature is a community of life. All the elements that make it up, including the human species, are linked and have a function or role. The properties of each element arise from the interrelationships with the rest of the elements and function as a network. When an element is affected, the functioning of the system is altered. When the system changes, it also affects each of its elements.⁴⁷

Autonomy shows the difference that exists between environmental rights and the rights of nature: It is not semantic, but substantial, since the rights of nature do not protect something, but respect someone. And, in the Ecuadorian case, the constitutional reference to *Pacha Mama* implies the highest degree of respect for Mother Earth.⁴⁸

The autonomy of the rights of nature is based on the **principle of respect**, established by the World Charter for Nature - as explained above - which is founded upon the idea of **non-disturbance of nature’s essential processes**.⁴⁹ Hence, the Constitutional Court of Ecuador has affirmed that the purpose of these new rights is to coexist **in harmony with nature**, which “occurs when there is a respectful and mutually beneficial relationship between human beings and nature.”⁵⁰ The Ecuadorian Constitutional Court has also said that autonomy derives from a perspective on the relationship between nature and society “recognizing nature as a living being and as a giver of life and sustaining **the respect that human beings owe to nature** beyond its usefulness for people.”⁵¹

The autonomy of the rights of nature is likewise supported by its *intrinsic value*, which is the cornerstone of the World Charter for Nature: “Every form of life is unique and deserves to be respected, whatever its usefulness for people.” In order to recognize the intrinsic value of other living beings, humanity must be

⁴⁶ [Sentence No. 22-18-IN/21](#), Constitutional Court of Ecuador, September 8, 2021.

⁴⁷ *Ibid.*

⁴⁸ Zaffaroni, Eugenio Raúl, “La Pachamama and the Human,” *Nature with Rights*, Quito, Abya Yala, 2011, p. 117.

“The incorporation of Pachamama into constitutional law would be nothing less than that of a universal archetype existing in every human as a result of the survival experiences of the species throughout evolution. Far from causing an underestimation of this incorporation, this thesis - if correct - would exalt it.”

⁴⁹ A/RES/37/7, *Op. Cit.* Preamble.

⁵⁰ [Sentence No. 1185-20-JP/21](#), Constitutional Court of Ecuador, December 15, 2021. Para. 64.

⁵¹ Sentence No. 218-15-SEP-CC, *Op. Cit.*

guided by a code of moral action.⁵² Intrinsic value is, for the Constitutional Court of Ecuador, “the central idea of the rights of nature.”⁵³ In this regard, the Court said:

48. The intrinsic valuation of nature through the recognition of rights is difficult to understand from a rigidly anthropocentric perspective, which conceives the human being as the most valuable species, while reducing other species and nature itself to a set of objects or resources to satisfy human needs, especially those of an economic nature.⁵⁴

49. This vision of nature as a simple source of resources, exploited at will, has been deeply questioned from various aspects of the natural and human sciences. **The rights of nature represent this questioning in the world of Law.**⁵⁵

50. The intrinsic valuation of nature implies, therefore, a defined conception of the human being about himself, about nature and about the relationships between the two. According to this conception, human beings should not be the only subject of rights, nor the center of environmental protection. On the contrary, recognizing specificities and differences, the complementarity between human beings and other species and natural systems is proposed as they integrate common life systems.⁵⁶

51. In this sense, this Constitutional Court highlights what was stated by the Inter-American Court of Human Rights (Inter-American Court) regarding the objectives of environmental protection indicated in Advisory Opinion 23-17:

*It is about protecting nature and the environment not only because of its connection with a utility for human beings or because of the effects that its degradation could cause on other people's rights, such as health, life, or personal integrity, but due to its importance for the other living organisms with which the planet is shared, also deserving of protection in themselves.*⁵⁷

52. This is a change in the legal paradigm because historically the Law has been functional to the instrumentalization, appropriation and exploitation of nature as a mere natural resource. The rights of nature propose that to harmonize their relationship with it, human beings are to adapt to natural processes and systems, hence the importance of having scientific knowledge and community knowledge, especially indigenous knowledge, for its relationship with nature, on such processes and systems.⁵⁸

3.3.2. Full regulatory force, direct application, and effective protection

The Constitutional Court of Ecuador has said that the rights of nature have full normative force:

35. The rights of nature, like all the rights established in the Ecuadorian Constitution, have full normative force. They do not constitute only ideals or rhetorical statements, but legal mandates. Thus, in accordance with article 11 paragraph 9, respecting and ensuring these rights are fully respected, along with other constitutional rights, is the highest duty of the State.

⁵² A/RES/37/7, *Op. Cit.* Preamble.

⁵³ Sentence No. 1149-19-JP/21, *Op. Cit.* Para. 42.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

This duty of the State is reiterated by the Constitution in article 277 paragraph 1, when establishing the norms of the development regime.⁵⁹

38. The Court observes that the normative force of the Constitution applies not only to the rights of nature, but also to all applicable guarantees and principles of constitutional interpretation. Article 71, second paragraph of the Constitution establishes that “any person, community, peoples or nation may demand compliance with the rights of nature from the public authority.

To apply and interpret these rights, the principles established in the Constitution will be observed, where appropriate.” Among these principles, the Court highlights, for effective protection of nature, direct application and the *in dubio pro natura principle*.⁶⁰

39. In accordance with article 11, paragraph 3, the rights and guarantees recognized to nature by the Constitution are directly and immediately applicable by and before any public, administrative or judicial servant, *ex officio* or at the request of a party.⁶¹

40. Regarding the principle of *in dubio pro natura*, every public servant, in accordance with number 5 of article 11 of the Constitution, must apply the norm and interpretation that most favors the effective validity of the rights and guarantees, including the rights of nature. If there are several interpretations of the same provision, the *in dubio pro natura principle is also relevant*, in accordance with article 395, paragraph 4 of the Constitution, whereby in case of doubt about the specific and exclusive scope of environmental legislation, it must be interpreted in the sense most favorable to the protection of nature. The Court also rules that these principles must also be applied in the interpretation of the constitutional provisions themselves, since this is what best fits the Constitution in its entirety and the most favorable sense for the full validity of the rights, according to article 427 of the Constitution.⁶²

3.3.3. Subjection to constitutional principles and rules

By being recognized as constitutional rights, the rights of nature are governed by general constitutional principles and rules; and, not only by those that govern Environmental Law. Hence, the Constitutional Court of Ecuador interprets them by virtue of the principle of reservation of law, the right to legal certainty, and complementarity with other constitutional rights. This is what the Court has stated:

Reserve of law. - As with all constitutional rights, the regulation of the exercise of the rights of nature is the responsibility of the national legislature, not to the president or the ministers:

62. Although it is not up to this [Court] to verify, through this action, the effects that may occur in specific cases, nor to determine the degree of impact that the deviation of the natural course of a water body may have in each case. Due to the importance of ecological flows and the potential effects that their alteration could have on constitutional rights, not only of ownership of nature but also of human beings, this Court considers that the challenged norms regulate matters that have a fundamental impact on constitutional rights. Even though its central purpose is to have permits and authorizations to divert the natural course of a water body, this entails, in turn, a possible restriction of the rights of nature and other related rights recognized in the Constitution. Therefore, in the opinion of

⁵⁹ Sentence No. 1149-19-JP/21, Constitutional Court of Ecuador, November 10, 2021.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Ibid.*

this Court, the possibility of diverting the natural course of a water body for the development of mining activities or other regulated activities, by directly affecting constitutional rights, must be enshrined in an organic law, as well as the procedures and standards applicable to the authorizations and permits issued for this purpose. This is because, under the protection of articles 132 and 133 of the Constitution, an organic law will be required to regulate the exercise of constitutional rights and guarantees.⁶³

Legal security. - The rules that regulate the exercise of the rights of nature must be clear and precise:

70. The vagueness of the expression “other productive activities” allows the environmental authority to absolutely define this concept and establish the limits it considers for the protection of the rights of mangroves.⁶⁴

71. The challenged provision, due to its indeterminacy, by not defining what the other productive activities will be, lacks certainty. Furthermore, by delegating its definition to the environmental authority, discretion is allowed that is contrary to the constitutional provision that protects the rights of nature and its fragile ecosystems. Protection of the mangrove ecosystem requires certainty, because it has rights and because the Constitution defines it as a fragile ecosystem.⁶⁵

73. For what has been said, the Court considers that the term “other productive activities,” established in article 104 (7) of the COAM, is contrary to the right to legal certainty, which is why this phrase must be expelled from the norm and from the legal system.⁶⁶

Complementarity. - Human rights and the rights of nature complement each other; they are not excluded. These rights reinforce mutual objectives:

8. [...] the case of mangroves, precisely illustrates the possibility and necessity of complementing the rights of nature and human rights, and among the latter especially the right to a healthy and ecologically balanced environment.⁶⁷

9. As recognized by the Constitution and expressed in the ruling, mangroves themselves constitute ecosystems with rights to their existence and the reproduction of their functions and life cycles. But of most interest is that the human communities that develop traditional economic activities in the mangroves have adapted to their functions and ecological cycles, respecting, and maintaining them.⁶⁸

10. It is evident that the rights of nature can be respected without necessarily excluding or relegating human beings, when they are understood as part of the ecosystems that integrate and coexist in harmony with them. This is the wisdom present in many indigenous peoples and traditional communities around the world and it is also the conclusion to which the best developments in scientific knowledge, the humanities and the social sciences lead us.⁶⁹

⁶³ Sentence No. 32-17-IN/21, *Op. Cit.*

⁶⁴ Sentence No. 22-18-IN/21, *Op. Cit.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ Sentence No. 22-18-IN/21, *Op. Cit.* Concurring vote of Judge Agustín Grijalva.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

3.4. Content of the rights of nature

In one of its most recent rulings on the violation of the rights of nature due to the impact on ecological flow, due to the excessive capture of water from its channel, the Constitutional Court set the content, object and purpose of these new rights:

59. The content of the rights of nature emerges from the general obligations not to do (negative) and to do (positive) of any right. The obligations not to do anything are stated in the wording of article 71 when it says that nature or Pacha Mama “has the right to be respected...” The obligation to do so is stated in the words: maintain, regenerate, encourage, protect, promote, recover, conserve, and restore. This content is reinforced and specified by what is established in the LORHUAA, which has particular importance in the present case, since the ecosystem we are referring to is a river and “Nature or Pacha Mama has the right to the conservation of waters with its properties as essential support for all forms of life.”⁷⁰

60. The object of protection is the life cycle and the purpose of the recognition and guarantee of the rights of nature is to achieve life in harmony with nature, which is manifested when there is a balance in the ecosystem to which the element of nature belongs. The life cycle, in turn, as provided by the Constitution, allows us to look at the protected subject, in this case a river, from its “structure, functions and evolutionary processes.” Considering this complex structure, the existence of the river in its entirety is respected, as required by the Constitution.⁷¹

61. The structure of the river has several elements: morphology, bottom, sediments, flow and water. Water is an important element that in turn has particular constitutional protection. For example, the Court established that the right to water means that people have access to a continuous, sufficient and safe supply of water for their personal and domestic use, as well as for their health.⁷²

62. The functions are, among others, the provision and purification of water for human consumption, irrigation that guarantees food sovereignty, maintenance of habitat for plant and animal life (fish, birds and wildlife), transportation of rainwater and other sources, the control of floods or droughts, the satisfaction of basic human needs (food if there are fish and irrigation if there are crops that require water), the connectivity of ecological processes and social, environmental and economic dynamics along the river, from its origin to its mouth.⁷³

63. For evolutionary processes, one could look at the river in historical perspective and appreciate that “the diversity and abundance of life forms in rivers reflect millions of years of evolution and adaptation to natural cycles.” Altering the functioning and structure of a river could interrupt its millennia-old evolutionary process. Hence, any use, intervention or alteration of the structure or function of the river, which drastically affects its life cycle or evolutionary process, must be carried out with extreme care because it could violate its rights.⁷⁴

64. The purpose of the exercise of the rights of nature in general and of the river in particular is “citizen coexistence, in diversity and harmony with nature.” Harmony occurs

⁷⁰ Sentence No. 1185-20-JP/21, *Op. Cit.*

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*

when there is a respectful and mutually beneficial relationship between humans and nature. One of the ways to appreciate harmony with nature is when there is diversity and water is a source of life and environmental health.⁷⁵

65. The life cycle is violated, in other words, when the subject is not allowed to have its natural structure, the fulfillment of its functions is prevented and its evolutionary process is disrespected. The effect of the violation is that it is not possible to fulfill the purpose and the harmony of the ecosystem and the relationship between human beings and nature is broken. The abuse of a river could generate conflicts, social or environmental, that break harmony and coexistence.⁷⁶

4. CONTRIBUTION OF THE RIGHTS OF NATURE TO THE CLARIFICATION OF THE SCOPE OF STATE OBLIGATIONS TO RESPONSE TO THE CLIMATE EMERGENCY.

The rights of nature can contribute to clarifying the scope of obligations to respond to the climate emergency, particularly regarding the loss of ecosystems, water resources and the impact on flora and fauna, which are the adverse impacts of climate change, as stated in the Request for Advisory Opinion.⁷⁷

The Inter-American Commission on Human Rights (hereinafter IACHR) points out that abrupt climate impacts produce changes in the natural cycles of ecosystems, droughts and floods⁷⁸; and that environmental degradation can cause perpetual and irreparable damage to human beings and also to nature.⁷⁹ In this regard, the IACHR recognizes that “The excessive exploitation of nature to satisfy the growing pattern of consumption at a global level has caused the **transgression of certain planetary limits**, which set a threshold under which the biophysical processes of the Earth system operate safely for humanity.”⁸⁰

Resolution 3/2021 shows the dimension of the climate emergency: **certain biophysical limits have been transgressed**. This reality contrasts with the aspiration of the United Nations General Assembly,⁸¹ embodied in the World Charter for Nature of 1982: “Nature will be respected, and its essential processes will not be disturbed.”

Today, the insufficiency of legal efforts based on a limited focus on the **protection of nature** (as an object) is evident. Today, when the world faces a triple environmental crisis, it is time to face reality by integrating a new direction; one that emphasizes **respect for nature** (4.1). This is the approach that promotes the **trend** of the rights of nature, in which the principle of respect is essential (4.2).

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ See Section II. The climate emergency and its consequences from a human rights perspective.

⁷⁸ Resolution 3/2021, [Climate Emergency: Scope of Inter-American Obligations Regarding Human Rights](#), Inter-American Commission on Human Rights, December 31, 2021. Preamble.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ A/RES/37/7, *Op. Cit.* Preamble.

4.1. Complementary approaches: protection and respect for nature

The CDER recognizes that the climate emergency will be analyzed from a legal approach of **nature protection**. This approach prevails in Resolution No. 3/2021 on the climate emergency of the IACHR:

States must make significant efforts to advance comprehensive policies and programs of comprehensive, universal, and broad environmental education, allowing people to acquire environmental awareness, modify their consumption behaviors and care for the environment, as well as aimed at guaranteeing that authorities and companies adopt patterns of sustainable development and **protection** of nature.⁸²

However, the climate emergency could also be examined from the new approach of **respect for nature**, which - as has been clarified - has already been adopted by several countries in the Americas, through the recognition of rights of nature. This approach and these rights are underpinned by principles established by the World Charter for Nature.

4.2. Principles that support the approach of respect for nature and the rights of nature

It has been mentioned that the rights of nature are based on the **principle of respect**, established by the World Charter for Nature, which is founded upon the recognition of the **intrinsic value** of nature; and it has become the founding principle of this new legal trend.

However, the World Charter for Nature establishes two additional principles, which are relevant to this Request for Advisory Opinion: a) the **principle of special protection** of representative ecosystems and the habitat of endangered species; and, b) the **principle of optimal administration** of natural resources, including **atmospheric resources** “in such a way as to achieve and maintain their optimal and continuous productivity without endangering the integrity of other ecosystems and species.”⁸³

It is relevant to highlight before the Inter-American Court that these principles radiate the regulations and jurisprudence of the American States that have adopted the trend of the rights of nature.

Principle of respect. The law of Panama integrates **intrinsic value** into the principle of the best interest of nature,⁸⁴ and the correlative obligations: “The State must respect Nature in its existence in an integral way, for its intrinsic value and the enjoyment of present and future generations.”⁸⁵

⁸² Resolution 3/2021, *Op. Cit.* Resolution Part, paragraph 5.

⁸³ A/RES/37/7, *Op. Cit.* Preamble.

⁸⁴ Law that Recognizes the Rights of Nature and the Obligations of the State related to these Rights, *Op. Cit.* Article 8, No. 1.

⁸⁵ *Ibid.*

Special protection principle. The Ecuadorian Constitution provides for a unique provision in the world: “The State will apply precautionary and restriction measures for activities that may lead to the extinction of species, the destruction of ecosystems or the permanent alteration of life cycles.”⁸⁶

Principle of optimal administration. Bolivian law includes this guarantee of regeneration of nature, which is based on the optimal administration of nature:

The State at its different levels and society, in harmony with the common interest, must guarantee the necessary conditions so that the various life systems of Mother Earth can absorb damage, adapt to disturbances, and regenerate without significantly altering their natural characteristics, structure and functionality, recognizing that life systems have limits on their ability to regenerate, and that humanity has limits on its ability to reverse its actions.⁸⁷

4.2.1. The principle of ecological development as a bridge between the protection and respect of nature

By recognizing constitutional rights to nature, the Ecuadorian case is the one that best reflects the application of the principles that support the perspective of respect for nature. In this regard, the Constitutional Court of Ecuador has indicated that the recognition of rights to Nature meant the incorporation of “the highest standards of environmental protection”⁸⁸ in comparative Constitutional Law.

The Constitutional Court has also specified that the absence of analysis of the rights of nature, in actions related to the matter, “denaturalizes the constitutional postulates that proclaim comprehensive respect for the existence and maintenance of natural areas.”⁸⁹ In this framework, this judicial doctrine stands out:

- a. Natural resources can be used for the benefit of society, “as long as their life cycles are respected without threatening their existence [...]”⁹⁰
- b. Comprehensive and effective respect for its existence [nature] must be fulfilled by “safeguarding each and every one of its systems, processes and natural elements [...] being an imperative to safeguard the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.”⁹¹

⁸⁶ Constitution of the Republic of Ecuador, *Op. Cit.* Article 73.

⁸⁷ [Law on the Rights of Mother Earth](#), Bolivia, December 21, 2010. Article 2.

⁸⁸ [Sentence No. 017-12-SIN-CC](#), Constitutional Court of Ecuador for the Transition Period, April 26, 2012.

⁸⁹ Sentence No. 166-15-SEP-CC, *Op. Cit.*

⁹⁰ [Sentence No. 065-15-SEP-CC](#), Constitutional Court of Ecuador, March 11, 2015.

⁹¹ Resolution No. 0567-08-RA, *Op. Cit.*

- c. The guarantee of protection of nature implies respect for “their own behavior, otherwise the validity of their rights and their effective protection would be omitted.”⁹²

In the case of Ecuador, in addition, shows how **protection** and **respect** can complement each other. To this end, the Ecuadorian Constitutional Court has established the principle of ecological development, by virtue of which “the use of the elements of nature under no circumstances can put at risk its existence and the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.”⁹³

Hence, Ecuadorian jurisprudence proposes a **collaborative duality** between this new principle (of rights of nature) and the environmental principles of sustainability, whereby “the use of elements of Nature is not subject only to a maintenance mandate. and ensuring the well-being of future human generations, but also to the conservation and intrinsic valuation of Nature.”⁹⁴

This **collaborative duality** could also be applied for the purposes of this Request for Advisory Opinion, to contribute to the clarification of state obligations in relation to the adverse effects of the climate emergency on nature.

5. THE OBLIGATION TO AVOID DAMAGE TO NATURE WITHIN THE FRAMEWORK OF THE DUTIES OF PREVENTION AND THE GUARANTEE OF HUMAN RIGHTS IN THE FACE OF THE CLIMATE EMERGENCY

Question A of the Request for Advisory Opinion refers to the scope of the State's duty to prevent climate phenomena, highlighting the measures that should be adopted to **minimize** the impact of damage caused by the climate emergency on people and nature.

From a **collaborative duality approach**, the **trend** of the rights of nature can be integrated into the legal analysis from a perspective of **avoiding** the impact of damages due to the climate emergency. As can be seen, the proposed guideline is more demanding: It is not about minimizing the impact, but about avoiding it.

This **avoidance guideline** is articulated with the concept of due diligence and is consistent with the environmental principle of prevention. Furthermore, in the American States that have included it, this guideline applies selectively in extreme situations: the extinction of species, the destruction of ecosystems or the permanent alteration of natural cycles. Such a guideline has been incorporated

⁹² *Ibid.*

⁹³ Sentence No. 253-20-JH/22, *Op. Cit.* Para. 60.

⁹⁴ *Ibid.*

by Ecuador, Bolivia and Panama. The regulations of these American States reflect the following common characteristics:

Impact on nature. In the three countries, state action is oriented towards the impact on nature and not only on the violation of human rights derived from said impact. The focus is limited on the violation of the rights of nature: Bolivian law - while recognizing the rights of Mother Earth - establishes the obligations and duties of the state and society “to guarantee respect for these rights.”⁹⁵

State obligation. In the three countries, state action is neither subsidiary nor discretionary, nor of *ultima ratio*: but rather it is conceived as a state obligation of *prima ratio* and of a comprehensive nature. For this reason, Panamanian law provides for the application of “all administrative, legal and/or technical measures, among others, necessary to prevent and restrict the effects of human activities that may contribute to the extinction of species, the destruction of ecosystems or “the permanent alteration of natural cycles and climate.”⁹⁶

In the Ecuadorian case, the language of the Constitution is mandatory: “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.”⁹⁷ For this reason, the Ecuadorian Constitutional Court has said:

[...] This is not a conditional power or option, but rather a constitutional obligation derived from the intrinsic valuation that the Constitution makes of the existence of species and ecosystems, through the rights of nature. In fact, the risk in this case is not necessarily related to effects on human beings, although they may be included, but rather to extinction of species, destruction of ecosystems or permanent alteration of natural cycles or other types of serious or irreversible damage to nature, regardless of such effects.⁹⁸

Precautionary measures. In all three countries, state action is framed in scientific uncertainty as a basis for decision-making or the exercise of regulatory power. In Panamanian law, the expansive application of this Environmental Law principle towards the new rights of nature stands out.⁹⁹

Regulatory obligation. In the three countries, state action is framed in the regulation of anthropogenic activities, from a perspective that admits restrictions on said activities. This obligation considers the violation of human rights, but above all the impact on nature and, therefore, the restriction of anthropogenic activities must be foreseen.

⁹⁵ Law on the Rights of Mother Earth, *Op. Cit.* Art. 1.

⁹⁶ Law that Recognizes the Rights of Nature and the Obligations of the State Related to these Rights, *Op. Cit.* Art. 7.

⁹⁷ Constitution of the Republic of Ecuador, *Op. Cit.* Art. 73.

⁹⁸ Sentence No. 1149-19-JP/21, *Op. Cit.* Para. 65.

⁹⁹ Law that Recognizes the Rights of Nature and the Obligations of the State Related to these Rights, *Op. Cit.* Art. 8, No. 5.

Environmental impact assessment obligation. Panamanian law establishes bridges between the rights of nature and the evaluation of environmental impact, through the granting of permits that “comply with all environmental principles and standards.”¹⁰⁰

In the *Los Cedros* case, the Ecuadorian Constitutional Court emphasized the importance of environmental studies:

131. It is also not admissible that the mere issuance of an environmental record, which does not describe, consider, or evaluate in a technical and sufficient manner the complex biodiversity of this protective forest, replaces the constitutional obligations of the State in terms of compliance with the precautionary principle. and the consequent protection of the rights of nature, and in particular the existence of species at high risk of extinction and destruction or alteration of fragile ecosystems such as the one existing in Los Cedros. This environmental registry in fragile ecosystems such as Los Cedros must also fulfill a precautionary function, and, therefore, it should always be preceded by environmental evaluation or risk studies that consider the biodiversity of the respective ecosystem.¹⁰¹

132. In this regard, this Court has previously stated, referring to the diversion of water courses, but with a scope applicable to the present case, that the mere granting of a permit or license does not replace the obligation to carry out technical and independent environmental studies that guarantee the rights of nature.”¹⁰²

This is how State obligations regarding the climate emergency could include measures aimed at respecting nature, which aim to avoid the extinction of species, the destruction of ecosystems or the permanent alteration of natural cycles; through regulations that restrict harmful anthropogenic activities and that integrate respect for nature as a material guideline in the evaluation of environmental impacts.

6. RIGHTS OF NATURE AND CLIMATE CHANGE

The legal relationship between the rights of nature and climate change has just been expressed directly and concretely at the 28th Conference of the Parties to the Framework Convention on Climate Change. The draft available at the date of the *Outcome Decision of the First Global Stocktrade* recognizes this important reference in its Preamble:

Noting the importance of ensuring the integrity of all ecosystems, including in forests, the ocean, mountains and the cryosphere, and the protection of biodiversity, recognized by some cultures as Mother Earth, and also noting the importance of 'climate justice', when taking action to address climate change.¹⁰³

¹⁰⁰ *Ibid.*

¹⁰¹ Sentence No. 1149-19-JP/21, *Op. Cit.* Para. 65.

¹⁰² *Ibid.*

¹⁰³ FCCC/PA/CMA/2023/L.17, Conference of the Parties serving as the meeting of the Parties to the Paris Agreement, 5a. session, [First global stocktrade. Proposal by the President Draft decision -/CMA.5. Outcome of the first global stocktrade](#), p. 2.

In 2017 this provision was included in the *Charter and General Ordinances of the City of Lafayette*, Colorado, in the United States of America:

Right to a healthy climate. All residents and ecosystems of the city possess a right to a healthy climate and life sustaining resources, which shall include the right to be free from all activities within the city that interfere with that right, including the extraction of coal, oil, or gas, disposal of drilling waste contaminated drinking water, lethal carcinogens, toxic gases and other byproducts of industrial activity which threaten human physical and neurological systems.¹⁰⁴

7. CONCLUSIONS

- The climate emergency affects people. These effects lead to violations of the human rights to life, personal integrity, health and a healthy environment. In the face of the climate emergency, States must adopt measures to guarantee these rights. The climate emergency also affects nature, so States must adopt measures to address adverse impacts on ecosystems and species. These measures can be framed in the new rights of nature.
- The rights of nature are a **trend** that emerged in the seventies of the 20th century and is being consolidated in the 21st Century, especially in Latin America, where several States have integrated it even through constitutional, legislative or jurisprudential recognition. Legally, this trend is based on the principle of respect for nature and others established by the World Charter for Nature of 1982. Several countries in the Americas have been inspired by this Resolution of the United Nations General Assembly to recognize and regulate the exercise of the rights of nature.
- Ecuador provides the most advanced model on the rights of nature. Its jurisprudence is providing content to these rights: The principle of ecological development and a collaborative approach (in which the rights of nature complement and reinforce environmental rights and other human rights that are violated by environmental damage) stand out. The main strength of the collaborative approach is the integration of the intrinsic value of nature from a perspective of respect to a new rights holder (subject of rights) and not only as the protection of something. This, in practice, has led to the elevation of standards applicable to the relationship between humans and nature.
- In the framework of the climate emergency, the interpretation of article 11, paragraph 2 of the San Salvador Protocol could be carried out from a complementary and collaborative approach to environmental rights and the rights of nature, in which the general principles of the World Charter for Nature are integrated to set the State obligation to prevent irreversible

¹⁰⁴ [Code of Ordinances City of Lafayette](#), Colorado, 2017. Chapter 43, article IV, section 43-51.

damage to nature. To this end, the experience of countries in the Americas could be taken as a model, particularly that of Ecuador.

- The insufficiency of legal efforts based on a limited focus on the **protection** of nature (as an object) is evident. Today, as the world faces a triple environmental crisis, it is time to confront it by integrating a new approach: one that emphasizes respect **for** nature. This is the path that promotes the trend of the rights of nature.
- Countries in the Americas have adopted the **trend** of the rights of nature and are providing it with essential content. Although the intrinsic value of nature is making its way into the field of Environmental Law, it is important to analyze the validity of the new **trend** from a perspective that transcends said branch of Law and is situated in the field of Constitutional Law, such as happened in Ecuador, and as it was considered in Chile and Aruba.
- The guideline adopted by several countries in the Americas, consisting of the State obligation to 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, could contribute to clarifying the scope of state obligations in this matter, as stated in the Request for Advisory Opinion on which this opinion is presented.
- Finally, it is important to determine that the rights of nature are different from environmental rights. This difference reflects the coexistence of several legal trends that seek to find alternatives to face the triple environmental crisis. Being different, environmental rights and the rights of nature complement each other and reinforce the common purpose of substantially improving the relationship between humans and nature.

PETITION

In accordance with the provisions of Article 73.3 of the Rules of Procedure of the Inter-American Court, the *Center for Democratic and Environmental Rights* requests that the Inter-American Court of Human Rights consider this written opinion when making a decision.

RATIFICATION, SIGNATURE AND ANNEXES

This document is signed by Mari Margil, executive director of the CDER; and Hugo Echeverría, external lawyer in Ecuador. Attached to this document are four annexes on representation and legal existence of the organization; as well as the professional registration.

The cover of this written opinion includes the address, emails, and telephone number where all communications and notifications sent by the Court will be

deemed to have been officially received, emphasizing email as the first means of communication.

We ratify the content of this written opinion, through the signatures:

Mari Margil
CDER

Hugo Iván Echeverría Villagómez
Registration No. 17-2001-108
Lawyers Forum - Ecuador