

Andres Martinez-Moscoso

Universidad San Francisco de Quito, Ecuador

e-mail: amartinez@usfq.edu.ec

ORCID: 0000-0002-8952-0680

Israel Castro-Enriquez

Universidad San Francisco de Quito, Ecuador

e-mail: castroisrael31@gmail.com

ORCID: 0000-0003-1310-8064

THE PERSONHOOD OF RIVERS IN ECUADOR. USING THE CASE ANALYSIS METHOD

Abstract

This paper studies the legal recognition of rivers as subjects of rights in Ecuador through a case study methodology, focusing on two landmark rulings by the Constitutional Court involving the Aquepi and Monjas Rivers. This study highlights the importance of demonstrating how Ecuador's constitutional framework has evolved from symbolic recognition of the rights of nature to concrete judicial enforcement. Using a qualitative legal analysis, the article explores how ecological flow and the interdependence of environmental and human rights serve as the basis for the legal personhood of the rivers. The Aquepi case led to the creation of a water protection area, while the Monjas case prompted a combination of gray infrastructure and nature-based regulatory measures. These cases underscore that Ecuador's ecocentric constitutional model is pioneering, and the recognition of nature's rights is often contingent upon their connection to human rights. Ultimately, the study concludes that enforceability remains the greatest challenge for the sustainability of such rulings.

KEYWORDS

Rights of Nature, rivers, subject of law, water

SŁOWA KLUCZOWE

Prawa Natury, rzeki, podmiot prawa, woda

II. INTRODUCTION

Illegal mining represents a significant problem for the international community due to the alarming levels of pollution that it generates in rivers. Specifically in Ecuador, academic studies have shown that the rivers of the provinces of Orellana, Zamora Chinchipe, and Pichincha exhibit high concentrations of heavy metals, particularly mercury, and a considerable sediment load.¹ This situation is attributable to small-scale and artisanal mining, an unregulated activity that lacks environmental impact studies, licenses, and mitigation measures. This activity constitutes the main source of anthropogenic mercury emissions in Latin America, accounting for 71% of the total of gaseous emissions.²

In Ecuador, a critical environmental issue is the widespread impact of water pollution, with the lack of adequate wastewater treatment emerging as its primary cause, even surpassing illegal mining. Recent data reveals a stark reality: 80% of all wastewater generated by human activities nationwide is discharged directly into rivers and seas without any form of treatment. This underscores the inadequacy of current infrastructure and management to address this critical problem, which significantly affects public health and water ecosystems. Despite the existence of 577 treatment plants across the country, in 2021, only a mere 22.3% of the distributed wastewater was actually directed to these facilities.³

River pollution has a direct and measurable impact on human health, as well as on the enjoyment of a range of interrelated rights, such as clean water access,

¹ Business & Human Rights Resource Centre, 'Ecuador: Contaminación en el río Napo por minería ilegal y desechos pone en peligro la biodiversidad y la salud de la comunidad kichwa' (24 June 2024) <<https://www.business-humanrights.org/es/latest-news/ecuador>>.

² Sebastián Rubiano Galvis, 'El mercurio en la minería ilegal de oro en los países del Bioma Amazónico' (Fundación Gaia Amazonas y Red Amazónica de Información Socioambiental Georreferenciada 2024) <<https://gaiaamazonas.org/wp-content/uploads/2024/04/>>.

³ INEC, 'Gestión de Agua Potable y Saneamiento 2021. Instituto Nacional de Estadística y Censos' (Instituto Nacional de Estadísticas y Censos 2021) https://www.ecuadorencifras.gob.ec/documentos/web-inc/Encuestas_Ambientales.

a healthy environment. It also affects the city and sustainable development.⁴ The cases analyzed in this study demonstrate how Ecuadorian constitutional jurisprudence has moved beyond the conventional framework of environmental law to adopt a new interpretation for recognized rivers as legal persons.

Ecuador has upheld the right to a healthy environment since the early 1980s, reflecting a longstanding commitment to environmental protection.⁵ Nevertheless, jurisprudence across Latin America indicates that, historically, the interests of political and industrial actors have often prevailed over judicial attempts to enforce environmental safeguards. This persistent imbalance has led countries such as Ecuador and Bolivia to adopt more transformative constitutional frameworks – often described as eco-socialist orientation – which enshrine the protection of nature not merely as an object of regulation but as a legal subject in its own right.⁶

Ecuador's twentieth and current Constitution, adopted in 2008, is emblematic of the broader movement known as the 'New Latin American Constitutionalism', and shares features with other Bolivarian constitutions in the region. Unique among these, however, Ecuador remains the only country to explicitly recognize nature – or *Pachamama* – as a legal subject within the constitutional text. This constitutional innovation represents a paradigmatic shift in legal thought, situating the natural world not only as a matter of environmental concern but as a bearer of intrinsic rights.

The legal basis for this approach is found in Articles 71 and 72 of the 2008 Constitution of Ecuador, which represent a paradigmatic shift in environmental constitutionalism. Article 71 proclaims that: '(...) 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' and Article 72 further reinforces this framework by affirming that: '(...) Nature has the right to be restored'.

⁴ Andrés Martínez-Moscoso and Mildred E Warner, 'Courts, Rights of Rivers and the City: Insights from Ecuador' (1–18 May 2025) Water International, doi:10.1080/02508060.2025.2501913.

⁵ Andrés Martínez-Moscoso, Israel Castro-Enríquez, 'Principios generales del Derecho Internacional Ambiental en el constitucionalismo ecuatoriano' in Richard Ortiz y Juan Manuel Alba (eds), *Constitución de 2008. Un enfoque multidisciplinario* (Corporación de Estudios y Publicaciones & Universidad de las Américas 2023).

⁶ Ana Guamán, Marco Aparicio, 'Los derechos de la naturaleza y la lucha frente al poder corporativo en Ecuador. El caso Texaco-Chevron, los alcances del ecoconstitucionalismo y las deficiencias de los mecanismos de garantía y reparación' in Fernando Antonio De Carvalho Dantas and others (eds) *Derechos de la naturaleza: teoría, política y práctica* (Universidad de Valencia 2019), 89–130.

This article employs a case study methodology to examine two landmark decisions of the Constitutional Court of Ecuador involving the Aquepi and Monjas Rivers. It explores how rivers – traditionally seen as natural resources – have come to be recognized as legal persons within the framework of Ecuadorian constitutional jurisprudence.

The analysis demonstrates how the judicial extension of the rights of nature has evolved from abstract constitutional recognition to concrete procedural enforcement. Special attention is given to the role of ecological flow not only as a technical hydrological standard but as a legal expression of the river's right to maintain its vital functions. The recognition of rivers as rights-bearing entities contributes significantly to the realization of interdependent economic, social, cultural, and environmental rights, and offers a compelling response to the broader question of what kinds of entities can – and should – be considered legal persons.

II. METHODOLOGY

This study adopts the case study method as an analytical tool to explore the adjudication of legal issues through judicial decisions in selected complex cases. As Talancón and others suggest,⁷ this approach facilitates a contextual understanding of legal reasoning, while also integrating socio-environmental realities, in line with the interpretive framework developed by Stake.⁸ The use of qualitative case studies – particularly within the domain of empirical legal research – offers the advantage of enhanced methodological rigor and the capacity to derive insights from emblematic or precedent-setting rulings.⁹

The Constitutional Court of Ecuador has played a central role in shaping the discourse around the recognition of nature as a legal person, focusing specifically on four key ecological domains: forests, mangroves, wildlife, and rivers.¹⁰ For the purposes of this study, rivers were selected as the focal point due to the presence of landmark constitutional decisions that have addressed their legal personhood.

⁷ Gabriela Talancón Villegas, María José Gutiérrez Rodríguez (eds), *El método de estudio de casos complejos para la enseñanza del derecho* (CEEAD 2021).

⁸ Robert E Stake, *The Art of Case Study Research* (Sage Publications 1995).

⁹ Argyrou, Aikaterini, 'Making the Case for Case Studies in Empirical Legal Research' (2017) 13(3) *Utrecht Law Review*.

¹⁰ Martínez-Moscoso Andrés, Pablo Alarcón-Peña, Martina Sánchez Espinosa, 'Los Derechos De La Naturaleza En La Jurisprudencia De La Corte Constitucional Ecuatoriana. Reconocimiento Y evolución histórica' (2023) 32 *Dikaion* (1):e32117 <<https://doi.org/10.5294/dika.2023.32.1.17>>.

Additionally, rivers are uniquely situated at the intersection of rural and urban ecosystems, making them a particularly illustrative category for judicial analysis.

It is important to note that while other judicial decisions in Ecuador have recognized rivers as rights-bearing entities, such recognition has predominantly occurred at the level of trial or appellate courts rather than the Constitutional Court. Within the selected cases, two variables emerge as central to the Court's reasoning in granting rights to rivers.

First one, the prioritization of water uses most notably the recognition of ecological flow as a guiding principle. Second one, the articulation of the river's personhood as instrumental to the realization of other constitutional rights, including the rights to the city, to a healthy environment, to water, and to sustainable development.

III. RESULTS

1. COULD RIVERS STAND IN FRONT OF A COURT?

Over the past two decades, countries in the Global South have shown the greatest receptiveness to the recognition of nature as a legal subject. Nonetheless, the philosophical foundation for this idea can be traced back to the 1970s, notably to Christopher Stone's seminal work, which emerged from the *Sierra Club vs. Morton* case in the United States.¹¹ Stone argued that there existed no inherent legal impediment to granting rights to nature, particularly given that non-human entities such as ships, municipalities, and corporations were already recognised as rights-bearing subjects, represented by a legal counsel. Although the US Supreme Court¹² ultimately dismissed the *Sierra Club's* claim, Justice Douglas dissent, explicitly drawing upon Stone's reasoning to advocate for the legal standing of natural entities.¹

In a 2018 study, Cano¹³ observed that legal systems across the globe are increasingly acknowledging the possibility for nature – especially rivers – to possess rights and to be represented judicially. Her analysis focused on the landmark 2011 case in Ecuador, where the Vilcabamba River was recognised as holding constitutional rights to exist and to regenerate.² Cano suggests that rivers have become

¹¹ Christopher D Stone, 'Should Trees Have Standing? Toward Legal Rights for Natural Objects' (1972) 45 *Southern California Law Review* 450–501.

¹² *Sierra Club v Morton*, 405 US 727 (1972).

¹³ Lidia Cano Pecharroman, 'Rights of Nature: Rivers That Can Stand in Court (2018) 7(1) *Resources* 13 <<https://doi.org/10.3390/resources7010013>>.

particularly salient candidates for legal personhood due to their tangible physical characteristics and clearly identifiable ecological functions.

Among the most prominent cases recognising rivers as legal subjects¹⁴ are those of the Whanganui River in New Zealand, the Atrato River in Colombia,¹⁵ the Marañón River in Peru,¹⁶ and the Aquepi and Monjas Rivers in Ecuador.³ These examples are examined in this paper. The application of the rights of nature to rivers has triggered a domino effect globally, prompting the proliferation of legal actions and the adoption of regional and national regulations in other jurisdictions, including the recent recognition of the Mar Menor lagoon in Spain as a legal subject.¹⁷

2. RON AROUND THE GLOBE. RIVERS AS A SUBJECT OF RIGHTS

In the Global South – and in other southern jurisdictions such as New Zealand – high courts have increasingly adopted a rights-based approach to environmental protection, recognizing nature as a subject of rights. In many of these landmark decisions, rivers have played a central role. Prominent examples include the Whanganui River in New Zealand, the Atrato River in Colombia, the Monjas and Aquepe Rivers in Ecuador, and, more recently, the Marañón River in Peru.

This juridical trend is also rooted in the cultural and spiritual significance of rivers for many Indigenous communities. In numerous cases, rivers are revered as sacred entities. As a result, legal recognition as rights-bearing subjects has often been accompanied by the creation of guardianship institutions, typically composed of representatives from Indigenous or local communities living along the river. These guardians are tasked with overseeing compliance with reparative and protective measures.¹⁸

¹⁴ María Valeria Berros, María Carman, ‘Los dos caminos del reconocimiento de los derechos de la naturaleza en América Latina’(2022) 13 (1) Revista Catalana de Dret Ambiental <<https://raco.cat/index.php/rcda/article/view/404063>>.

¹⁵ Alejandra Molano, Diana Murcia, ‘Animales y naturaleza como nuevos sujetos de derecho: un estudio de las decisiones judiciales más relevantes en Colombia’ (2018) 13 Revista Colombiana de Bioética 82–103. <<https://doi.org/10.18270/rcb.v13i1.2218>>.

¹⁶ Mirella Pretell Gomero, ‘Marañón, the River that Feels: Kukama Indigenous Women Leading the Way in the Struggle Against Environmental Injustices in the Peruvian Amazon’ (2024) 23(2) Journal of Latin American Geography 155 <<https://dx.doi.org/10.1353/lag.2024.a939023>>.

¹⁷ Teresa Vicente Giménez, Eduardo Salazar Ortuño, ‘An Ecological Citizenship’s Triumph: From the Popular Legislative Initiative to the Rights Granted for the Mar Menor’ in *Rights of Nature in Europe* (Routledge 2024) 83–101.

¹⁸ Craig M Kauffman, ‘Guardianship Arrangements in Rights of Nature Legal Provisions’ (UN Harmony with Nature 2020).

According to González,¹⁹ this development can be understood as the recognition of biocultural rights, wherein environmental governance is entrusted to Indigenous and local communities that possess longstanding ecological knowledge and cultural ties to the land and water. Nevertheless, there remains an ongoing debate concerning the effectiveness of recognizing the rights of nature. Symbolic recognition alone does not guarantee substantive outcomes. Critical questions persist about how court-ordered reparatory measures will be implemented – and especially, how they will be financed. Environmental law scholars, such as Michael Prieur and others,²⁰ have noted that such operational concerns are often overlooked in judicial rulings.

Importantly, the recognition of rivers as subjects of rights has not been confined to constitutional or supreme courts; it has also occurred through legislative acts or decisions by lower courts in cases that do not necessarily pertain to constitutional or environmental matters.

This paper focuses on the Ecuadorian study, but some international precedents are briefly described below to provide a comparative context within the chosen methodology.

In 2014, after extensive litigation, New Zealand enacted the Te Awa Tupua – Whanganui River Claims Settlement – Act²¹ which resolved long-standing disputes between the government and the Māori iwi tribe over the river's governance. The Act recognized the Whanganui River as a legal entity with its own rights and obligations, akin to those of a person. It established the office of Te Pou Tupua – the river's official guardian – comprising one representative appointed by the Crown and another by the Whanganui iwi. Their joint mandate is to represent the river's interests and safeguard its well-being.²²

Colombia drew international attention in 2017 when its Constitutional Court²³ declared the Atrato River a legal subject, placing its protection under the shared responsibility of the state and local communities. The ruling came in response to severe ecological degradation caused by illegal mining, deforestation, and pollution, which had led to biodiversity loss, water contamination, and ecosystem

¹⁹ Valentina González, 'Derechos bioculturales: Perspectiva filosófica' (2023) 5 *Naturaleza y sociedad Desafíos Medio Ambientales* 117–142 <<https://doi.org/10.53010/nys5.06>>.

²⁰ Michel Prieur, Christophe Bastin, Ali Mekouar, *Measuring the Effectivity of Environmental Law: Legal Indicators for Sustainable Development* (Peter Lang 2021).

²¹ Toni Collins, Shea Esterling, 'Fluid Personality: Indigenous Rights and the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 in Aotearoa New Zealand' (2019) 20 *Melbourne Journal of International Law* 197.

²² Catherine Iornes, 'Nature as an Ancestor: Two Examples of Legal Personality for Nature in New Zealand' (2015) *Vertigo* <<http://dx.doi.org/10.2139/ssrn.3532319>>.

²³ Corte Constitucional de Colombia, Sentencia T-622/16 (10 November 2016) [9.25].

collapse.²⁴ The court explicitly acknowledged biocultural rights, allowing communities to steward the river in accordance with their cultural practices while promoting environmental restoration.²⁵

More recently, in 2024, a Peruvian court recognized the Marañón River – one of the Amazon’s principal tributaries – as a rights-bearing entity. This river has suffered extensive pollution from oil spills, particularly from the Norperuano pipeline. The case²⁶ was notable for being initiated by the Kukama Indigenous people, especially women from the community. Although the court did not explicitly use the term ‘subject of rights’, it designated several institutional actors – including the Ministry of the Environment, the Ministry of Agrarian Development and Irrigation, the National Water Authority, the Regional Government of Loreto, and Indigenous organizations as guardians and legal representatives of the river and its tributaries.²⁷

IV. CASE STUDIES

1. AQUEPI RIVER (RURAL)

The case centered on the constitutionally and legally established priority of water use in Ecuador, which mandates the following hierarchy: first, human consumption; second, food sovereignty; third, ecological flow, and lastly, productive uses.²⁸

The dispute involved a river in a rural area that experienced a significant reduction in water flow after the National Water Authority – Autoridad Nacional del Agua, SENAGUA – authorized water uses for productive activities, neglecting the amount required to sustain the river’s ecological flow.²⁹

²⁴ Liliana Mosquera-Guerrero and Tobias Krueger, ‘Struggling for the Recognition of River Rights: A Case of Hydrosocial Territorialization of the Atrato River in Colombia’ (2024) 151 *Geoforum* 104000.

²⁵ *T-622/16* (C Corte Const, 10 November 2016) [9.25].

²⁶ Juzgado Mixto de Nauta I, *Expediente N.º 00010-2022-0-1901-JM-CI-01* (8 March 2024) <<https://img.lpderecho.pe/wp-content/uploads/2024/03/Expediente-00010-2022-0-1901-LPDerecho.pdf>>.

²⁷ Mariano Andrés Bustamante Jiménez, ‘Los Ríos como Titulares de Derechos en el Perú: A Propósito de la STC Exp. N.º 00010-2022-0-1901’ (2025) 18 *YachaQ: Revista de Derecho* 75. <<https://doi.org/10.51343/yq.vi18.1673>>.

²⁸ Mihnea Tănăsescu and others, ‘Rights of Nature and Rivers in Ecuador’s Constitutional Court’ (2024) *The International Journal of Human Rights*, 1–23 February 2024, doi:10.1080/13642987.2024.2314536.

²⁹ Andrés Martínez-Moscoso, ‘Caudal Ecológico y Derechos de la Naturaleza. Análisis del Caso del Río Aquepi No. 1185-20-JP’ (2024) 80 *Revista de Derecho Ambiental (RDAMB)* October – December.

The key facts of the case are: on 29 April 2015, residents of the Julio Moreno commune submitted a request to the National Water Authority to use the waters of the San Vicente River – a tributary of the Aquepi River – for domestic purposes. This request was approved, in line with the highest priority of water use: human consumption.

Subsequently, the provincial government of Santo Domingo requested authorization to divert water from the Aquepi River to support irrigation infrastructure for baby banana cultivation, an action that was of a production nature. This request was granted on 21 October 2015. Soon, after a noticeable decrease in the river's flow, it triggered concern among Julio Moreno residents.

Between 2018 and 2019, the community engaged in social protests, which failed to elicit a response from state authorities. On 2 October 2019, community members filed a constitutional protection action – *acción de protección* – a remedy established under the Ecuadorian Constitution to address violations of fundamental rights. However, their claim was initially denied.

The case was appealed and on 22 April 2020, a provincial court reversed the lower decision, holding that the National Water Authority had violated the community's right to legal certainty, particularly with respect to the absence of an environmental consultation. Nevertheless, the judge tasked with enforcing the ruling dismissed the case in October 2020.

On 6 April 2021, Ecuador's Constitutional Court selected the case for review,³⁰ citing its novelty – specifically, the relationship between the right to water and the duty to consult communities that are not formally recognized as Indigenous peoples or nationalities – and the need to evaluate potential impacts on the ecological flow of the Aquepi River.

The legal issue examined by the Court was whether the National Water Authority had failed to uphold the constitutional hierarchy of water uses when granting the permit for productive irrigation.

Ecuadorian legislation defines ecological flow as: '(...) the quantity of water, expressed in terms of magnitude, duration, season, and frequency of the specific flow, and water quality expressed in terms of range, frequency, and duration of the concentration of parameters required to maintain an adequate level of health in the ecosystem'.³¹

³⁰ Corte Constitucional del Ecuador, Sentencia No 1185-20-JP/21 (15 December 2021).

³¹ Ley Orgánica de Recursos Hídricos, Uso y Aprovechamiento del Agua (Asamblea Nacional del Ecuador, 6 August 2014) Art 76.

The Court emphasized that ecological flow: ‘(...) defines the morphology, biological diversity, and ecosystem processes of a river. An infrastructure project that affects the flow could break the connectivity between elements and biodiversity and violate the rights of Nature’.³²

In earlier rulings, the Constitutional Court had already established that: ‘(...) there is evidence to affirm that, in general, the diversion of the natural course of a water body could lead to adverse effects not only on the river but on everything that surrounds or depends on it’.³³

The Court held that any impact on ecological flow critically threatens ecosystem health, with direct consequences for nature, nearby communities, and other living beings. It reaffirmed that rivers perform vital ecological functions that sustain human life – such as in the case of the Julio Moreno community – along with the well-being of surrounding species and vegetation.

In its reasoning, the Court adopted an ecocentric approach, affirming that the Aquepi River possesses intrinsic value beyond its utilitarian contributions. It stated that while the Constitution of Ecuador recognizes nature as a subject of rights in general and abstract terms, jurisdictional recognition of specific natural entities, such as individual rivers, furthers the Constitution’s overarching goal: ‘(...) to build a new form of citizen coexistence, in diversity and harmony with nature’.³⁴

As a result, the Court formally recognized the Aquepi River as a subject of rights of nature, and declared that: ‘(...) its existence and the maintenance and regeneration of its life cycles, structure, functions, and evolutionary processes must be fully respected’.³⁵

It concluded that the National Water Authority violated the rights of the Aquepi River by failing to safeguard its ecological flow in accordance with constitutional and legal obligations.³⁶

2. MONJAS RIVER (URBAN)

The Monjas river case centered on the constitutional analysis of the rights of a healthy environment, safe habitat, water, sustainable development, city, nature,

³² Corte Constitucional del Ecuador, Sentencia No 1185-20-JP/21 (15 December 2021) [para 61].

³³ Corte Constitucional del Ecuador, Sentencia No 32-17-IN/21 (9 June 2021).

³⁴ Corte Constitucional del Ecuador, Sentencia No 1185-20-JP/21 (15 December 2021) [para 64].

³⁵ Corte Constitucional del Ecuador, Sentencia No 1185-20-JP/21 (15 December 2021) [para 57].

³⁶ Corte Constitucional del Ecuador, Sentencia No 1185-20-JP/21 (15 December 2021) [Decision].

and cultural heritage, analyzed in a jurisdictional guarantee that involved a private real estate.

The dispute involved a river in an urban area that experienced significant pollution and erosion of water after the Decentralized Autonomous Government of the Metropolitan District of Quito did not adequately manage the treatment of wastewater and stormwater that flows into the Monjas river basin.

The most important factual foundations are: 1) increased demand of basic public services, 2) unsound system for the waters treatment, 3) continued and unplanned population growth in the middle zone of the river, 4) accelerated erosion of the ravine and its surroundings, and 5) damage to a private property declared as cultural heritage due to the lack of water treatment infrastructure.³⁷

Otherwise, this case initiates with a protection action filed by Ann Arlene & Pamela Lilian Monge Froebelius, owners of the Hacienda Carcelén, against the Decentralized Autonomous Government of Metropolitan District of Quito, the Metropolitan Public Company for Drinking Water and Sanitization, Metropolitan Public Company for Mobility and Public Works, the Municipal Environment Secretariat, the Metropolitan Institute of the Municipality of Quito, and the General State Attorney, on 20 October 2020.³⁸

But the judge of the Traffic Judicial Unit rejected the jurisdictional guarantee, on 12 March 2021, also the petitioners appealed the decision and the Specialized Labour Chamber of the Provincial Court of Justice of Pichincha denied the recourse on 19 May 2021; on virtue of the judicial resolutions set out above, Ann Arlene & Pamela Monge Froebelius present an extraordinary protection action against the sentence on 17 June 2021, and the Admission Chamber of the Constitutional Court on 9 September admitted for processing.³⁹

During the development of the judicial process, on 5 October 2021, the mayor Santiago Guarderas Izquierdo declared the emergency state in the Monjas river basin and its adjacent area, due to the risks and potential impacts in the event of a hazardous event related to the progressive erosion of the upper edge of the ravine and its potential collapse of inhabited houses.⁴⁰

On the rights to a healthy environment and safe habitat, the sentence determined its individual and collective dimension. The first one foresees that while the plain-

³⁷ Corte Constitucional del Ecuador, Sentencia No 2167-21-EP/22 (19 January 2022) [paras 7–11].

³⁸ Corte Constitucional del Ecuador, Sentencia No 2167-21-EP/22 (19 January 2022) [para 1].

³⁹ Corte Constitucional del Ecuador, Sentencia No 2167-21-EP/22 (19 January 2022) [paras 2–5].

⁴⁰ Metropolitan Mayor's Office of Quito, Resolution No AQ 009-2021 (5 October 2021).

tiffs initially alleged damage to health, life, property, and housing, their central argument focuses on the exercise of the right to a healthy environment and the imminent risk facing the Hacienda Carcelén;⁴¹ and the second one established the importance to interpret the case in light of the rights to water, sustainable development and city, since consideration will broaden the understanding of the systemic implications arising from the specific case.⁴²

The Court found that the right to water was not respected in this case. It concluded that the discharge of contaminated water – despite undergoing treatment and exceeding permitted levels – into a water source violates water quality standards, rendering the water unsafe and unsuitable for uses such as irrigation or human consumption.⁴³

On the right of sustainable development, the Court determined that it is not consistent with a degraded environment, as the exploitation and use of water resources requires the water management to maintain a sufficient supply of good quality. Furthermore, uncontrolled discharges of wastewater and stormwater result in excessive exploitation of the river capacity, affecting its flow, and influencing the fulfillment of the rights to a healthy environment and water.⁴⁴

Finally, the sentence ruled the right of the city on the need to address issues such as marginalization, environmental risks and damage, provide the following dimensions: 1) fair distribution of resources to the population, 2) democratic management, 3) socioeconomic and cultural diversity, and 4) harmony with nature,⁴⁵ also this analysis on the specific case is involved by the uncontrolled physical expansion of the city, due to the lack of planning of the Municipality of Quito that generated serious damages for the urban environment and the ecosystem of the river.⁴⁶

V. DISCUSSION

1. ECOLOGICAL FLOW

The connection between ecological flow and the rights of nature lies in the recognition of rivers and other water bodies as living ecosystems, a conceptualization

⁴¹ Corte Constitucional del Ecuador, Sentencia No 2167-21-EP/22 (19 January 2022) [para 74].

⁴² Corte Constitucional del Ecuador, Sentencia No 2167-21-EP/22 (19 January 2022) [para 74].

⁴³ Corte Constitucional del Ecuador, Sentencia No 2167-21-EP/22 (19 January 2022) [para 87].

⁴⁴ Corte Constitucional del Ecuador, Sentencia No 2167-21-EP/22 (19 January 2022) [paras 95–97].

⁴⁵ Corte Constitucional del Ecuador, Sentencia No 2167-21-EP/22 (19 January 2022) [paras 101–103].

⁴⁶ Corte Constitucional del Ecuador, Sentencia No 2167-21-EP/22 (19 January 2022) [paras 7–11].

explicitly endorsed by the Constitutional Court. This perspective aligns with Ecuador's broader constitutional framework, which establishes a hierarchy of water uses: the highest priority is allocated to human consumption – drinking water, followed by water for food production and food sovereignty, and subsequently ecological flow, even above extractive or productive uses such as hydroelectric generation or industrial agriculture.

In its ruling on the Aquepi River, the Constitutional Court adopted a systemic approach, affirming that 'the Court's jurisprudence has valued the importance of each element of an ecosystem for its systemic significance'.⁴⁷

In an earlier decision, the Court further clarified that the ecological flow of a river determines its morphology, biological diversity, and ecosystemic processes. Any infrastructure project that alters the flow regime may disrupt the ecological connectivity and biodiversity of the river, thereby violating the rights of nature.⁴⁸

To assess whether a new water concession could be authorized, the State – through its Water Authority – was required to measure the ecological flow during both the rainy and dry seasons. Its failure to conduct such assessments constituted a violation of the Aquepi River's rights, as it did not ensure '(...) the conservation, restoration, and integrated management of water resources, nor did it prioritize the sustainability of ecosystems and human water consumption'.⁴⁹

2. RIGHTS OF THE CITY, HEALTHY ENVIRONMENT, RIGHT TO WATER, SUSTAINABLE DEVELOPMENT

The Constitutional Court of Ecuador in sentence No 2167-21-EP/22 recognizes that the rivers could be declared as legal subject as long as there is a direct impact on other fundamental rights, an argument that is expressed in the case of the Monjas River based on the violations caused to the right to the city, to a healthy environment, to water and to sustainable development, which are ascribed to the quality of natural persons.

Even in the present case, the Court does not recognize the Monjas River as a legal subject due to the direct violation of the right to nature, but it is based on violations related to degradation, pollution, alteration of the natural channel, loss of biodiversity, and/or soil erosion, despite constitutional level recognition, reasoning that it demonstrates the application of anthropocentric rather than biocentric theory.

⁴⁷ Corte Constitucional del Ecuador, Sentencia No 1185-20-JP/21 (December 15 2021) [paras 52].

⁴⁸ Corte Constitucional del Ecuador, Sentencia No 32-17-IN/21 (June 9 2021) [paras 61].

⁴⁹ Corte Constitucional del Ecuador, Sentencia No 1185-20-JP/21 (December 15 2021) [paras 82].

It is important to highlight that the recognition of a river as a legal subject grants it the capacity to be protected and legally represented, not only for its intrinsic value as an ecosystem but also for its fundamental role in sustaining human rights and sustainable development. This perspective implies a paradigm shift, where the river is not seen merely as a property or a resource to be exploited, but as a vital entity whose health is inseparable from the health of populations and the planet, a situation that is not conceived a priori in the present case.

However, the Court was right to analyze the rights related to the city, a healthy environment, water, and development, prior to recognizing the river as a subject of rights, since in this particular case, the lack of water infrastructure for the treatment of wastewater and stormwater is evident, which guarantees people's right to health in the face of the State's obligation to provide quality basic public services.

3. REPARATION MEASURES

An effective way to assess the impact of constitutional court rulings regarding the recognition of rivers as legal entities or subjects of rights is not limited to the mere declaratory nature of such recognition. Rather, effectiveness must be evaluated in terms of the remedial measures ordered by the judiciary with the purpose of restoring or repairing the affected ecosystems.

In the case of the Aquepi River, the central legal dispute concerned the allocation of water resources and their impact on ecological flow. As a result, the court mandated the establishment of a Water Protection Area in the river's upper basin. This conservation mechanism is recognized under Ecuadorian environmental law as a tool for safeguarding the hydrological and ecological integrity of strategic water sources. The Ecuadorian State complied with this judicial directive in December 2022.

In contrast, the case concerning the Monjas River involved broader and more complex remedial actions. The Constitutional Court ordered two principal measures for ecosystem restoration. First, it required the physical recovery of the river basin and designated risk zones through the construction of gray infrastructure – traditional civil engineering interventions such as retaining walls, stormwater collectors, and drainage systems. Second, the Court compelled the Metropolitan District of Quito to adopt a local ordinance, known as the 'Green and Blue' regulation. This ordinance mandated the application of Nature-Based Solutions and established a framework for the integrated management of the municipality's green and blue infrastructure. It aimed to promote biodiversity conservation,

disaster risk reduction, climate resilience, and the protection and sustainable use of ecosystem services related to public health, recreation, and local economies. The municipal government implemented these measures in 2023.

VII. CONCLUSIONS

One of the key questions that emerges from the case study analysis presented in this article is whether the rights of nature are exportable – that is, whether this legal paradigm can be effectively adopted in other jurisdictions. The answer is necessarily nuanced: the transposition of rights of nature frameworks to other national contexts depends on a range of legal, institutional, cultural, and political variables. As the Ecuadorian cases demonstrate, this model did not arise in a vacuum. Rather, it emerged as a response to persistent institutional weaknesses in environmental adjudication dating back to the 1980s. Ecuador's constitutional recognition of nature as a subject of rights was catalyzed by broader ideological and legal transformations, including the adoption of eco-socialist principles and the influence of the New Latin American Constitutionalism. These developments reframed nature not merely as an object of regulation, but as a rights-bearing subject – both as a tool for ecological conservation and as a counter-hegemonic political project embedded in constitutional reform.

Moreover, the cases analyzed suggest that the recognition of nature's rights in Ecuador, while groundbreaking, is often conditioned upon its interrelation with human rights. For example, in the Río Monjas case, rivers, as subjects of rights, can protect their interests, provided an interested party files a jurisdictional guarantee. However, the status of a legal subject is recognized conceptually through the protection of rights intrinsically linked to the well-being and protection of natural persons. This means that a violation of an individual's recognized rights is typically required for that individual, through jurisprudential precedent, to attain this category.

A similar dynamic was evident in the Aquepi River case, where a local community filed suit over harms linked to the reduction of ecological flow. The Court's response recognized both the ecological integrity of the river and the human rights implications of its degradation. These cases collectively highlight a central feature of Ecuadorian jurisprudence: while the rights of nature enjoy constitutional standing, their enforceability often hinges on the demonstrable impact of environmental harm on human communities.

Although Ecuador's constitutional recognition of nature as a subject of law adopts an ecocentric perspective, the cases analyzed reveal ongoing debate not only about the intrinsic value of ecosystems but also about their connection to the infringement of other rights. What citizens tend to value most about this new legal paradigm is the availability of effective remedies, such as the enactment of new regulations, the designation of protected areas, and the implementation of infrastructure projects, as illustrated by the cases examined. However, the major challenge lies in ensuring that judicial decisions are both sustainable and economically feasible; otherwise, they risk remaining symbolic declarations without tangible impact.

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