The Constitution of the Republic of Ecuador: *Pachamama* Has Rights

María Valeria Berros

Summary

The question of whether nature has rights has been debated in law and environmental and animal ethics for several years. In 2008, the rights of *Pachamama*, or nature, were recognized in the constitution of Ecuador—the first national constitution in history to officially recognize such rights. This constitutional recognition has generated a series of new arguments and legal tools in the context of Andean worldviews. At the same time, different challenges and research topics have been identified and have prompted an important dialogue between the juridical and other academic fields.

Nature has recently been recognized as a subject rather than an object of rights in some Latin American countries. This is the case in Bolivia, on a legal level, and in Ecuador, on a constitutional level. This kind of recognition is relevant because, after decades of juridical, legal, and ethical debates about whether rights should be extended beyond human beings, today it is, at last, a reality. Although discussions about the juridical and moral status of nature, animals, plants, and inanimate aspects of nature are not yet over, this new legal system acknowledges that nature, known as *Pachamama* in the Quichua and Aimara indigenous languages, has rights.

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The reforms in Bolivia and Ecuador could be also understood as a regional process that emphasizes the recognition of human, environmental, and indigenous rights. Many countries in the region have recognized these rights in different ways since the late twentieth century. In the case of Ecuador, the seventh chapter of its new constitution is entitled "Rights of Nature." This document establishes *Pachamama* as a legal entity for the first time in history, stipulating the right to an integral respect for nature's existence and for the maintenance and regeneration of its life cycles, structures, functions, evolutionary processes, and restoration. The new constitution was approved in 2008 after a referendum, with nearly 64 percent of votes in its favor. At present, the Ecuadorian constitution is the only one in the world where this kind of recognition exists.

This is the expression of an alternative way of living: the *sumak kawsay* (in English "good way of living", in Spanish "buen vivir"), an expression that comes from the Quichua language and demonstrates the important role in these reforms, alongside other actors (e.g., feminist, socialist, and ecological movements), of indigenous peoples. The *sumak kawsay* is presented as a re-foundation for Ecuador and, in this sense, is included in the constitutional preamble: "We hereby decide to build a new form of public coexistence, in diversity and in harmony with nature, to achieve the good way of living, the *sumak kawsay* ..."

This reform challenges older paradigms of progress and development, and puts the idea of harmony with *Pachamama* on center stage. *Pachamama* is no longer seen as a set of natural resources to be exploited or as a chain of natural elements that comprise the environment and must be protected. The debate goes beyond this,

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and it intends to establish new ways of thought and living with a claim that nature has its own rights.



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The actual implementation of nature's rights is now the challenge. Many conflicts have taken place in the last years due to political decisions regarding the protection of *Pachamama*. The most remarkable one is the Yasuní-ITT Initiative, a creative and innovative way proposed to avoid the exploitation of an oil reserve in the Ecuadorian Amazon. The use of a classic legal tool from contractual law—the trust fund—was proposed. Applying the co-responsibility principle to global ecological problems, the international community was called upon to contribute approximately 3.5 billion US dollars, roughly half of the revenue that the oil reserve would have generated for the country. However, on 26 August 2013, Ecuador decided to end the project due to insufficient and declining contributions. This decision made an important conflict visible, especially with environmental Ecuadorian organizations, as well as the tensions present in a country where constitution protects not only human rights, but also nature's rights.

Different social actors have started to use these new legal tools, for example argumenting in judicial claims. This opens an important space for research in the juridical field. For instance, it is necessary to reconstruct and analyze the first applications of these new legal tools and to identify new kinds of institutions that will make this recognition real. What are the different fields of knowledge needed to construct the new institutions (such as the Buen Vivir secretary and a planned "nature court" for the Galápagos) stated in the rights of *Pachamama*? Is it possible to study these topics from a legal perspective or is it necessary to initiate a dialogue with other fields, particularly ancestral and local knowledge?

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Further readings:

- Berros, María Valeria. "El estatuto jurídico de la naturaleza en debate (*meulen* en el mundo del derecho)." *Revista de Derecho Ambiental*, no. 36 (2013).
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- Stone, Christopher D. "Should Trees Have Standing? Toward Legal Rights for Natural Objects." *Southern California Law Review* 45 (January 1, 1972): 450.

Related links:

- The Ecuadorian Buen Vivir Secretary
  http://www.secretariabuenvivir.gob.ec/
- The Ecuadorian Department of the Environment
  http://www.ambiente.gob.ec/

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- http://www.endangeredlanguages.com/lang/10851
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María Valeria Berros is a professor and researcher at the National University of Littoral and the National Council of Scientific and Technical Research in Santa Fe, Argentina. She completed her doctoral degree in Law focusing on Sociology of Law at the National University of Littoral. Her work deals with the intersection between environmental law, sociology of risk, and social sciences studies, and she has researched at the Sorbonne University, the School for Advanced Studies in Social Sciences in Paris, the Limoges University, and the Nantes University during the last years in different types of research projects. Currently she is a fellow at the Rachel Carson Center for Environment and Society. Her current research focuses on matters concerning law, environmental ethics, and social movements in Latin America. She analyzes the processes by which non-anthropocentric ethics are incorporated into the legal field in different countries in Latin America.

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