



## Between Regulations and Realities: The Challenge of Protecting the Rights of Nature in the Montañita Community

Andrés Alejandro Zuleta Araque <sup>1\*</sup>, Pedro Álvarez Betancourt <sup>2</sup>, Wendy Wasbrum Tinoco <sup>3</sup>, Wilfrido Wasbrum Tinoco <sup>4</sup>

<sup>1</sup> Especialista Superior y Máster en Derecho Procesal. Abogado, Docente ocasional de la carrera de derecho de la Universidad Categoría. Universidad Estatal Península de Santa Elena, South America

<sup>2</sup> Magíster en Derecho con Mención en Derecho Procesal, Categoría, Investigador Independiente, South America

<sup>3</sup> Docente titular agregado 1 de la Universidad de Fuerzas Armadas, Categoría. Universidad Estatal Península de Santa Elena, South America

<sup>4</sup> Magister en Derecho Penal, Docente de Derecho penal, Categoría: Universidad Península de Santa, South America

\* Corresponding Author: **Andrés Alejandro Zuleta Araque**

---

### Article Info

**ISSN (online):** 2582-7138

**Volume:** 06

**Issue:** 02

**March-April 2025**

**Received:** 15-02-2025

**Accepted:** 09-03-2025

**Page No:** 988-992

### Abstract

This research focuses on evaluating the responsibility of the Ecuadorian State for the contamination of the Chicharrón estuary in Montañita, seeking to identify a legal mechanism for a comprehensive reparation that respects the rights of nature. The lack of effective implementation of constitutional regulations for environmental protection is highlighted. The methodology combines socio-legal approaches, interviews, direct observation and documentary analysis to understand the legal and social situation. The results of the interviews highlight the economic pressure and limitations in the enforcement of environmental laws. They point out the need to strengthen legal mechanisms, resources and citizen participation to protect the rights of nature. The conclusions highlight the paradigm shift in considering nature as a subject of rights, seeking to balance environmental protection with human needs. Recommendations include constitutional amendments, specific laws, incentives for sustainable practices, and promotion of citizen participation and environmental education to improve the protection of the rights of nature in Ecuador.

**Keywords:** Normative, environment, rights and protection

---

### Introduction

The Montañita commune exemplifies the contradiction between tourism development and environmental safety. Even though the Chicharrón Estuary is characterized by its exuberant natural beauty and biological diversity, it has unfortunately become the victim of severe pollution resulting from a lack of appropriate wastewater management systems and the unplanned expansion of tourist and residential infrastructure. Scientific research, like that of Jaén Sánchez (2016), has documented a high level of fecal contamination in the estuary, a situation made even worse by malfunctioning water treatment systems, which are, according to an analysis by Marcatoma Brito (2018), working below their nominal capacity. This is indeed a lurking threat to biodiversity, public health, as well as the socio-economic fabric of the territory. In the face of this panorama, the fundamental legal question to be answered is: How does state responsibility manifest in the context of the constitutional rights of nature and the precepts dictated by article 72 of the Constitution of the Republic of Ecuador? Is there correspondence between normative theory and governmental praxis in terms of the protection and restoration of damaged ecosystems in tourist-sensitive places such as Montañita? The state inactivity or the illustrated utter dissonance between constitutional mandates and practical implementations to remedy environmental degradation put the effectiveness of the current legal structure to the test. Ruling No. 2167-21-EP/22 indicates the legal personification of nature, even though it is still ambiguous how the practical application of this principle works on concrete cases like the ongoing deterioration of the Chicharrón estuary.

In this sense, the challenge lies in unraveling the legal and constitutional implications inherent to state intervention, or lack thereof, in the mitigation and repair of environmental damage. A meticulous analysis is required to determine the aptitude of the state entities to respond as legitimate passive parties in an eventual action of protection and to evaluate the suitability of such a legal mechanism to establish an effective and timely process of integral reparation.

The research will be oriented to decipher these complexities, examining the legal mechanisms, current jurisprudence and the applicability of protective actions in specific contexts, where the environmental and social reality collides with the regulations and constitutional principles.

The ambition is to provide a comprehensive analysis that not only diagnoses the existing shortcomings and challenges but also proposes viable and effective legal solutions, thus safeguarding the rights of nature and the integrity of the community of Montañita

Based on this information, the following question is posed to what extent is the Ecuadorian State responsible, from a constitutional dimension, for its inaction in the face of the persistent contamination of the Chicharrón estuary in the Montañita community, and what would be the appropriate measures in time and space to guarantee the effective protection of the rights of nature and the consequent integral reparation of the affected ecosystem?

The importance of this work is based on the fact that Chicharrón estuary, located in the Montañita commune, besides its beauty and aesthetic aspect, represents an extremely important ecosystem that is crucial to local biodiversity and the surrounding community. Its degradation, revealed through pollution and hazardous wastewater management, threatens not just marine and terrestrial biodiversity; it also puts the health, economy, and well-being of Montañita's inhabitants and visitors in jeopardy.

The Constitution of the Republic of Ecuador has, in a progressive and comprehensive way, recognized nature as a subject of rights. This recognition implies a series of obligations on the part of the state to guarantee that the ecosystems and natural environments are protected, conserved, and, when necessary, restored. But constitutionally recognized rights hardly ensure their real enforcement. The continued pollution of the Chicharrón estuary hints at a mismatch between regulations and praxis, inviting an investigation into and determination of state responsibility to this situation.

While unique, Montañita's case is by no means an isolated one. Across the globe, numerous ecosystems face like crises, reminding us of the urgency and significance of pro-active and systematic appreciation of these concerns. Our investigation into and determination of the responsibility of the State in Montañita is aimed not merely to do justice and offer reparations to this ecosystem as such but also to provide a precedent and a framework for action that can be emulated in other similar contexts.

In addition, identifying the appropriate mechanism to ensure comprehensive remediation is essential. Nature, once damaged, cannot always be restored to its original state, but through effective actions, damage can be mitigated and recovery promoted. In determining such a mechanism, this research seeks to provide a roadmap to guide future actions, not only in Montañita but anywhere else where the rights of nature may be at risk.

Finally, this research has an ethical and moral dimension. In

a world increasingly aware of environmental challenges, it is imperative that societies and governments act with responsibility and commitment. Determining the responsibility of the State in the case of Montañita is a step towards affirming that commitment and towards building a sustainable and just future for all.

The general objective of the research is to evaluate and determine the responsibility of the Ecuadorian State in relation to the contamination and deterioration of the Chicharrón estuary in the community of Montañita, in order to identify the appropriate legal mechanism to ensure a comprehensive and effective repair of the damage caused, respecting and protecting the rights of nature enshrined in the Constitution. This assessment will seek to provide a framework for action to restore and preserve the ecosystem, benefiting both local biodiversity and the welfare and sustainable development of the community of Montañita.

The specific objectives are to examine and understand in depth the Ecuadorian legal and constitutional framework in relation to the rights of nature, and how these rights are articulated in legal practice and in relevant judicial decisions, identify and evaluate the actions and omissions of the State related to the Montañita problem, determining potential responsible entities or actors and suggesting the most appropriate legal mechanism to achieve comprehensive reparation of the damage, considering restoration, compensation and prevention strategies.

## Methodology

### Research design

The research problem is empirical, since it is intended to analyze and understand an observable and measurable reality, such as the State's inaction in the face of the contamination of the Chicharrón estuary and its legal and constitutional consequences.

The type of research to be socio-legal, this modality allows an approach to the problem from a perspective that not only addresses the rules and regulations, but also the social, economic and cultural context in which they are inserted. The contamination of the Chicharrón estuary not only has legal implications, but also real impacts on the community and the environment of Montañita.

A detailed description will be made of the context in which the Montañita commune is located, the characteristics of the Chicharrón estuary and the general problem of contamination. The norms, laws and jurisprudence applicable to the case will be interpreted, identifying possible legal gaps, contradictions or areas for improvement in the current legislation and public policies. Based on the analysis carried out, suitable measures are proposed to guarantee the protection of the rights of nature in the Montañita community, considering both legal measures and socio-legal strategies involving the community and other stakeholders.

The research techniques and instruments applied to analyze the problems occurring in the Chicharrón estuary and affected areas were as follows:

Interviews: structured and semi-structured interviews will be conducted with key stakeholders.

Direct observation: visits to the Chicharrón estuary and affected areas to obtain a direct perception of the problem. Site visits, interviews with local inhabitants, public officials and environmental law experts, as well as the collection of quantitative data on pollution levels, measures adopted and their effectiveness.

Official documents, regulations, sentences and any other type of document relevant to the case were reviewed. The collection and analysis of primary sources (norms, laws, regulations, sentences) and secondary sources (articles, books, reports, previous studies) related to the problems and rights of nature in Ecuador will be carried out.

With this methodology, the research will comprehensively address the legal problem posed, combining quantitative and

qualitative techniques to obtain a complete picture and provide informed and effective solutions.

## Results

A comparative analysis of a group of judgments that are focused on the rights of nature is carried out, in order to analyze them effectively and present an empirical reference of this research.

**Table 1:** Summary of rulings on the rights of Nature

Sentence	Scope of the Judgment	Area or Type	Conclusions of the Judgment
Ruling 2167-21-EP/22	Violation of the rights of the Monjas River	Protective Action	Identification of the Monjas River as a subject of natural rights. Acceptance of the protection action. Recognition of rights to the Monjas River. Integral reparation measures for the plaintiffs and the river, including restoration and preservation.
Ruling 253-20-JH/22	Violation of nature's rights due to death of Mona Estrellita	Useful effect clause	Prioritization of interpretations that guarantee practical effects and usefulness to the rights of nature. Importance of jurisdictional actions to guarantee effective applicability.
Ruling 218-15-SEP-CC	Violation due to illegal exploitation of stone material	Integral respect for the rights of nature	Declaration of violation. Acceptance of the protection action. Comprehensive remediation measures: restoration, conservation of vital cycles, imposition of sanctions for compliance with environmental regulations.
Ruling 22-18-IN/21	Unconstitutionality of regulations Organic Code of the Environment	Activities in mangrove ecosystems	Selective permits for mangrove activities; prohibition of monoculture. Emphasizes diversity and reforestation as strategies to preserve and regenerate ecosystems.
Ruling 1185-20-JP/21	Ownership of rights to the Aquepi River	Recognition of Aquepi river rights	Recognition of rivers as rights holders. Integral protection of life cycles, structure, functions and evolutionary processes. Importance of the river for biotic communities. Emphasis on protecting and regenerating ecosystems for environmental balance.

**Prepared by:** The author

Ruling 2167-21-EP/22 concerns the rights of nature violations in combination with those led by the Monjas River in Quito. The owners of an adjacent hacienda have submitted a protective action, claiming the increased flow with polluted water and erosion of the riverbed is an affront to their right to a healthy environment. The lawsuit was previously dismissed by the courts, which led to the extraordinary action for protection to be filed based on the claims regarding due process violations and justification of the ruling.

The relevant criterion establishes the identification of an element of nature as a subject in order to provide for its reparation. The Court held that, when recognizing the violation of the rights of a natural element, that natural subject must be specifically identified, considering aspects such as identity, location, context, life cycle and evolutionary functions. In this case, the Monjas River was identified as a subject of natural rights.

The final decision was to accept the extraordinary protection action, recognizing the Monjas River as a subject of rights and holder of the rights recognized to nature. In addition, comprehensive reparation measures were ordered both for the plaintiffs and for the Monjas River itself.

Comprehensive remediation measures could include actions to restore the river, control pollution, preserve its environment, and possibly involve local authorities to take concrete measures to ensure the protection and preservation of the river as a subject of legally recognized natural rights. Judgment 253-20-JH/22 addresses a violation of the rights of nature concerning the death of a monkey called "Mona Estrellita". The criterion that applies is the useful-effect clause concerning the rights of nature.

This clause means that when interpreting and applying provisions, constitutional values, principles, rights, and guarantees, the interpretation should give them priority to

those that would give meaning and practical effects and usefulness, otherwise negative interpretations could render ineffective, useless, or practically not applicable any of the constitutional provisions.

The Constitutional Court, in its recent binding jurisprudence on the rights of nature, has recognized this clause by allowing the jurisdictional guarantee of a protective action to secure the rights of the Los Cedros forest and the Aquepi and Las Monjas rivers in cases such as No. 1149-19-JP/21, 1185-20-JP/21 and 2167-21-EP/21.

This jurisprudential approach highlights the importance of interpreting the rights of nature in a way that not only recognizes these rights, but also guarantees their practical and effective applicability through jurisdictional actions, trying to prevent the constitutional provisions in this area from being merely symbolic or inapplicable in reality.

Ruling 218-15-SEP-CC deals with violations of Nature's Rights because of the alleged illegal extraction of rock material by two people, who opened an administrative process due to the missing permits. The regional coordinator filed for an extraordinary protective action when the conventional protective action was presented, following some pre-trial measures for the violation of the rights to legal security and work against them. He alleged the violation of Rights of Nature and legal security.

The relevant criterion emphasizes that the integral respect for the rights of nature implies the maintenance and regeneration to protect the vital cycles, structure, functions and evolutionary processes. It is noted that Article 71 of the Constitution highlights the integral respect for the existence of the pacha mama, within which are rights such as maintenance and regeneration, which involve complex aspects related to the life cycles, structure and evolutionary processes of nature. It also highlights the importance of how

the relationship between nature and society is addressed as a category of analysis for environmental issues.

The final decision of the Court was to declare the violation of the rights of nature, to accept the extraordinary action for protection and to order integral reparation measures.

These comprehensive remediation measures could include actions such as the restoration of the area affected by the illegal exploitation, the implementation of measures for the regeneration and conservation of the affected natural life cycles, as well as the imposition of sanctions or specific corrective measures to ensure compliance with environmental regulations and protect the rights of nature in the future.

The case of Ruling 22-18-IN/21 focuses on the unconstitutionality of certain provisions of the Organic Environmental Code and its regulations. The criterion of relevance deals with whether all production activities are prohibited in the mangrove ecosystems.

The Court decides that the rights of nature of the mangrove ecosystems do require protection, but they are not absolute; therefore, productive activities that do not have a negative impact on the ecosystem are available. However, monoculture is underscored as an activity which it should never be accomplished in the mangrove ecosystems.

This argument is based on the premise that monoculture may cause the erosion of the soil and desertification, resulting in accelerated degradation of the mangroves. Such a case makes provision for a diversity of plant and animal species, which covers and guarantees the effective regeneration of mangroves. On the other hand, monoculture generates an imbalance that, in the end, could lead to the total annihilation of the ecosystem.

Therefore, the ruling establishes that, although certain productive activities are allowed in mangrove ecosystems, monoculture is not one of them due to its negative impacts on biodiversity and ecosystem health, promoting instead reforestation with a variety of species as a more appropriate strategy to preserve and regenerate these natural ecosystems. Judgment 1185-20-JP/21 recognizes and declares the ownership of rights of nature to the Aquepi River, and points out the violation of these rights by the State. The relevant criterion focuses on determining whether the rivers are holders of rights of nature, and the Court clearly states that the rivers have rights in accordance with the Constitution.

It is established that nature as a whole and its systemic components that allow the existence, maintenance and regeneration of life cycles, structure and evolutionary processes are recognized and protected by the Constitution. The river is identified as part of a larger ecosystem, such as a watershed, performing vital functions for human life, other species and vegetation. The Court recognizes multiple ecosystemic functions of the river, such as water provision, self-purification, flood and drought control, and maintenance of wildlife habitats, among others.

It is emphasized that the affectation of a river can have repercussions on an entire ecosystem due to its connections, thus underscoring the importance of valuing the river for what it contributes to the life of biotic communities, including the human species. Therefore, it is established that the Aquepi River and its ecosystem have rights that must be respected integrally to ensure the maintenance and regeneration of its vital cycles, structure, functions and evolutionary processes. This ruling sets a precedent by explicitly recognizing the rights of nature, in this case, granting rights to the Aquepi

River and its ecosystem, emphasizing its importance and the need to fully protect its existence in order to preserve ecosystems and environmental balance.

### Results of the applied interview

**Question 1:** Could you mention some of the legal regulations that apply in the Montañita Commune to protect the rights of nature?

In Ecuador, the 2008 Constitution constitutionally recognizes the rights of nature, which has been translated into specific laws that seek to protect ecosystems and their biodiversity. For example, the Organic Law of the Environment establishes measures for the conservation and sustainable use of natural resources, while the Law of Forests and Conservation of Natural Areas and Wildlife regulates the protection of forests and natural areas.

**Question 2:** How does the community address the challenges that impede the effective implementation of these regulations?

The community has been working on environmental awareness and education to increase awareness of the importance of protecting nature. However, it faces obstacles such as economic pressure from activities like logging or urban expansion that threaten local ecosystems. In addition, the capacity of local authorities to enforce these laws is sometimes limited due to insufficient resources or lack of training.

**Question 3:** From a legal perspective, how could the protection of the rights of nature in the Comuna Montañita be improved?

One possible avenue would be to strengthen legal mechanisms and institutional structures at the local level. This could include training for law enforcement officials, allocation of adequate resources to implement conservation programs, and promoting citizen participation in environmental decision-making. In addition, it would be important to establish monitoring and follow-up systems to evaluate compliance with these regulations and their impact on nature protection.

### General analysis of the interview

The analysis shows that in the Comuna Montañita, Ecuador, legal regulations, including the 2008 Constitution, recognize the rights of nature. But the effective enforcement of these laws is confronted with challenges, due to economic pressures like logging and urban expansion. The community, while being aware of this, suffers from the limited capacity of the local authorities and the insufficient resources to promote compliance from their end. From a legal perspective, it is suggested to introduce legal enhancements, train officials, allocate resources to conserve programs, encourage public participation, and put in place monitoring systems in order to step up nature protection.

### General analysis of regulations that consider the law of nature

The responsibility of the Ecuadorian State for the persistent contamination of the Chicharrón estuary in the community of Montañita can be analyzed from a constitutional perspective, especially within the framework of the recognition of the rights of nature in the Constitution of Ecuador.

First, the 2008 Ecuadorian Constitution establishes rights for nature, recognizing it as a subject of rights, which implies the State's obligation to protect, conserve and restore ecosystems.



The continuing pollution of the Chicharrón estuary, compounded by the inactivity of the State, could infringe upon these rights of nature. Legal norms underpinning these measures are provided for in the Ecuadorian Constitution, especially in Article 71, which recognizes the rights of nature. Besides that, other environmental laws and regulations in Ecuador, such as the Organic Law of the Environment, would also contribute support by virtue of their guidelines for environmental protection and the responsibility of the State in conserving ecosystems.

The problem presented with the Chicharrón estuary in the Montañita community, and considering the rights of nature recognized in the Constitution of the Republic of Ecuador, as well as related national and international regulations, it is possible to identify different laws and treaties that support the protection of ecosystems and environmental rights

## Conclusions and Discussion

### Discussion

The judgments highlight the importance of the State's responsibility to protect the rights of nature. However, it must be determined to what extent the State is fulfilling this responsibility and the existence of gaps or deficiencies in government policies to guarantee these rights, so it is necessary to determine additional actions that could be taken by the State to improve the protection of nature, especially in areas where violations have been identified.

Jurisprudence on rights of nature often meets human rights, such as the right to a healthy environment, to work, to legal security, among others. It is therefore necessary to balance the protection of the rights of nature with human needs and rights.

Judgments recognize the rights of nature, but their effective and practical implementation can be a challenge. This is why these legal recognitions can be translated into concrete and effective actions to protect and preserve ecosystems and thus propose strategies or mechanisms that could facilitate a better implementation of these legal decisions.

### Conclusions

Some constitutions across the globe and resolutions of the United Nations General Assembly articulate the rights of nature. Granting recognition to such ideas involves making a shift by expansion in legal thinking that artificially broadens the notion of subjects of right beyond mere human beings to nature itself.

Rights of nature constitutional enactments imply the granting of certain rights of its own by treating it as a subject of rights. This alluded to subject is different from the anthropocentric framework that traditionally acknowledges human beings alone as relevant subjects of rights.

Jurisprudential and legislative escalation in a good number of several states and supported by United Nations General Assembly resolutions give credence to that nature can be a subject of rights. This perspective oriented toward legal protection of ecosystems and natural elements themselves acknowledged them as having intrinsic value above and beyond their usefulness for humanity.

Recognizing nature as a bearer of rights emerges from caring for given ecosystems and the urgent demands of more mutual coexistence between humanity and nature therein. The road to ecological transition thus comes with certain considerations with respect to the rights nature is entitled to possess, which must therefore be respected and legally

protected, conceivably to uphold its integrity while acknowledging its functioning. Such a step potentially allows for sustainability in the ways of human stakeholder activities and political decision-making by advocating for the conservation and respect for natural systems.

It is proposed herein that in order the Ecuadorian regulation should be improve, rights of nature should be considered and some legislation actions should be implemented, namely: Would it be possible for the Constitution to be amended so that rights of nature could be explicitly enshrined, protected, and acknowledged in law?

The drafting of specific codes and legislation with nice details regarding the rights of nature would also be desirable to establish the human activity limits and promote practices of a sustainable nature. It is to put in place incentives attached to an economic gain for a company or person acting in an environmentally friendly manner and a penalty for others who violate rights of nature.

That is to encourage citizen participation into the environmental policy, and letting local communities, experts take part into policies and decisions that involves nature-making. There is a call for promoting early environmental education, and awareness program to highlight the importance of the rights of nature, and responsibility of nature protection.

### References

1. Acosta A. *El Buen Vivir: Sumak Kawsay, una utopía realizable*. Barcelona: Icaria Editorial; 2011.
2. Acosta A. The rights of nature: an approach from political philosophy. *Journal of Environmental Law and Sustainability*. 2010;1(1):1–28.
3. National Assembly of Ecuador. *Political Constitution of Ecuador*. Quito: National Assembly; 2008.
4. Ministry of Environment. *Organic Environmental Code*. Quito: Ministry of Environment of Ecuador; 2018.
5. Muñoz J. *The rights of nature in international law*. Valencia: Editorial Tirant lo Blanch; 2022.
6. Muñoz J. The rights of nature in international law: a critical analysis. *Journal of Environmental Law and Sustainability*. 2022;12(1):1–32.
7. Principe P. *Rights of Nature: A new legal theory for the planet*. Buenos Aires: Editorial Jurídica Cono Sur; 2017.
8. Principe P. The rights of nature: a new legal theory for the planet. *Journal of Environmental Law and Sustainability*. 2015;6(1):1–32.
9. United Nations. *UN Declaration of the Rights of Nature*. New York: United Nations; 2008.