ARTICLE

How Ecuador’s Courts Are Giving Form and Force to Rights of Nature Norms

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Abstract
In 2008, Ecuador recognized rights of nature (RoN) in its Constitution. Since then, RoN have been relied upon in judicial decisions 55 times in Ecuador. Following years of ad hoc treatment of RoN by Ecuador’s government and courts, its Constitutional Court selected various cases to establish binding jurisprudence in respect of RoN. In doing so, the Constitutional Court and various provincial courts in Ecuador have clarified the content of RoN, including specific criteria for determining RoN violations and the relationship between RoN and other constitutional rights, including community and economic rights related to development. Moreover, the courts are imposing sanctions on RoN violators, including the state and powerful commercial sectors. This article shows how Ecuadorian court decisions are changing RoN from a vague, abstract concept into a set of specific standards for how to balance RoN with various human rights and existing environmental law in order to implement sustainable development in an integrated and holistic manner that does not sacrifice ecosystem functioning. In doing so, the article contributes to the emerging literature on how new environmental law norms are constructed as they are put into practice, as well as the important role that judges play as norm entrepreneurs.

Keywords: Rights of Nature, Ecuador, Sustainable development, Norm development, Judicial action

1. INTRODUCTION
In 2008, Ecuador adopted a new Constitution, recognizing rights of nature (RoN). Since then, RoN have been invoked at least 55 times in case law;¹ half of these 55 RoN lawsuits occurred between 2019 and February 2022.² One explanation for this

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² All data regarding the number of RoN cases is sourced from an original dataset of RoN legal provisions worldwide compiled by the authors through a project funded by the Rockefeller Brothers Fund, available at: https://ecojurisprudence.org.
may be that Ecuador installed a new Constitutional Court in 2019, which is widely considered to be more independent and professional. Following years of ad hoc treatment of RoN in the Ecuadorian court system, legislature, and executive branch, this Constitutional Court selected a number of cases to establish binding jurisprudence regarding RoN, clarifying aspects of RoN, and clarifying their relationship with other constitutional rights. This marks not only a milestone in the evolution of RoN at the domestic level, but also internationally.

In this article we show how Ecuadorian court decisions are changing RoN from a vague, abstract concept to one that is more specific and concrete. In particular, courts are evolving a set of specific standards for balancing RoN with various human rights and existing environmental law in order to implement sustainable development in an integrated and holistic manner that does not sacrifice ecosystem functioning. Ecuador’s courts, and particularly its Constitutional Court, are giving form and force to RoN by (i) clarifying what RoN are and how they should be applied in specific contexts; (ii) establishing the relationship between RoN and other constitutional rights, thereby clarifying a hierarchy of rights; (iii) specifying what constitutes a violation of RoN; (iv) spelling out specific procedures through which the Ecuadorian government and citizens must protect RoN; and (v) specifying and enforcing the sanctions for failing to do so. We demonstrate this by analyzing seven recent cases involving RoN – two provincial court rulings and five Constitutional Court rulings – which are transforming how sustainable development must be conceptualized and practised in Ecuador.

The article draws on an original dataset of RoN legal provisions worldwide that we created with funding from the Rockefeller Brothers Fund. At the time of writing, the dataset included 55 RoN cases (lawsuits) in Ecuador, as well as 14 additional statutory laws, regulatory policies and declarations invoking RoN. For this article, we analyzed the content of court rulings related to all 55 RoN cases and traced the evolution and strengthening of RoN jurisprudence within Ecuadorian courts between 2009 and 2022. Because of space considerations, we focus our analysis below on recent decisions by the Constitutional Court and several provincial courts, which add content to RoN and, in some cases, establish binding jurisprudence. Our analysis is based on the text of these decisions and context informed by 12 years of fieldwork on RoN in Ecuador and interviews on the cases below with Constitutional Court judges, attorneys and activists from May to September 2022. Building on a diverse array of RoN scholarship, this article frames the Ecuadorian provincial and Constitutional Court cases as important and unique advancements, enabled by the fact that Ecuador is the only country that has RoN enshrined at the constitutional level.
This article also responds to criticisms in the literature of Ecuador’s ability to implement RoN. Initial assessments were understandably sceptical on the basis of Ecuador’s history of judicial corruption and dysfunction, as well as structural barriers such as the need for secondary law clarifications and standing doctrine. Kotzé and Villavicencio Calzadilla criticized the Ecuadorian Constitution for recognizing both RoN and seemingly conflicting human rights, particularly economic rights related to development, without specifying a clear hierarchy of rights. These issues led some observers to conclude that Ecuador’s constitutional RoN were merely symbolic, or ‘beautiful rhetoric used to entice support for Ecuador from the international community’.

While these criticisms were understandable in the initial years following the adoption of the 2008 Constitution, actions taken by Ecuadorian courts, and particularly the Constitutional Court, have largely addressed these concerns. The courts have regularly recognized nature’s standing in court, and gradually gave form and content to RoN, which were admittedly underdeveloped in secondary laws like the 2014 Criminal Code and the 2018 Environmental Code.

In as early as 2015, the Constitutional Court began to clarify the relationship between RoN and economic rights, ruling that an individual’s economic interests and private property rights cannot be placed above RoN. In the same year the Court ruled that a shrimp farmer must be ejected from an endangered mangrove ecosystem even though this constituted a loss of property. Citing Articles 71 to 73 of the Constitution, the Court stated:

From the aforementioned provisions, it is clear the change of conception that was established by the new Ecuadorian constitutional system, which not only considers nature as a subject of rights, but also provides transversality over the entire legal system to the rights recognized to the Pacha Mama. That is to say, all the actions of the State, as well as those of individuals, must be carried out in observance of and adherence to the rights of nature.


Kotzé & Villavicencio Calzadilla, n. 5 above.


Ibid., p. 12. All English translations in this article are by the authors.
In the remainder of this article we first analyze how the decisions of Ecuadorian judges relating to RoN are influenced by the post-neoliberal conceptualization of sustainable development provided in the 2008 Constitution (Section 2). We show how judges are using RoN to advance a legal framework for a more ecologically sustainable approach to development which contrasts with traditional environmental law (Sections 2 and 5). We also analyze the implications for RoN jurisprudence beyond Ecuador (Section 3). We then discuss how our analysis of Ecuadorian court decisions contributes to the growing literature on how new norms are constructed in practice, the role of judges as norm entrepreneurs, and the role of courts in global norm diffusion (Section 3). Building on this context, we detail how Ecuadorian judges are giving form and force to RoN, beginning with some background context on RoN in Ecuador (Section 4), followed by an analysis of seven key judicial decisions, showing how each provides new content to RoN, which has material impacts on how sustainable development is conceptualized and practised in Ecuador (Section 5).

2. RIGHTS OF NATURE AND SUSTAINABLE DEVELOPMENT IN ECUADOR

In characterizing RoN as transversal, and therefore affecting all other constitutional rights, the Constitutional Court of Ecuador acknowledged that its ruling reflects ‘a biocentric vision that prioritizes nature in contrast to the classic anthropocentric conception in which the human being is the centre and measure of all things, and where nature was considered a mere provider of resources’.13 It justified this vision (and its ruling) by stating:

This new vision adopted since the 2008 Constitution came into force is evident throughout the text of the Constitution. The Preamble of [the Constitution] expressly establishes that the sovereign people of Ecuador: ‘Celebrating nature, the Pacha Mama, of which we are a part and which is vital for our existence’ has decided to build a new form of citizen coexistence in diversity and harmony with nature, in order to achieve the good living or sumak kawsay. In this way, sumak kawsay constitutes a primordial goal of the State, where this new conception plays a transcendental role in promoting a social and economic development in harmony with nature.14

As the 2015 shrimping case illustrates, Ecuadorian court rulings on RoN have been guided by the 2008 Constitution’s commitment to building an alternative approach to sustainable development based on the Andean Indigenous concept sumak kawsay (translated into Spanish as buen vivir, or good living), which is rooted in the idea of living in harmony with nature.15 Rejecting the conventional neoliberal approach to

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13 Ibid., p. 10.
14 Ibid.
development that prioritizes exponential growth in consumption, the Ecuadorian Constitution commits to creating ‘a new form of public coexistence, in diversity and in harmony with nature, to achieve the good way of living, the *sumak kawsay*’. The Preamble acknowledges the need for a more balanced and integrated approach to development by celebrating ‘nature, the Pacha Mama (Mother Earth), of which we are a part and which is vital to our existence’. This sentence reflects the rejection by *sumak kawsay* of the Western neoliberal idea that humans are separate from nature, and consequently rejects the anthropocentric-ecocentric dichotomy common to many discussions of sustainable development and environmental law. *Sumak kawsay* similarly rejects the neoliberal idea that well-being should be conceptualized as exponential growth in economic consumption. Rather, ‘human well-being is possible only within a community in harmony with nature, according to principles of reciprocity, complementarity and relationality, rather than a nature/society dualism’.

Ecuador’s Constitution presents RoN as a tool for achieving an alternative model of sustainable development rooted in *sumak kawsay*. This was the logic used by the Constitutional Court to rule that RoN are transversal, and thus affect all other rights. Recognizing that the alternative development model implied by *sumak kawsay* is transversal in the Constitution, and RoN is a legal framework for supporting this approach, the Constitutional Court concluded that RoN are transversal. It is therefore no coincidence that as Ecuadorian judges give form and force to RoN in their rulings, they are explicitly noting how the Constitution’s RoN provisions require a paradigm change in how we conceptualize what sustainable development is and how it should be practised, emphasizing the need to sustain ecosystem functioning in order to ensure human well-being, rather than sacrificing ecosystem functioning for economic gain.

In his decision on mining in the Los Cedros case, for example, Constitutional Court Judge Antonio Grijalva highlights a ‘new paradigm of environmental protection guided by a biocentric vision of the world, establishing a new application of the focus on sustainable development, whose objective is not just human activities but those that are equitable and environmentally sustainable’. Judge Grijalva also emphasizes the transversal nature of the development model associated with *sumak kawsay* within the Constitution, and consequently the Court’s obligation to consider sustainable development in all economic and social justice instances in a way that addresses nature in an integral manner.

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17 Constitution of the Republic of Ecuador, n. 1 above.
18 Ibid.
19 Chuji, n. 15 above.
21 Shrimping in Cayapas case, n. 11 above, p. 12.
23 Ibid.
24 Ibid., p. 9.
development (that is, one that prioritizes ecosystem functioning), as informed by the concepts *sumak kawsay* (*buen vivir*) and living in harmony with nature, provide alternative pathways beyond the conventional approach detailed in Agenda 2030.25 The rulings analyzed in this article demonstrate an attempt to put this alternative ideation of sustainable development into practice. In doing so, Ecuadorian judges are helping to construct the kind of ‘legal ontological turn’ called for by Boulot and Sterlin.26

The 2015 shrimping case described above, as well as the seven cases analyzed below, demonstrate both paradigmatic and practical developments in RoN law when implemented at the constitutional level which go beyond simple symbolism and anthropocentrically rooted laws, producing more culturally and ecologically informed laws.27 This does not mean that Ecuadorian judges are ignoring individual human rights, such as economic rights. As the judgments below reveal, Constitutional Court judges have sought to balance economic rights within ecosystem limits while also recognizing the inextricable cultural ties to nature of many Ecuadorian communities. Such decisions provide global guideposts for how to address RoN beyond constitutional symbolism.

These cases also contribute to a discussion of RoN beyond the Ecuadorian context that cautions against providing rights for ecosystems, such as rivers, without recognizing the territorial and collective rights of Indigenous peoples and other communities, or providing legal rights for ecosystems without also providing tools to implement such protection.28 For example, the judgments analyzed here contribute to an understanding of biocultural rights, and specifically the connection between RoN and Indigenous rights.29 Various cases, such as a second ruling on mangroves analyzed below, weave distinct Indigenous and community identities together with nature.

A 2018 ruling of the Provincial Court of Sucumbios shows how a legal basis for connecting Indigenous rights and RoN is being constructed.30 In 2018, a community of Cofán Indigenous peoples in Ecuador’s Amazonian province of Sucumbios sued the Ministry of Mining, the Ministry of Environment, and other government agencies for issuing gold mining concessions in their ancestral territory. They argued that the resulting damage to the Aguarico River basin violated the community’s rights to prior consultation, to clean water, and to a healthy environment. They also said it violated the Aguarico River’s rights to exist, maintain its natural cycles, and be restored.

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27 For assessments of RoN laws as being primarily symbolic, see Villavicencio Calzadilla & Kotzé, n. 25 above.


when damaged. When the Cofán won in the lower court, the government appealed to the Sucumbios Provincial Court.

The Sucumbios Provincial Court also ruled in favour of the Cofán.31 The Court rejected the government’s argument that prior consultation was not necessary because the mining activity did not take place in Cofán territory. The Court emphasized that whether or not the mining occurred in a government-recognized protected area was irrelevant, because the Ecuadorian Constitution recognizes all nature as having rights; moreover, the Constitution recognizes the interdependence of all living things, making human well-being dependent on the health of the ecosystems on which humans depend for life.32 Consequently, the negative effects of gold mining on the Aguarico River basin directly threatened not just the Cofán’s right to water, but the rights of all the riverside communities in the Aguarico basin. Furthermore, the Court ruled that constitutionally protected rights, such as the right to a dignified life, required guaranteeing a healthy, biodiverse environment where the Cofán could sustain themselves according to their customs.33 The Court justified its linking of Indigenous rights and RoN by citing other Ecuadorian cases, as well as the decision of the Colombian Constitutional Court in 2016 recognizing the Atrato River as a legal person with rights, which was similarly rooted in an argument about biocultural rights.34 This decision shows how RoN jurisprudence in Ecuador is evolving in response to advancements in both its own courts and those abroad.

Noting the inherent connection between Indigenous cultural rights and RoN, the Court ruled that the gold mining violated not just the Cofán’s community rights, but also the RoN. It ordered the Ecuadorian government to protect these areas by prohibiting the exploration, exploitation, and marketing of gold. To this end, the Court cancelled all 52 mining concessions that had been granted or were being processed for the 125 square miles of Cofán territory, prohibited the granting of new mining concessions, and ordered the government to repair the environmental damage caused by the mining operations.35

It is worth noting that since 2016 there has been a significant increase in the number of cases brought by Ecuadorian Indigenous communities, like the Cofán in Sucumbios, who advance legal arguments connecting RoN with Indigenous cultural rights, and who have succeeded in using these arguments to protect their territories from mining and oil extraction. We detail several examples below. This suggests that contrary to criticisms in the literature that RoN may be misaligned with Indigenous rights,36

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31 Ibid., pp. 17–9.
32 Ibid.
33 Ibid.
34 Ibid., pp. 13, 31, 54; Center for Social Justice Studies et al. v. Presidency of the Republic et al. (Atrato River case), Judgment T-622/16, 2016, Constitutional Court of Colombia.
Indigenous groups in Ecuador are using RoN as a tool to strengthen claims of sovereignty and self-determination within their ancestral territory.

In interviews with the authors, judges of the Constitutional Court noted their direct intent to issue rulings that integrate RoN with Indigenous cultural rights based on what they have learned from visits to Indigenous communities, Indigenous testimony in the Court, and scientific evidence, all of which provided the judges with a new understanding of how sustainable development might be reconceptualized as harmony with nature.

We show below how Ecuadorian provincial courts and its Constitutional Court are establishing the norm that translating RoN from an approach or legal ambition to exercisable legal rights requires taking a holistic, systems-level, integrated approach to environmental management, and sustainable development generally. Moreover, the Court is creating binding standards for how such an integrated systems approach should be implemented within Ecuador, as well as developing specific standards for determining when RoN violations occur. In doing so, the judges are establishing the state’s obligation to protect RoN and creating a framework for balancing economic rights and RoN. They are acknowledging and addressing societal needs, like water for irrigation and mining for economic growth, but balancing these with ecosystem rights, further defining what it means to practise sustainable development based on living in harmony with nature, or sumak kawsay (buen vivir), as called for in the Constitution’s Preamble.

In so doing, Ecuadorian judges are advancing a legal framework for a more ecologically sustainable approach to development. This approach contrasts both with traditional environmental law, which considers human needs as central, and with conventional approaches to sustainable development, which prioritize economic growth above the health and well-being of ecosystems and the communities that depend on them. Consequently, Ecuador’s Constitutional Court is producing examples of environmental protection, such as the annulment of mining concessions in fragile ecosystems, which previously had not occurred under a conventional environmental law framework (and, according to Ecuadorian lawyers we interviewed, probably could not have done). This demonstrates the material impact that RoN are having, both conceptually and in practice, within Ecuador. We detail below how the Constitutional Court is transforming RoN from a vague and amorphous concept to a concrete legal and policy approach for achieving a more ecologically sustainable approach to development.


38 Constitution of the Republic of Ecuador, n. 1 above.

39 For descriptions of how the traditional approach to sustainable development prioritizes economic growth over ecological sustainability, see Kotzé & Villavicencio, n. 5 above, p. 410.

40 Criollo Quenama v. Perez Garcia, n. 30 above, p. 19.
In showing how Ecuadorian courts are giving form and force to nascent RoN norms, this article also contributes to the growing literature on how new norms become constructed in practice, the role of judges as norm entrepreneurs, and the role of courts in global norm diffusion. The role of courts in domestically implementing new norms circulating globally has long been acknowledged.\footnote{K. Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (W.W. Norton & Company, 2011); A. Rzabay et al., ‘Implementation of International Norms in National Environmental Legislation’ (2019) 49(6) *Environmental Policy and Law*, pp. 389–94; O. Dilling & T. Markus, ‘The Transnationalisation of Environmental Law’ (2018) 30(2) *Journal of Environmental Law*, pp. 179–206.} However, as Krook and True note, ‘the norms that spread across the international system tend to be vague, enabling their content to be filled in many ways and thereby to be appropriated for a variety of different purposes’.\footnote{M. Krook & J. True, ‘Rethinking the Life Cycles of International Norms: The United Nations and the Global Promotion of Gender Equality’ (2012) 18(1) *European Journal of International Relations*, pp. 103–27, at 104.} Because of this, new norms are constructed, in the sense of being given content, as they are put into practice. For this reason, courts play an important role in constructing new norms like RoN. This article shows how Ecuadorian judges are playing an important role in constructing RoN norms by giving them greater form and content. This makes them important norm entrepreneurs.

The norm construction taking place through Ecuadorian courts has broader relevance because a growing body of research shows that court decisions have international ramifications, contributing to the diffusion of new global environmental norms.\footnote{A.-M. Slaughter, *A New World Order* (Princeton University Press, 2004), p. 66; E. Barritt, ‘Consciously Transnational: Urgenda and the Shape of Climate Litigation: The State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v Urgenda Foundation’ (2020) 22(4) *Environmental Law Review*, pp. 296–305.} For example, Angstadt finds that domestic judges played a direct role in the transnational diffusion of environmental norms related to the creation of environmental courts.\footnote{J.M. Angstadt, ‘Environmental Norm Diffusion and Domestic Legal Innovation: The Case of Specialized Environmental Courts and Tribunals’ (2022) 31(2) *Review of European, Comparative & International Environmental Law*, pp. 222–32.} Similarly, research on domestic climate litigation ‘suggests that judges may be intentionally facilitating the diffusion of new legal concepts and models beyond their domestic jurisdictions’.\footnote{Ibid., p. 225.} Affolder shows that transnational dialogue among judges is prompting some to identify and implement environmental norms from sister jurisdictions, thereby shaping international environmental law.\footnote{N. Affolder, ‘Contagious Environmental Lawmaking’ (2019) 31(2) *Journal of Environmental Law*, pp. 187–212.}

While the transnational reverberations of Ecuador’s court decisions on RoN are not the focus of this article, we note that evidence suggests that the mechanisms of norm diffusion identified in the literature are present in the case of Ecuadorian courts and RoN. At least two Constitutional Court judges who authored important rulings on RoN – Ramiro Avila and Augustine Grijalva – are active members of epistemic networks advocating RoN. In 2014, before joining the Constitutional Court, Ramiro Avila participated as a...
‘prosecutor for the Earth’ in a citizen-led International Rights of Nature Tribunal organized by the Global Alliance for the Rights of Nature.47 Both judges regularly participate in international meetings on the subject, such as the More Than Human (MOTH) Rights workshop sponsored by New York University School of Law, New York, NY (United States (US)) in September 2022. Both have created a programme to train future lawyers and judges in RoN at Universidad Andina in Quito (Ecuador).

The norm diffusion literature also highlights the important role of intergovernmental organizations in global norm diffusion.48 Ecuador is regularly held up as an exemplar case in United Nations (UN) General Assembly resolutions and reports of the UN Secretary-General on Harmony with Nature, which document and diffuse innovations on RoN to member states.49 The Inter-American Court of Human Rights, in a 2017 advisory opinion, similarly cited Ecuador when noting ‘a tendency, not only in court judgments, but also in Constitutions, to recognize legal personality and, consequently, rights to nature’.50 RoN in Ecuador is also mentioned in reports by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES).51

Perhaps most importantly, Ecuadorian developments in the area of RoN are cited in dozens of court decisions and proposed or adopted in laws on RoN in 14 other countries.52 Examples include the Colombian Constitutional Court’s decision recognizing the rights of the Atrato River53 and the ruling of the Supreme Court of Bangladesh recognizing the rights of rivers within the country.54 These examples are theoretically interesting because judges in countries like Colombia, Bangladesh, and India are similarly serving as norm entrepreneurs, interpreting existing laws to recognize RoN even though their countries have no laws that explicitly recognize RoN.55

51 ‘Methodological Assessment regarding the Diverse Conceptualization of Multiple Values of Nature and its Benefits, including Biodiversity and Ecosystem Functions and Services’, adopted by the Plenary of IPBES, 9th session, Bonn (Germany), 3–9 July 2022, available at: https://www.ipbes.net/the-values-assessment.
52 The authors determined this from text analysis of RoN legal documents in an original dataset of RoN legal provisions worldwide compiled by the authors through a project funded by the Rockefeller Brothers Fund, available at: https://ecojurisprudence.org/dashboard.
53 Atrato River case, n. 34 above, fn 87.
We mention these transnational implications of Ecuadorian judicial decisions only to show the broader relevance of norm construction being undertaken in Ecuador by its courts. Consistent with the literature on norm diffusion, there is evidence that the norm entrepreneurship being undertaken by Ecuadorian judges is not only transforming the way in which sustainable development is conceptualized in Ecuador, but is also having an impact on the thinking of judges and policymakers around the world.

In the remainder of the article we first contextualize RoN in Ecuador. We then analyze seven recent Ecuadorian court decisions on RoN, detailing how the courts are giving greater form and force to RoN norms. We conclude by discussing the implications of Ecuador’s development of RoN for reconceptualizing sustainable development.

4. CONTEXTUALIZING RIGHTS OF NATURE IN ECUADOR

In 2008, Ecuador became the first country in the world to recognize constitutional RoN. Despite the fact that Ecuador has a civil law system, its constitutional RoN have been given content and form through the courts because the legislature failed to do so, largely for political reasons. Judicial intervention was made possible by Article 71 of the Constitution, which gives anyone legal standing to ask a court to enforce RoN. Over time, various Ecuadorian groups started to sue to protect nature’s rights. These cases gradually worked their way up through the appellate courts, eventually reaching the Constitutional Court. Consequently, RoN is being given content by experts in constitutional law rather than politicians.

Because RoN was given form through the courts rather than the legislature, RoN was not implemented immediately or evenly following adoption of the 2008 Constitution. Rather, the number of RoN lawsuits accumulated gradually over time in response to specific situations. There was a steady accumulation of RoN case law during the first decade, but a dramatic increase occurred after 2018 (see Figure 1). By the end of 2022, RoN were invoked in 55 lawsuits as well as 14 additional statutory laws, regulatory policies and declarations (see Figure 1). More than half (38) of these occurred between 2019 and February 2022. This trend was driven by a dramatic increase in lawsuits invoking RoN; half of all RoN lawsuits since 2008 occurred in this three-year period. The percentage of decisions favouring RoN also increased after 2018 (see Figure 2). Most importantly, a growing number of these decisions were made by the Constitutional Court, establishing binding jurisprudence regarding the content of RoN. Before 2018, only 38% of RoN cases made it to the Constitutional Court. Since 2019, that number has gone up to 63%. As we show

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56 Kauffman & Martin, n. 5 above, pp. 82–84.
57 Ibid., pp. 89–102.
58 Kauffman et al., n. 4 above.
59 Ibid.
60 Ibid.
61 Ibid.
below, these Constitutional Court rulings built on momentum behind RoN that had been growing in lower courts throughout the previous decade.

We argue that part of the explanation for these shifts after 2018 is the dramatic change in Ecuador’s political context, which began in 2017 when Lenin Moreno was elected president, replacing Rafael Correa. Lenin Moreno had been Correa’s vice
president and Alianza País’s presidential candidate. However, Moreno split with Correa soon after taking office and used corruption charges to purge key Correa supporters from state institutions. These efforts caused a split within Alianza País, causing the party to lose its legislative majority and forcing the government to rely on changing majorities. While Moreno pursued an economic development strategy centred on mining and oil extraction, his election influenced the evolution of RoN in Ecuador in one important way – by producing a judicial system widely perceived as more professional and independent of the executive branch. The current Ecuadorian president, Guillermo Lasso, vowed not to allow Indigenous groups to block mining projects; yet, on the same day, the Constitutional Court declared invalid a mining permit in Los Cedros Protected Forest, as we discuss below. Since 2019, Ecuador’s Constitutional Court has made high-impact decisions on RoN that are independent of presidential policies and statements.

The story behind the new Constitutional Court began in February 2018, when President Moreno held a national referendum which proposed seven constitutional amendments. Voters overwhelmingly approved a new temporary Council for Citizen Participation and Social Control (CCPSC), empowered to evaluate all officials running Ecuador’s accountability institutions. In August 2018, the transitional CCPSC dismissed all nine judges of the Constitutional Court, citing a lack of independence and conflicts of interest that benefited executive power. The CCPSC then established a new system for selecting judges designed to be more transparent and based on merit rather than political influence. The new Constitutional Court, established in January 2019, is widely seen as professional, and independent from the executive branch. According to former presidential candidate and water defender Yaku Perez, the Court’s new-found independence has allowed legal victories for RoN and Indigenous activists that would have been impossible under former President Rafael Correa.

Early attempts by civil society to defend RoN mostly failed in the courts, leading to some disillusionment and a decline in civil society-led lawsuits. Early legal victories for RoN came when the Ecuadorian state invoked RoN for instrumental purposes. However, we argue that this inadvertently helped to strengthen RoN norms in two ways. Firstly, in a court system seen by many as having limited independence from...
the executive, the state always won; this helped to establish early precedent. Secondly, this raised awareness of RoN within the courts, prompting judges to rethink how to interpret constitutional RoN provisions.

We argue that the data in Figure 2 shows the effects of these changes. Ecuador moved closer to a tipping point between 2015 and 2018 and began to cascade thereafter, as a wide variety of Ecuadorian actors sued to protect RoN, and largely won in court. Importantly, many of these cases were used by the Constitutional Court to establish binding jurisprudence regarding RoN and their relationship with other constitutional rights. We show, in the following sections, how Ecuadorian courts are giving form and force to RoN norms by analyzing seven recent cases involving RoN – two provincial court rulings and five Constitutional Court rulings – which are transforming how sustainable development must be conceptualized and practised in Ecuador.

5. ECUADORIAN COURTS GIVING FORM AND FORCE TO RIGHTS OF NATURE

In May 2019, Ecuador’s new Constitutional Court announced that it would begin to address the juridical content of nature’s rights.70 According to Ecuadorian constitutional law, the Constitutional Court has the power to select cases that are novel and/or relevant to the protection of constitutional rights in order to establish binding jurisprudence on these constitutional rights.71 To that end, the Court selected a case regarding the state’s role in the environmental management of the hydropower plant Hidrotambo, S.A. Until then, previous Constitutional Courts and many lower courts had issued verdicts in cases involving RoN; however, none of these had erga omnes effect, so the verdicts were binding only on the parties to those specific cases, and not on everyone in Ecuador in all similar cases. Moreover, the early court rulings often did not provide substantive content regarding nature’s rights.

Since May 2019, the Constitutional Court of Ecuador has selected six cases to establish binding jurisprudence on various aspects of RoN.72 The decisions in these selected cases provide substantive content on constitutional rights. As of January 2023, the Court had issued verdicts in two of these cases.73 The verdicts in these and several other cases build on momentum provided through earlier lower-court rulings and add content to

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70 CEDHU v. ARCONEL et al. (Dulcepamba River case), Case No. 502-19-JP, selected 6 May 2019, Constitutional Court of Ecuador, pp. 2–3.
72 These include: Dulcepamba River case, n. 70 above; Canton Santa Clara et al. v. Ministry of Environment et al. (Piatúa River case), Case No. 1754-19-JP, selected 9 July 2020, Constitutional Court of Ecuador; Los Cedros case, n. 22 above; Riera v. Ministry of Environment et al. (Nangartiza case), Case No. 1632-19-JP, selected 5 Mar. 2020, Constitutional Court of Ecuador; Rights of Nature and Animals as Subjects of Rights (Monkey Estrellita case), Judgment No. 253-20-JH/22, 27 Jan. 2022, Constitutional Court of Ecuador; Guayusa Parish et al. v. PetroEcuador et al. (San Rafael case), Case No. 974-21-JP, selected 18 May 2021, Constitutional Court of Ecuador.
73 See Los Cedros case, n. 22 above; Monkey Estrellita case, n. 72 above.
RoN by addressing standards and limits regarding the exploitation of resources and its impacts on nature. We detail these below.

5.1. Piatúa River Case

The Piatúa River case is one of several that the Constitutional Court is using to address the tensions between collective human rights, RoN, and economic development that result from state-led development projects. The case shows how Ecuadorian courts are beginning to differentiate between RoN and procedural rules adopted for environmental protection. This has important implications for thinking about the relationship between RoN and sustainable development.

Conventional wisdom among lawyers and judges has been that to meet international standards of sustainable development, one simply needs to follow traditional environmental law and procedures, such as conducting environmental impact assessments and making sure environmental licences are issued. Before 2019, Ecuadorian courts typically held that when these procedures are followed, RoN are not violated. This was, for example, the logic of the 2013 provincial court decision regarding Condor Mirador, the country’s first and largest open-pit mining project. However, in 2019, two other provincial courts departed from this thinking by ruling that RoN can be violated even if environmental impact assessments are conducted and environmental licences are granted. The Constitutional Court subsequently agreed. This established the precedent that RoN implies a standard of sustainable development beyond the conventional definition of meeting environmental procedural requirements.

In 2017, the Ecuadorian Ministry of Energy and Non-Renewable Natural Resources gave concessions over the Piatúa River to an electric company, GENEFRAN, for 40 years. The Ministry of the Environment approved environmental permitting in 2018. The Quichua communities of Santa Clara, Pastaza province, the Confederation of Indigenous Peoples of the Amazon (CONFENIAE), and the Ecuadorian Office of the Ombudsman (Defensoría del Pueblo) brought suit against these government entities and the electric company for denying the river’s rights as well as the communities’ collective rights, which included free and prior consultation. This is one example of how many Ecuadorian Indigenous communities are developing legal arguments that present RoN and Indigenous community rights as being interwoven.

In September 2019, the Provincial Court of Pastaza ruled that both RoN and community rights had been violated despite the fact that the procedural requirements

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74 Kauffman & Martin, n. 5 above, p. 109. This point was noted by Ecuadorian lawyers in interviews with authors.
75 Almeida v. Narvaez (Condor Mirador case), Judgment No. 1711120130317, 2013, Provincial Court of Pichincha (Ecuador).
76 Cristian Rigoberto v. GENEFRAN (Piatúa River case), Judgment No. 16281-2019-00422, 5 Sept. 2019, Multicompotent Chamber of the Provincial Court of Pastaza (Ecuador); Gualaceo v. Azuay (Collay Forest case), Judgment No. 01281-2019-00032, 10 May 2019, Specialized Court for Family, Children, Adolescents and Offenders of the Provincial Court of Justice of Azuay (Ecuador).
78 Piatúa River case, Provincial Court of Pastaza, n. 76 above, pp. 1–2.
surrounding the environmental impact assessment and licensing had been followed. As a result of the concession, the flow of the Piatúa River had been significantly disrupted and reduced to less than 10% of its original extent, threatening the ability of the river to maintain its vital cycles, which in turn endangered local flora and fauna. This environmental degradation threatened the community’s way of life, its customs and spiritual traditions, its economic viability and eco-tourism. The Court reviewed the mitigation impacts in the environmental impact assessment, but argued that the Ministry of Environment cannot violate ‘Article 71 [which] provides the right to respect the integral existence, maintenance and regeneration of vital cycles, functions and evolutionary processes’ of natural ecosystems.79 The Court noted that natural resources can be used only when RoN are protected: ‘always and when vital cycles are respected and nothing impacts their existence’.80

This ruling, and others below, suggest an evolution of RoN norms in Ecuadorian courts. Courts are ruling that conventional environmental law and regulatory processes are not sufficient justification for approving development projects that violate the RoN. The Piatúa River ruling expands the use of RoN to develop standards for sustainable development that go beyond the conventional international definition of meeting environmental legal and procedural requirements. This case lays the legal groundwork for arguments that sustainable development must adopt a holistic and regenerative approach, recognizing the vital cycles of ecosystems and the integration of communities within nature.

The Constitutional Court selected this case in June 2020 to create binding jurisprudence on the relationship between RoN and environmental regulatory procedures.81 While its verdict was still forthcoming at the time of writing, the Court’s leanings can be gleaned from its verdicts in similar cases, particularly the Collay Forest and Aquepi River cases.

5.2. Collay Forest Case

This case, concerning road construction in the protected Collay Forest in Azuay Province, illustrates the evolution of RoN as a legal tool wielded by local governments. In 2018, after waiting six years for the Ministry of Transport and Public Works to build a road connecting Azuay to its neighbouring province, the provincial government of Azuay authorized a new road to be built in the protected forest, an important water catchment and reserve for Gualaceo Canton. The mayor and citizens of Gualaceo sued the provincial government on the ground of issuing an environmental permit to build the road without completing sufficient environmental studies.82 They also sued Castillo Molina, the legal representative of the construction project, for building the road. The lawsuit sought protective action, arguing that the construction damaged the watershed to such an extent that it violated the watershed’s right to exist and maintain its cycles.

79 Ibid., p. 5.
80 Ibid.
81 Piatúa River case, Constitutional Court, n. 72 above.
In February 2019, the lower court agreed with the claimants and ordered the provincial government and Mr Molina to reforest the affected area as a form of restitution. The municipal judge argued that nature is not only a ‘service to man, but also a biocultural vision, or what we call biodiversity’. Noting nature’s constitutional rights (Article 72), the judge ordered reforestation of the area using native plants, and cultural environmental education to include education about the RoN. Importantly, the judge ordered a criminal investigation of the destruction of the Collay Forest, moving RoN enforcement beyond protective action to criminal prosecution.

Both the provincial government and Mr Molina appealed, and the case eventually reached the Constitutional Court. The provincial appeals court upheld the lower court’s ruling. The Constitutional Court declined to review the case, making the Provincial Court’s ruling in favour of the claimants the final verdict. The Collay Forest and Piatúa River cases show how provincial appeals courts are establishing the precedent that government entities can be held liable (perhaps criminally) for issuing environmental permits for projects that violate RoN. While the Constitutional Court has yet to issue binding jurisprudence on this issue, it has issued numerous verdicts regarding RoN that indicate its willingness to reshape norms regarding how sustainable development should be pursued. One example is its verdict in the Aquepi River case.

5.3. Aquepi River Case

The Julio Moreno Espinosa community lives along the banks of the Aquepi River, using the river for drinking water, agriculture, fisheries, and tourism. From 2015 to 2017, the provincial government of Santo Domingo worked with the National Secretary of Water (SENAGUA) to implement an irrigation infrastructure plan in a sector known as Union Carchense for communities that are not based along the river banks but are affected by climate change in their ability to harvest crops year-round. SENAGUA approved a plan to divert 440 litres of water per second to irrigate crops in Union Carchense.

Communities along the river opposed this diversion on the ground of low water levels, even during rainy seasons. They formed the Pro Defense of River Aquepi Commission in 2018 and sent various messages to the provincial government and SENAGUA expressing their concerns about the reduced flow of the river and its inability to support the Union Carchense infrastructure plan. Nevertheless, the provincial government signed a contract to divert water for Union Carchense. The community along the Aquepi River grew frustrated and, in 2019, protested for over a month by

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83 Ibid., p. 18.
84 Ibid., pp. 32–3.
85 Collay Forest case, Provincial Court of Justice of Azuay, n. 76 above, p. 23.
87 Aquepi River case, n. 77 above, p. 4.
88 Ibid.
89 Ibid., pp. 4–5.
blocking road access to the construction site. Construction stopped along the river and the community organized its case to protect the river.90

On 2 October 2019, the community presented a protective action against SENAGUA and the provincial government of Santo Domingo de Los Tsachilas for violating the RoN and the community’s rights to health, water, a clean environment, judicial protection and prior consultation.91 In December 2019, a municipal court judge denied the protective action and the community’s solicitor appealed against the decision.92 On 22 April 2020, the Provincial Court approved the protective action, revoked authorization for the Union Carchense water diversion, and ordered the provincial government to present an alternative project to the people of Union Carchense.93 SENAGUA stopped all work on the infrastructure project in May 2020.

The Constitutional Court selected this case to address four constitutional issues: (i) RoN, (ii) environmental consultation, (iii) effective guardianship of nature’s and community rights, and (iv) integral restoration of the river. The Court reviewed RoN in combination with the National Hydrological Law for Water Use and Approval. In 2021, it ruled that SENAGUA had violated the rights of the Aquepi River by allocating water in a quantity that exceeded the river’s ecological flow during the dry season, altering the function and structure of the river’s ecosystem in a way that could disrupt its life cycle and evolutionary process.94 The Court also ruled that the provincial government violated the rights of prior consultation with the communities.95

The Court found that SENAGUA did not protect the river’s ecological flow because it used inconsistent and imprecise measurements when authorizing the project,96 and consequently issued directives for conceptualizing and measuring RoN violations in water-related ecosystems. In doing so, the Court established concrete standards for measuring and upholding RoN involving water-related ecosystems, thereby giving specific content to RoN norms.

The Court measured water-related ecosystem rights in terms of an ecosystem’s access to affluents (tributary streams) and other water sources, its ability to regulate and restore its flow, its ability to maintain biodiversity, and its ability to preserve its natural hydrological cycle.97 The ruling emphasizes that nature is one integral system which must be addressed in a way that integrates both human and biotic communities. This requires ‘building a new form of citizens living together in harmony with nature’.98

The definition of water’s vital cycle plays a significant role in the Court’s framework for measuring compliance with the rights of water-related ecosystems. The Court argued that the health of water ecosystems (and thus potential RoN violations) can

90 Ibid., pp. 5–6.
91 Ibid., p. 6.
92 Ibid., p. 1.
93 Ibid., p. 7.
94 Ibid., p. 25
95 Ibid.
96 Ibid., p. 17.
97 Ibid., p. 11.
98 Ibid., p. 13.
be measured according to their structure, functions, and evolutionary processes. The Court defined the structure of water in terms of its morphology, depth, sediments, flow, and water quality. Water has particular constitutional protection, the Court highlighted, as it performs vital functions in supporting human health and environmental rights, again emphasizing the inherent connections between RoN and human rights.99 The functions of water are defined as purification for consumption, irrigation for food security, habitat maintenance, transporting water to control flooding, and satisfying basic human needs.100 The Court argued that the evolutionary process of water ecosystems needs to be viewed historically through the diversity and abundance of the life forms it supports and alterations that occur naturally.101 The Court further outlined a methodology for measuring water flow and highlighted how SENAGUA did not follow such practices, leading to violation of the Aquepi River’s rights.102

Viewing RoN and human environmental rights as inherently connected, the Court also specified actions that the state must take to protect community rights to environmental consultation, which includes communicating information in a manner that is comprehensible to communities and ensuring that all decisions about water projects consider community input.103 It ordered a new dialogue on alternative projects for the communities of Union Carchense, as well as the integral restoration of the Aquepi River, to be supervised by the municipal court. The ruling also emphasized the responsibility of lower courts to recognize RoN in their decisions.

The Constitutional Court’s decision with regard to the Aquepi River is important for several reasons. Firstly, it upheld (and strengthened) the precedent that state permits authorizing development projects are not sufficient to protect against RoN violations. Secondly, it added substantive content to RoN by providing a detailed framework for measuring compliance with rights of water-related ecosystems, as well as determining when RoN violations occur and mandating that local communities be included in decisions about water projects that affect the rights of local water ecosystems (and consequently the communities). This form of integration of water law and RoN was previously lacking, not only in Ecuador but worldwide, thus limiting its applicability.104 For this reason, the Aquepi River ruling will no doubt be seen as an important model for how to apply RoN to river systems elsewhere. Finally, the ruling advances the norm that sustainable development should be pursued through a holistic and integrated approach that (i) views nature as integrated ecosystems, (ii) recognizes that human societies are part of these systems, and consequently (iii) requires development to balance competing needs in an integrated manner that ensures the ability of ecosystems to continue to produce the resources that people need.

100 Ibid.
101 Ibid., p. 15.
102 Ibid., pp. 16–8.
103 Ibid., p. 20–2.
5.4. Los Cedros Protected Forest Case

Ecuador’s Constitutional Court also selected two cases to examine the application of RoN to situations involving endangered species and endangered ecosystems. These cases involve mining in two protected forests, which are biodiversity hotspots: Los Cedros (the habitat of the endangered spider monkey), and Nangaritza (home of the endangered Andean spectacled bear). Unlike the previous water-related examples, these cases have an impact on development through the extraction of non-renewable resources. With Ecuador’s oil resources rapidly depleting, the government has turned to mining in recent years to fund economic development, including by permitting industrial mining projects within protected forests located near national parks. These two cases establish binding jurisprudence on the conditions under which mining in such places may occur. The Court decided the Los Cedros case in 2021.

The Los Cedros Protected Forest is part of the Choco Bioregion, which is one of the most biodiverse places on the planet, holding 3% of all species on Earth despite comprising 0.2% of the planet’s surface. 25% of the plant species are endemic to the region. In its verdict the Court notes two specific mammal species that are at high risk of extinction within the forest: the jaguar and the spider monkey. These mammals require long corridors for their migratory patterns, which extend into the Cotacachi Cayapas National Park and to the Mandariacu River, the site of mining.

In 2017, mineral concessions were awarded to Ecuador’s National Mining Company (ENAMI EP) for the Magdalena River. Ecuador’s Ministry of the Environment approved the projects in December 2017, providing environmental permitting. In November 2018, the mayor and solicitor of Cotacachi (a local municipality) filed for protective action against the mining concessions in the Los Cedros Protected Forest. They argued that the Ministry of Environment violated both the RoN and Indigenous community rights to prior consultation. The Los Cedros case differs from the cases discussed above in that the mayor and solicitor of Cotacachi are claiming that the rights of non-human species are affected, and that this will have a negative impact on the larger ecosystem in surrounding areas on which humans depend. Again, this illustrates how Ecuadorian Indigenous communities are making legal arguments that present the protection of RoN as necessary to protect their human rights.

In November 2018, the Cotacachi municipal court ruled that no rights were violated. The solicitor appealed to the Provincial Court, which, in June 2019, ruled that judicial rights for prior consultation were violated. It ordered protective action against mining.

105 Los Cedros case, n. 22 above.
106 Nangaritza case, n. 72 above.
107 Los Cedros case, n. 22 above, pp. 5–6.
108 Ibid., p. 19.
109 Ibid., p. 20.
110 Ibid., p. 22.
and also required a public notice for affected communities. The Provincial Court did not examine RoN in its ruling. Consequently, the Constitutional Court selected this case to further analyze the application of RoN, as well as its relationship with human environmental rights and the right of communities to environmental consultation.

The Constitutional Court noted, in its 2021 verdict, that public authorities, in particular judges, must apply all rights, including RoN. The Court stated that ‘the central idea of rights of nature is that it has value in itself and these rights should be considered independent of the utility that nature can have for humans’. In elaborating the intrinsic value of nature, the Court argued that ecosystems should be viewed as ‘systems of life whose existence and biological processes merit strong judicial protection through the Constitution’. The Court also defined ecosystems by their interrelationships with biotic and abiotic communities, for example, noting that the decline in one species can have a chain of impacts throughout the ecosystem. The ruling details the flaw in valuing nature only for its value to humans and argues that humans, species, and ecosystems should be viewed as existing in ‘common, integrated systems’ with elements of nature valuable for their ability to maintain the functioning of these systems.

Given such value, the Court identified the conditions under which the precautionary principle must guide state policy. These include (i) potential and irreversible damage, and (ii) scientific uncertainty about negative consequences to an ecosystem. When such risk and uncertainty exist, the state must adopt precautionary measures to protect ecosystems. The Court explained that the biodiversity of the Choco region and its endemism were significant variables in its decision, noting the scientific studies and multiple amicus curiae briefs submitted with such data.

The Court’s verdict addressed the mining activities on the Magdalena River and their potential to divert the river water. For this examination the Court identified criteria for determining the rights of water, including (i) availability of water for personal and domestic use, (ii) measurement of water quality, including levels of chemicals and radioactive properties with colour and flavour that are acceptable for use, and (iii) accessibility of water for all without discrimination. As in the Aquepi River case, the Court referred to the National Law for Water Uses and Availability, defining water rights as (i) the protection of water and its ecosystems, (ii) maintenance of the ecological flow of water, (iii) preservation of water’s natural cycle, (iv) the protection of

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113 Los Cedros Case, Constitutional Court, n. 22 above.
114 Ibid., p. 11.
115 Ibid.
116 Ibid., p. 12.
117 Ibid., p. 13.
118 Ibid., pp. 99–100.
119 Ibid., pp. 41–2.
120 Ibid., p. 41.
water basins and ecosystems from contamination, and (v) restoration of affected ecosystems. Based on these standards, the Court ruled that precautionary measures must be applied in Los Cedros.

Consequently, the Court ruled that the National Mining Company must remove its equipment and cease all activity in the forest, as well as reforest affected areas. Further, the Court mandated a new participatory plan for the management and care of the Los Cedros Protected Forest, which includes the Ecuadorian Office of the Ombudsman (Defensoría del Pueblo) and the Ministry of Environment, Water, and Ecological Transition. This new plan must adopt decisions that align with the RoN, adopting measures that preserve the fragile ecosystem of the forest.

In sum, the Constitutional Court ruled that while the Constitution allows mining in protected forests, RoN comes into play when fragile ecosystems or endangered species are involved. The verdict balances RoN with economic rights by saying that mining can occur in Ecuador, but just not in places where ecosystems are so fragile that mining would jeopardize their ability to maintain their natural cycles (that is, to exist), nor in habitats for endangered species where mining could lead to extinction. The verdict further clarifies the content of RoN in important ways. Firstly, it reinforces the idea that government permits are unconstitutional when they authorize activities that violate RoN. Secondly, it mandates the state to enact the precautionary principle in situations of scientific uncertainty. Thirdly, it provides guidelines for protecting nature within mining areas, shifting the burden of proof to mining companies to show no harm. Fourthly, it mandates a new governing structure for forest management which requires management plans and decision making to be based on RoN principles.

5.5. National Environmental Law and the Mangroves Case

In September 2021, the Constitutional Court issued another verdict addressing how to balance RoN and economic rights related to development. This case involves shrimp farming, which is Ecuador’s second most important industry after oil, and which often occurs in fragile mangrove ecosystems. Specifically, the case addresses the constitutionality of provisions in the 2018 National Environmental Law that permit productive activities (like shrimp farming) in mangrove ecosystems.

In June 2018, the Coordinating Body for Organizations in the Defense of Nature and the Environment, along with several other Ecuadorian non-governmental organizations (NGOs), called for a review of the recently enacted National Environmental Law. Specifically, they were concerned about Articles 104(7), 121, 184 and 320, which covered (i) mangroves and RoN, (ii) productive activities and infrastructure in mangrove ecosystems, (iii) monocultures in those ecosystems, and (iv) citizen participation and prior consultation. The Constitutional Court agreed to hear the case; its

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121 Ibid., p. 50.
122 Ibid., p. 63.
123 Ibid., pp. 81–3.
The Court recognized the complexity of mangrove ecosystems by noting that they provide important ecological, cultural and economic functions in coastal regions of the country where shrimp farming, fishing, artisanal works and tourism support many local communities. Ecologically, mangrove forests capture carbon, provide flood control during tsunamis, and support high levels of biodiversity; 75% of fish species spend part of their life cycles in these ecosystems.125 The verdict also notes that mangroves are enveloped into the lifeblood of local communities, quoting one local resident: ‘The mangrove is me and I am the mangrove’.126 While recognizing the intrinsic value of nature, the Court noted that the concept of sumak kawsay (buen vivir) in the Preamble to the Constitution is based on the idea that humans and nature are interwoven, and so must be considered in an integrated fashion.127 Given this, and the fact that 20% of the world’s mangroves have been destroyed, special protection through RoN is needed to provide for their sustainable use.128

In reviewing whether mangroves have rights under the Constitution, the Court determined that they do indeed have rights and that this must guide their sustainable use and protection. Article 71 of the Constitution provides mangrove ecosystems with the right to their ‘integral existence, maintenance, and regeneration of their vital cycles, structure, functions, and evolutionary processes’.129 The Court ruled in favour of the mangroves and declared that the relevant provisions of the National Environmental Law (i) violated the right of mangrove ecosystems to maintain their vital natural cycles, (ii) did not provide legal security or clear provisions within the law as mandated by the Constitution, and (iii) were inconsistent with the principle of ‘legal reserve’, or the legislative duty to provide content by means of law for constitutional rights.130 Consequently, the provisions were struck from the law.

Regarding the legal security principle, the Court ruled that the law’s allowance of ‘other productive activities’ in mangrove ecosystems was too generic and undetermined. The Court argued that such phrasing could open the mangroves to intense extractive industries, causing further deforestation, species loss, and overuse of the water system.131 According to Ecuadorian RoN legal scholar, Hugo Echeverría, the Court determined that the vagueness of the provision did not meet the constitutional standard on clarity; nor did it meet the constitutional principle of legal reserve.132 The Court emphasized that ‘the protection of the mangrove system requires certainty because it has rights and because the Constitution defines it as a fragile ecosystem’.133 Hence,

125 Ibid., pp. 3–4.
126 Ibid., p. 4.
127 Ibid., pp. 54–7.
128 Ibid., p. 6.
129 Ibid.
130 Ibid., pp. 40–1.
131 Ibid., p. 15.
132 H. Echeverría, Ecuadorian environmental attorney, email communication, 16 June 2021.
133 Mangroves case, n. 124 above, p. 18.
the Court ruled Article 104(7) of the National Environmental Law, granting ‘other productive activities’ in mangroves, to be unconstitutional and ordered it to be struck from the law.134

Echeverría points out that the verdict further clarifies how sustainable development should be pursued with a RoN emphasis: ‘This verdict reflects that rights of nature achieved what Environmental Law (unfortunately) could not: to set a real balance between the economy and the environment. In practice: Shrimp farming can expand in Ecuador, but not in mangrove areas’.135

5.6. Las Monjas River Case

The Constitutional Court’s 2021 ruling on the rights of the Monjas River basin clarifies how sustainable development is affected by RoN in the context of a city. Like the other cases, the Monjas River basin case exemplifies the integral nature of ecological jurisprudence, showing how RoN are connected to various human rights. The case stems from a complaint by the citizens of the Monjas River basin, represented by Ann Arlene and Pamela Lilian Monge Froebelius, owners of the historic Hacienda Carcelen in the northern section of Quito. They alleged that the Quito municipal government and its various entities violated the RoN as well as the rights of citizens to live in a clean environment, and the rights to a secure habitat, to water, to sustainable development, and to protect their cultural patrimony.136

The Monjas River basin is in the northern section of Quito and encompasses nearly 18 hectares. It serves both domestic and industrial uses in the north-western area of the city, which has grown substantially since the 1980s. Various amicus curiae briefs and scientific experts testified to the Constitutional Court regarding the severe contamination of the river, which was verified in studies conducted by the municipality of Quito.137 The urban expansion in this section of the city increased the impermeable ground surface that used to soak up the rainfall, and the ravines that were always present in the area widened and deepened as more water was collected and drained into the basin in this section of the city. In an effort to provide water to expanded neighbourhoods in the northern sector, the Metropolitan Public Works Office created a collector for the pluvial and riverine waters that flowed. This Colegio Collector channelled increased flows of water 400 metres away, changing the river’s flow and velocity.138 According to scientific expert studies and testimony, the Colegio Collector created erosion and undermined previous water channels, thus creating sedimentation.139 People living along the Monjas River, including those in the Hacienda Carcelen (a cultural patrimony site for Ecuador and the city), were now living on unstable

134 Ibid., p. 41.
135 Echeverría, n. 132 above.
137 Ibid., pp. 7, 42–3.
139 Ibid.
slopes that threatened the integrity of their housing, as well as part of the country’s heritage.  

The plaintiffs sued the municipality, asking the court for protective action to protect the Monjas River. The Municipality of Quito argued that the erosion and sedimentation were caused by the natural phenomena of increased rainfall and stronger currents from the river. They did not see a causal relationship between the Colegio Collector and the issues confronted by the residents. Rather, they argued, the situation required mitigation steps and individual landowner intervention, potentially with future public works projects.

After losing at the municipal level in March 2021, Arlene and Monge appealed to the Pichincha Provincial Court for protective actions for the river in May 2021; they also lost on appeal. In September 2021, the advocates appealed to the Constitutional Court for extraordinary protective actions for the Monjas River. The Court agreed to hear the case in November 2021 and ruled in favour of the plaintiffs.

The Constitutional Court’s decision builds on two of its earlier decisions on the rights of rivers and the National Mining Law, as well as on the National Environmental Law and the rights of mangrove ecosystems discussed above. It further defines the intrinsic value of ecosystems, as well as their integral nature and their unique contributions in multiple connected ways to the welfare of humans and biodiversity. The case further defines the duties of a municipality, in this case the city of Quito, to protect the rights of a clean environment, secure habitat and clean water within the context of sustainable development. Importantly, the Court uses RoN as a lens for understanding the interconnection among various constitutional rights and establishes RoN as a vehicle for weaving together these rights. The Court also places the onus on the state (or municipality) to protect and enforce these rights.

The Constitutional Court found that the city was in fact responsible for the pressures placed on the Monjas River basin, and consequently the erosion and water contamination, as it had allowed increased development in this fragile area without sustainable urban planning within a framework that protected nature, the water basin, and the citizens.

Referencing Ecuador’s constitutional commitment to sumak kawsay (buen vivir, or living in harmony with nature) as expressed in the Preamble, the Court recognized the right of humans to live in a clean environment, contained in Article 14 of the 2008 Constitution, and ruled that this implies the responsibility to restore degraded environments. Further, presiding Judge Ramiro Avila cited the Inter-American Court on Human Rights opinion which outlines the universal interest in living in a

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140 Ibid., pp. 8–10.
141 Ibid., p. 3.
142 Ibid., pp. 48.
143 Ibid., pp. 34–5.
144 Ibid., pp. 43–5.
145 Ibid., pp. 3–7.
146 Ibid., pp. 16–8.
147 Ibid., pp. 42–3.
clean and healthy environment. Importantly, Judge Avila’s arguments provide clarity on what these rights mean for city policy regarding sustainable development. The ruling clarifies the responsibility of cities (as representatives of the state) to guarantee the equilibrium of ecosystems within water basins, establishing this as a criterion for sustainable development. More specifically, the ruling establishes sustainable management of water resources as necessary for providing a safe and clean environment, which is guaranteed by the right to live in a clean environment. In this way, the Court identifies RoN (such as rights of water ecosystems), human environmental rights, and the responsibility of cities in ensuring these rights through ecologically sustainable development as all integrally connected, with RoN seen as necessary to ensure human environmental rights.

Importantly, in examining the unique rights of the Monjas River, the Court recognized RoN as the key lens through which various constitutional rights are woven together. Acknowledging that the river is ‘sick, has lost its ecological equilibrium, and requires restoration’, the Court linked river rights to the people’s right to protect the country’s cultural patrimony. It noted that the Hacienda Carcelen and the river were both part of a collective identity shared by the city, its people and other living beings. As such, the Constitutional Court found in favour of the rights of the Monjas River and declared that the Municipality of Quito must restore and repair the river and the affected sector of Quito in an integrated manner, respecting the above-mentioned rights in a ‘green-blue’ plan that recognizes and respects the interdependent and reciprocal relationships between the city and its inhabitants, on the one hand, and the river’s natural flow, on the other.

As in previous cases, the Constitutional Court relied heavily on expert testimony of local citizens and scientists to outline the specific river rights and water rights, as well as to define integrated restoration practices. This case was built upon the precedent of two other RoN cases, including the mangrove case discussed above. This illustrates how RoN norms are being clarified, strengthened, and more fully institutionalized through a cumulative process. Learning plays an important role in this process as judicial decisions in one case are informed by earlier decisions, as well as by expert witnesses who help judges in clarifying what it means to practise RoN within the context of specific ecosystems, in this case the city of Quito and the Monjas River.

5.7. Habeas Corpus for Wild Animals (Monkey Estrellita Case)

The final case we discuss was selected by the Constitutional Court to establish binding jurisprudence on the application of RoN to individual wild animals. Specifically, it

148 Inter-American Court of Human Rights, n. 50 above.
150 Ibid., p. 36.
151 Ibid., p. 48.
152 This point was stressed through author interviews with multiple Constitutional Court justices.
153 Monkey Estrellita case, n. 72 above.
considers the question of whether the Constitution’s RoN provisions mean that individual animals enjoy habeas corpus rights against being unlawfully detained.

Ana Beatriz Burbano Proaño, a librarian in the city of Ambato, lived for 18 years with her chorongo monkey named Estrellita. Having cared for Estrellita since she was one month old, Ana considered herself a mother figure for the monkey. In 2018, an anonymous tip was given to the Ministry of Natural Heritage and Wildlife that a chorongo monkey, considered at high risk of extinction, was at the Burbano Proaño residence. One year later, after repeated attempts to persuade Ms Burbano Proaño to turn in Estrellita, the Ministry of the Environment removed Estrellita from the house and transported her to an eco-zoo in Baños, about half an hour from Ambato. The ministry claimed that the monkey needed to be ‘decommissioned’ to the wild.154

Estrellita was quarantined for medical examination at the zoo. Upon arrival, doctors found the monkey to be malnourished with skin and fur problems, and corroding teeth.155 Meanwhile, Ana Beatriz Burbano Proaño claimed that the authorities invaded her home and abruptly took Estrellita from the only home she had known for her entire life. Burbano Proaño claimed that the Constitution’s RoN provisions in Article 71 meant that Estrellita should be protected under the rights of habeas corpus and returned to her home;156 23 days after being removed from the home, Estrellita died at the eco-zoo.157

In February 2020, a Provincial Court denied the habeas corpus action because Estrellita was no longer alive. It noted that the Ministry of the Environment completed its duty to help Estrellita recover from her captivity and return to the wild.158 The Constitutional Court reviewed this case to determine the reach of RoN and its application to wildlife, issuing its verdict in January 2022.159 The case involves a unique debate on how Estrellita’s rights should have been interpreted and handled – specifically, whether Estrellita possessed a right to her ‘natural’ state, and thus removed from her home in Ambato and transferred to a wildlife environment, or whether she possessed a right to be treated as an individual living being with special needs given her unique circumstance of domestication.

In its consideration of whether animals like Estrellita have rights, the Constitutional Court considered the Constitutional Preamble, which states that humans should live ‘in harmony with nature, to achieve the good way of living, the sumak kawsay’.160 The Court further defined nature as all living beings, which includes humans, but is not focused solely on humans. Hence, animals, as part of nature, have rights.161 The reasoning demonstrates the need for a systems-level approach to evaluating the

154 Ibid., p. 12.
155 Ibid., pp. 7–10.
156 Ibid., p. 13.
157 Ibid., p. 12.
158 Ibid., p. 16.
159 Ibid., pp. 57–8.
160 Ibid., p. 18.
interrelationships of human and non-human elements in nature (and the value of nature itself), and outlines a framework for doing so. The Court determined that, in general, protecting the RoN of a wild animal includes not extracting it from its habitat and domesticating it. The judges identified the rights that animals have, including access to water and food, a place to rest and have freedom to move, sanitary conditions, the ability to act in its natural way as an animal, and to be free from cruelty and violence. Furthermore, without a legal permit to have a wild animal, the justice system should impose proper sanctions.

At the same time, the Court noted that protecting RoN also means taking a systems-level, integrated approach to considering the individual situation of the living being. It stated that extracting the monkey without rehabilitating it to adjust to a new undomesticated setting was not applying a systems-level, integrated approach to valuing nature and life. The Court found that Estrellita, along with all animals, did have the right to invoke habeas corpus. It also mandated that the Ecuadorian Office of the Ombudsman (Defensoría del Pueblo) and the National Assembly outline criteria and details of RoN for animals within six months. Finally, the Court noted that the decision itself was a means of repairing and restoring the relationship with nature and with Estrellita.

6. CONCLUSION

This article shows how Ecuadorian courts, and particularly the Constitutional Court, have been issuing judgments that are transforming RoN from a vague norm to a concrete, legal policy approach for achieving ecologically sustainable development guided by judicial interpretation of the Andean Indigenous concept of sumak kawsay, highlighted in the 2008 Constitution.

Building on years of momentum provided by lower-court rulings, Ecuador’s Constitutional Court is clarifying the specific rights of various natural entities, from rivers and forest ecosystems to biodiversity habitats and individual animals. Moreover, it is establishing frameworks with specific criteria for determining rights violations of different kinds of ecosystem. It is also establishing procedures and rules that the state must follow to protect and enforce RoN. For example, governments must adopt the precautionary principle amid scientific uncertainty. Environmental impact assessments and permitting by state authorities are no longer sufficient to protect RoN. State entities (including cities) and citizens must go further by showing that their behaviour does not threaten the ability of ecosystems to exist, maintain their cycles, and evolve naturally. Companies engaging in extraction and other

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162 Ibid., p. 22.
163 Ibid., pp. 39–42.
164 Ibid., p. 43.
165 Ibid., pp. 38–42.
166 Ibid., pp. 49, 51–2.
167 Ibid., p. 57.
168 Ibid., pp. 55–8.
industrial activities have the burden of proving that their operations will not violate these fundamental rights. Perhaps most importantly, Ecuador’s Constitutional Court has ruled that it is no longer justifiable to sacrifice RoN for the sake of economic development. The two goals must be balanced in a way that allows nature’s life-giving cycles to continue to function. Entities that violate these rules, including government authorities and powerful companies, are being sanctioned, including through fines, the cancellation of mining concessions, orders to pay to restore ecosystem functioning, and even criminal prosecution.

The above cases undermine previous analyses suggesting that RoN in Ecuador are merely symbolic and unimplemented as a result of judicial corruption and structural barriers.169 Ecuadorian judges are also rejecting the idea that the Constitution provides no guidance for how to reconcile competing constitutional rights, as some scholars allege.170 Court rulings emphasize the Constitution’s commitment to a new development approach rooted in the Andean Indigenous concept sumak kawsay, which sees humans as embedded in natural systems and dependent on other natural entities through reciprocal relationships. Based on this, the Constitutional Court has ruled repeatedly that RoN are transversal, interacting with all other constitutional rights.

A main purpose of this article is to show how Ecuadorian judges are acting as norm entrepreneurs, giving form and force to relatively vague RoN norms that are circulating internationally. Ecuadorian courts are constructing RoN norms by giving them content as they are put into practice in concrete ways. This has important implications for how sustainable development is conceptualized and practised in Ecuador. According to its Constitutional Court, RoN requires people to adopt a holistic, systems-level, integrated approach to sustainable development.171 The Court has found it unacceptable to conceptualize nature as a mere collection of discrete resources to be exploited for the purposes of exponential growth in consumption.172 Rather, it is forcing a redefinition of nature as a living system in which many different types of community – human and non-human alike – are interconnected through mutual dependency and reciprocal relationships. In this way, the Court is reinforcing the idea that RoN are interwoven with human environmental and cultural rights. Protecting the former is necessary to protect the latter.

Consequently, the Court is interpreting RoN in a way that forces a non-traditional approach to sustainable development, which emphasizes the need to achieve an equitable balance between economic development and ecosystem protection, rather than consistently prioritizing economic development at the expense of the environment. Extractive economic activities like mining and shrimping may continue (and even expand) in Ecuador; they just cannot be carried out in a way that threatens the ability of ecosystems to maintain their natural cycles or the survival of species. When in doubt,

169 Whittenmore, n. 6 above; Fitz-Henry, n. 8 above.
170 Kortzé & Villavicencio, n. 5 above.
171 See, e.g., Aquepi River case, n. 77 above, pp. 12, 15–6, 23; Los Cedros case, n. 22 above, p. 13; Mangroves case, n. 124 above, pp. 54–7.
172 See, e.g., Shrimping in Cayapas case, n. 11 above, p. 10; Los Cedros case, n. 22 above, pp. 11–13; Aquepi River case, n. 77 above, pp. 11–13.
those conducting the development activities must prove that they will not violate the RoN. Rather than procedural requirements like permitting, the Court is forcing a reorientation towards measures of ecosystem functioning linked to RoN to determine whether development activities are ecologically sustainable (and therefore legal). In so doing, Ecuadorian courts are illustrating how an ecologically sustainable approach to sustainable development may be implemented.