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## **The Recognition of the Rights of Nature: A New Paradigm**

*Translated from French by Alice BRITES OSORIO*

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**Since 2008, with the Montecristi Constitution of Ecuador, a new phase has emerged for Latin American constitutionalism.** Based on the idea that humans must live in harmony with nature to achieve well-being, this approach elevates nature to the status of a legal subject, placing it on an equal footing with human life. This recognition profoundly transforms dominant legal conceptions and is spreading worldwide. Alice Brites Osorio delves into the foundations of this paradigm shift, which promotes respect for nature, ancient traditions, diversity, and femininity as the guiding principles for renewing legal frameworks.

In Andean culture, humans must live in harmony with nature to live well. Based on this idea, and since 2008, the new Latin American constitutionalism<sup>1</sup> has made nature a subject of law.

These new constitutional principles, enshrined in the constitutions of Ecuador (2008) and Bolivia (2009) – such as *buen vivir* (living well) and profound respect for Mother Earth – are deeply tied to the relationship between humans and their environment. They propose a new vision of development. Breaking away from anthropocentric concepts, they introduce the possibility of plurinational participation. Non-human life is thus placed on the same level of importance as human life, marking a genuine paradigm shift.

### **The Negation of Indigenous Worldviews Before 2008**

Until recently, the dominant legal perspective in most states has been anthropocentric—that is, it places humans at the center of the world and opposes the recognition of nature's rights. However, an analysis of customs, laws, and language reveals that cultures are institutional, standardized, and repetitive. This means that societies establish ways of acting and speaking that help maintain behavioral models, which are upheld and reinforced by social institutions. In this context, it becomes clear that societies are not encouraged to question these legal models or to observe or imagine alternative ways of conceptualizing nature/culture relationships in their legal systems.

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<sup>1</sup> The new Latin American constitutionalism includes a wave of constitutions in Latin America that mark a post-dictatorial period on the continent. This wave begins with the Brazilian constitution of 1988, followed by the constitutions of Colombia (1991), Paraguay (1992), Argentina (1994), Venezuela (1999), Ecuador (2008) and Bolivia (2009). Little by little it introduces new rights aimed in particular at the participation and inclusion of all.

Nevertheless, the creation and alteration of laws and customs also result from phenomena such as diffusion<sup>2</sup>, acculturation<sup>3</sup>, and invention<sup>4</sup>. While cultural models of behavior may appear relatively stable, cultural paradigms tend to evolve gradually through changes in social and environmental realities. Cultural exchanges between distinct societies serve as powerful drivers of these changes or renewals. Understanding the interactions linked to diffusion, acculturation, and invention worldwide is therefore essential for questioning the need for a critical perspective on dominant legal conceptions and for the development of norms that recognize the rights of nature.

Due to Iberian colonization, Latin American countries historically adopted laws pre-existing in Europe without adapting them to their own conditions, realities, or understandings of the environment. Indigenous peoples' worldviews were minimized, if not entirely ignored, by the law. As a result, all cultural forms of understanding the world and the environment that differed from those imposed by the state were excluded from legal texts. The Ecuadorian Constitution of 2008, shaped by various social and ecological demands, partially altered this paradigm.

## **Harmonizing Environment and Humans**

Drawing on Andean culture, this new constitutionalism in South America seeks to reimagine the legal and political principles of the state, aiming to reshape governmental activities toward harmonization between the environment and humans. This concept of harmony encompasses not only the common good of humanity but also the well-being of all living beings. It extends beyond individuality to embrace a collaborative recognition among all forms of life<sup>5</sup>. The respect owed to non-human beings on Earth complements critical thought and universal ecological, feminist, and humanist principles<sup>6</sup>. For South American cultures that adopt these principles, public policies fostering economic and social development must be designed in alignment with this paradigm shift.

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<sup>2</sup> Cultural diffusion, according to legal anthropology, is a process in which cultural elements or complexes spread from one society to another. In fact, some cultures tend to spread to other regions in the form of more or less consistent "loans". This diffusion can take place by imitation or stimulation, depending on the social conditions that are or are not favorable to it. The most important type of diffusion is that of peaceful relations between peoples, in a continuous exchange of thoughts and inventions. However, not everything is accepted in its entirety. There is often a modification of the character trait of a culture borrowed by the other and a subsequent reinterpretation by the society that adopted it leading to reformulations regarding the form, application, meaning and function of the norm (see Olney Queiroz Assis, and Vitor Frederico Kumpel, *Manual de antropología jurídica*, São Paulo, Saraiva, 2017, p. 255).

<sup>3</sup> Acculturation is the interpenetration of two different cultures that, remaining in permanent contact, lead to changes in the cultural patterns of both groups. Even if, in the reciprocal exchange between the two cultures, one group often gives more and receives less. Continuous contacts between different cultures and societies result in an exchange of cultural elements. Over time, these cultures merge to form a new society and a new culture. Due to colonial conquests and, more recently, thanks to the globalization of communications, there is a very intense cultural diffusion from "central" countries to so-called "peripheral" countries, for example. This same relationship can be seen in state law to the detriment of the norms and customs of minority cultures within the same country. (idem)

<sup>4</sup> Invention is an instrument that allows not only the diffusion or transmission of culture but also its modification. It can cause new cultures to emerge through the fusion of elements of two or more cultures, or cause certain cultures to disappear. (ibidem)

<sup>5</sup> Eugenio Raúl Zaffaroni, « La naturaleza como persona: pachamama y Gaia », in Bolivia: Nueva Constitución Política del Estado. Conceptos elementales para su desarrollo normativo, La Paz-Bolivia, Vicepresidencia del Estado Plurinacional de Bolivia, 2010, p. 120.

<sup>6</sup> Alberto Acosta, *El buen vivir en el camino del post-desarrollo: una lectura desde La Constitución de Montecristi*, Fundación Friedrich Ebert, FES-Ildis, 2010, p. 13.

By advancing the legal framework for environmental protection, this constitutionalism builds on universal declarations such as the Stockholm Declaration of 1972. For instance, Ecuador's 2008 Constitution was the first to grant nature the right to the full respect of its existence and to the preservation of its vital cycles, structure, and evolutionary processes (Art. 71). It acknowledges sustainable development as a state obligation (Art. 3.5) and recognizes citizens' role as protectors of nature (Art. 74). In practice, nature can be represented in court to defend its rights<sup>7</sup>.

With Bolivia's 2009 Constitution<sup>8</sup>, these two nations initiated a movement advocating for the respect of nature and legal pluralism, inspiring others to reinvent norms that better align with local realities and to rethink their relationship with the environment. These laws demonstrate an acceptance of diverse perspectives on human/non-human relationships found in Indigenous cultures. Examples include the legal personhood status granted to the Whanganui River in New Zealand and the Ganges and Yamuna Rivers in India in 2017, aimed at protecting these rivers and the cultures connected to them. Similarly, an Argentine court's 2016 decision recognized *habeas corpus* for the chimpanzee Cecilia<sup>9</sup>, showcasing another case of legal innovation in recognizing non-human rights.

### **A More Open and Innovative Vision of Law**

Beyond the imperative of harmony with nature, this more open and innovative vision of law – which, as seen, is gaining ground on the global legal stage – is also rooted in the respect for the ancient, the plural, and the feminine, standing in contrast to traditional positive law and capitalist ideals.

Opposing the immediate, neoliberal mindset, the respect for intergenerational responsibility and a broader understanding of time finds legal expression in norms and actions supporting the rights of nature worldwide. For example, Bolivia's Law No. 71 on the Rights of Mother Earth, enacted on December 21, 2010, mandates the regeneration of the Earth, as well as of animals and plants, to respect future human generations<sup>10</sup>. In the same spirit, the agreement signed on December 20, 2017, grants legal recognition to Mount Taranaki in New Zealand for its protection. This agreement affirms the respect for the mountain, regarded as an ancestor of the Māori people, and its environment, which "transcends our perception of time," where "the past and the future are understood, engaged, and passed on to future generations"<sup>11</sup>.

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<sup>7</sup> This was the case of the Vilcabamba River, which was represented in court before the Tribunal by two residents of Loja (Ecuador) against the environmental aggressions of a government road development project that affected the river's ecosystem. The sentence was favorable for the rights of nature and ordered the city of Loja to present a project to restore the damaged natural areas and to publicly apologize to the company for having started work without an environmental license (Provincial Court of Justice of Loja, Resolución N° 11121-2011-0010 (in Spanish)). So far, the Vilcabamba case has been the most significant on a global scale. Other similar cases such as the Zutiwa River in Brazil (jurisprudence AC 0000494-76.2004.4.01.3000 of the Tribunal Regional Federal 1, in Portuguese) have also resulted in the conviction to create funds for the restoration of damaged natural areas.

<sup>8</sup> Constitución Política de Bolivia de 2009.

<sup>9</sup> The female chimpanzee Cecilia had been depressed in a cage in an Argentinian zoo for several years. For the first time in Argentina, the Mendoza court applied the action of *habeas corpus* to a non-human being in favor of her freedom. See: Marguenaud, J.-P., "La femelle chimpanzé Cécilia, premier animal reconnu comme personne juridique non-humaine", *Revue semestrielle de droit animalier*, 2016/2, p. 15.

<sup>10</sup> See Article 2 Principle 3 of Bolivian Law 071 on the Rights of Mother Earth of 2010 (French version, our translation).

<sup>11</sup> Record of understanding for Mount Taranaki, Pouākai and the Kaitake Ranges, December 20, 2017

## The Respect for Pluralism

The foundations of the rights of nature are also pluralistic, as evidenced by the aforementioned Bolivian law, which emphasizes the recognition and respect for all cultures that strive to live in harmony with nature<sup>12</sup>. The respect for pluralism and the rights of nature is also evident in the management of the armed conflict in Colombia. Recently, the Special Jurisdiction for Peace in Colombia declared that nature is a victim of armed conflict. The following are the words of magistrate Belkis Izquierdo, an indigenous woman from the Arhuaco people:

“Why do people separate nature from humans? The concept of ethnic peoples is that the territory is inseparable from the people. We want to strengthen a line of thought that allows us to understand that all living beings, not just humans, have the right to exist”<sup>13</sup>.

This indicates that respect for diversity and the various nature/culture relationships also reflects a harmonious coexistence (the ability to live together) and a culture of peace.

Furthermore, the respect for the feminine and women is also a cornerstone of the rights of nature. The Ecuadorian Constitution is clear on this issue. In essence, it states: “Nature or Pachamama, where life is reproduced and conceived, has the right to have its existence fully respected, as well as the maintenance and regeneration of its vital cycles, structure, and functions”<sup>14</sup>. This article also appears in Uganda's *National Environment Act 2019*<sup>15</sup>. Additionally, Bolivia's Law No. 71 attributes feminine qualities of motherhood, nurturing, and cyclical nature to the environment.

Considering that, in indigenous cosmologies, Pachamama or Gaia is originally a feminine deity, aggression against nature is symbolically understood as aggression against the feminine. Ecofeminist movements<sup>16</sup> argue that the root cause of the violation of women's rights and the destruction of the environment lies in the objectification of both the female body and nature. This objectification and subjugation can be seen in the capitalist system at both the institutional level (where masculinity predominates) and the symbolic or cultural level (where both women and nature are generally marginalized).

Ultimately, we can observe that the rights of nature are gradually evolving on a global scale, presenting significant innovations for human rights, such as the inclusion of non-Western cultural knowledge that was previously minimized. This is why considering the evolution of the rights of nature means not only granting legal personhood to non-humans but also legally recognizing other ways of understanding the relationship between nature and culture, respecting diversity.

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<sup>12</sup> Articles 3 and 8 of the Bolivian Law 071 on the Rights of Mother Earth of 2010. Op. cit.

<sup>13</sup> Helena Calle, H., “Una mirada al caso 002: La JEP reconoce que la naturaleza es víctima del conflicto”, *El Espectador*, February 6, 2020 (our translation).

<sup>14</sup> See Article 71 of the Ecuadorian Constitution of 2008 (in Spanish).

<sup>15</sup> National Environment Act, 2019. See also “Rights of nature gain ground in Uganda's legal system”, The Gaia Foundation: “Nature has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution.

<sup>16</sup> Ecofeminism describes the movements and philosophies that link feminism to ecology. To better understand this term, see: Catherine LARRÈRE, “Ecofeminism: ecological feminism or feminist ecology”, *Tracés. Revue de Sciences humaines* [Online], 22 | 2012, published on 21 May 2014, consulted on 13 January 2021. URL: <http://journals.openedition.org/traces/5454>; DOI: <https://doi.org/10.4000/traces.5454>

The constitutionalization of the rights of nature, while a significant and consistent theoretical advancement, may not be sufficient to further protect nature. To advance the rights of nature practically, a deep societal commitment is necessary to ensure harmony between the theory and practice of *buen vivir* (living well), as outlined in legal texts.

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