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Rights of nature, defense and warranty; legal and social analysis in communities of Azuay

Derechos de la naturaleza, defensa y garantías; análisis jurídico y social en comunidades del Azuay

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Conflictos de Interés: Ninguno que declarar.

Abstract

The study in seven communities in the province of Azuay in Ecuador, had goal determining the knowledge of populations of rights of nature, citizen participation, social control and if there are infringement of this, analyzed legally and socially the rights of participation in relationship with rights of Nature enforcement and guarantee, the rights of participation as an element necessary for effective compliance of rights of nature, through quantitative and qualitative analysis. The majority of population considers that they know about rights, four of the communities do not that these rights are enshrined in the Constitution, it is meaning that they do know, generate a limiting for reach the defense it. It found the necessity to educate for protect and defend the rights of nature, to know the rights, as a requirement of the defense for the appropriation of the norms and participation tools, as a citizen


Keywords: environmental conflicts, debate, rights of citizen, social participation

Resumen

El estudio a siete poblaciones de la provincia del Azuay en Ecuador, tuvo el objetivo determinar el conocimiento de los habitantes de los derechos de naturaleza, la participación ciudadana, control social y si existe vulneración de estos, analizó jurídica y socialmente los derechos de participación y los derechos de la naturaleza, la exigibilidad y garantía, los derechos de participación como elemento

necesario para el efectivo cumplimiento de los derechos de la naturaleza, mediante un análisis cualitativo y cuantitativos. La mayoría de las poblaciones consideran que conocen los derechos de la Naturaleza, cuatro de las comunidades, no conocían que estos derechos se encuentran consagrados en la Constitución, significa que; al no conocer, se genera una limitante para la defenderlos. Existe la necesidad de educar para proteger y defender los derechos de la naturaleza, conocer los Derechos, requisito de la defensa para el apropiamiento de normas y herramientas de participación ciudadana.

Palabras clave: conflictos medioambientales, debate, derechos ciudadanos, participación social

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INTRODUCTION

Governments around the world are adopting laws granting rights of nature. Despite expressing common meta-norms transmitted through transnational networks, rights of Nature (RoN) laws differ in how they answer key normative questions, including how to define rights-bearing Nature (Kauffman & Martin, 2018).

To date, ethical, aesthetic, religious, and economic arguments for the conservation and protection of the natural environment have made relatively little headway, one capable of garnering attention and motivating action, would be welcome. There is another approach, one that it will call rights of nature and social environments conflicts, is an attempt to address environmental issues via the language and theory of legal and moral rights in balance with economic interest and development. Ultimately, it is our duties to our fellow humans that explain why we have duties regarding the natural environment. There are three main contenders among theories that can be called rights approaches to environmental issues. The first identifies the (alleged) human right to a healthful environment as the source of our obligations to conserve and protect nature. The second approach has it that our duties to nature arise from the rights of the constituents of nature themselves, its flora and fauna. The third approach to addressing environmental problems via rights is, the best path to environmental conservation and protection. This approach-which grounds duties toward nature on the human right to health-has the benefits of being a straightforward, uncontroversial, and simple approach to issues and problems that desperately need to be resolved (Brei, 2013).

Ecuador is first country in the world that recognition of rights of nature or Pachamama, this implied that Nature has its own values, regardless of the values that people give them. This recognition makes the environment leave to be an object (Ghione & Loriete, 2011). Rights of nature recognize the Earth and all its ecosystems as a living being with inalienable rights: to exist, to live free of cruel treatment, to maintain vital processes, necessary for the harmonious balance, that supports all life. The rights of nature is pathbreaking work in Ecuador, especially in this research on a timely subject by eminently qualifies scholars. Although; that in Ecuador since 2008 in Constitution give rights like juridical person, is permanent the violated of this the deepening of environment consciousness represents a meaningful trend (Nash, 1989). In Constitution of Ecuador the indigenous concept of Sumak Kawsay on human beings living in harmony with each other and the environment is the fundamental framing of rights of nature (Lalander, 2014). For this reason in important the evaluate the impact of humans in the natural environment, with economics activities, specially extractives, and the point of view of the natives person in each territory, in consequence result in social environments conflict with many arises because the same constitutions grant the State the right to exploit and commercialize natural resources and extractivism has increased.

Right of Nature

Rights of Nature are a legal instrument that enables nature, wholly or partly, ecosystems or species, to have inherent rights and legally should have the same protection as people and corporations; that ecosystems and species have legal rights to exist, thrive and regenerate. It enables the defense of the environment in court – not only for the benefit of people, but for the sake of nature itself (Global Alliance for the Rights of Nature, 2022).

Granting nature legal standing might arm it against injury under the law, but how does that translate into reality? Legal personhood attributed to ecosystems has so far been mostly symbolic and it remains unclear how successful these lawsuits can be in gaining adequate, long-term protection of ecosystems. Outcomes can vary based on how a case is framed and on what the interests of the claimants are. Questions surrounding these potential outcomes continually arise: What exactly is the party seeking on behalf of the injured entity? Does the party seek to compel an authority figure to pay for damages

incurred? How are these damages measured? Who can be held responsible for these damages? Could the appointed guardian be held responsible if a river floods and causes damages? (Chale, 2021).

Rather than treating nature as property under the law, rights of nature acknowledges that nature in all its life forms has the right to exist, persist, maintain and regenerate its vital cycles. Nonetheless, for millennia, legal systems around the world have treated land and nature as "property". It then suggests that the rights of nature are, paradoxically, not a politics over whether a singular nature should be a rights holder but, rather, are partial challenges to the universality of secular law and the sovereign state. As such, they raise important questions about the politics of translation and the commensurability of multiple conceptions of collective personhood.

Ecuador and Constitution of 2008

In 2008, Ecuador became the first country in world to include rights of nature, in its constitution. The constitution presents as a tool for building a new form of sustainable development based on the Andean Indigenous concept *sumak kawsay* (good living in English), which is rooted in the idea of living in harmony with Nature (Kauffman & Martin, 2017).

The prevalence of laws granting rights to nature has dramatically increased in recent years at local, state, and national levels. In the United States, approximately 200 municipalities have passed ordinances that grant rights to nature in some manner. This movement was substantially catalyzed by Ecuador's 2008 Constitution (Pieteri, K., 2016). Granting rights to nature is a new approach to environmental law that conceptualizes the natural, non-human world as something worthy of protection for its own sake, and not just as something to be used for the benefit of people, to shows a fundamental rethinking of the purpose of law. Nearly all legal systems were designed only for the benefit of people. Property law, in particular, was built on the premise that the modification of the natural environment for human benefit should not only be acceptable, but incentivized. John Locke's *Second Treatise on Government* provided the foundation for the labor theory of property (Pietari, 2016), in order to try to stopped the increasing destruction to nature emerge of rights for nature in global politics, focusing particularly on questions surrounding the politics and ontology of collective personhood (Yoautt, 2017). In Ecuador, the Preamble "celebrates" Nature (which it identifies as Pachamama) and presents a guiding principle for the new development approach: that humans are part of Nature, and thus Nature is a vital part of human existence. Ecuador's constitutionally recognized Rights of Nature are analyzed with a focus on their potential for resisting socio-environmental injustice. The internationally celebrated inclusion of these rights in the Constitution was advocated by nonindigenous intellectual activists but influenced and supported by the indigenous movement. Beyond legal implications, these rights might foster an epistemic pact between indigenous and nonindigenous society to defend territories from extractive industries (Valladares & Boelengs, 2017).

The link between environmental injustice and human rights violations highlights the urgent need to unite human rights and the environment, "two dominant legal and social discourses that are often assumed to have, at best, an awkward and, at worst, antithetical relationship (Raftopoulos, 2017)

Between 2018 and 2019, Ecuador experienced a boom in legal claims motivated by alleged violations of consultation rights involving decisions regarding extractive projects. These suits resulted in rather favorable judgments for the plaintiffs and led to the halting, albeit temporarily, of several of these projects. The boom in consultation-related lawsuits has run parallel to the tumultuous institutional changes promoted, consultation is located within a disputed legal field in which citizen participation is highly political (Vela & Torres, 2021).

Although Ecuador became the first country in the world to codify the rights of nature in their constitution. The provisions relating to the rights of nature, the practice of environmental law seeks to

protect the environment by 'regulating' human interaction. Only in exceptional circumstances are communities provided the legal right to say no to an activity or stop an existing project.

Ecuadorian authorities have led a campaign to vilify and stigmatize indigenous groups and social movements, labelling them 'environmental extremists' or 'terrorists' in an attempt to build a framework of acceptance (Raftopoulos, 2017). It also presents horizontal concepts and debates theories that explore the language of Latin American socio-environmental movements, such as "Buen Vivir" (Svampa & M., 2019). Of course, many activities extractivists, such as logging old growth forest, mineral extraction, electrics and others cause considerable harm to the environment. However, unless a human or representative body can demonstrate direct harm as a result of the activity, they cannot meet the requirement of standing to challenge the action. In light of this limitation, the vast majority of work carried out by environmental organizations is to make sure a proponent is meeting their agreed obligations and has applied for the appropriate licenses (Burdon, 2011)

This paper will not attempt to dissuade the reader about the individualistic nature of rights or the serious questions that arise in their implementation with nature. Instead, it will focus on a relevant branch of rights discourse, which seeks to shift the focus of rights from individuals, to relationships.

Citizen participation

Citizen participation is understood as: a mechanism of democratic deepening in which individual and collective subjects intervene in public affairs; a social process, which requires different social forces to intervene in communal life in maintaining, reform or transforming the power structure to promote social change (social dimension) and deepen democracy (political dimension); a political process, which requires the action and intervention of individual and collective subjects in public activities as bearers of social interests; and, a management instrument that allows translating into concrete actions the guidelines of state policies oriented to territorial development.

The Ecuadorian constitution it is widely argued that increased community participation in government decision making produces many important benefits (Renée A. Irvin, 2004). Fragmented public action and the limitations to coordinate national and local public policies with the involvement of citizens need to generate spaces and mechanisms for citizen participation linked to the planning processes of the different levels of government. In Ecuador since Constitution of 2008, citizen participation is a constitutional right of mandatory compliance for the entities and instruments part of the National Decentralized System of Participatory Planning (Vivanco, Ordoñez, Pacurucu, & Orellana, 2022). A mechanism that allows the community of a locality, region, or nation to express their opinions definitively and bindingly on specific issues that the constituted powers or a part of the citizenry have decided to inquire from the sovereign with the main objective to systematize the legal foundations that enable effective citizen participation in the political power of the Ecuadorian State. During the research, it made an approach and analysis of the 2008 Constitution of Ecuador in order of rights to nature through citizen participation, carried out to evaluate the knowledge in each territory of normative regulation of citizens' participation to play rights of nature, as well as the jurisprudential recognition established. Also, try to provide necessary elements regarding citizen participation as a pillar of democracy and tool to protect nature (Galiano, Morffi, Bravo, & Marriot, 2023). The tools to do mechanism of direct democracy make stronger the empowerment of the people that feel that nature is destroyed. The approach of this research is focus in the know the perception and the knowledge about nature rights and juridical tools that contains the constitution in Ecuador in order to defend it, to its subject matter requires a prefatory note in order to understand what is the best way since social and juridical approach to execute properly protection of each territory.

Social environment conflicts

Social-Environmental Conflicts, extractivism and rights of nature in Ecuador analyses how rights have emerged as a weapon in the political battleground over the environment as natural resource extraction has become an increasingly contested and politicised form of development. It examines the link between rights abuses and extractivism, arguing that this new cycle of protests has opened up new political spaces for rights based resistance. Furthermore, the explosion of socio-environmental conflicts that have accompanied the expansion and politicisation of natural resources has highlighted the different conceptualisations of nature, development and rights of nature that exist within Ecuador. Focuses on social change in relation to extractivism and social-environmental conflicts, as examined in rural communities a critical issue for communities: how, in the current context of globalization and neoliberalism, they can respond to external pressures. In doing so, it uses social movements as a framework with which to examine social change, considered through evidence about local peoples' reaction to extraction (Palgrave Macmillan, 2022). While new rights perspectives are emerging in the region, mainstream rights discourses are providing social movements and activists with the legal power to challenge extractivism and critique the current development agenda. However, while the application of rights of nature discourses can put pressure on governments, it has yielded limited concrete results largely because the state as a guardian of rights of nature remains fragile in country and is willing to override their commitment to human and environmental rights in the pursuit of development. Lastly, individual contributions to the volume are introduced and future directions for research in natural resource development and rights of nature are suggested (Raftopoulos, M, 2017).

To get an initial understanding of the environmental conflicts, a quote is used from Santandreu and Gudynas (1998), who define them as being "a particular type of social conflict where the disputed subject matter concerns environmental issues or those related to the quality of life of people". But when it comes to analysing them, it is worthwhile refining the definition and point out that the resources are limited and distributed unequally, and that there is an imbalance between the costs and benefits (Vazquez, Espinoza, & Eguiguren, 2016)

Ecuador's rights of nature provisions resulted from the activism of a diverse array of indigenous, environmental, and leftist organizations that ascribe different meanings to these concepts. If we assume a course of conflict stages, beginning just with an existing cleavage between social groups, our attention should in every case begin at the stage of crisis. A situation of crisis is characterized by conflict parties using means such as political and economic sanctions or grave verbal attacks which precede military threats. But it could also be necessary to give attention to just manifest and in certain cases even potential conflicts in the context of serious environmental degradation (Maser & De Silva, 2019) Located at the intersection of geography, anthropology, sociology, and environmental history, political ecology is one of the most vibrant and conceptually diverse fields of inquiry into nature – society relations within the social sciences (Perrealt, Bridge, & McCarthy, 2015). The literature, which explains social and environmental conflicts by neoliberal extractive policies, now acknowledges that these governments neither escaped the resource curse nor avoided the social protests against the expansion of extractive frontiers and the state repression thereof. The criminalization of the social protest and autocratic is common in our country that repeat conflicts and state repression lead under neoliberal extractive policies around the world (Fontaine, 2018).

The reason of social conflicts are generate for the intention and interest of extractives enterprises and the state over the real owners of the territories, the citizen, who live in this places and they are affected for the violation of nature for this economic activities against the territories favoring to enterprises. The major challenge to any state is the environments problem by the extractives and also, the volatility of commodity prices rather than their absolute value, because of its adverse effects on macroeconomic indicators and political institutions (Guy Peters, Fontaine, & Mendez, 2018). For example, the communities resist to proposals by transnational networks watershed management reforms that

coupled conservation with ecosystem Community (Kauffman & Martin, Can Rights of Nature Make Development More Sustainable? Why Some Ecuadorian lawsuits succeed and others Fail, 2016).

The challenge is the Rights of Nature to Make a Difference between the citizen participation local communities who challenged the dominant international model of sustainable development and drew on indigenous norms to offer an alternative. (Kauffman & Martin, Scaling up Buen Vivir: Globalizing Local Environmental Governance from Ecuador, 2021).

The meaning in a legitimate demand of people were reflected in many protests and citizen initiative in order to empower the defense of territories with approach of rights or the Nature (Karmen, 1992). The promotion of nature's rights consolidates the defense of the territories, use of the soil, proper management and the construction of inclusive, redistributive, fair and sustainable, an analysis of the constitutional provisions directly and indirectly related to the rights of nature; and a critical appraisal of whether those provisions, so far, measure up to the rhetoric of constitutional rights of nature in this communities (Kotzé & P., 2017).

METHODOLOGY

The aim of this study is to analyze what is the knowledge of people in seven communities of Azuay in Ecuador, about the rights of nature, the citizen participation, and level of social environmental problems in each community. This analysis seeks to contribute to the debate on participation in policy as a fundamental aspect of the national proposal of the "well-being" and to the robust discussion on the use and control of natural resources, the practice of democracy, and the guarantee of consultation rights in Ecuador.

The closeness with the community leaders, it was achieved with the work of social managers of the research team of the project, and students of the Sociology career, together with the thesis students and the research team to be able to make the surveys. In this research to obtain data, is use a participatory methodology in order to approach the communities with the objective of obtaining first-hand information from the social actors, working directly with the population involved, allowing the participants to appropriate the topic and from their own experiences, generate new knowledge, fulfilling the objective of this investigation, knowing the social reality about the rights of nature from the seven territories in Azuay, using participatory workshops and participating observation methodology during the research process. "Systematization as participatory research" Alfonso Torres Carrillo presents an overview of systematization as participatory research that is emerging in Latin America and is presented as a methodology that seeks to understand and promote practices of social transformation (Paño, Rébola, & Suárez, 2018).

In the second moment to process the data, the methodological approach of this research is of a mixed type, which includes the use of quantitative and qualitative tools. It is an observational, descriptive and analytical study. A non-probabilistic sampling was used, since the selection was made at convenience, with a total of 303 surveys based on the sample that represents an average 10 percent of each community.

RESULTS AND DISCUSSIONS

One of the goals of this methodology was to know the level of participation of women and nature defense social organizations inside of each territory and level of scholarship of participants of this study and their knowledge of rights of nature that is overall law in all country and citizens participations in order to defense of these areas.

We can see that in seven communities there is the perception that there are social environmental conflicts and also there are vulneration of the rights of nature. The research team had several

conversations and approaches were held with the leaders of each community, visiting two or three times the 7 communities, to be able to explain the objective of this research project.

A very important situation that were previously known, are these seven territories has socio-environmental conflicts.

Table 1

Territories has socio-environmental conflicts

Community	Do you belong to asocial organization	Sex		Total
		Women	Men	
Cañaribamba	Yes	10	4	14
		71,40%	28,60%	43,75%
	No	12	6	18
		66,70%	33,30%	56,25%
Total	22	10	32	
	68,80%	31,30%	100,00%	
Cochapata	Yes	2	1	3
		66,70%	33,30%	3,49%
	No	43	40	83
		51,80%	48,20%	96,51%
Total	45	41	86	
	52,30%	47,70%	100,00%	
San Gabriel	Yes	1	1	2
		50,00%	50,00%	8,00%
	No	8	15	23
		34,80%	65,20%	92,00%
Total	9	16	25	
	36,00%	64,00%	100,00%	
San Sebastián	Yes	11	6	17
		64,70%	35,30%	48,57%
	No	12	6	18
		66,70%	33,30%	51,43%
Total	23	12	35	
	65,70%	34,30%	100,00%	
Santa Marianita	Yes	3	2	5
		60,00%	40,00%	26,32%
	No	9	5	14
		64,30%	35,70%	73,68%
Total	12	7	19	
	63,20%	36,80%	100,00%	
Shumiral	Yes	4	5	9
		44,40%	55,60%	13,04%
	No	33	27	60
		55,00%	45,00%	86,96%
Total	37	32	69	
	53,60%	46,40%	100,00%	
Soldados	Yes	9	15	24
		37,50%	62,50%	82,76%
	No	2	3	5
		40,00%	60,00%	17,24%
Total	11	18	29	
	37,90%	62,10%	100,00%	

Source: self made.

About of the first question in survey ¿Do you belong a social organization? We obtain in Cañaribamba where 14 persons that represent the 43,7% of all surveyed, belong a social organization, in Cochapata are 3 persons that represent 3,4% of persons that participate in survey, in the community San Gabriel are two persons that that represent 8% of persons that participate in survey, by other hand , in San Sebastian community are 17 persons that represent 43.7% of the persons that participate in survey, in Santa Marianita are only 5 persons that represent 3,4% that persons that participate in the research in this community, in Shumiral community are 9 persons that represent 13% of the persons that participate in this community, finally, In Soldados community are 24 persons that participate in a social organization that represent 83,7% of total of surveyed in this community, in conclusion in Soldados and San Sebastián there are more participation of the people from this communities in a social organizations.

The following question “Do you know that Ecuadorian Constitution of 2008 year give rights of the nature? “

Of seven communities researching, four of them, Cochapata, San Gabriel, Soldados, Santa Marianita pointed out that they unknow, that Ecuadorian Constitution of 2008 year give rights of the nature, while Shumiral, San Sebastián, and Cañaribamba know this situation

Mostly the populations was researching consider know about rights of nature; however, four of them unknow that these rights of nature are presents since 2008 in Ecuadorian Constitution, this mining of that people unknow this relevant aspect, both legal and social, are a limitation in order to achieve enforceability, defense and guarantee of these rights.

The Rights are not only a law like as stated in his Theory Pure of right of Hans Kelsen, rather, it is full of all social, political, cultural, economic elements, and also of moral and behavioral values in a given society, without forgetting that normative creation is at the same time the result of the struggles and sociopolitical achievements of classes, groups, and sectors. social represented (Mendez, 2011).

In order to draw a baseline and diagnostic of the knowledges that have the population in 7 communities in Azuay about rights nature and could demand effective exercise of citizens participation rights and all communities, indigens collectives, and all ways to social organization

The promotion of the nature rights consolidates the defense of the territories, use of the soil proper management and the construction of inclusive, redistributive, fair and sustainable project, opens a space for dialogue to communities and participation in making important decisions about the ancestral soil they habit.

The investigation hope establishes a reading order that describe the citizen perception of nature rights in the Ecuadorian constitution and the compliance effective of these rights in each community, like follow:

Respect elements of the ecosystems.

- Restoration of nature
- No introduction of exotic species that damage ecosystems.
- The right to full respect for the existence of nature
- That the populations use the resources to benefit within the framework of a Good Living

The right of restoration of environment and nature is the most important problem that point out the communities, in order the damage caused in all the ways and kinds, the environment deteriorates and

the amount of resources that support human life and other species on the planet is reduced (Acosta, 2011).

CONCLUSION

The nature must repair deeply their structure and ecosystems, keep the life conditions for all species. One of the most important questions in our investigation is Do you considered the rights of Nature in the Constitution of Ecuador help to protect it? In all communities researching in this study, considered that the recognition in Ecuadorian constitution of rights of nature is a tool to protect nature, finally in all communities there are social environment conflicts.

Is very important know about the participation of all communities and directly impact in protection of rights of nature. Basing in data obtain in this investigation in 7 communities the participants consider that the state at all levels, local, province and national conclude have not implemented public policies to protect the rights of nature.

Finally, this study pretend open the way to research to other studies in all province and national level, the discussing about rights of nature in the communities is vital in order to empowerment the persons in order to defense their territories in base of this results work deeply in social environment conflicts is urgent the necessity of development discussing and debate about public political in order local and national in order to build strategies that allow protect of Pachamama and rights of nature that are consecrated in Ecuadorian constitution, because the law for itself is not enough and also the lack of knowledge about right of nature it turns more vulnerate in communities for many extractivist projects that are intended to be established or that are currently being executed.

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