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¹ Corte Constitucional del Ecuador [Constitutional Court of Ecuador] Jan. 27, 2022, Judgment No. 253-20-JH/22.

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In the latest battle, the Southern District of New York (“S.D.N.Y.”) exceeded its authority by invalidating M-37050. Moreover, the S.D.N.Y. issued an opinion that conflicts with a Second Circuit ruling, violating the law of the circuit doctrine. The court also did not properly address standing, the threshold question in every federal case.

The first Article (“*Strictly for the Birds: The Scope of Liability Under the Migratory Bird Treaty Act*”) advocates for a broad interpretation. Courts are a cornerstone of the country. They have been bestowed with the awesome power of proper and fair administration of justice. When courts dispense their own brand of justice, no matter how noble or righteous the reason, it is the greatest injustice of all.

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treatment of animals in various areas of the law illustrate a change in societal attitudes from viewing animals as property to seeing animals as something much dearer to our hearts and deserving of more protections under the laws. While no American court has dared to revoke or change such a legal classification, the United States legislatures and judicial systems have found ways around this limiting categorization to better align with American society's treatment of its companion animals. One particular area of law has made substantial developments towards society's evolved recognition of animals as more than mere property: Estate Planning. An exploration into the history of Estate Planning grants insight into how this area of law has been able to become so progressive in its treatment of companion animals by recognizing the unique bond that humans form with the animals in their care and what American society can learn from such a recognition to be able to apply such perceptions and protections to other areas of the law. While Estate Planning has been the most successful in overcoming the barrier of animals' classification as property, other areas of law such as tort remedies for harm caused to our animals, malpractice suits, duties imposed on humans to provide care, criminal laws prohibiting abuse of animals, and even family courts opening their doors to disputes involving humans' beloved animals, all suggest the property status of animals is outdated and American society needs to take the bold step of eliminating such an antiquated classification.

between society and Nature to move towards the recognition of the intrinsic value of Nature; and 2) to face the threats of development, foreign investments, and mining activities.⁴

Article 10 of the Ecuadorian Constitution declares natural persons, peoples, nations, and communities as holders of “the rights guaranteed to them in the Constitution and in international instruments.”⁵ Article 10 also recognizes Nature as a rights-holder, but only in relation to “rights that the Constitution recognizes for it,”⁶ referring to the rights recognized under Chapter VII of Title II (on Rights) of the Ecuadorian Constitution. Basically, three rights correspond to Nature under the Ecuadorian Constitution: i) “the right to integral respect for its existence;”⁷ ii) the right to the “maintenance and regeneration of its life cycles, structure, functions and evolutionary processes;”⁸ and iii) “the right to be restored.”⁹

With the recognition of the Rights of Nature in the Ecuadorian Constitution, Nature has become a legal subject. The Constitution defines Nature as the place “where life is reproduced and occurs,”¹⁰ consequently, the first leading interpretation considered Nature only as physical spaces, such as lands, rivers, or mountains.¹¹ Progressively, in 2019, animal species¹² were also recognized as legal subjects since the

⁴ See Jordi Jaria Manzano, *The Rights of Nature in Ecuador: An Opportunity to Reflect on Society, Law and Environment*, in *Global Environmental Law at a Crossroads* 48, 48–50 (Robert V. Percival et al., eds., 2014).

⁵ Constitución de la República del Ecuador [Constitution of the Republic of Ecuador] Oct. 20, 2008, art. 10.

⁶ *Id.*

⁷ *Id.* art. 71 (“Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions, and evolutionary processes. All persons, communities, peoples, and nations can call upon public authorities to enforce the Rights of Nature. To enforce and interpret these rights, the principles set forth in the Constitution shall be observed, as appropriate. The State shall give incentives to natural persons and legal entities and to communities to protect Nature and to promote respect for all the elements comprising an ecosystem.”).

⁸ *Id.*

⁹ *Id.* art. 72 (“Nature has the right to be restored. This restoration shall be apart from the obligation of the State and natural persons or legal entities to compensate individuals and communities that depend on affected natural systems. In those cases of severe or permanent environmental impact, including those caused by the exploitation of nonrenewable natural resources, the State shall establish the most effective mechanisms to achieve the restoration and shall adopt adequate measures to eliminate or mitigate harmful environmental consequences.”).

¹⁰ *Id.* art 71.

¹¹ Harvard Animal Law, *03/24/22: Animal Personhood, Rights of Nature, and the Estrellita Constitutional Case in Ecuador*, YouTube (Mar. 24, 2022), https://www.youtube.com/watch?v=fKOFQ8scvc&t=41s&ab_channel=HarvardAnimalLaw.

¹² Corte Constitucional del Ecuador [Constitutional Court of Ecuador] Nov.

Court found that a high number of interacting species creates a diverse and more resilient Nature.¹³ Consequently, “ecosystems with their species and biodiversity are subject to intrinsic value in the Ecuadorian Constitution.”¹⁴ Until the *Estrellita* case, the interpretation of Rights of Nature did not consider individual animals as subjects of law.

According to the judgment,¹⁵ *Estrellita* was a chorongito monkey (*leothrix lagotricha*), which is one of the most threatened monkey species in the Ecuadorian rainforest. *Estrellita* lived with Ana Beatriz Burbano Proano (Ana) for eighteen years starting from the age of just one month old.¹⁶ On September 11, 2019, because of an anonymous complaint, officials from the Ecuadorian Ministry of the Environment confiscated *Estrellita* using physical force and transferred her to the San Martín Eco Zoo.¹⁷

Ana filed a writ of habeas corpus on December 6, 2019, demanding the immediate delivery of *Estrellita* to her home and the issue of a permit to legally possess *Estrellita*.¹⁸ On February 20, 2020, during a hearing, the Ministry of the Environment gave notice about *Estrellita*'s death on October 9, 2019. This means that *Estrellita* was dead for more than four months before her family and the court were

10, 2021, Judgment No. 1149-19-JP/21, ¶ 46. (The Court defined species as “the set of organisms capable of interbreeding and producing fertile offspring but not with members belonging to other species in a natural state.”).

¹³ *Id.* ¶ 47 (“It is considered that a diverse ecosystem is one that has a high number of species in interaction. Biodiversity acts as a natural insurance for the ecosystem because it allows it to recover from the events that affect it. If there are several species that fulfill a similar function, such as feeding on plants, it is feasible that, if one of them decreases in its population due to natural catastrophes, the others can supply that deficiency and the ecosystem recovers its stability. Both ecosystems with their species and biodiversity are subject to intrinsic value in the Ecuadorian Constitution.”).

¹⁴ *Id.*

¹⁵ Corte Constitucional del Ecuador [Constitutional Court of Ecuador] Jan. 27, 2022, Judgment No. 253-20-JH/22.

¹⁶ *Id.* ¶¶ 24–25 (Ana identified herself before the Court as “*Estrellita*'s mother and caregiver,” affirming that she developed “motherly feelings towards her [*Estrellita*]” who became a member of the family.).

¹⁷ *Id.* ¶ 30.

¹⁸ *Id.* ¶ 39 (Plaintiff pointed out the following in the writ of habeas corpus: “[T]he possible damage to the physical integrity as well as ethological balance of *Estrellita* is evident and imminent, for which reason an [sic] habeas corpus will stop the mistreatment she is suffering, in precarious conditions totally unknown to her. For this purpose [of the writ of habeas corpus], the Ministry of the Environment will issue a license for the possession of wildlife in which I offer to take care of it in the most appropriate way for her species, including the signing of a commitment to recognize the exceptional right that assists me, in view of the circumstances explained, and in recognition of the need for a dignified treatment and the fundamentals of rights invoked.”).

informed. The Ministry of the Environment also reported that the body of Estrellita was frozen for possible taxidermic work.¹⁹ Because the writ of habeas corpus was originally for the return of Estrellita to Ana's house, upon her death the purpose changed to govern the delivery of her body and to determine the official responsibility for her death.²⁰ Both the trial and appellate courts dismissed the habeas corpus action.²¹

On July 3, 2020, Ana filed an constitutional suit before the Constitutional Court of Ecuador as a last resort to address her petition. The Court admitted the case, selected it for the development of binding jurisprudence, and issued its judgment on January 27, 2022. The judgment declared that Estrellita's rights were violated at three different times: when she was removed from her natural habitat;²² at the time of her confiscation;²³ and when she was placed in a zoo.²⁴ However,

¹⁹ *Id.* ¶ 37.

²⁰ *Id.* ¶ 45 (“Unfortunately today we received the news that the little monkey has died, for this reason I want to request the order of a new necropsy so that the habeas corpus is granted, we want to see the body, unfortunately because of this abrupt separation she could not continue with her life unleashing this painful feeling. [S]he died on October 9th, 2019 and the representatives of the Ministry of Environment did not communicate this, there has been procedural fraud, the hearing has been summoned, the appeal was filed to the court in which they appeared and they never communicated the death... Estrellita is no longer a non-human person whose right to life we have come to protect, we request that Estrellita's body be handed over to her family in the state it is in, we request that the responsibility of the environment and the owner of the zoo be declared...we request that the violation of Estrellita right to life be declared, we request that a special protocol be created for the case of the restraint of live animals as sentient beings.” (quoting Minutes of the Public Hearing at 142–43, Corte Constitucional del Ecuador [Constitutional Court of Ecuador] Feb. 21, 2020 Case File No. 18331-2019-00629.)).

²¹ *Id.*

²² *Id.* ¶ 134 (“In the case of the Estrellita choro monkey, due to the circumstances in which the wild animal was found and since there is no reason or allegation in the interspecies principle or ecological interpretation that justifies in the specific case the extraction or subtraction of a wild animal specimen, which then lived in circumstances or conditions not suitable to preserve its life and integrity, it is evident that it could be considered a violation of its rights to integrity and life (in its positive dimension), and, therefore, a violation of the rights of Nature in the specific case.”).

²³ *Id.* ¶ 142 (“In the specific case, it is not observed that the environmental authority has examined or evaluated the particular circumstances of the Estrellita monkey to execute its “restraint” or “immobilization”, but it was executed directly on September 11th, 2019 only taking care of the inviolability of domicile -since as a preparatory act it is observed that there was a search warrant from a Judicial Unit to enter Ana's house—, but it was not considered in any way the particular conditions of the Estrellita monkey nor the suitability of the measure of restraint or immobilization for the protection of the wild species.”); *id.* ¶ 145 (indicating that the rights of Estrellita were violated “by omitting to consider the particular circumstances of the wildlife specimen.”).

²⁴ *Id.* ¶ 154 (“[T]his Constitutional Court cannot overlook the fact that

the habeas corpus petition was dismissed as the Court reasoned that returning Estrellita from the zoo to Ana's house meant continuing to subject the animal to captivity.²⁵ The Court further established that Ana could not receive Estrellita's body because the corpse of a wild animal within *ex situ* (off-site) conservation must receive the corresponding sanitary treatment made only by the authorities and competent persons with sufficient scientific and technical knowledge.²⁶

II. THE RECOGNITION OF INDIVIDUAL ANIMALS AS LEGAL SUBJECTS AND RIGHTS HOLDERS IN THE ECUADORIAN LEGAL SYSTEM

Notwithstanding the ruling and the negative outcome for Ana, the main question in the *Estrellita* case was to determine whether animals are legal subjects in the Ecuadorian legal system. The Court rapidly resolved this question by pointing out that even though animals are different from humans, that does not mean that they are not legal subjects.²⁷ The innovation of the *Estrellita* case, in contrast to previous case law, is that, for the first time, the Court recognized individual animals as legal subjects under the Rights of Nature framework. In doing so, the Court appealed to the following reasons:

[T]his Court is aware that the rights of Nature not only protect species but also a particular animal, since it would not be possible to recognize an intrinsic value to Nature as a whole and neglect the same value to its elements; and that to that extent, a wild animal should be protected and be free in its natural habitat.²⁸

This becomes relevant because protecting only the species of animals—neglecting the protection of individual animals, which in turn make up the species—

Estrellita's death was not due to natural causes, typical of the species. In other words, the physical conditions of the Estrellita monkey—malnutrition, body conditions resulting from an inadequate environment, stress levels, etc.—are the result of the actions or omissions of both Ana and the state entities involved in the administrative procedure in general, since such conditions are precisely because the wild animal was taken from its natural habitat, and did not have the minimum conditions to thrive, given its particular circumstances such as the human imprint, as established in the previous section.”).

²⁵ *Id.* ¶ 172.

²⁶ *Id.* ¶ 177.

²⁷ *Id.* ¶ 83.

²⁸ *Id.* ¶ 125.

endangers a significant number of animals and fuels the idea of the possibility of extinction. Even in the case of animals whose species is not endangered, neglecting or failing to protect individuals also has an impact.²⁹

In other words, the Court used the following argumentative structure to recognize individual animals as legal subjects under the Rights of Nature: Ecuadorian case law already recognizes that Rights of Nature protect animal species;³⁰ animal species are composed of individual animals; what happens to one individual animal has an impact on the whole animal species; and, consequently, protecting Nature implies also protecting individual animals.³¹ The Court also recognized that animals are different from other elements of the environment since animals are “sentient beings in a strict sense.”³² Under these

²⁹ *Id.* ¶ 126.

³⁰ Corte Constitucional del Ecuador [Constitutional Court of Ecuador] Nov. 10, 2021, Judgment No. 1149-19-JP/21 (Los Cedros Forest), ¶ 25.

³¹ *Id.* For this argumentative structure the Court considered the amicus curiae brief presented by the Brooks McCormick Jr. Animal Law & Policy Program at Harvard Law School and the Nonhuman Rights Project that in its paragraph 4.10 stated that “Species are made up of individuals. Thinking only at the species level has fueled the extinction and endangerment of a significant number of animals. First, many animal species have few individuals left, [so] what happens to these individuals affects the [entire] species.” Amicus Curiae Submitted by Harvard Law School Brooks McCormick Jr. Animal Law & Policy Program and the Nonhuman Rights Project at ¶ 4.10, Corte Constitucional del Ecuador [Constitutional Court of Ecuador] Jan. 27, 2022, Judgment No. 253-20-JH/22.

³² When the Court addresses the issue of the sentience, it distinguishes between sentience in a broad sense and sentience in a strict sense. Sentience in a broad sense would refer to the general capacity of the biotic components of Nature, such as plants and animals, to perceive and respond to stimuli in their environment. On the other hand, sentience in the strict sense would refer to the ability of sentient beings to receive stimuli, process information and produce a specialized and subjectivized response. Corte Constitucional del Ecuador [Constitutional Court of Ecuador] Jan. 27, 2022, Judgment No. 253-20-JH/22, ¶¶ 85–86. It would be worth clarifying the difference between sentience in a broad sense and sentience in a strict sense, since such a categorization is not one commonly used in animal studies, so that the language used by the Court could lead to confusion at the time of application of norms. Thus, when the Court refers to sentience in the broad sense, it would be speaking of sensitivity, a polysemic concept that encompasses the faculty of feeling of animated beings, being that animated beings can be plants or bacteria that can move thanks to the nasties and the tropisms. When the Court refers to sentience in the strict sense, it would be talking about what the academic literature simply calls sentience, the ability to subjectively feel life experiences, such as life itself. According to Romero Campoy, the differentiation between sensitivity and sentience is important for morality and law. Thus, an ethics of sensitivity is aligned with purely welfarist policies because it establishes that we can painlessly kill animals for human benefit, however unnecessary. An ethics that defends sentience as a relevant moral fact, expands moral consideration to the very

considerations, the Court recognized that animals are legal subjects under the Rights of Nature.

With the declaration of animals as legal subjects and rights holders, the Court recognized a set of rights for wild animals. Given that this case was about a wild animal, the court did not discuss rights for domesticated animals, but this does not mean that domesticated animals are not rights-holders. The rights of wild animals the Court identified are the right to life,³³ the right to physical integrity,³⁴ the right to exist;³⁵ the right to not be hunted;³⁶ the right to free development of animal behavior;³⁷ the right to not be domesticated;³⁸ the right to not be the object of humanization processes or forced to assimilate human characteristics

lives of sentient animals. For a better understanding of the legal difference between sensibility and sentience, I suggest Daniel Romero Campoy, *Sensibilidad y sintiencia de los animales: una reforma poco clara del Código Civil* [Sensitivity and sentience of animals: an unclear reform of the Civil Code], el Diario (Mar. 12, 2022, 6:01 AM), https://www.eldiario.es/caballodenietzsche/sensibilidad-sintiencia-animales-reforma-codigo-civil_132_8821346.html.

³³ *Id.* ¶¶ 107, 131–32, 153, 155 (recognizing that in the same sense as the right to life for human beings, the right to life of wild animals has two dimensions: a negative dimension according to which the State is prohibited from attempting against life, and a positive dimension according to which the State has the obligation to establish a protection system that punishes any attack on life).

³⁴ *Id.* ¶¶ 107, 133–134, 145. The right to physical integrity is understood in the physical dimension of the animal: “Regarding the rights of wild animals, their integrity is protected mainly in connection with the physical dimension, which includes ‘the preservation of all the body and the functions of its parts, tissues and organs.’ Therefore, it is understood that actions that are detrimental to the conservation of the wild animal’s body or that affect the functioning of its organs, violate this dimension of the right to integrity. Domestication, turning wild species into pets and their humanization are clear examples of acts that contravene the integrity of wild animals, as stated in the previous section.” *Id.* ¶ 133.

³⁵ According to the Court, the Right to exist is the main right of wild animals, a right that also implies the Right not to be extinct for non-natural or anthropic reasons. It supposes the prohibition of carrying out activities that may lead to the extinction of species, the prohibition of the destruction of ecosystems, and the prohibition of the permanent alteration of their natural cycles. Corte Constitucional del Ecuador [Constitutional Court of Ecuador] Jan. 27, 2022, Judgment No. 253-20-JH/22 ¶ 111.

³⁶ The Court also recognized the right not to be hunted, fished, captured, collected, extracted, held, trafficked, marketed or bartered. *Id.* ¶ 112.

³⁷ *Id.* ¶ 112–13, 119, 124, 137 (including the prohibition of removing wild animals from their natural habitat for the convenience with or benefit of human beings; the right of animals to freely develop their cycles, processes, and biological interactions; and the right of wild animals to behave according to their instinct, to their innate behaviors of their species, to behave according to the behaviors transmitted among the members of their population). Could this be a recognition that animals can have culture?

³⁸ *Id.* ¶ 124.

or appearances;³⁹ the right to freedom;⁴⁰ the right to a good living;⁴¹ the right to have a diet in accordance with the nutritional requirements of the species;⁴² the right to live in harmony,⁴³ the right to health,⁴⁴ and the right to habitat.⁴⁵ According to the Court, these rights must be analyzed in accordance with two legal principles: the interspecies principle and the principle of ecological interpretation. Interpretative guidelines, this pair of principles set the boundaries for determining the meaning of the recognized rights.

On the one hand, the interspecies principle establishes that the guarantees and rights of animals have to take into account the characteristics of their respective animal species. The Court explained that some rights can only be guaranteed in relation to certain properties of a species; properties which ultimately determine which rights and legal protections will apply to each particular animal species.⁴⁶ For instance, according to the Court, the right to respect and conserve migratory routes is a right that can only be protected in those species of animals with migratory behaviors.⁴⁷ In this way, the interspecies principle guarantees protection for animals with specific attention to their characteristics, processes, life cycles, structures, functions, and evolutionary processes.⁴⁸

On the other hand, the principle of ecological interpretation promotes respect for biological interactions that exist between species.⁴⁹ The Court recognized the importance of biological interactions as the foundation of the equilibrium of ecosystems and thus established that public authorities are legally obligated to ensure that biological interactions maintain their natural balance.⁵⁰ Those biological interactions include competition, amensalism, antagonism, neutralism, commensalism, and mutualism.⁵¹ There are also those biological interactions in which some individuals benefit from others and some even cause harm and death⁵² such as predation or parasitism.⁵³ Therefore, the rights of animals are not violated by acts that constitute biological interactions. For instance,

³⁹ *Id.* ¶¶ 112, 124.

⁴⁰ *Id.* ¶¶ 113 (as derived from the right to free animal behavior), 137, 147, 173.

⁴¹ *Id.* ¶ 119.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* ¶ 89.

⁴⁷ *Id.* ¶ 99.

⁴⁸ *Id.* ¶ 98.

⁴⁹ *Id.* ¶ 100.

⁵⁰ *Id.* ¶ 105.

⁵¹ *Id.* ¶ 101.

⁵² *Id.*

⁵³ *Id.*

“when a predator kills its prey in compliance with the trophic chain, the right to life of an animal is not illegitimately violated.”⁵⁴ In other words, the Court has considered biological interactions as legitimate restrictions on the rights of animals under the Rights of Nature.⁵⁵

This was the first time that the Court applied a principle of ecological interpretation to address rights of nature. Nonetheless, a precursor to this principle is identifiable in the *principio ecológico de tolerancia* (ecological principle of tolerance), developed in the *Los Cedros* case. This principle of tolerance establishes a commitment to the protection of Nature’s basic characteristics, life cycles, and biological interactions.⁵⁶ Both the ecological principle of tolerance and the ecological interpretation principle are based on the right to integral respect for existence and the right to the maintenance and regeneration of life cycles⁵⁷ that the Ecuadorian Constitution recognizes for Nature in Article 71.⁵⁸ It is important to consider how the Court established that the protection of ecological balance is also a component of the human right to a healthy environment.⁵⁹

The judgment in the *Estrellita* case is binding jurisprudence with the same legal effect as the jurisprudence of the common law. Thus, its ruling has an effect on the whole Ecuadorian legal system. Future cases in Ecuador will be resolved according to the *Estrellita* case’s ruling and principles.

⁵⁴ *Id.* ¶ 102

⁵⁵ *Id.*

⁵⁶ In this regard, it is important to understand the ecological principle of tolerance, which holds that natural systems can only function adaptively within an environment whose basic characteristics have not been altered beyond what is optimal for that system. This principle is closely related to the right to the existence and reproduction of cycles, because as an environment is modified, the adaptive behavior of the ecosystem becomes more and more difficult and eventually impossible. For each characteristic of the environment (amount of rain, humidity, solar radiation, etc.) there are limits beyond which organisms can no longer grow, reproduce, and ultimately survive. In such a way that, when the level of tolerance, it is impossible to exercise the right to reproduce life cycles. Thus, a protective forest can cushion an impact within certain limits beyond which it would lose its structure and would not be able to continue exercising this right to reproduce its life cycles, as established in article 71 of the Constitution. Constitutional Court of Ecuador Nov. 10, 2021, Judgment No. 1149-19-JP/21, ¶ 44.

⁵⁷ *Id.*

⁵⁸ Constitución de la República del Ecuador Oct. 20, 2008, art. 71.

⁵⁹ The Constitution contemplates as part of this right (the right to a healthy environment) to have an ecologically balanced environment, since this means the interaction of the beings that inhabit the environment does not cause or endanger the existence of any of these beings or of the elements that are required for your life. In this environment, the human being also develops as a species that is part of the natural cycles and whose intervention can affect the desired balance. Constitutional Court of Ecuador Nov. 10, 2021, Judgment No. 1149-19-JP/21, ¶ 44.

III. THE REASONS WHY RIGHTS OF NATURE IS NOT THE APPROPRIATE FRAMEWORK FOR THE ACHIEVEMENT OF ANIMAL RIGHTS

The *Estrellita* case has received broad public attention due to its ruling. Many media outlets have announced that Ecuador is the first country where animals have legal rights.⁶⁰ Nonetheless, that announcement is not technically correct. The following analysis of the judgment will demonstrate that Rights of Nature is not the appropriate framework for the achievement of fundamental animal rights, because under this framework the rights of animals are subject to arbitrary restrictions. These restrictions have the effect of undermining the full realization of those supposed rights.

According to the Court, the rights of animals under the Rights of Nature must be analyzed from the principle of ecological interpretation, which implies respect for the biological interactions that each individual animal is part of. As was recognized by the Court, some biological interactions, such as predation or parasitism,⁶¹ lead individuals to benefit from others by causing harm or death. According to the principle of ecological interpretation, such biological interactions must be respected regardless of their negative implications for individual animals.

Biological interactions include animal-animal and animal-environment interactions, such as “when a predator kills its prey in compliance with the food chain.”⁶² In cases such as these, according to the principle of ecological interpretation, “the right to life of an animal is not illegitimately violated.”⁶³ This is how the Court established that biological interactions are a legitimate legal restriction on the rights of animals under the Rights of Nature.

Biological interactions also include human-animal interactions, and here is where questions arise. The following statement from the

⁶⁰ See Rosie Frost, *Wild animals in Ecuador now have legal rights, thanks to a monkey named Estrellita*, EURONEWS, <https://www.euronews.com/green/2022/04/01/wild-animals-in-ecuador-now-have-legal-rights-thanks-to-a-monkey-named-estrellita> (June 4, 2022); Olivia Lai, *Ecuador Becomes First Country to Recognise Animal Legal Rights*, EARTH.ORG (Apr. 4, 2022), <https://earth.org/ecuador-becomes-first-country-to-recognise-animal-legal-rights/>; *A Landmark Ruling for Animal Rights in Ecuador*, NONHUMAN RIGHTS (Mar. 23, 2022), <https://www.nonhumanrights.org/blog/landmark-ruling-animal-rights-ecuador/>; *Ecuador becomes first country to give legal rights to wild animals: What does this mean for conservation?*, FIRSTPOST (Apr. 5, 2022, 16:48:10 IST), <https://www.firstpost.com/world/ecuador-becomes-first-country-to-give-legal-rights-to-wild-animals-what-does-this-mean-for-conservation-10520351.html>.

⁶¹ Constitutional Court of Ecuador Nov. 10, 2021, Judgment No. 1149-19-JP/21, ¶ 101.

⁶² *Id.* ¶ 102.

⁶³ *Id.*

Court draws attention: “as human beings are predators, and being omnivorous by Nature, their right to feed on other animals cannot be forbidden.”⁶⁴ This means that animals can continue to be slaughtered for food even though Ecuador recognizes the rights of animals. Therefore, Ecuador justifies animals slaughtered for food as an unquestionable biological interaction.

Thus, the human interest in consuming animal protein has been declared a legitimate restriction on the rights of animals. This means the fundamental rights that the *Estrellita* case recognized, such as the right to life,⁶⁵ to physical integrity,⁶⁶ to exist,⁶⁷ and not to be hunted,⁶⁸ can be negated at any time.⁶⁹ Moreover, the *Estrellita* judgment has legitimized other forms of animal use by humans. The Court declared that domesticated animals can be used for transportation, clothing, footwear, and even recreation and leisure.⁷⁰ Wild animals can be captured for *ex situ* conservation;⁷¹ that is, they can be placed in zoos, severely

⁶⁴ *Id.* ¶ 103.

⁶⁵ *Id.* ¶ 107, 131-32, 153, 155.

⁶⁶ *Id.* ¶ 107, 133-34, 145 (according to the Court, the right to physical integrity is understood in the physical dimension of the animal: [r]egarding the rights of wild animals, their integrity is protected mainly in connection with the physical dimension, which includes “the preservation of all the body and the functions of its parts, tissues and organs. Therefore, it is understood that actions that are detrimental to the conservation of the wild animal’s body or that affect the functioning of its organs, violate this dimension of the right to integrity. Domestication, turning wild species into pets and their humanization are clear examples of acts that contravene the integrity of wild animals, as stated in the previous section).

⁶⁷ *Id.* ¶ 111.

⁶⁸ *Id.* ¶ 112.

⁶⁹ *See id.* ¶ 103 (indeed, the Court made reference at this point to the right to food, enshrined in Article 13 of the Ecuadorian and in International Human Rights instruments, as if the consumption of animals is part of that human right).

⁷⁰ *See id.* ¶ 108-09 (here, the breeding, fishing, hunting, and other practices that the Court considers as legitimate activities because they “reflect historical and maintained forms of interaction of the human species with the rest of the animal species; and respond to mechanisms that human beings have been developing and consolidating to ensure their own survival as a heterotrophic species that lacks the capacity to produce its own nutrients”) (according to the Court, “the domestication of animals has served to enable humans to respond to threats to their physical integrity and the security of their possessions; to control pests that can endanger livestock, crops and human health; to provide transportation, help in work, for clothing and footwear; and even for recreation and leisure”).

⁷¹ *See id.* ¶ 149-50 (for the Court, *in situ* and *ex situ* conservation “enhance opportunities for environmental education, research and scientific development”) (it was also noted that: “activities such as the extraction of parental stock are recognized, the purpose of which is to provide a reproductive specimen for *ex situ* management programs, in order to guarantee the survival of species that are affected by a reduction in their population size, restricted distribution, threatened with extinction, threatened by erosion of the national genetic heritage or any other cause, and those that cannot be maintained *in situ*”).

restricting their right to freedom.⁷² Invasive species can be exterminated in the name of ecosystem balance,⁷³ which means a restriction on their right to life, their physical integrity or right to exist, as well as their right to live in harmony⁷⁴ and their right to habitat.⁷⁵

Restrictions on fundamental rights cannot be arbitrarily imposed. Some fundamental rights are considered absolute, as they may never be subject to limitations, even if there are compelling reasons to restrict them.⁷⁶ Nevertheless, most rights can be subject to restrictions, so long as they are exercised within limits on the rights of others. To protect these non-absolute rights, the fundamental rights theory establishes that no restriction can be imposed arbitrarily. Rather, restrictions to fundamental rights must satisfy three conditions: legitimacy by corresponding to a legitimate objective; legality by being in accordance with the law; and proportionality by being necessary for and suitable to the objectives pursued. This is the international standard for the restriction of rights, but in the *Estrellita* case, the Court did not evaluate any of the above-mentioned conditions for the restriction of rights.

Fundamental rights theory has never considered natural balance and biological interactions as restrictions or obstacles to the enjoyment of fundamental rights because the maintenance of the *status quo*⁷⁷ is not what rights do. For instance, the existence of viruses and bacterias in nature are not a justification for not carrying out vaccination campaigns as part of the right to health. Rights theory has the characteristic of ensuring moral progress, such as the prohibition of torture, declarations of freedoms, or the obligations of the State to carry out vaccination campaigns against natural but deadly diseases. To believe that what is natural is *per se* correct is to derive an ought from an is and to fall into a naturalistic fallacy. Naturalistic fallacies are usually contrary to

⁷² *Id.* ¶ 113, 137, 147, 173.

⁷³ *See id.* ¶ 105 (the Court established that “when scientific, technical and ecological reasons so require, subject to applicable environmental regulations, the National Environmental Authority may carry out the necessary actions to control species populations, especially when it is a matter of eliminating invasive, exotic or introduced species that may endanger the balance of ecosystems”).

⁷⁴ *Id.*

⁷⁵ *See id.* ¶ 92, 115, 119, 125.

⁷⁶ A right is absolute when it cannot be overridden in any circumstances so that it can never be justifiably infringed and it must be fulfilled without any exceptions. If an absolute right applies, it must be fulfilled, and infringement automatically amounts to a violation. The prohibition on torture or inhumane or degrading treatment or punishment contained in Article 3 of the European Convention on Human Rights is the most expounded and referred example of an absolute right. Natasa Mavronicola, *What is an ‘Absolute Right’? Deciphering Absoluteness in the Context of Article 3 of the European Convention on Human Rights*, 12 HUM. RTS L. REV. 723 (2012).

⁷⁷ *See id.* ¶ 104 (the Court noted that public authorities are obliged to guarantee such biological interactions).

fundamental rights, like when a woman is obligated to have a child simply because she is physiologically able to, or when a homosexual couple is denied the right to marry or start a family simply because they cannot physiologically procreate on their own.

Rights of Nature is a framework aimed at protecting environments and their abiotic elements from pollution and overexploitation. The Rights of Nature were not framed to intentionally protect individuals with subjective interests. Protecting a mountain, river, or forest implies a necessary ecological interpretation that allows the maintenance of their integrity, natural balance, natural characteristics, or a pristine landscape. Protecting individuals, with subjective interests, is substantially different. Individuals claim a sphere of protection and fundamental rights that recognizes their autonomy and intangibility, going beyond what is natural. In the same way that one would not accept that biological interactions supersede human rights, one should not accept that biological interactions supersede the rights of animals.

Consequently, the recognition of rights for animals under the Rights of Nature does not constitute significant progress for animals. Rather, as the *Estrellita* case shows, rights for animals under the Rights of Nature remains a welfarist conservationist system. The ecological interpretation principle is of the same sort of problem as necessary/unnecessary suffering is for animal protection in welfarist regimes. Welfare regimes are focused on moderating the treatment of animals without questioning the legal status of animals. The focus is to avoid unnecessary suffering, but at the end of the day, under a justification of necessity, all kinds of animal use can be considered necessary, including the most trivial uses, such as sport hunting, entertainment, or testing for cosmetic products.⁷⁸ Within the Rights of Nature framework, the argument for protecting natural balance uses biological interactions in a similar way as the rhetoric to continue justifying the use of animals for human benefit.

If a theory of fundamental rights had been applied to the rights of animals in the *Estrellita* case, human interest in eating animals would not be a legitimate restriction to the right to life of animals.

⁷⁸ CASS R. SUNSTEIN, ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS 115-16 (Cass R. Sunstein, et. al eds., 2005)(statement of Gary Francione)(“Although we express disapproval of the unnecessary suffering of animals, nearly all of our animal use can be justified only by habit, convention, amusement, convenience, or pleasure. To put the matter another way, most of the suffering that we impose on animals is completely unnecessary.... [f]or example, the use of animals for sport hunting and entertainment purposes cannot, by definition, be considered necessary. Nevertheless, these activities are protected by laws that supposedly prohibit the infliction of unnecessary suffering on animals. It is certainly not necessary for us to wear fur coats, or to use animals to test duplicative household products, or to have yet another brand of lipstick or aftershave lotion.”).

Rights theory is aimed to “erect the strongest of safeguards for the most vulnerable protecting subordinated groups from dominant groups.”⁷⁹ In a fundamental rights regime, the interests of the majority with power cannot undermine the enjoyment of the rights of the weak, because rights are protections against the interests of others⁸⁰ and are limits on State power. On the contrary, the Rights of Nature framework does not provide animal rights protection against the interests of humans. No fair standard of restrictions is considered under the Rights of Nature framework, as occurs in rights for humans. Rather, the Rights of Nature framework offers a new argument for justifying the continued use of animals for human benefit.

Following a similar approach to welfarist regimes, the Rights of Nature framework puts animals in a residual category of consideration as hierarchically inferior to humans. This leads to the conclusion that the scheme of rights for animals under the Rights of Nature framework is legally different from the scheme of rights recognized for human beings.⁸¹ For instance, the right to life recognized for humans under Article 66⁸² of the Ecuadorian Constitution does not have the same legal structure and value that the right to life recognized for animals in the *Estrellita* judgment has.

Article 66 of the Ecuadorian Constitution recognizes several rights of persons, including: the right to the inviolability of life; the right to bodily, psychological, moral, and sexual safety; and the right to a life without violence. Article 66 also establishes prohibitions on torture, forced disappearance, and cruel, inhuman, or degrading treatments and punishments.⁸³ Nonetheless, all these fundamental freedoms remain exclusive to humans.⁸⁴ The rights for animals that the *Estrellita* judgment

⁷⁹ SUE DONALDSON & WILL KYMLICKA, *ZOOPOLIS: A POLITICAL THEORY OF ANIMAL RIGHTS* 29 (Oxford Univ. Press, Inc., 2011).

⁸⁰ See Ronald Dworkin, *Taking Rights Seriously* (Harvard Univ. Press, 1977).

⁸¹ Constitutional Court of Ecuador Nov. 10, 2021, Judgment No. 1149-19-JP/21, ¶ 45-48 (Corral Ponce, J., dissenting) (the grant of habeas corpus in the *Estrellita* case in favor of wild animals, is extremely excessive and contrary to the provisions of our constitutional text and the law on the matter, and habeas corpus is a guarantee that exclusively protects human dignity).

⁸² Constitution, Oct. 20, 2008, ¶ 45-48 (“The following rights of persons are recognized and guaranteed: 1. The right to the inviolability of life. There shall be no capital punishment”).

⁸³ Constitution, Oct. 20, 2008, at Article 66.

⁸⁴ The following rights of persons are recognized and guaranteed: 1. The right to the inviolability of life. There shall be no capital punishment. 2. The right to a decent life that ensures health, food and nutrition, clean water, housing, environmental sanitation, education, work, employment, rest and leisure, sports, clothing, social security, and other necessary social services. 3. The right to personal well-being, which includes: a) Bodily, psychological, moral, and sexual safety. b) A life without

recognized under the Rights of Nature framework does not provide inviolability of physical or mental integrity, so animals are not protected against slaughter or torture. Autonomy is not recognized either, so animals are not recognized as unique and irreplaceable beings, owners of their own lives, or beings that must be protected from the coercion or domination of others. The recognized rights are also not based on dignity or intrinsic value; rather, animals remain means to human ends. These are not the kind of rights that animal rights theory claims. On the surface, the *Estrellita* judgment gives the appearance of real recognition of rights for animals, but, in fact, only human beings continue being subjects of inviolable rights. For all the aforementioned reasons, the Rights of Nature framework is not an appropriate framework to achieve animal rights, and it should not be promoted for that end.

An analysis of the Rights of Nature within the Ecuadorian Constitution explains why, under the Rights of Nature framework, animals are not holders of inviolable rights; instead, animals remain resources. “Rights of Nature” is the title of Chapter VII of Title II, located alongside other chapters that only recognize rights of humans.⁸⁵ In this way, even when the Ecuadorian Constitution declares that humans are a part of Nature,⁸⁶ the Ecuadorian Constitution has two different kinds of rights: rights for human beings and rights for Nature and its elements. Therefore, in Ecuador there is a separation between rights for humans and rights for animals that reinforces the human/animal dualism that animal rights theory denounces.⁸⁷

violence in the public and private sectors. The State shall adopt the measures needed to prevent, eliminate, and punish all forms of violence, especially violence against women, children and adolescents, elderly persons, persons with disabilities and against all persons at a disadvantage or in a vulnerable situation; identical measures shall be taken against violence, slavery, and sexual exploitation. c) Prohibition of torture forced disappearance and cruel, inhuman or degrading treatments and punishments. d) Prohibition of the use of genetic material and scientific experimentation that undermines human rights. Constitution, Oct. 20, 2008, at Article 66.

⁸⁵ Constitution, Oct. 20, 2008, at Chapter VII of Title II.

⁸⁶ Constitution, Oct. 20, 2008, at Preamble.

⁸⁷ In the same way that ecofeminist theories reject the dualisms in which women, animals, and nature are marginalized as the less-valued “other,” the animal rights theory rejects the hierarchical characterization of animals as “things” in the “person/thing” dualism, where only humans are persons and rights holders. Gary Francione identifies the person/thing dualism as the foundation of all institutionalized animal exploitation that can only be overcome through the achievement of animal rights. Gary L. Francione, *Animals as Persons Essays on the Abolition of Animal Exploitation*, Columbia University Press, (2008) & Gary L. Francione, *Rain Without Thunder: The Ideology of the Animal Rights Movement*, Temple University Press (1996).

The Ecuadorian Constitution recognizes Nature as a legal person under an analogy to corporations rather than as mother earth, *Pacha Mama*.⁸⁸ The Rights of Nature framework continues operating within a notion of social rights and welfare that in turn is clearly based on a Western economic model that treats Nature as a mere provider of resources.⁸⁹ For this reason, Article 74 of the Ecuadorian Constitution establishes the right of human beings to benefit from the environment,⁹⁰ which includes benefiting from animals as elements of the environment.

According to the rhetoric, the declaration of the Rights of Nature's purpose is to recognize the intrinsic value of Nature and its elements, including animals; however, the ultimate outcome of the Rights of Nature framework is to serve humans with the healthiest environment possible to provide them welfare and economic growth. Rights of Nature necessarily clash with the right to development and other human rights, even the most fundamental ones, such as access to food, water, and sanitation. The same Special Rapporteur on the right to a healthy environment declared that human rights do not require untouched ecosystems.⁹¹ This is because economic and social development depends on them, for instance, the conversion of natural ecosystems into human-managed ecosystems such as pastures and cropland.⁹² Recognizing this fact, Article 407 of the Ecuadorian Constitution prohibits the extraction of non-renewable resources in protected areas and allows the President of Ecuador to lift the ban with consent of the national assembly.⁹³ As a

⁸⁸ Manzano, *supra* note 5, at 52.

⁸⁹ *Id.* at 54 (“Ecuador cannot escape from taking part in the process of capitalist accumulation, because it requires foreign investment and foreign consumption of its raw materials to provide economic opportunity for Ecuadorians.” The author adds: “the Rights of Nature occupy a strange place against a backdrop of social demands for more exploitation”).

⁹⁰ Constitution, Oct. 20, 2008, at Article 74 (“Persons, communities, peoples, and nations shall have the right to benefit from the environment and the natural wealth enabling them to enjoy the good way of living. Environmental services shall not be subject to appropriation; their production, delivery, use and development shall be regulated by the State”).

⁹¹ A/HRC/34/49 Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment, (Jan. 19, 2017), https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/009/97/PDF/G1700997.pdf?OpenElement*.

⁹² *Id.* (“Human rights law does not require that ecosystems remain untouched by human hands. Economic and social development depends on the use of ecosystems, including, in appropriate cases, the conversion of natural ecosystems such as old-growth forests into human-managed ecosystems such as pastures and cropland. To support the continued enjoyment of human rights, however, this development cannot overexploit natural ecosystems and destroy the services on which we depend.”).

⁹³ Constitution, Oct. 20, 2008, at Article 407 (“Activities for the extraction of nonrenewable natural resources are forbidden in protected areas and in areas declared intangible assets, including forestry production. Exceptionally, these resources can

consequence, the final decision about the intangibility of Nature rests with the President and the national assembly, not with the supposed inherent value of Nature.⁹⁴ Therefore, the fact that animals continue to be resources for humans after the *Estrellita* judgment is not a surprise.

Additionally, two other flaws in the *Estrellita* ruling can be questioned. The *Estrellita* judgment is quite rich in biological concepts, so it is surprising that the Court reduced the concept of wild animals to “those that have not been domesticated by humans.”⁹⁵ The Court embraced the traditional binary concept of wild/domesticated, a categorization of animals that is currently being overcome to consider new categories, such as synanthropic, feral, and other classes of liminal animals,⁹⁶ whose legal statuses are still unclear. In addition, the recognition of the right to the free development of animal behavior, according to which wild animals have a pattern of behavior typical of their species that the State has to protect, could be detrimental to animals. The respect, protection, and empowerment of the unique forms of life and flourishing indicative to each species⁹⁷ is a plausible outcome. Nevertheless, to consider animals from a pure species-specific approach, “in which each individual is only perceived as a token of its inexhaustible” type,⁹⁸ is a mistake. Each animal, if recognized as an individual, has unique forms of flourishing and behavior outside of the species-standard that should be addressed on a case-by-case basis, at least in judicial decisions. The recognition of animals as sentient beings and rights holders implies their recognition as individuals, as long as the rights recognized are based on autonomy as is done with human rights.

be tapped at the substantiated request of the President of the Republic and after a declaration of national interest issued by the National Assembly, which can, if it deems it advisable, convene a referendum”).

⁹⁴ Manzano, *supra* note 5, at 54.

⁹⁵ Constitutional Court of Ecuador Nov. 10, 2021, Judgment No. 1149-19-JP/21, ¶ 111.

⁹⁶ Donaldson & Kymlicka, *supra* note 75, at 210 (proposing the term liminal animals to refer to animals whose status is neither wilderness animals nor domesticated animals. These animals, who live amongst humans, even in the heart of the cities and inside of our houses, represent a large variety of non-domesticated species who have adapted to life amongst humans. Some examples of liminal animals are “squirrels, raccoons, rats, starlings, sparrows, gulls, peregrine falcons, and mice;” but also, suburban animals, such as “deer, coyotes, foxes, skunks, and countless others”).

⁹⁷ Bjørn Ralf Kristensen, *Rethinking Domestication Pathways in the Context of Anthrodependency*, Medium (Mar. 30, 2022), <https://medium.com/@bjornkristensen/rethinking-domestication-pathways-in-the-context-of-anthrodependency-9020006ea391>.

⁹⁸ Matthew Chrulew, *Managing Love and Death at the Zoo: The Biopolitics of Endangered Species Preservation*, 50 Australian Human. ’s Rev. (May, 2011), <http://australianhumanitiesreview.org/2011/05/01/managing-love-and-death-at-the-zoo-the-biopolitics-of-endangered-species-preservation/>.

IV. THE POSITIVE OUTCOMES FROM THE *ESTRELLITA* CASE AND THE SYMBOLIC AND INSTRUMENTAL VALUE THAT COULD BENEFIT ANIMALS

I have argued that the Rights of Nature framework is not an appropriate path for the achievement of fundamental rights for animals. The Rights of Nature framework has to be carefully studied through animal rights theory and carefully applied to the animal issue.⁹⁹ However, the Rights of Nature framework can be a practical legal tool to be used on behalf of animals.¹⁰⁰

To begin with, the Rights of Nature framework uses the value-laden Nature of the Constitution and other important legal texts that carry significant symbolic weight.¹⁰¹ Even when animals only enjoy the Rights of Nature with the aforementioned defects, the sole declaration of those ‘supposed’ fundamental rights is an achievement for animals given the strong symbolic value that the language of rights has in Western political culture.¹⁰² To recognize animals as legal subjects and rights-holders is powerful as a political declaration that can lead to the recognition of animal rights by their own value, independently from the Rights of Nature framework.

With the recognition of animals as legal subjects, the Constitutional Court of Ecuador has overcome the false idea that only human beings can be rights holders.¹⁰³ and with this recognition of animals as subjects, there is no space for the false idea that the holding of rights is necessarily conditioned on the capacity of the right-holder to bear legal obligations. Also, the Court has mentioned that the list of rights that the *Estrellita* case recognizes for wild animals is a *numerus apertus* catalog of rights.¹⁰⁴ Thus, the guarantee of rights will progressively include new rights that, although not explicitly contemplated in the *Estrellita* judgment, will be identified from its interpretation or the interpretation of the Rights of Nature and other normative provisions.¹⁰⁵ The same is true in relation to the recognition of rights for other categories of animals that the *Estrellita* case did not address.

⁹⁹ Kristen Stilt, Note, *Rights of Nature, Rights of Animals*, 134 Harv. L. Rev. F. 276, 285 (2021) (“[Rights of Nature] do not offer a model to be copied wholesale, but instead call for careful study of the parallels and points of disconnection, of the commonalities and the conflicts, with the potential for significant results”).

¹⁰⁰ *Id.* (arguing that the Rights of Nature framework can be “instructive to the cause of animal rights, intellectually and practically”).

¹⁰¹ Visa Kurki, *Can Nature Hold Rights? It’s Not as Easy as You Think*, Helsinki Legal Studies Research Paper No. 66, May 14, 2021, at 3.

¹⁰² Manzano, *supra* note 5, at 57.

¹⁰³ Constitutional Court of Ecuador Nov. 10, 2021, Judgment No. 1149-19-JP/21, ¶ 89.

¹⁰⁴ *Id.* ¶ 95.

¹⁰⁵ *Id.* ¶ 96.

Paragraph 78 of the *Estrellita* judgment is valuable in pointing out that, “although the recognition of animals as subjects of rights is the most recent phase in the development of their legal protection, it does not mean that this is a finished phase free of progression and perfection.”¹⁰⁶ In such a way, a future recognition of rights for animals based on sentience, intrinsic value, dignity, or another legal foundation different from the Rights of Nature framework could overcome the aforementioned defects of the *Estrellita* judgment.

The interspecies principle is a first step towards the recognition of inherent rights for animals, as this principle applies a capabilities approach. According to the interspecies principle, the rights for animals will correspond to their specific needs, characteristics, functions, or evolutionary processes.¹⁰⁷ In the *Estrellita* case, this principle seems to consider solely those characteristics in relation to the animal species.¹⁰⁸ Nevertheless, a more progressive interpretation of this principle will lead to the consideration of animals as individuals and consideration of their individual preferences, experiences, fears, choices, needs, and context.

There is also an instrumental value in the Rights of Nature framework that has benefited animals in Ecuador. This is because the Rights of Nature framework treats legal personhood and standing as a tool for environmental protection and, in this case, for the protection of animals.¹⁰⁹ At the time of the *Estrellita* case, the only legal tools to protect animals in Ecuador were the provisions for the Rights of Nature established in the Constitution, as Ecuador does not have an animal protection or animal welfare act to date.¹¹⁰

The judgment in the *Estrellita* case made possible the protection of individual animals, as the Court stated that, “the Rights of Nature not only protect species but also a particular animal, since it would not be possible to recognize an intrinsic value to Nature as a whole and neglect the same value to its elements.”¹¹¹ The Court also recognized the protection of animals even in the case of animals whose species are not endangered.¹¹²

¹⁰⁶ *Id.* ¶ 78.

¹⁰⁷ *Id.* ¶ 98.

¹⁰⁸ *Id.* ¶ 98-99.

¹⁰⁹ Kurki, *supra* note 99, at 2.

¹¹⁰ LA DEFENSORÍA DEL PUEBLO DE ECUADOR PRESENTÓ EL PROYECTO DE LEY PARA GARANTIZAR LOS DERECHOS DE LOS ANIMALES EN EL ECUADOR, Defensoría del Pueblo Ecuador (Aug. 19, 2022, 7:27 PM), <https://www.dpe.gob.ec/la-defensoria-del-pueblo-de-ecuador-presento-el-proyecto-de-ley-para-garantizar-los-derechos-de-los-animales-en-el-ecuador/>.

¹¹¹ Constitutional Court of Ecuador Nov. 10, 2021, Judgment No. 1149-19-JP/21, ¶ 125.

¹¹² *Id.* ¶ 126.

As a necessary part of the recognition of fundamental legal rights, the Court has recognized to animals standing to sue, pointing out that animals have the power to exercise, promote, and demand their rights before the competent authorities.¹¹³ Thus, the rights of Nature are fully justiciable through jurisdictional guarantees, and any person can bring suit on behalf of animals.¹¹⁴ Habeas corpus can be used in favor of animals, because, according to the Court, no prohibitory or mandatory rule determines that this jurisdictional guarantee cannot protect the rights of animals under the Rights of Nature.¹¹⁵ In the same way as habeas corpus, other constitutional processes are available for the vindication of the rights of animals under the Rights of Nature, such as habeas data or writs of Amparo. These constitutional processes are faster and have priority over civil, administrative, and criminal processes, as they are dealing with constitutional and fundamental rights. With the recognition of access to justice, the Court has also recognized other procedural rights for animals, such as the right to seek redress and the right to demand enforcement. In general, procedural rights for animals are particularly important as private standing (animals represented by legal guardians) will decentralize both legal animal protection and the demand for enforcement that typically are at the hands and sole discretion of public authorities.¹¹⁶

Given that the Court declared the violation of Estrellita's rights, it ordered various national authorities in Ecuador to implement policy measures on behalf of animals as a form of reparation for Estrellita. The Court ordered the Ministry of Environment to create, within a period of

¹¹³ The Court emphasized that the capacity of animals as subjects and holders of rights contemplates, namely, the powers to exercise, promote and demand before the competent authorities their rights understood under the principles of interspecies and ecological interpretation, through the mechanisms established in our current legal system; hence, the rights of wild animals, such as Estrellita, the chorongo monkey, are fully justiciable. For all these reasons and having determined the scope of the rights of Nature, the second problem of this first part of the analysis is answered positively, i.e., that the rights of Nature include the protection of a wild animal such as a chorongo monkey. *Id.* ¶ 121.

¹¹⁴ *Id.* ¶ 157.

¹¹⁵ The Court established that: there is no forbidding or mandatory rule in the Constitution or in the LOGJCC [Law of Jurisdictional Guarantees And Constitutional Control] that determines that the rights of Nature cannot be protected under a certain jurisdictional guarantee (prohibition) or that they can only be protected by a specific jurisdictional guarantee (mandate). Hence, the appropriateness of the jurisdictional guarantees according to the type of action, must be verified by the jurisdictional operators from the particularities of the specific case and the purpose of the specific guarantees, and never "prima facie" without observing the pretensions and rights whose protection is demanded. *Id.* ¶ 164.

¹¹⁶ Saskia Stucki, *Towards a Theory of Legal Animal Rights: Simple and Fundamental Rights*, 40(3) *Oxford J. Legal Stud.*, 533–60 (2020).

up to sixty days, a protocol to guide the actions of the environmental officials to address protection of wild animals in captivity, mainly those that will be subject to confiscation, taking into account the particular situations of the animal.¹¹⁷ The Court ordered the Ombudsman's Office to prepare, within six months, a bill on animal rights with the participation of civil society and technical organizations.¹¹⁸ Once the bill is finalized and presented to the legislature, the National Assembly must debate and approve a law on animal rights that respects the rights and principles established and recognized in the *Estrellita* judgment.¹¹⁹

¹¹⁷ To order the Ministry of Environment: I. To create, within a period of up to 60 days and with the support of the Ombudsman's Office, a protocol or regulation to guide the actions of the Ministry for the protection of wild animals, mainly those that will be subject to seizure or restraint, restrictions on the free locomotion of animals in order to evaluate the particular situations of the specimen and adopt appropriate measures to protect it and its species, in accordance with the standards set in this ruling. II. To issue, within a term of up to 60 days, a normative resolution that determines the minimum conditions to be met by animal keepers and caretakers in accordance with the minimum criteria or parameters of this final judgment, particularly the appreciation of such animals as subjects of rights with intrinsic value. *Id.* § VI.

¹¹⁸ To order the National Assembly and the Ombudsman's Office: I. That the Ombudsman's Office, in a participatory process and with the support of technical organizations, prepare within a period of up to six months a bill on animal rights, in which the rights and principles developed in this final judgment are included, including the minimum criteria or parameters established. II. That the National Assembly, within a term of up to two years, debate and approve a law on animal rights, in which the rights and principles developed in this final judgment are included, including the minimum criteria or parameters established. The term will be counted from the moment the bill is received from the Ombudsman's Office. *Id.*

¹¹⁹ To order the National Assembly and the Ombudsman's Office:... II. That the National Assembly, within a term of up to two years, debate and approve a law on animal rights, in which the rights and principles developed in this final judgment are included, including the minimum criteria or parameters established. The term will be counted from the moment the bill is received from the Ombudsman's Office. *Id.*