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An Analysis of the *Estrellita* Constitutional Case from an Animal Rights Perspective

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On January 27, 2022, the Constitutional Court of Ecuador (the Court) granted judgment in the case 253-20-JH, called “Rights of Nature and animals as subjects of rights, Estrellita Monkey Case,” popularly known as the *Estrellita* case.¹ The case generated high expectations as the Court selected it for the development of binding jurisprudence. Since its release, the case has received broad public attention due to its ruling. Given the importance of the *Estrellita* case, an analysis from an animal rights theory perspective is necessary. First, I will provide the prior facts of the case, explaining briefly the rights of nature under the Ecuadorian Constitution, the history before of the case, the Court’s arguments, the recognized rights for wild animals, the interspecies principle, and the principle of ecological interpretation. Secondly, I will explain why rights of nature is not the correct framework for the achievement of animal rights. Finally, I will present positive outcomes for animals that derive from the *Estrellita* case.

1. A BACKGROUND OF THE ESTRELLITA CASE

In 2008 Ecuador promulgated a new constitution that for the first time in the constitutional tradition recognized rights to nature. Its preamble proclaims a “public coexistence, in diversity and in harmony with nature, to achieve the good way of living, the *sumak kawsay*.”² Article

¹ Constitutional Court of Ecuador, Judgment No. 253-20-JH/22 (Rights of Nature and animals as subjects of rights) Case Mona Estrellita, January 27, 2022.

² Constitution of The Republic of Ecuador, October 20, 2008, Preamble (Ecuador). *Sumak kawsay* is a Quechua expression which could be translated as "good living." Pachamama Alliance, *Sumak Kawsay: Ancient Teachings of Indigenous Peoples*, <https://www.pachamama.org/sumak-kawsay#:~:text=Sumak%20Kawsay%20>

10 declares natural persons, communities, peoples, nations, and communities as rights holders. Article 10 also recognizes nature as a rights holder, but only in relation to “rights that the Constitution recognizes for it”³, that is, the rights recognized under chapter seven of the Ecuadorian Constitution.⁴ The recognition of the rights of nature had two goals: 1) overcome the Western hegemonic pattern in the relationship between society and nature to move towards the recognition of the intrinsic value of nature; and 2) face the threats of development, foreign investments and mining activities.⁵ With the recognition of the rights of nature in the Ecuadorian Constitution, nature became a subject of law. However, the Constitution defines nature as “where life is reproduced and occurs,”⁶ and because of that, the former leading interpretation considered nature only as the living space, that is, the land, a river or a mountain. Under the former leading interpretation of rights of nature, the elements of nature, such as animals, were not considered subjects of law.⁷ The Court set aside this interpretation in the *Estrellita* case.

[%20“Good%20Living”,is%20much%20deeper%20than%20this](#). Sumak Kawsay or good living is considered the right of the population to live in a healthy and ecologically balanced environment that guarantees sustainability and the good way of living. Constitution of The Republic of Ecuador, *supra*, Article 14.

³ Constitutional Court of Ecuador, *supra*, Article 10.

⁴ *Id.* Chapter Seven - Rights of nature.

Article 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. Article 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. Article 73. The State shall apply preventive and restrictive measures on activities that might lead to the extinction of species, the destruction of ecosystems and the permanent alteration of natural cycles. The introduction of organisms and organic and inorganic material that might definitively alter the nation’s genetic assets is forbidden. 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.

⁵ Jordi Jaria Manzano, *The rights of nature in Ecuador: an opportunity to reflect on society, law and environment* (48–62) (in *Global environmental law at a crossroads*, Edward Elgar Publishing, 2014).

⁶ Constitutional Court of Ecuador, *supra*, Article 71.

⁷ Hugo Echeverría, 03/24/22: Animal Personhood, Rights of Nature, and the Estrellita Constitutional Case in Ecuador, Harvard Animal Law, https://www.youtube.com/watch?v=fKOFQ8scvc&t=41s&ab_channel=HarvardAnimalLaw

According to the judgment,⁸ Estrellita was a *chorongó* monkey (*lagothrix lagothricha*) who lived for eighteen years with Ana Beatriz Burbano Proaño (Ana), beginning when Estrellita was only one month old.⁹ On September 11, 2009, as a result 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. Ana filed a writ of habeas corpus on December 6, 2019, with the purpose of obtaining a permit to possess Estrellita.¹⁰ On February 20, 2020, the Ministry of the Environment got notice about Estrellita's death on October 9, 2019.¹¹ Because the writ of habeas corpus was originally for the return of Estrellita, upon her death the purpose changed to govern the delivery of her body and to determine the official responsibilities.¹²

Both the trial and appellate courts dismissed the habeas corpus action. On July 3rd, 2020, Ana filed an extraordinary action before the Constitutional Court of Ecuador, which selected the

⁸ Constitutional Court of Ecuador, *supra*.

⁹ It is also important to point out that 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. *Id.*, paragraph 24.

¹⁰ The plaintiff pointed out the following in the writ of habeas corpus: "Mr. Judge, the possible damage to the physical integrity as well as ethological balance of Estrellita is evident and imminent, for which reason an habeas corpus will stop the mistreatment she 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." based on these arguments, the petitioner asked the immediate delivery of Estrellita to her home. *Id.* Paragraph 39.

¹¹ *Id.* Paragraph 37. It was also informed that the body of Estrellita would possibly be used for taxidermy work. *Id.*

¹² The petitioner pointed out: "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." *Id.* Paragraph 45.

case for the development of binding jurisprudence. The Court issued the judgment on January 27th, 2022, declaring the violation of Estrellita's rights at three different times: i) when she was removed from her natural habitat,¹³ ii) at the time of her confiscation,¹⁴ and iii) when she was placed in the zoo.¹⁵ However, the habeas corpus was dismissed. The Court considered that returning Estrellita from the zoo to Ana's house meant continuing to subject the animal to captivity.¹⁶ Also, the Court established that Estrellita's body could not be given to Ana because the corpse of a wild animal within an ex situ conservation mechanism must receive the corresponding phytosanitary treatment only by the authorities and competent persons with sufficient scientific and technical knowledge.¹⁷

Notwithstanding the ruling, the main question in the *Estrellita* case was to determine if animals are legal subjects. The Court rapidly resolved this question. The Court pointed out that even though animals are different from humans, that does not mean that animals are not legal

¹³ In relation to the violation of the rights of Nature by extracting Estrellita from its natural habitat, the court stated: "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." *Id.* Paragraph 134.

¹⁴ In relation to the violation of the rights of Nature by seizing Estrellita from Ana's home, the court stated: "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.* Paragraph 142. The Court also indicates that the rights of Estrellita were violated "by omitting to consider the particular circumstances of the wildlife specimen." *Id.* Paragraph 145.

¹⁵ In relation to the violation of the rights of Nature by ordering the custody of the Estrellita in a zoo, the court stated: "[T]his Constitutional Court cannot overlook the fact that 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." *Id.* Paragraph 154.

¹⁶ *Id.* Paragraph 172

¹⁷ *Id.* Paragraph 177

subjects.¹⁸ The Court also recognized that animals are different from other elements of the environment since they are “sentient beings in a strict sense.”¹⁹ Under these considerations, the Court recognized that animals are legal subjects under the rights of Nature.²⁰

Thereafter, the Court recognized a list of rights for wild animals, while no rights were established for domesticated animals. Those rights are: right to life²¹, right to physical integrity²², right to exist²³, right not to be hunted²⁴, right to free development of animal

¹⁸ *Id.* Paragraph 83

¹⁹ When the Court address 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. *Id.* Paragraphs 85 and 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 the 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 lives of sentient animal. 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] (March 12, 2022), https://www.eldiario.es/caballodenietzsche/sensibilidad-sintiencia-animales-reforma-codigo-civil_132_8821346.html

²⁰ Constitutional Court of Ecuador, *supra*, paragraph 91.

²¹ *Id.*, paragraphs 107, 131, 132, 153, 155. In the same sense as the Right to life for human beings, the Court recognizes that 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.

²² *Id.* paragraphs 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.* paragraph 133.

²³ According to the Court, the Right to exist is the main right of wild animals, 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. *Id.* paragraph 111.

²⁴ The court also recognized the right not to be hunted, fished, captured, collected, extracted, held, held, trafficked, marketed or bartered. *Id.* paragraph 112.

behavior²⁵, right not to be domesticated²⁶, right not to be the object of humanization processes or forced to assimilate human characteristics or appearances²⁷, right to freedom²⁸, right to good living²⁹, right to have a diet in accordance with the nutritional requirements of the species³⁰, right to live in harmony³¹, right to health³², and right to habitat³³. According to the Court, these rights must be analyzed from two principles: i) the interspecies principle, and ii) the principle of ecological interpretation.

The interspecies principle refers to a capability approach. The Court explained that each species has its own characteristics and qualities that will determine which rights and legal protections will apply to certain animal species.³⁴ For instance, the right to respect and conserve migratory routes is a right that can only be recognized in those animal species with migratory behavior.³⁵ For the Court, the interspecies principle guarantees protection for animals with a specific attention on their characteristics, processes, life cycles, structures, functions, and different evolutionary processes.³⁶

On the other hand, the principle of ecological interpretation claims for the respect of the biological interactions that exist between species.³⁷ Thus, biological interactions are legitimate

²⁵ *Id.* paragraph 112, 113, 119, 124, 137. One aspect of the Right to free development of the animal behavior is the prohibition of removing wild animals from their natural habitat for the convenience with or benefit of human beings. The Right to the free development of the animal behavior also recognizes the right of the 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?). It is also recognized the right to freely develop of the cycles, processes and biological interactions. *Id.* paragraph 113.

²⁶ *Id.* paragraph 124.

²⁷ *Id.* paragraphs 112 and 124.

²⁸ *Id.* paragraphs 113 (as derived from the right to free animal behavior), 137, 147, and 173.

²⁹ *Id.* paragraph 119.

³⁰ Constitutional Court of Ecuador, *supra*, paragraph 119.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.* paragraph 89.

³⁵ *Id.* paragraph 99.

³⁶ *Id.* paragraph 98

³⁷ *Id.* paragraph 100. Some of those biological interactions are competition, amensalism, antagonism, neutralism, commensalism, mutualism, and others. *Id.* paragraph 101.

restrictions to the rights of nature.³⁸ Biological interactions include those in which some individuals benefit from others, even causing harm and death.³⁹ For example, “ when a predator kills its prey in compliance with the trophic chain, the right to life of an animal is not illegitimately violated.”⁴⁰

The judgment of the *Estrellita* case is binding jurisprudence with the same legal effect of the binding jurisprudence of the common law. Thus, its ruling will determine how future cases will be resolved in Ecuador until a later judgment overturns it.

2. The *Estrellita* Case as an example of why the 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 affirmed that Ecuador is the first country where animals have legal rights.⁴¹ Nonetheless, that affirmation is not technically correct. The following analysis of the judgment will demonstrate that rights of nature is not the appropriate framework to achieve 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.

³⁸ *Id.* paragraph 102

³⁹ *Id.* paragraph 101

⁴⁰ *Id.*

⁴¹ See for instance Rosie Frost, Wild animals in Ecuador now have legal rights, thanks to a monkey named Estrellita, Euronews Green (April 06, 2022), <https://www.euronews.com/green/2022/04/01/wild-animals-in-ecuador-now-have-legal-rights-thanks-to-a-monkey-named-estrellita>, Olivia Lai, *Ecuador Becomes First Country to Recognise Animal Legal Rights*, Earth.org (April 4, 2022), <https://earth.org/ecuador-becomes-first-country-to-recognise-animal-legal-rights/>, Nonhuman Rights, *A Landmark Ruling for Animal Rights in Ecuador*, (March 23, 2022), <https://www.nonhumanrights.org/blog/landmark-ruling-animal-rights-ecuador/>, or Firstpost, *Ecuador becomes first country to give legal rights to wild animals: What does this mean for conservation?*, (April 5, 2022), <https://www.firstpost.com/world/ecuador-becomes-first-country-to-give-legal-rights-to-wild-animals-what-does-this-mean-for-conservation-10520351.html>.

According to the Court, the rights of animals under the rights of nature must be analyzed from the principle of ecological interpretation, that implies that each individual animal is part of biological interactions that have to be respected. Such biological interactions include animal-animal, animal-environment⁴², and human-animal interactions. Some biological interactions lead individuals to benefit from others by causing harm or death. As consequence, the Court established that biological interactions are a legitimate restriction for the rights of animals under the rights of nature.⁴³ Additionally, the following statement from the Court draws attention: “as human beings are predators, and being omnivorous by nature, their right to feed on other animals cannot be forbidden”⁴⁴. This means that, even though Ecuador has recognized rights for animals, they can continue to be gratuitously slaughtered for food.

Thus, the human interest in consuming animal protein has been declared a legitimate restriction on the rights of animals. So, rights such as the right to life, to physical integrity, to exist, or not to be hunted, can be negated at any time.⁴⁵ But also, the *Estrellita* judgment has legitimized other forms of animal use. The court declared that domesticated animals can be used for transportation, clothing, footwear, recreation, and leisure.⁴⁶ Wild animals can be captured for

⁴² The court presents the following example: "when a predator kills its prey in compliance with the food chain, the right to life of an animal is not illegitimately violated." *Id.*

⁴³ *Id.*

⁴⁴ *Id.* paragraph 103

⁴⁵ Indeed, the court made reference at this point to the right to food, enshrined in the Article 13 of the Ecuadorian and in International Human Rights instruments, as if the consumption of animals is part of that human right. See *Id.* paragraph 103.

⁴⁶ Here is also considered the breeding, fishing, hunting, practices that the Court considers as legitimate activities that “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.” *Id.* paragraph 108. 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.” *Id.* Paragraph 109.

ex situ conservation,⁴⁷ that is, they can be placed in zoos. Invasive species can be exterminated in the name of ecosystem balance.⁴⁸

In conclusion, the recognition of rights for animals under the rights of nature is not progress for animals, rather, it remains a welfarist conservationist system. This is because the ecological interpretation principle is a problem of the same nature that the problem of necessary/unnecessary suffering is for animal protection in welfarist regimes. In welfarist regimes, unnecessary suffering is generally disapproved, but at the end of the day, under a justification of necessity, all kinds of animal uses can be considered necessary, including the most trivial ones such as sport hunting or testing for cosmetic products.⁴⁹ In the same way, the argument of protecting natural balance and biological interactions is a rhetoric to continue justifying the use of animals for human benefit.

Restrictions on rights cannot be arbitrarily imposed either. No rights are absolute; rather they are exercised within limits on the rights of others. Nevertheless, in the history of rights, biological interactions have never been considered as a restriction or obstacle to the enjoyment

⁴⁷ For the Court, *in situ* and *ex situ* conservation “enhance opportunities for environmental education, research and scientific development” *Id.* paragraph 149. 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.*” *Id.* paragraph 150.

⁴⁸ 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.” *Id.* paragraph 105.

⁴⁹ Gary Francione explains that “[a]lthough 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, (...). For example, the uses 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.” Gary L. Francione, *Animals -Property or Persons?*, at 115, *Animal Rights Current Debates and New Directions* (Cass R. Sunstein and Martha C. Nussbaum Eds., 2014).

of human rights. For instance, the existence of viruses and bacteria in nature is not a justification for not carrying out vaccination campaigns as part of the right to health. Rather, restrictions to fundamental rights must satisfy three conditions: 1) legitimacy: that restriction corresponds to a legitimate objective; 2) legality, that the restriction is in accordance with the law; and 3) proportionality, that the restriction must be one that is necessary for the fulfillment of the objectives pursued. This is the international standard for the restriction of rights, but none of these conditions have been evaluated in the *Estrellita* judgment.

The maintenance of the *status quo*⁵⁰, namely natural balance and biological interactions, is not what rights do either. Rights theory has the characteristic of ensuring moral progress, such as the prohibition of torture, or the carrying out of vaccination campaigns against natural but deadly diseases to fulfil the right to health. Also, rights theory erects the strongest of safeguards for the most vulnerable, so subordinated groups can be protected from dominant groups.⁵¹ From a rights theory, the interests of the majority with power cannot undermine the enjoyment of rights of the weak, because rights are protections against the interests of other⁵² and are limits to state power.

If human rights standards 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. However, that was not the case. This lead to conclude that the rights of animals recognized in the *Estrellita* case are legally different from the rights recognized for human beings.⁵³ For

⁵⁰ Consider that the Court pointed out that public authorities are obliged to guarantee such biological interactions. Constitutional Court of Ecuador, *supra*, paragraph 105.

⁵¹ Sue Donaldson and Will Kymlicka, *Zoopolis A Political Theory of Animal Rights*, at 29, (Oxford University Press. 1st Ed. 2020).

⁵² Ronald Dworkin, *Taking Rights Seriously*, Bloomsbury Academic, 2013.

⁵³ The Judge Carmen Corral Ponce issued a dissenting vote pointing out that 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. For the judge, the habeas corpus is a guarantee that exclusively protects human

instance, the right to life recognized for humans under the Article 66⁵⁴ has not the same meaning that the right to life recognized for animals in the *Estrellita* judgment.

The rights for animals that the *Estrellita* judgment recognize do 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 subjects 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. Following a similar approach to welfarism, the rights of nature framework has put animals in a residual category of consideration hierarchically inferior to humans. For all the aforementioned reasons, I consider that rights of nature is not the 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, rather, they remain resources. Rights of Nature is the title of Chapter Seven of Title II – Rights, alongside other chapters that only recognize rights of humans. In such a way that, even when the Ecuadorian Constitution declares that humans are a part of nature,⁵⁵ there are two different kinds of rights

dignity. Judge Carmen Corral Ponce, dissenting vote in Judgment No. 253-20-JH/22, Constitutional Court of Ecuador, February 4, 2022. Paragraphs 45-48.

⁵⁴ Some rights recognized by the Article 66 of the Ecuadorian Constitution, that could be applied for animals, are the right to life, right to health, right to food and nutrition, right to clean water, right to housing, right to the right to bodily, psychological, moral and sexual safety, prohibition of torture, forced disappearance and cruel, inhuman or degrading treatments and punishments. *Id.*

⁵⁵ Preamble of the Constitution of The Republic of Ecuador. *Id.*

in the Ecuadorian constitution, one for human beings and another 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 duality that animal rights theory denounces.

In fact, the recognition of nature as rights holder has been done under an analogy to corporations rather than as mother earth or *Pacha Mama*.⁵⁶ The rights of nature framework continues operating within a notion of social rights and welfare that in turn are clearly based on Western patterns.⁵⁷ This Western economic model treats nature as a mere provider of resources.⁵⁸ For this reason, article 74 of the Ecuadorian Constitution establishes the right of human beings to benefit from the environment,⁵⁹ and that includes animals as elements of the environment. Thus, it is not a surprise that animals, after the *Estrellita* judgment, continue being resources for humans.

Two other flaws in the ruling in the *Estrellita* judgment can also be questioned. The *Estrellita* judgment is quite rich in its content of biological concepts, so it is surprising that the Court has reduced the concept wild animals to "those that have not been domesticated by humans"⁶⁰. Thus, the Court embraced the false binary wild/domesticated, a categorization of the animals that is currently being overcome to consider new categories of animals, such as synanthropic, feral, and other classes of liminal animals⁶¹, whose legal status is still unclear. In addition, the

⁵⁶ Jordi Jaria Manzano, *supra*, at 52

⁵⁷ *Id.*

⁵⁸ Jordi Jaria Manzano explains: "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." *Id.* at 54.

⁵⁹ 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. Constitution of The Republic of Ecuador, *supra*.

⁶⁰ Constitutional Court of Ecuador, *supra*, paragraph 111.

⁶¹ Donaldson and Kymlicka propose 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

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 for animals. The respect, protection and empowerment of the unique forms of life and flourishing indicative to each species⁶² 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”⁶³, is a mistake because each animal, if recognized as individual, may have unique forms of flourishing outside of the species-standard. The recognition of animals as sentient beings and rights holders implies necessarily their recognition as individuals. Therefore, their behavior and flourishing can vary in relation with specific circumstances that have to be addressed in a case by case basis.

3. Positive outcomes to animals from the *Estrellita* case

Even when animals only enjoy the rights that the Ecuadorian Constitution recognizes to nature, and when the principle of ecological interpretation and Ecuador's economic policy weighs against those rights, the achievement of the recognition of animals as legal subjects cannot be ignored. Thus, the Court has overcome the false idea that only human beings can be rights holders and legal persons. Also, the Court has mentioned that the list of rights that the *Estrellita*

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. Sue Donaldson and Will Kymlicka, *supra*, at 210.

⁶² Bjørn Ralf Kristensen, Rethinking Domestication Pathways in the Context of Anthrodependency. Medium. March 30, 2022. <https://medium.com/@bjornkristensen/rethinking-domestication-pathways-in-the-context-of-anthrodependency-9020006ea391>

⁶³ Matthew Chrulew, Managing Love and Death at the Zoo: The Biopolitics of Endangered Species Preservation, May, 2011, <http://australianhumanitiesreview.org/2011/05/01/managing-love-and-death-at-the-zoo-the-biopolitics-of-endangered-species-preservation/>

case recognizes for wild animals is not limited to a numerus clausus catalog of rights, rather, the list is a numerus apertus list.⁶⁴

Paragraph 78 is valuable as it points 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.”⁶⁵ In such a way, a future recognition of rights for animals that is based on animal sentience, intrinsic value, or animal dignity, and not within the rights of nature framework, could overcome the abovementioned defects in the *Estrellita* judgment. The interspecies principle is a first step towards the recognition of inherent rights for Animals as it applies a capabilities approach. According to the interspecies principle, the rights for animals will correspond to their needs, characteristics, functions, or evolutionary processes,⁶⁶ that necessarily will lead to consider animals as individuals.

Indeed, the judgment in the *Estrellita* case makes possible the protection of individual animals. The Court has 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.”⁶⁷ The Court also recognized the protection of animals even “in the case of animals whose species is not endangered.”⁶⁸

Finally, a great achievement is that the Court has recognized standing for the protection of animal rights, pointing out that animals have the power to exercise, promote, and demand their

⁶⁴ Id, paragraph 96

⁶⁵ Constitutional Court of Ecuador, *supra*, paragraph 78

⁶⁶ *Id.* paragraph 98

⁶⁷ Id, paragraph 125

⁶⁸ Id, paragraph 126.

rights before the competent authorities.⁶⁹ Thus, the rights of Nature are fully justiciable through jurisdictional guarantees, and any person can bring suit on behalf of animals.⁷⁰ Thus, the habeas corpus can be used in favor of animals, because no forbidding or mandatory rule determines that the rights of animals under the rights of nature cannot be protected under this jurisdictional guarantee.⁷¹

⁶⁹ 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 chorongó 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 chorongó monkey." *Id*, paragraph 121.

⁷⁰ *Id*, paragraph 157

⁷¹ 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*, paragraph 164.