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**MONOGRAPH**

**“NATURE AND ITS RIGHTS, ARE THEY RESPECTED IN ECUADOR?”**

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## SUMMARY

The Right to Nature is a right which arises from the need as well as responsibility that man himself has to protect the environment where we develop, disrupting and changing any natural environment in any way causing a disbalance, trying in this way to develop a protection of human beings and nature, as protected subjects within a constitutional state.

By enshrining the rights of nature in our Constitution, this seeks to achieve a natural contract, which is the agreement and reciprocity that must exist between humans and nature.

Without the many conferences that i present to you in this monography, there wouldn't be any nature rights, thanks to this conferences we can enjoy an almost safe, clean and beautiful environment.

Nature should be protected and respected, in this monography we can find many ways to preserve it, take care of it and respect it.

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## **Introduction**

In the following monographic work, we will analyze, the rights of nature and the importance of the conservation of the environment.

In the year of 2008, in the Constituent Assembly of Montecristi, our Constitution created the rights to nature, becoming the first country in the world to grant this right to it, which led to the generation of a series of rules to achieve conservation, restoration, as well as the pertinent sanctions in the different acts that lead to the contamination of the environment.

The norms, although regulate our actions as a society and greatly help to respect our environment, we must be aware of our relationship with their environment and especially their relationship with non-human forms of life, it must be harmony is our home and the home of our future generations, that we must take care of and respect as our own

Environmental damages can be prevented, that is why we will also analyze Article 73 of the Constitution of the Republic of Ecuador, where it determines the need to take precautionary measures, as well as prohibit the entry of organisms that alter the natural genetics of our means

To give nature its title as a subject of law, is a path that began in 1972, when the first global Conference on the environment was held, in which the Stockholm Declaration on the Environment was written, Here 26 principles were established that were already seeking the protection of our nature, which were generated by the increase in pollution. Years later, in 1992, the United Nations Conference on Environment and Development, known worldwide as the summit of the land, in the city of Rio de Janeiro, in this conference the principles of Stockholm are ratified.

That citizens become aware of the importance of generating activities that provide care, as well as the restitution of spaces affected by the depredation that man generates in our environment, should be part of our life plan, in as much that we learn to live in harmony with our environment, with nature, since this is the source of life, and we must be the first defenders of it, taking the laws that empower us to be the promoters of any judicial action on behalf of nature.



## **Chapter I**

### **1. Birth of the environmental agenda at the global level**

#### **1.1 Conference of the united nations on the environment, stockholm 1972**

The United Nations Conference on the environment, more commonly known as the Stockholm Conference, that took place in Stockholm, Sweden, from June 5 to 16, 1972. 113 Nations attended the Conference along with 119 inter/governmental countries and more than 400 non-governmental and intergovernmental organizations. The purpose of this conference was to make the countries aware of the early signs of damage caused to the environment and establish a vision towards a unified structure based on principles that will serve as a guide for a common environmental policy and binding agreement between participating countries.

“In this conference 26 principles were settled with its objective to focus on the reduction and elimination of 12 persistent organic pollutants which are resistant to degradation in the environment and harmful to human health” (COFEPRIS, Gobierno Mexicano). This coming together of so many great nations was a great venture towards bringing and sharing awareness o

### **1.1.1 Principles.**

Principle 2: All the natural resources that the nature provides must be taken care of, and must be respected and protected necessarily for the present and next generations.

Principle 4: The subject has as a specific duty to conserve and take care of the wild flora and fauna and its habitat that are located in danger due to a mixture of unfavorable factors. As a result, in order to plan any economic development, the importance of the conservation of all that Nature must be taken into account.

Principle 12: A portion of the countries resources should be taken for the preservation and improvement of the environment, taking into account the important needs that may be met and any expenses that may be incurred by the State for the conservation of the environment, and provide financing and assistance if requested



Principle 19: An education must be provided for the younger generation and adults that teaches the importance and the commitment of taking care of the environment and also its preservation. It is also necessary that the media helps spread the need to protect and care for the nature. (Organización de las naciones Unidas, 1972)

## **1.2**

### **Earth Summit, Rio de Janeiro 1992.**

The advance of prevention of the environment did not have the expected results after the Stockholm summit, although there were scientific advances as the adoption of measures established in the Stockholm principles were not implemented properly, so the damage to the environment continued to progress. So the United Nations created the World Commission on Environment and Development in 1983.

This commission determined the need to hold a new conference which was held in Rio de Janeiro from June 3 to 14, 1992, in which it sought to reach a point of balance between economic progress, social progress and the environment, to give priority to measures that help prevent environmental damage in the present and the future of the planet.

#### **1.2.1 Agreements.**

Agenda 21: Program 21 covers more than 2,500 recommendations that address day-to-day problems. The objective of program 21 is to prepare the generations for the challenges that may arise in the following centuries, and includes proposals that contain social and economic issues, the fight against

poverty, the preservation of natural resources, the protection of forests, the atmosphere, the oceans and biological diversity.

The declaration of Rio: In the declaration of Rio the rights and obligations of the states toward nature are determined, some of which are:

- States have the right to take advantage of and exploit their natural resources, but these must not harm the natural resources of other States.
- States must take care, seek and adopt measures to protect the environment.
- Scientific uncertainty should not delay these measures to protect the environment.

Principles relating to forests:

These principles were the first global agreement that was held on this issue, in these principles states that all countries, especially developed countries should help the preservation of the environment and land through reforestation and conservation of forests, States have the right to develop their forests according to their socioeconomic demands. (ONU, 1972)

### **1.3 Comparison between Rio and Stockholm.**

The Stockholm Declaration, which marked the beginning of global agreements to protect the environment, that protection and prevention to prevent pollution from progressing, the Rio Declaration ratified the global consensus that appropriate measures should be taken and a real commitment by States to continue pollution prevention.

In the Stockholm Declaration it was determined that care for the environment is linked to human rights, and to protect natural resources for the new generations, also to promote scientific research, education, etc., the Rio de Janeiro Declaration stressed the need to motivate sustainable development, both declarations have an anthropocentric vision, where



the human being is the main executor of this care. Without his commitment it will not be possible to reach the end of the task.

They also agree that less developed states should obtain cooperation from other more developed states, which with their technology help to achieve the desired end.

One of the highlights of the Rio Declaration is the determination that anyone who causes any damage to the environment must pay and pay back the damage caused, as

well as the fact that information about environmental damage is clear and can be made known to everyone, that legislation is created to control the damage to the environment, and to make clear that everyone is involved in the struggle, such as young people, women and ancestral peoples.

#### **1.4 Framework Convention of the United Nations on climate change 1997.**

The United Nations Framework Convention on Climate Change, this forum is the main place where consensus is reached, among the participating countries. Here is where all may come to seek prevention measures of an international nature, where regulations are created to stabilize the concentration of greenhouse gases in the atmosphere. (ONU, 1997)

The greenhouse effect produced by gases emanating from large industries cause irreversible damage to the atmosphere, and can only be avoided by training people to take precautions, as well as to adapt to climate changes while in the process of or whilst, seeking a better standard of living.

#### **1.4.1 Kyoto Protocol.**

The Kyoto Protocol is the first binding commitment for the industrialized countries, where they commit themselves to the reduction of gases that emanate their industries, and those that cause greenhouse effect in the atmosphere, this protocol seeks a sustainable environmental development.

The greenhouse effect produces global warming, which affects the earth in general, either by causing or influencing in the lack of water in many places, such as low production in agriculture, floods or droughts, changes in the climate, etc., These last mentioned have become more notorious in recent years resulting from, the gases that affect the atmosphere are not only emanating from the industries, but it has been discovered that they are also emanating from the cars. For this reason it is made obvious why it is of the utmost importance to create and adhere to an agreement that links the countries with the highest percentage of pollution, to be part of this agreement, unfortunately the United States, the first world power



and one of the highest polluting countries of the earth has not been linked to the Kyoto Protocol yet.

## **Chapter II**

### **2. Legal concept of the environment in Ecuador**

#### **2.1 Environmental principles in force in the current constitution**

As of 2008, Ecuador is the first state in the world that has in fact established, Nature in its Art, 10, as subject of Law within its constitution, Within the Act, it stipulates clearly that nature is the subject of the rights which all are entitled to and, because of this, the Constitution recognizes it as such. , In turn, the Ministry of Environment as the governing entity, regulator and coordinator of the principles, determined that laws which were written , passed and established as the environmental management law are to be met.

The following principles under the Title VII of the Good Living Regime, Chapter Two, of Biodiversity and Natural Resources, determine the following

Art 395.- The Constitution recognizes the following environmental principles:



1) The State will guarantee a sustainable model of environmental development balanced and respectful of cultural diversity, which conserves biodiversity and the natural regeneration capacity of ecosystems, and ensures the satisfaction of the needs of present and future generations.(Constitución de Ecuador, 2008)

This article establishes the principle of sustainable development, with this the state seeks a harmony between the development of the state by satisfying the needs of its inhabitants without this being detrimental to the environment, achieving a balance in a sustainable way that benefits both generations present and future.

4) In case of doubt about the scope of the legal provisions on environmental matters, these will be applied in the most favorable sense to the protection of nature.

Principle pro nature, in case of any doubt in the regulations established for the care or damages that may be caused to nature, always determine the most favorable provisions for the protection of it.

Art. 396. - The State will adopt the policies and opportune measures that avoid the negative environmental impacts, when there is certainty of damage.(Constitución de Ecuador, 2008)

The principle of prevention is found in this article where the State is committed to establish the necessary measures that are capable of protecting nature or a possible damage to it.

Art.396 ... Each one of the actors in the processes of production, distribution, marketing and use of goods or services will assume direct responsibility to prevent any environmental impact, to mitigate and repair the damage caused, and to maintain a system of permanent environmental control.(Constitución de Ecuador, 2008)

With this article it is sought that the processes that are carried out, have a properly pre-string chain, so that in the event of any environmental damage, it can be established at what point from production to use or services, it is responsible for the damage, embodying the Principle of solidarity and integral responsibility in this article.

Art. 397 ... 1. Allow any natural or legal person, community or human group, to take legal action and go to the judicial and administrative bodies, without prejudice to their direct interest, to obtain from them effective protection in



environmental matters, including the possibility of requesting measures precautionary measures that allow to cease the threat or environmental damage that is the subject of litigation. The burden of proof on the absence of potential or actual damage will fall on the activity manager or the defendant(Constitución de Ecuador, 2008)

Effective protection and investment of the burden of proof, we know that as established by the Constitution, nature is subject to law, but in order to be effective these rights the same Constitution, determines the freedom that all natural or legal persons or collective groups have to submit before the administrators of justice is or not affected by the damage that was caused to the nature, being able to be a representative of the same, and determining that the manager or defendant must under his own means, demonstrate that there is no such damage.

The Constitution in its Article 396 in its last subsection, determines that any type of legal action for environmental damages caused are imprescriptible.

### **2.1.1 Organic code of the environment**

The organic code of the environment in:



Art. 1 .- States that the purpose of it is that Ecuadorian citizens live in a healthy environment and ecologically balanced, in harmony with nature, respecting and enforcing the rights of citizens as the right of nature, which are already established as I have indicated in the Constitution of Montecristi of 2008.  
(COA,2018)

The relevant environmental principles that we find in this code are the following:

1.Comprehensive responsibility. The responsibility of those who promote an activity that generates or may generate an impact on the environment, mainly by the use of substances, waste, waste or toxic or dangerous materials, comprehensively covers shared and differentiated responsibility. This includes all the phases of said activity, the life cycle of the product and the management of the waste or waste, from generation to the moment in which it is available in conditions of harmlessness to human health and the environment.

Here it is clear that the responsibility for any damage occurred falls on all citizens, generating a chain of individual or shared responsibilities, which are established from its creation to the management of toxic waste.

2.Sustainable Development. It is the process through which, dynamically, the economic, social, cultural and environmental spheres are articulated to meet the needs of current generations, without jeopardizing the satisfaction of the needs of future generations. The concept of sustainable development implies a global task of a permanent nature. A fair and equitable distribution of economic and social benefits will be established with the participation of individuals, communities, communities, peoples and nationalities.

The sustainable or sustainable development allows to establish a harmony in the development of a nation, achieving a mechanism that is worth it alone and that constitutes a care for nature, that helps the progress of our country in all its aspects without causing harm to the environment, and achieve this is sustained and does not affect the current generation as to future generations.

3.The polluter pays. Whoever carries out or promotes an activity that contaminates or does so in the future, must incorporate into its production costs all the necessary measures to prevent, avoid or reduce it. Likewise, whoever contaminates will be obliged to complete reparation and compensation to the injured parties, adopting compensatory measures for the affected populations and paying the corresponding penalties.



By taking preventive measures, which manage to avoid any damage, we manage not only to care for the environment where we live, but also to avoid a greater expense, such as the reparation and compensation of the injured, since it is determined who causes any damage to the environment should be responsible of the economic damages caused as well as the total restoration that caused said damage.

10. Subsidiarity. The State will intervene in a subsidiary and timely manner in the repair of environmental damage, when the one that promotes or operates an activity does not assume its responsibility for the integral reparation of said damage, in order to protect the rights of nature, as well as the right of citizens to a healthy environment. Likewise, the State in a complementary and obligatory way will demand or repeat against the person responsible for the damage, the payment of all expenses incurred, without prejudice to the imposition of the

corresponding sanctions. Similar procedure applies when the affectation is derived from the action or omission of the public servant responsible for environmental.

Any natural or legal person is liable for the damages caused and must pay all the expenses that the damage generates, without this exempting it from the penal sanctions established in the Comprehensive Organic Penal Code, which also generate these damages.



#### **2.1.1.1 COIP**

Sanctions for crimes against nature, among the most relevant articles, are found.

Art. 245, establishes a sanction on people who invade the areas of the National System of Protected Areas, for which a custodial penalty of one to three years will fall.

Art.246 Penalizes people who directly or indirectly cause forest and vegetation fires with a custodial sentence of one to three years and if that fire causes the death of a person the privative penalty will be established from thirteen to sixteen years.

In art. 251, 252 and 253, Sanctions are established for crimes against water, soil and air pollution where deprivation of three to five years.

Art.257 the obligation to fully restore the ecosystem and repair and compensate people and communities for the damage caused to the ecosystem.(COIP,2018)

## **Chapter III**

### **3. Environmental evaluation**

#### **3. 1 Impact**

The impact of not taking care of nature can be easily seen daily, whether in the news or by other means, where it is already reaching a worrying level. So far in 2018, that is to say, 8 months, we have exhausted all the natural resources that were ready for this year, and we are starting to use it in the coming years. Another example of the neglect we have shown towards the environment is that which has been predicted states that in 30 years, not a single fish will be left in the ocean, all due to the overfishing. It claims that we have caused, more and more

animals to become in danger of extinction due to the hunting of these, either for fun or to be sold on the black market. It must be emphasized that in many countries, this practice is prohibited and yet, many people continue to put at risk the preservation of wild animals.

Here is yet another final example which we can clearly see, which is the ice in the Antarctic, the thickest caps of ice that exists, which many scientists have said is almost impossible to break. This year, sadly it is. Due to global warming, the ice in the Antarctic is breaking little by little. Although the idea may seem far fetched, this problem may even get worse because if there are no changes made on our behalf, the planet by 2050, will have

increased 5 degrees in temperature, two more than what scientists consider to still be safe. To top this off, yet there is still another problem we face. This problem is the dangerous deforestation that we are provoking, this goes hand in hand with biodiversity that will be reduced by at least 10%. This problem can snowball causing air pollution to be especially dangerous because it will even be dangerous enough to kill people in countries like India where air pollution is already alarming. The pollution in the air can make us lose our sight, as well as cause lung cancer. If we do not start to take quick action, if we do not stop believing that global warming is a hoax, our time on earth is limited, since resources are going to run out, the sea growing due to the melting of the ice and the dry land disappearing.

### **3.1.1 Care and preservation of nature**



There are many ways in which we can help preserve the environment. The steps to follow are not complicated, yet we must reprogram ourselves in our way of life and in our daily activities. There are several easy ways to take care of our environment that we just do not know about or simply don't realize that by doing them, we can truly make a difference. Some of the ways we can help are:

- Eliminate single-use plastics

In the ocean, approximately eight million tons of plastic are dumped in the ocean per year. This is made up greatly in part by objects of single use such as straws. is , We can simply start making a difference each time we go, to a fast food restaurant, we should ask for

our drinks to be served without a straw or lid. Another way we can help is by not buying plastic bottles, instead buying a metal thermos. When going to the supermarket, instead of asking for plastic bags, we can order cloth bags either from your home or from the same supermarket, which many have implemented for a small fee. This small price can save us a lot in the long run .from the same supermarket, which many have implemented by paying a small price.

- Recycle

When we recycle, we help take care of our environment by giving a new use to things. By merely separating the plastic bottles and putting to another use, we are recycling, you can also buy containers that are specifically to facilitate recycling and leave space for three cases where you can recycle for: waste organics, paper and cardboard.

- Use a bicycle instead of a car or bus

By making this change in our lifestyle, even if only for one day a week, we can reduce the levels of carbon dioxide and carbon monoxide in the air, which are really detrimental to the ozone layer and our health. While another option which can be taken into account, is a little more expensive, but worth it in the long run. The environment would be able to bounce back even more quickly if the purchase of an electric car would become popular. , As more and more people buy these cars, their commonality would spread and become more mundane. Unbeknown to many, today you can even find shopping centers that let you "recharge" these car completely free of charge .

- Save energy



The production of energy that we use every day is expensive and pollutes, by reducing our energy consumption, these savings will not only save us money but it will also use less fossil fuels. This is the easiest way to help conserve the environment, simply by remembering to do a simple switch of the switch when leaving a room, we must make sure to turn off the light, disconnect the electronic accessories that we are not using, such as the cell phone chargers.

- Save water

Water is a limited basic resource and little by little the shortage of fresh water is diminishing many scientists have reported that if we do not take care of water we can create wars due to water scarcity therefore, precautions must be taken. We can save this resource for example, when we are brushing our teeth turn off the water until we need it, also to what we are taking a shower either while we are shampooing or lathering, turn off the water, approximately a shower of ten minutes can get to spend 200 liters of water, to close the key when we are not using it we can reduce this number down to half.

- Change eating habits

When we stop eating meat and dairy, we save natural resources since many of these are needed for the production of meats and dairy products. By buying products in the market,



we can save plastic containers and plastic bags that can often be found in the supermarket, besides not only do these actions help us to care for the environment, it is a means that also contributes in the growth and development of the national industry.

- **Activism**

By either joining a group or donating to some cause, we are helping to make an impact, these groups seek to generate awareness and to support these causes, as more and more people make these small changes in their lives we can inspire others to Do the same and this generates a great impact on the conservation of the environment.

#### **3.1.1.1 Importance of care and respect towards nature**

The biggest reason why we must preserve our environment is that this is our house, where we live, our house that God gave us to take care of, not to destroy, without it we did not exist and little by little we are destroying it. Another reason why the conservation of the environment is important is the future generations, we must take care of the planet for our children for their children, we must solve the environmental problems that we have right now so that they will not suffer later due to our mistakes.

## Conclusions

- At the end of this monographic work it is concluded that nature is something we have to take seriously, the clock is ticking, we are running out of time and we are not changing, we keep having these bad habits that keep worsening our environment and we seem to not care about nature and climate change.
- The time has come, we have to change these bad habits immediately otherwise our time in earth will be limited and our kids will have to face the consequences.
- We have to start using less plastic and be conscious that every time we use plastic, it ends up in the ocean, where marine animals can eat it and then those plastics end up in our tables, they also can choke with it and even die.
- We have to be conscious about the damage that we have done to earth and find ways to remedy it.
- By making small changes in our lives and lifestyle, it is possible to generate a huge change for the well being of the earth.

- Putting and end to the use of using electricity in a bad way, stop wasting electricity, stop saying climate change is a hoax (also stop voting for politicians that think this), stop wasting food, our planet can't take it anymore, we have to change quickly.

- Start finding ways to help, ways to help your community make a change, make campaigns about recycling, using less energy and stop using less plastic, even if you only change one person, keep trying to make a bigger change, keep believing that we can turn this situation around, yes, the time is ending but we can still make a change and save ourselves and our future children.

- Most importantly, we must think about the future, in our children and in the generations to come, we are destroying their planet and they are going to have to fix something they did not do.



## References

COA. (2018). Obtenido de <http://www.cpccs.gob.ec/wp-content/uploads/2017/07/CodOrgAdm.pdf>

COIP. (2018). Obtenido de [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/ECU/INT\\_CEDAW\\_ARL\\_ECU\\_18950\\_S.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/ECU/INT_CEDAW_ARL_ECU_18950_S.pdf)

*Cumbre de la Tierra de Estocolmo*. (1972). Obtenido de <http://www.ordenjuridico.gob.mx/TratInt/Derechos%20Humanos/INST%2005.pdf>

Ecuador, C. d. (2008). Obtenido de <http://www.wipo.int/edocs/lexdocs/laws/es/ec/ec030es.pdf>

mexicano, G. (2003). Obtenido de <https://www.gob.mx/cofepris>

ONU. (1997). Obtenido de <http://www.marn.gob.sv/convencion-marco-de-las-naciones-unidas-sobre-el-cambio-climatico/>

