

Quito, D. M., January 27th, 2022.

CASE No. 253-20-JH

**THE PLENARY OF THE CONSTITUTIONAL COURT OF ECUADOR, IN
EXERCISE OF ITS CONSTITUTIONAL AND LEGAL POWERS,
ISSUES THE FOLLOWING**

Final Judgment
(Rights of Nature and animals as subjects of rights)
"Estrellita Monkey" case

Subject: This case originates from the filing of a habeas corpus action in favor of a chorongo monkey named "Estrellita", who had lived 18 years in a human home with a woman perceived as her mother; situation that came to the attention of the public authorities and for which a procedure was initiated with the purpose of granting custody of the wildlife specimen to a Management Center authorized by the National Environmental Authority; finally, the habeas corpus that sought the wildlife possession license and return of the Chorongo monkey was denied because it was considered necessary to protect Nature through the Environmental Authority and because when it was presented, the Chorongo monkey had already died.

The Constitutional Court of Ecuador, after having selected the case for the development of binding jurisprudence, issues this final judgment in order to **i)** recognize the scope of the rights of Nature and determine whether it covers the protection of a particular wild animal such as the "Estrellita" monkey; **ii)** review whether in the specific case of the "Estrellita" monkey the rights of Nature have been violated; and, **iii)** develop general guidelines for the applicability of constitutional guarantees in favor of wild animals such as the "Estrellita" monkey.

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I. Proceedings before the Constitutional Court

1. On June 30th, 2020, the final judgment of the habeas corpus action No. 18102-2019-00032, issued by the Specialized Criminal, Military Criminal, Police Criminal and Traffic Court of the Provincial Court of Justice of Tungurahua, was filed with this Court.
2. On December 22nd, 2020, the Selection Chamber, composed by constitutional judges Ramiro Avila Santamaría, Agustín Grijalva Jiménez and Carmen Corral Ponce, resolved to select case no. 253-20-JH, with two votes in favor by constitutional judges Ramiro Avila Santamaría and Agustín Grijalva Jiménez, and one vote against by constitutional judge Carmen Corral Ponce, to issue binding jurisprudence and develop rights, since they considered that the selection parameters set forth in Article 25 number 4 of the Organic Law of Jurisdictional Guarantees and Constitutional Control (hereinafter, "LOGJCC" for its acronym in Spanish for *Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional*)¹ were verified.
3. On January 13th, 2021, the Plenary of the Constitutional Court randomly distributed the case and the case was assigned to Judge Teresa Nuques Martínez.
4. On November 8th, 2021, Judge Teresa Nuques Martínez asserted the competence of the Court to hear the matter and by means of a resolution issued on that same day, the judge notified the parties and requested information regarding the habeas corpus action No. 18102-201900032.
5. During the processing of the case, briefs were received from the following individuals and institutions as *amici curiae*: Fundación Protección Animal Ecuador, Fundación PAE²; Plataforma ZOOXXI³; Viviana Morales Naranjo⁴ (environmental researcher); Brooks McCormick Jr. Animal Law & Policy Program at Harvard Law School and the Nonhuman Rights Project⁵.
6. In a meeting held on November 12th, 2020, the Second Review Chamber, formed by constitutional judges Ramiro Avila Santamaría, Daniela Salazar Marín and Teresa Nuques Martínez, based on the random distribution made by the Plenary of the Constitutional Court, approved the draft judgment presented by the presiding judge.

¹ The Chamber determines that this case specifically meets the parameters of novelty and non-existence of judicial precedent.

² Written communication dated March 19th, 2021.

³ Written communication dated March 26th, 2021.

⁴ Written communication dated November 13th, 2021.

⁵ Written communication dated November 28th, 2021.

II. Amici curiae

a) PAE Foundation

7. In the *amici curiae* brief, the PAE Foundation points out that this case is of substantial importance in the development and promotion of "animal law"; furthermore, it indicates that it may constitute a milestone in court rulings for the regulation and exercise of the relations of "humans with other species and consequently the development of the rights of nature established in the Constitution...".

b) ZOOXXI Platform

8. The ZOOXXI Platform, with its headquarters in Barcelona-Spain, stated that the platform will address the captivity of wild animals captured in the wild and the level of satisfaction of their welfare needs in an artificial environment not comparable to the wild environment or the animal's habitat, where they cannot develop their natural behavior, taking as a reference the perspective of "compassionate conservation", whose movement has favored the study of the problems that humans cause to wild animals, especially those related to captivity.

c) Researcher Viviana Morales Naranjo

9. Researcher Viviana Morales, in the *amici curiae* brief, among other considerations, pointed out that:

"The constitutional recognition of the rights of nature and the various guarantees and mechanisms of citizen participation recognized by the Constitution became ideal tools to vindicate the claims of both welfare and fundamentalist groups. From 2008 onwards, animalists advocate for the protection of animals through the speech of animal rights and animal welfare, all of this in view of the rights of nature. [...]"

Although in principle, the rights of nature were recognized in Ecuador in 2008, it is still unclear: What are the fundamentals and limits of these rights?; To what extent do the rights of nature allow the life of each animal to be protected?; Are there animals that have more rights than others?; Can animal rights be subsumed into the speech of the rights of nature or are they autonomous rights?"

d) Harvard Law School and Nonhuman Rights Project

10. Harvard Law School and Nonhuman Rights Project requested the Constitutional Court to determine that: "(1) nonhuman animals may be subjects of rights, (2) habeas corpus may be appropriate for nonhuman animals, and (3) nonhuman animals are subjects of rights protected by the rights of nature".

11. In this context, they explained that:

"[...] a chorongo monkey has an elaborate cognitive system, is a complex social being with a high capacity to recognize other chorongo monkeys, resources and its environment, can remember the elements of its habitat and create maps that identify the travel routes it constantly uses, which require short and long term memory to elaborate and make these mental maps, has the ability to communicate with other chorongo monkeys, possesses a complex individual personality, has a powerful learning capacity, can operate autonomously and show intelligence and adaptability, lives in a large social group that is maintained by its complex cooperative, affiliative and antagonistic behavior and cooperates among group members, even showing altruistic behavior and strong emotional bonds."

12. They added that Ecuador was the first country to recognize the negative impact of humanity on ecosystems in its Constitution, by establishing the rights of Nature, which includes forests, rivers, animal species and individual animals, including Estrellita, the Chorongo monkey concerned in this case.

13. Finally, they mentioned that, Estrellita grew up exclusively in a human environment; consequently, she required specialized care and assistance to live and thrive according to her particular circumstances. Thus, the rights that correspond to each animal under the rights of Nature will depend on the specific context, thus, some species should have the right to invoke *habeas corpus* protection directly or through the rights of Nature.

e) Silvina Pezzetta and Pablo Suárez

14. On January 5th, 2022, Silvina Pezzetta and Pablo Suárez, in their capacity as professors of the Animal Ethics course of the Law School of the University of Buenos Aires, and of the seminar on Person of the Master's Degree in Law of the University of Palermo (Argentina), sent an amicus curiae brief to the e-mail of the clerk of the presiding judge's office, the lawyer Fernando Bajaña. In their main petition, they stated that:

"(i) In this case, it is disputed whether a non-human animal can be a holder of rights and in particular whether it can enjoy the protection of the Habeas Corpus action of Article 89 of the Constitution of Ecuador, which provides that it "...aims to recover the freedom of anyone who is deprived of it unlawfully, arbitrarily or illegitimately, by order of a public authority or any person, as well as to protect the life and physical integrity of persons deprived of freedom..."

(ii) The person concept is normative and not a term of biology.

(iii) The person concept is highly polysemous and therefore who is or is not considered a person is something that is decided in a relatively arbitrary way by those who have the power to make this decision.

(iv) In fact, the concept of person is one of the terms that has endured the most friction throughout history, as it has included and excluded different individuals and groups

(women, children, persons with disabilities, racialized persons), where the criteria used for such unequal treatment cannot be justified".

15. They also stated that:

"The solution that we propose in this written presentation finds background in past rulings issued by the Argentinean Court known as the "Sandra"⁶ and "Cecilia"⁷ cases. With the differences they have with this case, they are valuable and applicable decisions for the resolution to be adopted in this case, since they provide the dynamic and progressive interpretation of the notions of person, subject of law and equality that this brief alleges".

f) Paulina Bermudez Landa, Master in Philosophy, Universidad Nacional Autónoma de México, on behalf of Proyecto Gran Simio México, Asociación Civil.

16. She states that it will provide factual and legal grounds for the specific case. It cites several provisions of the Environmental Code and states: *"every living being forms an aliquot part of nature. Thus, all living beings in nature relate to each other and to the physical environment that surrounds them. These relationships are established between individuals, populations, communities and ecosystems. Therefore, when the Constitution protects nature, it must be understood that such protection and recognition of rights encompasses the integral respect for the existence of the life that depends on it and the maintenance and regeneration of its vital cycles. Otherwise, no recognition and protection in this regard would make sense".*

17. She points out that: *"Article 150 of the same legal framework is applicable to the specific case, because although ESTRELLITA is a species of wild fauna, the truth is that it has lived as a pet and not freely, therefore, there are other protocols and issues to consider, such as the fact that it was human-imprinted, so its bond with humans is flawed by the alteration of its natural behavior to force it to live in captivity, without being able to carry out the natural behaviors of its species. As a sociable being, being raised as a domestic animal, it is necessary to pay more attention during its quarantine".* She goes on to state that *"(...) animals, in this case particularly ESTRELLITA, are subjects of rights that must be recognized as such, inasmuch as their existence is protected by the considerations set forth above. Although she lives in captivity, she is capable of feeling and developing within the natural environment, and her value does not derive only with a merely utilitarian purpose granted by or*

⁶ Federal Chamber of Criminal Appeals (Argentina), II Chamber, 12/18/2014, Case CCC68831/2014/CFC1, "Orangutana Sandra s/Recurso de Casación s/Hábeas Corpus"; Court No. 4 Cont. Adm. Trib. de C.A.B.A., 10/21/2015, Exp. A2174-2015/0, "A.F.A.D.A. y otros c/GCBA s/Amparo"; Criminal Chamber of Appeals, Contravention and Misdemeanor offenses of C.A.B.A., Chamber III, 12/12/2016, Exp. 18491-00-00/14, "Responsable del Zoológico de Buenos Aires s/Ley 14,346".

⁷ Third Court of Guarantees of Mendoza (Argentina), 11/03/2016, Exp. P-72.254/15, "Brief filed by A.F.A.A.D.A. regarding the chimpanzee 'Cecilia' - Non-human subject".

linked to the human being that, in the specific case, is related to entertainment in an exhibitor to satisfy human curiosity. Being as she is, ESTRELLITA has the right to have her life and integrity protected from third party interference, and the Ecuadorian State, in that sense, must assume the correlative obligation to deploy all the tools designed for the preservation of her minimum rights such as freedom and dignity as a sentient being". Thus, it concludes that "in the specific case, ESTRELLITA, as the subject of a life, is at a disadvantage with respect to humans and in this scenario of vulnerability, an effective judicial protection is required, to protect ESTRELLITA not only in her own right but also as part of the Pacha Mama. The above in accordance with Article 11 of the Constitution of the Republic of Ecuador (...)"

g) Heron José de Santana Gordilho, Pernambuco University of Brazil

18. He states among other things: *"The philosophical and scientific debate on the relationship between humans and animals is becoming increasingly evident in the academic world, and the subject is one of the most important ethical debates of our time. The main objective of this manifesto is to promote an analysis of legal movements of animal liberation, at the same time, to identify the theoretical foundations of animal law, demonstrating that more than moral status, animals should be considered holders of basic fundamental rights"*.
19. He concludes by stating that: *"In the same way that species evolve, legal ideas also evolve, based on the analysis of important judicial precedents or previous court resolutions. Throughout history, the theory of the subjects of rights has been modified to include new subjects, such as slaves, foreigners, women, children, commercial and political institutions, up to the current automated legal subjects, such as the family, the decedent's estate, the real estate, stable and affective unions. The theory of animal law is forced to evolve through the analysis of pioneering actions that are established as a historical framework for the recognition of animals as subjects of law, hence this call for scholars, lawyers, promoters, judges, courts and other justice operators to play an important role in the process of political emancipation of non-human animals"*.

III. Competence

20. Based on the provisions of Article 436 number 6 of the Constitution of the Republic, in accordance with Articles 2 number 3 and 25 of the LOGJCC, the Plenary of the Constitutional Court is competent to issue rulings that constitute binding jurisprudence or precedent of *erga omnes* character, in the constitutional proceedings selected for review.
21. This Body has determined as a general rule that, in order to comply with the purpose of developing rights and guarantees through the review process and to guarantee legal

certainty, contradiction and, in general, due process in selection cases, the Court must safeguard the rights of the intervening parties when reviewing the selected cases. To this effect, the Court must notify all the procedural parties from the moment the selected case is heard, convene a hearing in which the parties will be duly heard and restrict the legal analysis to the facts of the case that have been presented before judges or courts.⁸

22. Notwithstanding the foregoing, this Court has established as an exception that, when the scope of the review is delimited by the connotations of the facts of the selected cases and the procedural record is sufficient, the scope of the review will be circumscribed, the Court will proceed to decide on the merits of the case⁹. On the other hand, it has been established that the terms¹⁰ are inapplicable when the Court finds damages caused by violations of constitutional rights that were not adequately repaired¹¹.
23. In this case, it may be noted *a priori* that the judgment under review has not adequately remedied the alleged violations, since the constitutional action filed has been rejected; in addition to this, the Court has the positions and allegations of the parties and third parties in the case file, as well as the supporting documentation in the case file. Therefore, there is sufficient evidence to issue a final judgment of review of the case based on the merits of the case.

IV. Facts of the case

4.1. RELATIONSHIP BETWEEN THE CLAIMANT AND ESTRELLITA, THE CHORONGO MONKEY

24. Ana Beatriz Burbano Proaño (hereinafter "the claimant") is a 57-year-old woman, librarian, domiciled in the city of Ambato, who describes herself as "*mother and caregiver of Estrellita, a Chorongo monkey*"¹² (hereinafter "**Estrellita**").
25. Estrellita is a "*female of the chorongo species (lagothrix lagotricha)*"¹³⁻¹⁴, who came to Ana's home "*when she was one month old. This was the home in which she lived for 18 years.*"¹⁵

⁸ Constitutional Court. Final Judgment No. 159-11-JH/19, paragraph 10.

⁹ Constitutional Court. Final Judgment No. 105-10-JP/21, paragraph 11.

¹⁰ LOGJCC, Article 25, number 1, 6 and 8.

¹¹ Constitutional Court. Final Judgment No. 159-11-JH/19, paragraph 8.

¹² Ana, brief dated July 3rd, 2020, case file No. 18102-2019-00032, page 50.

¹³ Ana, brief dated December 6th, 2019, case file No. 18331-2019-00629, page 3.

¹⁴ The species *Lagothrix lagotricha* has a life expectancy of 32 years. Amaru Bioparque Cuenca. Humboldt's Chorongo monkey. Retrieved from: www.zoobioparqueamaru.com/nuestrosanimales/animal.php?Id_Animal=69-mono-chorongo-de-humboldt&Grupo=mamiferos.

¹⁵ Ana, brief dated July 3rd, 2020, case file No. 18102-2019-00032, page 51. Estrellita stayed with Ana for approximately 18 years.

26. The claimant, in her opinion, considers that: "*(w)ith the passing of the years, Estrellita, (...) became a member of the family, acquiring (their) customs, communicating through gestures and sounds*". The claimant states that she developed "*maternal feelings towards her that were received with reciprocity on her part*"¹⁶.

4.2. RESTRAINT OF ESTRELLITA, THE CHORONGO MONKEY

27. The Natural Heritage-Wildlife Unit of the Provincial Directorate of Environment of Tungurahua of the Ministry of Environment ¹⁷ (hereinafter, "**Ministry of Environment**"), received an anonymous citizen complaint about the alleged possession of wildlife in a house located in the city of Ambato¹⁸. On September 28th, 2018, the police report was raised in which it is reported on the follow-up of the complaint made with officials of the Ministry of Environment, determining that:

"(O)nce we arrived at the place, (...) we saw a wildlife specimen (monkey), (...) we could not identify with certainty the species of the wildlife specimen, then we went to the house in order to interview the owner of the property but we did not get a positive response to our presence."¹⁹

28. On September 29th, 2018, the Ministry of Environment by means of a Technical Report, concluded that "*a wildlife is observed on the outside terrace of the identified house, by the characteristics of the individual it is determined that it is a specimen corresponding to the species *Lagothrix sp* (Chorongo monkey)*" and recommended mainly that the "*MAE and UPMA staff will follow up the specimen until they can photograph it as evidence and thus carry out the process that corresponds*"²⁰.
29. On September 10th, 2019, the Ministry of Environment conducted a field inspection, which generated another Technical Report dated September 11th, 2019, whose main conclusion is that through the photographs obtained "the taxonomic identification of the specimen is made, determining that the individual belongs to the genus *Lagothrix*, species of wild fauna whose category of threat in Ecuador based on the Red Book of Mammals is Endangered, is in Appendix II (species that could become endangered unless their trade is strictly controlled) of CITES, and in the global threat category Vulnerable according to the International Union for the Conservation of Nature and

¹⁶ Ana, brief dated December 6th, 2019, case file No. 18331-2019-00629, page 3.

¹⁷ Currently named Ministry of Environment and Water, by means of Executive Decree No. 533, dated October 3rd, 2018.

¹⁸ Technical Report No. MAE-UPNT-DPAT-V.S-2018-43, case file No. 18331-2019-00629, pages 56 to 58.

¹⁹ Environmental Protection Police Unit, Police Report No. UPMACP96915995, case file No. 18331-2019-00629, pages 53 to 55.

²⁰ Technical Report No. MAE-UPNT-DPAT-V.S-2018-43, case file No. 18331-2019-00629, pages 56 to 58.

Natural Resources (IUCN). and recommended "(c)ontacting the support of the Legal Advisory Unit (...) to proceed with the respective procedure (...) ²¹".

30. On September 11th, 2009, the Ministry of Environment, in coordination with the Prosecutor's Office, the Environmental Protection Unit (UPMA), Criminalistics and the Special Operations Group (GOE), proceeded to the physical restraint of Estrellita, as evidenced in the following documents:

- i) Record of the Restraint or Immobilization of wildlife, specimens or their parts, constituent elements or any biological material, products and derivatives, equipment, means of transport and tools, dated September 11th, 2019, issued by the Ministry of Environment, invoking as grounds for the restraint the *"Violation of the Environmental Regulations in force, not having the administrative authorization. (committed by) Ana Beatriz Burbano Proaño²²"*;
- ii) Police report dated September 12th, 2019, created to give *"compliance to the Search Warrant issued by (the judge of the Criminal Unit based in the Ambato canton) according to file No. 1828222201902921G dated September 11th, 2019"*, which in a brief summary states that with *"support of GOE personnel (...) we entered the house (where) repeated attempts were made to get Mrs. Ana Burbano Proaño to hand over the monkey, but she frequently refused (...) once the verbalization and dissuasion techniques were exhausted, we proceeded to use progressive force by means of physical control without causing physical harm and respecting her integrity, so that officials of the Ministry of Environment (...) could proceed to the restraint of the monkey, then subscribing the minutes (ibidem), to be immediately transferred to the San Martin Eco Zoo in Baños canton"²³*;
- iii) Technical restraint report dated September 12th, 2019, issued by the Ministry of the Environment which of its conclusions the following stand out: *"In the house (...) the possession of a chorongó monkey (...) without administrative authorization is verified. (Ana) is identified as a presumed violator of the Environmental Regulations in force, and a restraint report No. 13-2019-DPAT-V.S. is issued (...) From the quick assessment of the physical and behavioral state of the specimen physically restrained, it is determined that it is in regular body condition and with a high level of aggressiveness towards other people due to the imprinting to which it has been subjected for 18 years in captivity. The retained specimen is placed in temporary custody in an ex situ wildlife conservation and management center authorized by the National Environmental Authority. It also establishes as*

²¹ Technical Report No. MAE-UPNT-DPAT-V.S-2019-28-EL, case file No. 18331-2019-00629, pages 59 to 62.

²² Record No. 13-2019-DPAT-VS, case file No. 18331-2019-00629, pages 66 and 67.

²³ Environmental Protection Police Unit, Police Report No. 2019091210343561618, case file No. 18331-2019-00629, pages 63 to 65

recommendations: *"To initiate the administrative process against (Ana) for non-compliance with the Environmental Regulations in force by not having administrative authorization; Keep the specimen in the quarantine and isolation area of the management center, for observation, treatment and veterinary checkups, as well as for the change of diet according to the nutritional needs that the specimen needs; Once the specimen completes its quarantine period and has a diagnosed veterinary report of physical and behavioral improvement, to mobilize the specimen to a wildlife ex situ conservation and management center located in the eastern region according to the geographical distribution of the species²⁴."*; and

iv) The medical report issued by Dr. Nixón Manuel Núñez, who upon performing the medical evaluation of Estrellita was able to verify *"that it is an adult specimen, with a body condition of 2.5/5 due to its low weight and its state of malnutrition (...), bristling and depigmentation of the fur, as a consequence of a deficient and inadequate food ration, partial loss of hair on the inner part of her left arm, with the presence of small reddish spots and dryness or flaking of the skin possibly due to the presence of fungi and wear of the incisor teeth and fangs, causing the specimen difficulty in tearing, breaking or cutting the solid food that is an essential part of her nutritional diet."*²⁵

31. In the words of the claimant on *"September 11th, 2019 [her] home was raided and Estrellita abruptly separated from the environment that sheltered her for her entire life."*²⁶
32. By means of a resolution dated September 16th, 2019, the Ministry of Environment ordered to: (i) initiate the administrative proceeding No. 34-PNT-2019 against the claimant, (ii) summon the claimant and grant her a term of 10 days to answer²⁷, (iii) make the claimant aware of the principle of reversal of the burden of proof, (iv) order the restraint of Estrellita, and (v) order the custody of Estrellita to a management center authorized by the National Environmental Authority²⁸.
33. Within said administrative process, Report No. 001 MN-ECO-ZOO was included, issued on October 3rd, 2019, by Dr. Nixón Manuel Núñez, whose conclusions are: *"(a) With the use of materials, equipment, drugs and the necessary personnel, we worked*

²⁴ Technical Report on the Restraint No. 13-2019-DPAT-VS, case file No. 18331-2019-00629, pages 68 to 73.

²⁵ Case file No. 18331-2019-00629, pages 74 to 76.

²⁶ Ibid.

²⁷ On page 93 of case file No. 18331-2019-00629, the Ministry of Environment determines: *"It should be noted that (Ana) appears in this administrative process outside the legal term she had to do so according to Art. 252 of the Administrative Organic Code"*.

²⁸ Case File No. 18331-2019-00629, pages 77 and 78.

carefully at the time of sedation, providing the necessary security to perform the manipulation and verification of the state of health. (b) The evaluation of the monkey's recovery was carried out on a weekly basis, observing the favorable increase in its physical activity and health status. (and, c) Good handling, rehabilitation, feeding and veterinary care practices have been (sic) a fundamental pillar in the recovery process of the Chorongo monkey.²⁹"

- 34.** By means of a resolution dated January 14th, 2020, the Ministry of the Environment resolved: "1) To declare [the claimant's] responsibility in the commission of the very serious infraction established in Art. 318 number 2 of the Organic Code of the Environment, in accordance with the provisions of Art. 136 of Book IV of Executive Decree 3516; 2) To impose on [the claimant] the fine of (...) (ECS 3940.00) (...); 3) To decommission the wildlife specimen in accordance with the provisions of Art. 320 number 2 of the Organic Code of the Environment, in accordance with the provisions of Art. 136 of Book IV of Executive Decree 3516³⁰; (...)"

4.3. DEATH OF ESTRELLITA, THE CHORONGO MONKEY

- 35.** It is recorded within the administrative process, the Technical Report No. MAE-DPATUPNT-V.S-2020-09-EL dated January 28th, 2020, which formally refers to the death of Estrellita, stating that "(a) at 16:00 hrs. on October 9th, 2019, by means of a phone call, Mr. Orlando Vega, owner of the San Martin Eco Zoo, informs the Engineer William Quinatoa, Responsible of the Natural Heritage Unit of Tungurahua, about the death of the chorongo monkey (...) in the morning hours³¹".
- 36.** The same Report refers to the Necropsy Report No. 003-MN-ECO-ZOO dated October 11th, 2019, issued by Dr. Nixón Manuel Núñez, in which he mainly concludes that "(i) The pathological state of the lungs, the malfunctioning of the kidneys produced a respiratory insufficiency or deficiency, accompanied by renal and hepatic problems due to the inability to perform the cleaning, the chemical balance of the blood and the production of hormones, and by the excessive accumulation of blood at coronary level it is deduced that it triggered (sic) in a cardiorespiratory arrest that caused the death of the specimen. (ii) This type of pathologies is very frequent (sic) in specimens that are seized by the Ministry of Environment because they are abnormalities that are accentuated with the course of time, they are not recent, but have been affecting them for years, and little by little they increase until the animal can no longer cope and its state of health collapses. (iii) The causes of these pathologies are several, among them we can mention: nutritional deficiencies, (...) exposure to unfavorable environmental conditions, (...) stress levels, confinement, (...) mistreatment (...)" (iv) The specimen was showing signs of improvement in its physical and behavioral state during the 23

²⁹ Case File No. 18331-2019-00629, pages 81 to 84.

³⁰ Administrative proceeding No. 34-PNT-2019, case file No. 18331-2019-00629, pages 106 to 112.

³¹ Administrative proceeding No. 34-PNT-2019, case file No. 18331-2019-00629, pages 116 to 118.

days it remained in the quarantine area, however due to the pathologies described above not visible to the technical staff and workers of the management center, the death of the Chorongó monkey occurred on October 9th, 2019³² (sic)."

37. The aforementioned Technical Report concluded that Estrellita "is in freezing at the San Martín Eco Zoo management center since October 9th, 2019 for a possible taxidermy work³³; continuing in temporary custody of Mr. Orlando Vega, owner of the holding and management center (of the aforementioned zoo)".

4.4. THE HABEAS CORPUS ACTION

38. On December 6th, 2019, the claimant filed a petition for habeas corpus³⁴ action against the Ministry of Environment, Mr. Jesús Orlando Vega Mariño owner of the San Martín de Baños Ecozoo and the State Attorney General's Office, among other things emphasized that:

"It is easy to understand the state of mind of (Estrellita), locked in a cage for the first time, far from the people she considered her herd or family, without any stimulation and very little human contact.

It is also easy to imagine her surrounded by her chorongó siblings, of whom she knows nothing, without any social tool to relate to and with the 18-year human imprint, not to mention that technically the possibility of her joining a group of chorongos is zero due to the high risk of contagion of possible human, canine or feline latent viruses in her organism that could be a threat to the health of the other primates. This leaves her with the precarious possibility of spending the rest of her days confined in a zoo cage in an ex situ conservation, she will surely develop stereotypies³⁵ like those presented by all animals subjected to this sad fate³⁶."

39. In this line, based on Article 71 of the Constitution and Article 585 of the Civil Code, the claimant explained that "(i)n this case, your Honor, the possible damage to Estrellita's physical integrity as well as to her ethological balance is evident and imminent, so this Habeas Corpus action will stop the mistreatment that she is suffering now, in precarious and totally unknown conditions for her. For this purpose, the

³² Ibid.

³³ Art of dissecting animals to preserve them with the appearance of being alive. Royal Spanish Academy, 2021. <https://dle.rae.es/taxidermia>

³⁴ The process was labeled as No. 18331-2019-00629.

³⁵ Stereotyped behaviors or abnormal repetitive behaviors are ultimately caused by artificial environments that do not allow animals to satisfy their normal behavioral needs, meaning that they develop certain behaviors that would be completely alien to them in the wild. It has been shown that all of these behaviors are caused by frustration of natural behavior patterns, impaired brain function or repeated and unsuccessful attempts to achieve a goal, for example: escape. Ecoticias.com, 2016. <https://www.ecoticias.com/naturaleza/130369/Estereotipia-animal-porque-existe>

³⁶ Case File No. 18331-2019-00629, pages 3 to 5.

Ministry of Environment will issue a wildlife possession license in which I offer to take care of her in the most adequate way for her species, including the subscription of a commitment of recognition of the exceptional right that I have, in view of the circumstances explained, and in recognition of the need for a dignified treatment and the grounds of the rights invoked", being her specific request "the immediate delivery of Estrellita to my home³⁷".

40. The processing of the habeas corpus action corresponded, after a random distribution, to the Multicompetent Judicial Unit based in Baños canton (hereinafter Judicial Unit), province of Tungurahua, which summoned the parties to a public hearing to be held on Tuesday, December 9th, 2019; by means of a decree dated Tuesday, December 10th, 2019, it was established that due to an unconscious error, Tuesday, December 9th, 2019 was recorded, clarifying that the public hearing will be held "*today, i.e. Tuesday, December 10th, 2019 at 4:00 pm³⁸*", thus the hearing was held, without the appearance of Ana or her lawyers, therefore, the Judicial Unit "*declares the dismissal due to the lack of appearance of the petitioner and to close the case³⁹*".
41. On December 11th, 2019, the Judicial Unit issued the resolution ordering to close the case. On the same day Ana requested the revocation of the order to call for a hearing and appealed the dismissal order alleging lack of notification, "*according to the attached screenshots, I did not receive any order from the court within the term assigned by law until **Monday, December 9th, 2019 at 22:02** when the Public Hearing was convened for **Tuesday, December 9th, 2019 at 16:00 hours**. In other words, after the resolution (December 9th) (...) the following day, **Tuesday, December 10th**, I receive at **16:09** a new resolution that indicates that due to an "unconscious error" it is clarified that the hearing would be on **Tuesday, December 10th at 16:00**, i.e. I received the resolution 9 minutes after the time when the hearing was intended to be held.⁴⁰" (Emphasis is part of the original document). On December 12th, 2019, the appeal was admitted.*
42. On January 27th, 2020, the Criminal Chamber of the Provincial Court of Tungurahua⁴¹ (hereinafter, the Criminal Chamber) in its final judgement, resolved to declare the nullity of the process since page 12, establishing that a new day and time be set for the hearing and resolution of the case in the lower court (*first instance court*)⁴².

³⁷ Ibid.

³⁸ Case file No. 18331-2019-00629, page 12.

³⁹ Minutes of public hearing, December 10, 2019, file No. 18331-2019-00629, page 18.

⁴⁰ Ana, brief, December 11, 2019, file No. 18331-2019-00629, pages 23 to 27.

⁴¹ The process was signed as No. 18102-2019-00032.

⁴² The Criminal Chamber based its decision establishing that several of Ana's constitutional rights have been violated for: "*not having been notified in due time for the preparation of the defense and to attend especially the public hearing that due to an unconscious error in the date, the claimant could not reach the court office of the constitutional judge of first instance*".

43. On February 11th, 2020, the Judicial Unit summoned the parties to a public hearing to be held on Friday, February 21st, 2020.
44. On February 20th, 2020, the Ministry of Environment forwarded in certified copies the case file of the administrative process No. 34-PNT-2019 to the Judicial Unit.
45. On February 21st, 2020, the summoned hearing was held, in which Ana's defense attorneys mainly established:

"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 beings⁴³. (sic)"

46. At the hearing, the representatives of the Ministry of the Environment determined that the following were the main reasons for the decision:

"(W)e brought to your Honor's attention the complete content of the file, in which in the part of the execution the state of the specimen is repeated, urged and confirmed, they had knowledge on January 29th, 2020, (...) unfortunately it is unknown that the objective is called natural heritage of the state, the diversity that accumulates the wild flora and fauna, which are wildlife, where the animals that are domestic order have no place because they do not contribute to the ecosystem, specifically the system of guarantees establishes the right to defense (...) (Ana) had 10 days to appear which was in October 10, since then she has never appeared (...) they want to allege today that procedural fraud has been committed, when the only thing that has been done is to comply with the law (...) therefore they request that the action be dismissed, the habeas corpus has been denaturalized and its requirements have not been met in this case ⁴⁴(sic)".

47. On February 26th, 2020, the Judicial Unit denied the habeas corpus action and emphasized that "(t)he extraction of wild fauna among other circumstances is used for domestication with the consequent teaching of human habits. It has been justified that

⁴³ Minutes of the public hearing, February 21st, 2020, case file No. 18331-2019-00629, pages 142 and 143.

⁴⁴ Ibid.

in fact the domicile of the claimant was raided and that the restraint of said specimen was conducted by the Ministry of the Environment in its capacity as National Environmental Authority, as the governing body of the national environmental policy, which within the framework of the law, has the responsibility to adopt national and local territorial strategies for the conservation, sustainable use and restoration of the natural patrimony. (...) The environmental authority has acted with competence, from all of the above it is justified that the recovery of the primate ESTRELLITA has not been illegal, illegitimate or arbitrary, much more if we consider that the COIP in Article 247 typifies the Crimes against wild flora and fauna (...) and it was not possible to return to the claimant the specimen that she claims to have because it is not allowed by law. (...) the death occurred on October 9th, 2019, two months before the filing of the habeas corpus action, thus the judge has been misled and therefore any right that may exist regarding the facts that occurred after the seizure of the primate Estrellita that led to its death remains unchallenged⁴⁵".

48. Ana filed an appeal against the final judgment of February 26th, 2020, which was admitted for processing on March 4th, 2020.
49. On June 10th, 2020, the Specialized Criminal, Military Criminal, Police Criminal and Traffic Court of the Provincial Court of Justice of Tungurahua⁴⁶ (hereinafter, Criminal Court) in its decision, decided to dismiss the appeal, ratifying the lower court decision, and due to the actions of both the claimant and the defendants, ordered the Judiciary Council to carry out the relevant investigations. It based its decision mainly on the fact that:

"In this case, it is observed that party with active standing, without knowing the reality of the alleged victim has proceeded to raise an action of Habeas Corpus in favor of the extinct Chorongó monkey who was known as "Estrellita", who died on September 9th, 2019 (...) That in reality, she could no longer even have aspiration, since the alleged victim had died, whose jurisdictional protection is sought.

On the other hand, (...) the rights of nature are immanent rights that correspond to humanity and not only to one person, since we must understand (sic) that all living beings are part of the ecology or ecosystem, therefore of the balance of nature. The holder of the right to file the action draws attention to past resolutions issued by foreign courts such as the case of Chucho (spectacled bear), in which the Colombian Supreme Court of Justice decided to grant Habeas Corpus, but not to live with people but in an environmental reserve "Rio Blanco"; however, the Constitutional Court in CASE DOCKET TT-6.480-577-SENTENCE SU- 016/20 (January 23rd), denied the Habeas Corpus action indicating

⁴⁵ Judicial Unit, final judgment, February 26th, 2020, case file No. 18331-2019-00629, pages 146 to 151.

⁴⁶ The process at the beginning was labeled as No. 18102-2020-00010, by means of a resolution dated May 15, 2020, the Criminal Chamber, declared the accumulation of case No. 18102-2020-00010 to case No. 18102-2019-00032, for identifying between these cases equal parties, referring to both the claimant and the defendant, and also an equal cause, in order to avoid procedural duplicity.

among other things that: "... The writ of Habeas Corpus is not the mechanism to resolve the controversy raised in relation to the permanence of the Andean bear Chucho in a zoo, to the extent that it is an instrument of protection of the freedom of human beings, which is a right that cannot be predicated of animals". Therefore, in the event that the Chorongó monkey "Estrellita" was alive, it could not be released to be handed over to the claimant, for the reasons stated above.

Lastly, it is inconceivable that the claimant could have been unaware of the death of "Estrellita" (...) considering that the San Martín Zoo is of popular access, or in other words, she could have visited the monkey constantly, because of the interest she has shown even to propose this action, forcing an unnecessary use of resources of the administration of justice, activating an action for an inert being. Likewise, the action of the defendant who had full knowledge of the death of (...) "Estrellita" and did not inform the judicial authority immediately, failing to comply with the duties set forth in paragraphs 1, 2 and 12 of Article 83 of the Constitution, is also noteworthy⁴⁷.

50. On July 3rd, 2020, the claimant filed a special protection action under No. 810-20-EP.⁴⁸

V. Constitutional Analysis

51. This binding final judgement has originated in the context of a habeas corpus action filed for the defense of a wild primate, of the species *lagothrix lagothricha* or Humboldt's chorongó monkey, named Estrellita. The chorongó monkey had lived for 18 years in a human house with a woman perceived as her mother, a situation that was known to public authorities and for which an administrative procedure was initiated with the purpose of granting custody of the wildlife specimen to a Management Center authorized by the National Environmental Authority. Finally, the habeas corpus that sought the wildlife possession license and return of the chorongó monkey was denied because it considered the need to protect Nature by the Environmental Authority and because it was filed when the chorongó monkey had already died. For the analysis of this case, the Court considers it pertinent to address the following legal problems and subproblems.

5.1. PART ONE: THE RIGHTS OF NATURE IN THE CONSTITUTION OF ECUADOR AND THE JURISPRUDENCE OF THE CONSTITUTIONAL COURT

i) What is the scope of the rights of Nature, and is it possible for it to cover the protection of a wild animal, such as a monkey?

⁴⁷ Criminal Chamber, final judgment, June 10, 2020, case file No. 18102-2019-00032, pages 40 to 42.

⁴⁸ On September 4th, 2020, the court of the Admission Chamber, formed by constitutional judges Karla Andrade Quevedo, Carmen Corral Ponce and Daniela Salazar Marín, admitted case No. 810-20-EP, whose constitutional judge is Judge Daniela Salazar Marín.

52. In this first part, we will determine the scope of the rights of Nature and whether it is possible to cover the protection of a wild animal such as the Estrellita monkey. For this purpose, the current state of the Ecuadorian legal system for the protection of Nature, other instruments and the jurisprudence developed by this Constitutional Court will be brought up, to then address the protection of wild animals. In this last point, we will address whether wild animals can be qualified as subjects of rights.

5.1.1. Nature as a subject of rights

53. The Ecuadorian Constitution, in its preamble, states: "*to nature, the Pacha Mama, of which we are a part and which is vital to our existence*", and declares that "*with a deep commitment to the present and the future*" the sovereign people of Ecuador "*[d]ecid[e] to build [a] new form of citizen coexistence, in diversity and harmony with nature, to achieve a good way of living, the sumak kawsay*".

54. Based on this approach, the Constitution of Ecuador adopts from its preamble a constitutionalism based on the diverse and harmonious coexistence with Nature that pursues the goal of a good way of living or *sumak kawsay*.

55. As a consequence of this, the subjects immersed in the protective spectrum of the Constitution are not limited to those who have civil capacity to exercise rights and to undertake obligations, but through a phenomenological twist, the Constitution welcomes under its normative framework the whole reality, seen as a vital community in constant interrelation and evolution; recognizing as subjects of law, not only individuals and legal entities, but also communities, indigenous peoples and nationalities, the Afro-Ecuadorian people, the Montubio people, the municipal districts and Nature.⁴⁹

56. Thus, the Ecuadorian Constitution goes beyond the classic anthropocentrism⁵⁰ that had inspired the Law during modern times, to embrace a sociobiocentrism⁵¹ based on

⁴⁹ Constitutional Court. Final Judgement No. 22-18-IN/21. Decision I: "*To recognize that mangrove ecosystems are holders of the rights recognized to nature and have the right to "the full respect of their existence and the maintenance and regeneration of their vital cycles, structure, functions and evolutionary processes"*".

⁵⁰ Gudynas, E. (2011) Los derechos de la Naturaleza en serio. In Acosta, A. & Martínez, E. (eds.) La Naturaleza con derechos. From philosophy to politics. Abya Yala: Quito, p. 259: "*anthropocentrism refers to a way of being in the world; it is a broader concept that expresses the relationships that run between people and between people and Nature. Under anthropocentrism all measurements and evaluations start from the human being, and other objects and beings are means to their ends. It is a profoundly anthropocentric position (Cartesianism), from which the duality that separates Nature from Society was constructed*".

⁵¹ Gudynas, E. (2011) Tensions, contradictions and opportunities of the environmental dimension of a Good Way of Living. In Farah, I. & Vasapollo, L. (coordinators) To Live well: Non-capitalist paradigm?? CIDES-UMSA & University of Rome: La Paz, p. 243: "*One of the most important consequences of this conception of a good way of living is to recognize the rights of nature. A good part of the transition from*

our millenary roots, and the contributions of pluralism and interculturalism of the diverse peoples that make up Ecuador.⁵²

57. Nature, therefore, is observed as a subject of rights with an intrinsic value, which implies that it is an end in itself and not only a means to achieve the ends of others.⁵³ This means that Nature can only be analyzed as a means, if and only if its condition of end in itself is not ignored.

58. Regarding this assessment, this Court has stated:

"The intrinsic valuation of nature implies, therefore, a defined conception of the human being about himself, about nature and about the relations between the two. According to this conception, the human being should not be the only subject of rights, nor the center of environmental protection. On the contrary, while recognizing specificities and differences, the complementarity between human beings and other species, and natural systems as they integrate common life systems is proposed".⁵⁴⁻⁵⁵

59. However, since Nature contains in its bosom and is the basis on which other subjects of rights develop, and among these, human beings, it is rational for the latter to collaborate for the good living of all of them, without this translating under any assumption into disregarding or affecting their own good way of living; hence, for the achievement of this collaborative duality of "being a means" without ceasing to "be

anthropocentrism to an alternative posture, known as biocentrism, is at stake here. This recognition does not mean, as some superficial critics warn, that an untouched Nature is postulated (...). Therefore, it is possible to take advantage of the environment as long as it is judicious and limited". Viviana Morales Naranjo (amicus curiae): "The Ecuadorian Constitution, covered by an ecocentric and biocentric approach, simultaneously recognizes the rights of nature and the duty of the State to protect each of the elements that make up the ecosystems. 61 In addition, the highest standard constitutionalizes the State's duty to ensure that animals destined for human consumption are healthy and are raised in a healthy environment (...)". The prefix "-socio" has been used in order to emphasize that biocentrism is not a contradiction or a denial of the possibility for human beings and society to satisfy their material needs.

⁵² CRE. Preamble.

⁵³ Constitutional Court of Colombia. Final judgement T-760 of 2007: *"The resources of nature are no longer at the arbitrary disposal of women and men, but rather at their care. The Constitution, that is clear, does not reduce the protection of the environment or any of its components to a liberal vision, by virtue of which human beings can dispose at will of other living beings or natural resources, but recognizes that the link between them is preceded or conditioned by some guidelines or requirements that delimit their freedoms and duties, ensuring the protection of environmental diversity and integrity (art. 79 C.P.). To this end, the Constitution makes the State responsible for planning, that is, determining the formulas from which the management and use of such resources can be carried out in order to achieve not only sustainable development, but also their conservation, restoration or substitution (art. 80)".*

⁵⁴ Constitutional Court. Final judgement No. 1149-19-JP/21, paragraph 50.

⁵⁵ The constitutional judge who presided the court in his case, reaffirmed the criteria developed in the aforementioned pronouncement, with respect to the rights of Nature in her dissenting vote in Final Judgment No. 1149-19-JP/21

an end", the principles of sustainability and ecology occupy a place of unquestionable significance.

60. Article 83.6 of the Constitution establishes the duty of Ecuadorians to *"respect the rights of nature, preserve a healthy environment and use natural resources in a rational, sustainable and ecological manner"*. Both principles provide that the elements provided by Nature must be used to satisfy the needs of society, observing a mandate of intergenerational responsibility, according to which the satisfaction of the needs of the present generation cannot compromise *"the capacity of future generations to satisfy their own needs"*⁵⁶, and a principle of ecological development, by virtue of which the use of nature's elements may under no circumstances jeopardize *"its existence and the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes"*.⁵⁷ This means that the principles in reference must not only be understood and interpreted from a human dimension but also from an ecological key, therefore, the use of elements of Nature is not only subject to a mandate to maintain and ensure the welfare of future human generations, but also to the conservation and intrinsic value of Nature.
61. Likewise, the content of these principles requires that the use of Nature's elements be governed by a criterion of proportionality, which is widely related to the Ecuadorian economic constitution, which according to Article 283 of the Constitution must develop a *"social and solidarity-based economic system; [which] recognizes the human being as subject and end; tends to a dynamic and balanced relationship between society, State and market, in harmony with nature; and aims to ensure the production and reproduction of the material and immaterial conditions that make a good living possible"*.
62. Thus, from this point of view, the use of Nature's resources is legitimate and constitutional, provided that: (i) it aims to *"guarantee the production and reproduction of the material and immaterial conditions that make a good way of living possible"*, without jeopardizing the good way of living of future generations – appropriateness-; (ii) the methods, actions and tools employed are the least harmful and cause the minimum possible environmental impact -necessity; and, (iii) the greater the degree of non-satisfaction or affectation of Nature, the greater must be the importance of satisfying the good way of living regime -proportionality-.⁵⁸

⁵⁶ United Nations (1987). Our Common Future: Brundtland Report. Retrieved from: <http://www.undocuments.net/wcedocf.htm>.

⁵⁷ CRE. Art. 71.

⁵⁸ LOGJCC. Art. 3.3. Weighting: A relationship of preference shall be established between the principles and standards, conditioned to the circumstances of the specific case, in order to determine the appropriate decision. The greater the degree of non-satisfaction or affectation of a right or principle, the greater must be the importance of the satisfaction of the other.

63. In short, the combination of both principles mandates that nature not only be seen as an object of economic exploitation, i.e. as an external source for the satisfaction of human material needs, but also as a participant in the economy with its own rights (conservation and existence).⁵⁹

5.1.2. Protection of the elements of nature

64. Now, returning to the legal protection of Nature, it is important to emphasize that its recognition and integral protection as a subject of rights is not possible unless it is embraced in its total expression, with all its components and processes. To this end, it should be emphasized that the protection of Nature is not limited to its biotic factors such as plants and animals, but also reaches those abiotic factors that are the fundamental basis for the maintenance, reproduction and staging of life, such as water, air, land and light.
65. In this line, it is valid to repeat that a previous resolution of this Court has already stated:

"Nature is made up of an interrelated, interdependent and indivisible set of biotic and abiotic elements (ecosystems). Nature is a community of life. All the elements that compose it, including the human species, are linked and have a function or role. The properties of each element arise from interrelationships with the rest of the elements and function as a network. When one element is affected, the functioning of the system is altered. When the system changes, it also affects each of its elements".⁶⁰

66. Therefore, this Organism considers it prudent to specify that, although Nature is a subject of rights in itself, it shares such quality with all its members, elements and factors. Thus, it can be affirmed that the Law protects both Nature seen as the universality of beings, phenomena and biotic and abiotic elements that coexist, interact and manifest themselves on Earth; and Nature in each of its members or singular elements, for example, Nature in a forest, in a river -as previous resolutions of the Constitutional Court⁶¹ have stated- or in a wild animal whose species is threatened.
67. This has been mentioned by the Court in Final Judgement 1185-20-JP/21, when it recognized that Nature is "*a complex subject that must be understood from a systemic perspective*"⁶² and that its components or particular expressions can come to configure

⁵⁹ Constitutional Court. Final judgment No. 47-15-IN/21, paragraph 86: "Based on this, the rights in reference may be limited or regulated in order to prevent various abuses from being committed, for example, against workers or nature, as subjects of the economy (...)".

⁶⁰ Constitutional Court. Final judgment No. 22-18-IN/21, paragraph 27

⁶¹ Constitutional Court. Final judgment No. 1185-20-JP/21. See also final judgment No. 2167-21-EP/21.

⁶² Ibid., paragraph 26.

"determined holders" of rights; notwithstanding the fact that it is not necessary the jurisdictional recognition of each of its components to affirm that they are subjects of protection.⁶³

*"In the Ecuadorian case, there is a general recognition of rights of nature in the Constitution that, as expressed by the Court in final judgment 22-18-IN/21, which refers to mangrove rights, can be materialized in specific holders; specific recognition does not imply that recognition is necessary for protection, but helps to configure protection in a manner appropriate to the specific holder of rights, in this case, Bosque Protector Los Cedros."*⁶⁴

68. Similarly, Brooks McCormick Jr. Animal Law & Policy Program at Harvard Law School and the Nonhuman Rights Project, in their amicus curiae brief mentioned:

*"4.9 Recognizing the rights of nature implies that nature not only has intrinsic value as a whole but that each of its elements also has intrinsic value, independently from what humans find valuable (Gudynas 2011, 246). Taking nature's rights seriously means protecting all species, even those that humans find ugly, unpleasant, or useless for human purposes (Gudynas 2011, 257)."*⁶⁵

69. In the same sense, the Inter-American Court of Human Rights has also recognized the need to protect Nature by considering the elements and components that make it up:⁶⁶

*"62. This Court considers it important to emphasize that the right to a healthy environment as an autonomous right, unlike other rights, **protects the components of the environment, such as forests, rivers, seas and others, as legal interests in themselves, even in the absence of certainty or evidence of risk to individual persons.** It is a matter of protecting nature and the environment **not only because of their connection with a utility for human beings or because of the effects that their degradation could cause on other rights of***

⁶³ Ibid., paragraph 42: "The Court emphasizes that the jurisdictional recognition of specific ecosystems or elements in concrete cases does not mean that the subjects not judicially declared lack protection or that the judicial recognition of each ecosystem is necessary for the rights of nature to be effective".

⁶⁴ Constitutional Court. Final judgement No. 1149-19-JP/21, paragraph 43. See also Final judgement No. 2167-21EP/21.

⁶⁵ Brooks McCormick Jr. Animal Law & Policy Program at Harvard Law School and the Nonhuman Rights Project cite Gudynas, E. (2011) *Los derechos de la Naturaleza en serio*. In Acosta, A. & Martínez, E. (eds.) *La Naturaleza con derechos*. From philosophy to politics. Abya Yala: Quito. This amicus reaches this conclusion based on the third paragraph of Article 71 of the Constitution, which establishes that: "The State shall encourage individuals and legal entities and collectives to protect nature, and shall promote respect for **all the elements that form an ecosystem**" (Emphasis added); stating that: "The third paragraph states that the State 'shall promote respect for all the elements that form an ecosystem,' indicating a legal understanding of nature that includes constituent elements, such as particular rivers, forests and animals (Lyman, Fromherz and Echeverría 2021).

⁶⁶ IACHR. Advisory Opinion OC 23/17, November 15th, 2017 "Environment and Human Rights" (On state obligations in relation to the environment in the framework of the protection and guarantee of the rights to life and personal integrity - interpretation and scope of Articles 4.1 and 5.1, in connection with Articles 1.1 and 2 of the American convention on human rights).

individuals, such as health, life or personal integrity, but also because of their importance for other living organisms with which the planet is shared, who also independently deserve protection. In this sense, the Court notes a tendency to recognize legal personality and, therefore, rights to nature not only in court rulings but even in constitutional standards (emphasis added).⁶⁷

70. Consequently, this Constitutional Court notes that Nature, in all its levels of ecological organization, is protected by Law. In Nature, several levels of ecological organization⁶⁸ can be identified and in this sense, the Court has previously recognized the quality of rights holders to ecosystems such as mangroves, rivers and forests.⁶⁹

⁶⁷ Ibid., paragraph 62. In reference to the Ecuadorian and Bolivian Constitutions: "The preamble of the Political Constitution of the State of Bolivia states that: "In time extending beyond the reach of memory, mountains were erected, rivers moved, lakes were formed. Our Amazonia, our Chaco, our altiplano and our plains and valleys were covered with greenery and flowers. We populated this sacred Mother Earth with different faces, and since then we understood the current plurality of all things and our diversity as beings and cultures". Article 33 of the same Constitution provides that: "People have the right to a healthy, protected and balanced environment. The exercise of this right must allow individuals and collectivities of present and future generations, as well as other living beings, to develop in a normal and permanent manner". Likewise, Article 71 of the Constitution of the Republic of Ecuador establishes that: "Nature or Pacha Mama, where life is reproduced and carried out, has the right to full respect for its existence and the maintenance and regeneration of its vital cycles, structure, functions and evolutionary processes. Any person, community, people or nationality may demand from the public authority the fulfillment of the rights of nature. In order to apply and interpret these rights, the principles established in the Constitution shall be observed, as applicable. The State shall encourage individuals and legal entities and collectives to protect nature, and shall promote respect for all the elements that make up an ecosystem".

⁶⁸ It should be emphasized that the elements, factors, beings and phenomena of Nature are not separate and unconnected, but rather, it is the general rule that they are interrelated and interdependent, forming different levels of ecological organization. At least six levels of ecological organization can be identified in nature:

(i) The individual or organism, described as the entity capable of carrying out the vital functions of nutrition, relationship and reproduction (sexual or asexual). It is the basic unit of ecological organization, from which we can "*begin to understand the mechanisms that produce the diversity of life and ecosystems of the Earth*". (Smith, T. & Smith. R. (2012) Ecology. Pearson Education: Mexico City, p. 14).

(ii) Population, the "*group of individuals of the same species occupying a given area*" and which "*do not function independently*". (Smith, T. & Smith. R. (2012) *Op.cit.*, page 5).

(iii) The community, made up of "*the populations of different species living and interacting within an ecosystem*". (Smith, T. & Smith. R. (2012) *Op.cit.*, page 5).

(iv) The ecosystem, i.e. the set of biological communities interacting within a given area, with the physical or abiotic environment. (Witman, W. (2017) The Ecosystem and how it relates to Sustainability. What is an Ecosystem? University of Michigan. Retrieved from: <https://globalchange.umich.edu/globalchange1/current/lectures/klings/ecosystem/ecosystem.html>).

(v) The biome or biotic area, which constitutes all those biogeographical zones into which the biosphere is divided, which are characterized by having common climates and biotic components (animals, vegetation, etc.) (Witman, W. (2017) *Op. cit.*).

(vi) The biosphere or Nature, which is the highest level of ecological organization and comprises the Earth itself, with all its elements, systems, processes and phenomena.

⁶⁹ Cf. Constitutional Court. Final judgements No. 22-18-IN/21, 1149-19-JP/21 and 2167-21-EP/21.

5.1.3. Wild animals as subjects of rights

71. To address the question of whether a *wild animal* such as Estrellita, the chorongo monkey, is a *subject of rights*, first of all, it is important to determine whether animals, in general, can be considered as subjects of rights.
72. As far as animals are concerned, this group of living beings makes up one of the eukaryotic kingdoms⁷⁰ of Nature, the kingdom Animalia, among whose members the following characteristics, although not exclusive and universal, stand out: being multicellular,⁷¹ i.e. being composed of several cells that specialize in different functions; being heterotrophic,⁷² so they obtain their energy from organic sources, as opposed to autotrophs that obtain their energy from inorganic factors such as light; having tissue,⁷³ which implies that their cells are joined together forming tissues and, sometimes, even organs, apparatus and systems; and they usually have an embryonic stage of development.⁷⁴ The human being or *homo sapiens* belongs to the kingdom Animalia.⁷⁵
73. Within the levels of ecological organization, an animal is a basic unit of ecological organization, and being an element of Nature, it is protected by the rights of Nature and enjoys an inherent individual value. Animals by their genetic composition can be classified under various taxonomic categories⁷⁶.

⁷⁰ Beings whose cell nuclei are bounded in the cytoplasm by a nuclear membrane (Εἶ: true; and κάρυον: nucleus).

⁷¹ Moreno, A. Notes on Zoology. *The architectural model in animals. Degrees and levels of organization in the animal kingdom.*. Universidad Complutense de Madrid. page 4. Retrieved from: <https://www.ucm.es/data/cont/docs/465-2013-08-22-A3%20GRADOS%20NIVELES%20DE%20ORGANIZACION.pdf>

⁷² Oikos (2017) Glossaries and boxes. Autotrophic and heterotrophic organisms. Universidad Nacional Autónoma de México. Retrieved from: web.ecologia.unam.mx/oikos3.0/index.php/articulos/17recuadros/269-organismos-autotrofos-y-heterotrofos.

⁷³ De Juan, J. Introduction to General Animal Histology. Concept and types of tissues. University of Alicante. page 10. Retrieved from: <https://rua.ua.es/dspace/bitstream/10045/18813/1/CONCEPTO%20DE%20TEJIDO.pdf>

⁷⁴ Moreno, A. Notes on Zoology. Embryology. Complutense University of Madrid. Retrieved from: <https://www.ucm.es/data/cont/docs/465-2013-08-22-A7%20EMBRIOLOGIA.pdf>

⁷⁵ Valdebenito, C. (2007) Defining Homo Sapiens-Sapiens: An anthropological approach. Acta Bioethica No. 13. Retrieved from: https://www.scielo.cl/scielo.php?script=sci_arttext&pid=S1726569X2007000100008.

⁷⁶ Dictionary of the *Real Academia Española* (DRAE): Animals by their genetic composition can be classified under several taxonomic categories according to their phylum, class, order, family, genus and species. Phylum: "Fundamental taxonomic category of biological classification, which groups organisms of common ancestry and that respond to the same model of organization, such as mollusks, chordates or annelids"; Class: "Taxonomic group comprising several orders of plants or animals with many common characters"; Order: "Each of the taxonomic groups into which the classes are divided and which are subdivided into families"; Family: "Taxon constituted by several natural genera that have a large number of common characters". Genus: "A group of beings having one or more common characters". Species: "Each of the groups into which the genera are divided and which are composed of individuals that, in addition to

74. Human beings or *homo sapiens* were the first to perceive themselves as subjects of rights and as beings with intrinsic value; however, their affirmations, denials, judgments and conclusions about animals as to whether or not they are subjects of rights have developed throughout history.
75. Law in modern times has been characterized by a marked anthropocentrism, whereby the human being has been considered the center of all legal expression. This approach has been accompanied by an evident speciesism by means of which the human being has been denying, to a greater or lesser extent, the valuation and protection of animals and other species of Nature.⁷⁷
76. However, neither anthropocentrism nor speciesism are conclusive, finished and immovable approaches in law, and human beings have progressively admitted the need to legally protect animals. In this order of ideas we can highlight at least four moments in the development of the legal protection of animals:
- (i) Their protection as things by civil law, where animals, being equal to objects, are protected as integral elements of the patrimony of natural and juridical persons, and consequently their damage or detriment must be compensated monetarily.⁷⁸ This type of legal protection found support during the modern era in the

the generic characters, have in common other characters by which they resemble each other and are distinguished from those of the other species. The species is sometimes subdivided into varieties or races". Human beings, for example, belong to the Chordata phylum, the class of mammals, the order of primates, the family of hominids, the genus *homo* and the species *sapiens*. On the other hand, a Humboldt monkey belongs to the Chordata phylum, to the class of mammals, to the order of primates, to the family of atelids, to the genus *woolly* and to the species *lagothricha*. Both species differ in their family and genus, but are equal in their kingdom, order, class and phylum.

⁷⁷ Professors such as Peter Singer have defined speciesism as "discrimination on the basis of species", and as "a prejudice or partial attitude favorable to the interests of members of one's own species and against those of others". Thus, speciesism, understood as "the idea that it is justifiable to give preference to certain beings on the simple assumption that they are members of the species *Homo Sapiens*", basically contravenes the values, principles and rules that the Law itself has postulated to defend in modern times, such as the right to equality and the principle of non-discrimination, by virtue of which any differentiation between two or more groups that does not have "an objective and reasonable justification, i.e. when it does not pursue a legitimate end and there is no reasonable relation of proportionality between the means used and the end pursued" would be prohibited. Singer, P. (1999) *Animal liberation*. Trotta: Madrid, p. 14. Singer, P. *Animal Liberation*. The New York Review of Books No. 8 of Volume L, May 15, 2003, p. 1. Translation by Margarita Martínez. Retrieved from: www.sociales.uba.ar/wp-content/uploads/17.-Liberación-animal.pdf. I/A Court H.R., in Case of Duque v. Colombia, Judgment of February 26th, 2016, para. 106

⁷⁸ Rivero Sosa i. (2017) Ethical and legal approach to animal protection. In Ambrosio Morales, M. & Anglés, M. (coordinators). *The legal protection of animals*. Instituto de investigaciones jurídicas de la Universidad Nacional Autónoma de México: Mexico City, p. 36: "(...) the status of *res* or things, "This conception, which derives from Roman law, was adopted by the French Civil Code, a model that served as a direct source for our civil codification (...), and which has remained unalterable to this day, except for a few modifications."

philosophical reflections of René Descartes, who considered animals as "simple machines that experience neither pleasure nor pain, nor anything else."⁷⁹

- (ii) Animal welfare,⁸⁰ which in the words of Molina Roa, "*dominates the vast majority if not all legislation on animals, [where it] their use for food, obtaining skins, entertainment, vivisection, pharmaceutical, medical and military experimentation, hunting, exhibition in zoos, etc. is accepted, as long as the treatment is 'kind' and humane, and the death of the animals, in the case of their use as a food resource, is done with the minimum pain and suffering*".⁸¹
- (iii) Their identification as protected objects of the environment, where animals are only recognized as having an ecosystemic value, but not an inherent individual value.⁸²
- (iv) The recognition of animals as subjects of rights.⁸³

77. Thus, the recognition of animals as subjects of rights constitutes the most recent phase in the development of their legal protection, which is based on the recognition of animals as living beings with an intrinsic value that makes them holders of rights.

78. However, 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. Nor should this phase be seen as an antithesis of the previous phases, but rather as its synthesis and overcoming, still under construction, which, therefore, includes several of the notions of the previous phases, but distinguishes itself from them by directly recognizing in animals an inherent value and the quality of subjects in the Law.

⁷⁹ Molina Roa, J. (2018) Animal rights. From the consideration as things to zoopolitics. Universidad Externado de Colombia: Bogotá. p. 162. Cf. Descartes, R. Method Discourse/Metaphysical Meditations. Translation by Manuel García Morente, p. 37-41. Retrieved from: <https://ministeriodeeducacion.gob.do/docs/biblioteca-virtual/IHsx-descartes-rene-discurso-delmetodopdf.pdf>

⁸⁰ Peter Singer is probably the philosopher who has made the greatest theoretical contribution to this current.

⁸¹ Ibid, page 176. Cf. Singer, P. (1999) Animal Liberation. Trotta: Madrid.

⁸² Cf. Constitutional Court of Colombia. Final judgment T-760 of 2007: "*with wild, savage or "untamed" animals, a series of more burdensome requirements must be met, given that their closest link is linked to the full functioning of the ecosystem and because it is assumed that in the absence of any of them, the general equilibrium of the ecosystem could be seriously and irreversibly affected to the detriment of sustainable development and the right to a healthy environment*".

⁸³ Perhaps a first philosophical approach to this idea can be found in the valuation of animals as moral beings and subjects of life promoted by Tom Regan, from which he demands the recognition of animals as "*sentient beings and, above all, as subjects of life capable of being aware of their own existence and its ends*". Ibid, page 178.

79. In this sense, this Court warns that animals should not be protected only from an ecosystemic perspective or with a view to the needs of human beings, but mainly from a perspective that focuses on their individuality and intrinsic value. Regarding this consideration, the Colombian member of this organization has expressed: "*animals are protected not only in terms of their ecosystemic contribution, but also as sentient beings, individually considered*".⁸⁴

5.1.4. Animals are subjects of rights different from human beings.

80. There are many ways in which legal subjects can be classified. They can be classified according to whether they are individual subjects, such as human individuals, or collective subjects, such as indigenous peoples; or whether they are of a monetary nature, such as companies, associations and other legal entities.⁸⁵

81. Another way of categorizing the subjects of law is by looking at whether they are human, i.e., whether they correspond to what are commonly called individuals, or are non-human subjects, such as the State and corporations. Consequently, while all humans are subjects of law, not all subjects of law are humans.⁸⁶

82. In the case of animals, they are subjects of rights different from human beings.

83. Thus, this Court agrees that animals cannot be equated to human beings⁸⁷, since their nature and essence is not fully compatible with that of human beings, which does not mean that they are not subjects of rights, but rather that their rights should be observed as a specific dimension -with their own particularities- of the rights of Nature.

⁸⁴ Constitutional Court of Colombia. Final judgement SU016/20.

⁸⁵ Zaffaroni, Raúl. *La Pachamama y el Humano*", Ediciones Madres de Plaza de Mayo, Ediciones Colihue, ISBN 978-950-563-925-0, Buenos Aires, 2011, p. 58. 58: "The recognition of the legal personality of creatures considered things advanced in law through the centuries and the unthinkable became thinkable (...) There are many judges who prefer to continue conceiving the rights of animals in the Kantian style, i.e. as an indirect relationship always with the human, on the assumption that ethics is limited to the species and cruelty to animals affects this exclusively human ethics, as opposed to animalism that considers humans and animals included in the same ethical universe (...)".

⁸⁶ If there is one characteristic shared by companies, foundations, associations, commercial trusts, nationalities, peoples, communities, collectives and Nature, it is the fact that none of these subjects of law are human persons, or what is commonly referred to in civil law as individuals or *natural persons*.

⁸⁷ The recognition of animals as subjects of law does not mean their equality with humans, since each species has its own protection needs that are differentiated by its own characteristics and qualities. Therefore, it cannot be ignored that human beings can be differentiated from other animals by their capacity for rational reflection, which has allowed them to develop in scientific, political, economic, social, religious, cultural and psychological fields; to express their ideas, emotions, feelings and reasoning through conventional languages; and to build interpersonal relationships at family, community, social and global levels. As a result, their demands for legal protection are different.

5.1.4.1. Sentience in the broad and narrow senses

84. In this context, it is important to note that another way of classifying subjects of rights is according to their capacity for sentience, i.e. based on whether or not they possess the capacity to perceive and respond to external or internal stimuli.
85. The biotic elements and components of Nature, such as plants and animals, as a general rule, have the capacity to perceive and respond to stimuli in their environment and activate natural mechanisms, this faculty can be called biological reactivity or sentience in a general or broad sense.⁸⁸
86. However, in a special way, there are certain elements of Nature that are sentient beings in a strict sense, insofar as they possess, to a greater or lesser extent, a centralized and specialized nervous system, with the capacity to receive stimuli from their environment and interior, process this information and produce a specialized and subjectivized response⁸⁹. In order to have this type of sentience in the strict sense, the individual must necessarily possess a central nervous system.
87. Many animals have a centralized and specialized nervous system⁹⁰, which makes them sentient beings in the strict sense, since their responses to stimuli can be subjectivized, and they can analyze stimuli as sources of pain, suffering or pleasure. However, not all animal species have this characteristic; in fact, many species of the animal kingdom do not have a centralized and/or specialized nervous structure, so not every animal is a sentient being in the strict sense, and the physical, psychological and physiological characteristics of each species must be analyzed in order to determine this.
88. Human beings are sentient beings in the strict sense of the word, who have used their capacity for subjectification to enhance an important aptitude for reflection, which in turn has allowed them to build different social, political, economic, religious, cultural, scientific and psychological environments; to express their ideas, emotions, feelings

⁸⁸ In this way, certain elements of nature, such as plants, respond to stimuli from water, light, soil and other factors by moving closer or further away from the stimulus, depending on whether it is useful for their functioning.

⁸⁹ Brooks McCormick Jr. Animal Law & Policy Program at Harvard Law School and the Nonhuman Rights Project cite Islamabad High Court (2020), Resolution No. 1155/2019, Page 59-60. "An animal undoubtedly is a sentient being. (...) By nature, each specie has its own natural habitat. They require distinct facilities and environments for their behavioral, social and physiological needs. This is how they have been created. It is unnatural for a lion to be kept in captivity in a restricted area. To separate an elephant from the herd and keep it in isolation is not what has been contemplated by nature. Like humans, animals also have natural rights which ought to be recognized. It is a right of each animal, a living being, to live in an environment that meets the latter's behavioral, social and physiological needs."

⁹⁰ The nervous system enables animals to take in stimuli from the environment and from within their own organism, process this information and produce a specialized response.

and reasoning through conventional languages; and to build interpersonal relationships at family, community, social and global levels.

89. Thus, this Court concludes that there are subjects of rights such as human beings and some animals with sentient capacity in the strict sense. Notwithstanding, the latter does not mean that animals with sentience in the strict sense should or can be equated to human beings, since each species has its own protection needs that stand out for their own characteristics and qualities; therefore, their demands for legal protection will be different.

5.1.5. Animal rights as a particular expression of the rights of Nature

90. Within this framework and having established that animals are *subjects of rights*, it is necessary to verify whether the *rights of Nature* protect a particular wild animal such as the Estrellita monkey.
91. Thus, this Court recognizes that animal rights constitute a specific dimension with its own particularities of the rights of Nature.
92. Animal rights protect specific members of the animal kingdom who are therefore part of Nature. The conditions of their ecosystems, communities or habitats, also protected by the rights of Nature, necessarily affect them; just as the conditions of such individuals may eventually affect the systems in which they inhabit and their relationships.
93. The rights of animals are held by specific members of the animal kingdom, while the rights of Nature are more generally applicable to the existence of all natural species, not only animals, and to the maintenance and reproduction of their relationships and processes within their respective ecosystems, including abiotic elements.
94. Under these considerations, it is clear that in Ecuador animals enjoy special constitutional and legal protection, since the valuation that the Constitution has made of Nature has a common axiological foundation with the rights of animals.
95. Thus, having pointed out that the basis of the rights of Nature lies in the recognition of its intrinsic value, it should be considered that the rights expressly recognized by the Constitution are not exhaustive, and therefore do not exclude other rights that are necessary for its full development.
96. In this sense, one of the main consequences of the non-exhaustive list of rights of Nature is the duty not to limit them to a closed catalog or *numerus clausus* structure, but rather to identify them as a form of legal protection with an open clause, i.e. one that is not reduced to guaranteeing the rights stated in written normative bodies and

which, instead, recognizes all those rights that, although not explicitly contemplated in a normative body, are suitable for the protection of Nature.

97. Therefore, in order to solve this legal problem as to whether the rights of Nature are sufficient for the protection of a wild animal, such as the Estrellita chorongo monkey, it is important to point out that, in a general and non-exhaustive manner, the demands for legal protection of animals must be analyzed from the interspecies principle and the principle of ecological interpretation as principles of interpretation and understanding of their rights.
98. The interspecies principle is a principle that guarantees the protection of animals with a concrete grounding in the characteristics, processes, life cycles, structures, functions and evolutionary processes that differentiate each species⁹¹. For example, the right to food of an Andean condor is not protected or guaranteed in the same way as that of a pink Amazonian dolphin, since both species have different feeding demands and behaviors; while the former is a scavenger bird, the latter is a mainly fish-eating mammal.
99. The interspecies principle also allows us to observe that there are rights that can only be guaranteed in relation to unique or exclusive properties of a species, for example, the right to respect and conserve the areas of distribution and migratory routes, is a right that can only be protected in those species of animals with migratory behaviors⁹².
100. However, in addition to an interspecies principle, it is necessary to take into account a principle of ecological interpretation that respects the biological interactions that exist between species and between populations and individuals of each species.

⁹¹ The interspecies principle "means that animals cannot be seen as subordinate or as tools, and their needs and desires must be seriously considered through changes in perceptions and practices, and through regulation and enforcement". Therefore, the establishment of a principle of ecological and interspecies solidarity in a legal standard makes it possible to materialize, in law, the aspiration to make compatible the interest of conservation of the biosphere, as species and ecosystems, and the interest of non-human animals, as sentient individuals, under a logic of optimization, and not of mutual exclusion". Gonzalez Marino, I. (2020). Towards a principle of ecological and interspecies solidarity. *Journal Chilean Journal of Environmental Law*. (1). Pages 143-171.

⁹² Convention on the Conservation of Migratory Species of Wild Animals (CMS).

101. In this context, this Court highlights competition,⁹³ amensalism,⁹⁴ antagonism,⁹⁵ neutralism,⁹⁶ commensalism⁹⁷ and mutualism⁹⁸ among the main biological interactions that should be respected, valued and analyzed. In many of these biological interactions, some individuals benefit from others by causing them harm, sometimes even death, as happens with predation,⁹⁹ herbivory¹⁰⁰ or parasitism,¹⁰¹ which are the main cases of antagonistic relationships.
102. As a consequence, the rights to life, to physical integrity and others must be interpreted based on these principles, since biological interactions are the foundation of the interdependence, interrelation and equilibrium of ecosystems; therefore, when

⁹³ Gelambi, Mariana. (2018). Neutralism (biological relationship): theories and examples. Lifeder. Retrieved from <https://www.lifeder.com/neutralismo/>: "Neutralism, in ecology is a relationship or interaction between two biological entities, in which neither party is benefited or harmed. According to several authors, relationships of this type are virtually impossible in nature. Species are exposed to extremely complex relationships, so that a neutralistic relationship is quite difficult to prove."

⁹⁴ Hilje, L. (1984) Symbiosis Terminological and evolutionary considerations. P. 58. Retrieved from <https://dialnet.unirioja.es/servlet/articulo?codigo=538126>: "Relationship between individuals of two or more species, in which one of the associates inhibits the others".

⁹⁵ DRAE: "Interaction between organisms or substances that causes the loss of activity of one of them, such as the action of antibiotics against bacteria".

⁹⁶ Fiorani, V. Encyclopedia of the Conicet. Government of the Province of Mendoza-Argentina. Retrieved from: <https://www.mendoza.conicet.gov.ar/portal/enciclopedia/terminos/Competen.htm>: "It is the relationship that exists between individuals of the same species (intraspecific) or of different species (interspecific), when the resources of the ecosystem in which they develop are insufficient to supply the needs of all the individuals living there. These resources can be food, nutrients, light, water or space. When the water content of a soil approaches wilting point, plants with deeper roots, with greater physiological economy, can continue to live with greater chance than those with shallower roots. Competition is even more noticeable when two individuals compete or use the same resource, and may even lead to the elimination of the organism that is less capable of such a struggle, or less aggressive. Likewise, in the case of changing environmental conditions, a species may gain ground in certain periods of resource crisis or otherwise lose ground".

⁹⁷ Hilje, L. (1984) Ibidem: "Relationship between individuals of two or more species, in which at least one of the partners is not harmed and the others obtain benefits".

⁹⁸ Ibid: "Relationship between individuals of two or more species, from which temporarily or permanently all obtain benefits that are crucial for their existence".

⁹⁹ Ibidem: "Relationship between individuals of two or more species, in which the individuals of one or more of them are totally or partially devoured".

¹⁰⁰ Madriaza, A. (2017). Light and Herbivory: Factors to consider in the distribution of woody species in the temperate rainforest of southern Chile, p. 12: "Herbivory is the interaction between plants and animals where animals consume some part of the plant tissue (leaves, stems, flowers, fruits, roots, etc.) (del Val & Boege 2012), which brings negative or fatal repercussions for their biological performance and adaptation (Coley & Barone 1996)".

¹⁰¹ Hilje, L. (1984) Ibid: "Relationship between individuals of two or more species, in which the individuals of one or more of them derive benefits, harming the other, but usually without causing its death".

a predator kills its prey in compliance with the trophic chain¹⁰², the right to life of an animal is not illegitimately violated¹⁰³.

103. The latter is of great concern, particularly with regard to the relationship of human beings with other animals, insofar as human beings are predators, and being omnivorous by nature, their right to feed on other animals cannot be forbidden.¹⁰⁴ In addition to being a biological condition of human beings, driven by the intrinsic principle of survival, food is a right established in the Constitution and in international human rights instruments.¹⁰⁵

104. Finally, it should be pointed out that the ecological interpretation of animal rights reflects the need for each individual animal to be analyzed on the basis of the levels of ecological organization that contain it, i.e., as part of a population, a community and an ecosystem. Therefore, because of this principle, public authorities will be obliged

¹⁰² Spinelli. M. Conicet Encyclopedia. Government of the Province of Mendoza-Argentina. Retrieved from: <https://www.mendoza.conicet.gov.ar/portal/enciclopedia/terminos/CadeAlim.htm>: "Food chain (= Trophic chain) Trophic chain (from Greek throphe: feeding) is the process of transfer of food energy through a series of organisms, in which each one feeds on the preceding one and is food for the next one".

¹⁰³ Dalerum, F. & Swanepoel, L. (2017). Humans as predators: an overview of predation strategies pursued by hunters with different motivations. *ARBOR Science, Thought and Culture*. Vol. 193-786. Retrieved from: <https://arbor.revistas.csic.es/index.php/arbor/article/view/2229>.

¹⁰⁴ Heterotrophic organisms cannot form their own food and depend on forms of carbon synthesized by other organisms. The human being is a heterotrophic being and, therefore, biologically is conditioned to feed on other organisms. In addition to being a biological condition of the human being, driven by the intrinsic principle of survival, food is a right established in the Constitution and in international human rights instruments such as the ICESCR. 2. The States Parties to this Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the steps, including specific programs, which are needed to: (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating principles of nutrition and by improving or reforming agrarian systems so as to achieve the most efficient exploitation and utilization of natural wealth; (b) To ensure an equitable distribution of world food supplies in relation to need, taking into account the problems facing both food-importing and food-exporting countries. // Protocol of San Salvador. Everyone has the right to adequate nutrition which ensures the possibility of enjoying the highest level of physical, emotional and intellectual development. // Constitution. Art. 13.- Individuals and communities have the right to safe and permanent access to healthy, sufficient and nutritious food, preferably produced locally and in accordance with their diverse identities and cultural traditions. The Ecuadorian State shall promote food sovereignty // In General Comment No. 12, the Committee on Economic, Social and Cultural Rights of the United Nations has indicated that adequate food is "inseparably linked to the inherent dignity of humankind and is indispensable for the enjoyment of other human rights recognized in the International Bill of Human Rights" (paragraph 1). When referring to the concept of adequacy, the Committee mentions that its precise meaning "is determined to a large extent by the social, economic, cultural, climatic, ecological and other conditions prevailing at the time" and that its basic content includes the availability of food in sufficient quantity and quality to satisfy the dietary needs of individuals, specifying that this availability of food must be acceptable to a given culture; and the accessibility of this food in sustainable forms and that it "does not interfere with the enjoyment of other human rights" (paragraph 8).

¹⁰⁵ Ibid.

to ensure that the biological interactions of the different individuals, populations and communities of animal species within an ecosystem maintain their natural balance.

105. Consequently, when scientific, technical and ecological reasons so require, subject to applicable environmental regulations,¹⁰⁶ 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.¹⁰⁷

5.1.5.1. Human interactions with animals

106. Humans are biologically conditioned to feed themselves on other organisms¹⁰⁸. In general, humans have used techniques such as agriculture, animal husbandry, fishing, hunting, gathering and forestry to ensure the provision of nutritional sources.

107. As a consequence, and as previously recognized, the rights to life, to physical integrity and others, must be interpreted based on the principles of interspecies and ecological interpretation, since biological interactions are the basis of the interdependence, interrelation and balance of ecosystems; therefore, when a predator

¹⁰⁶ Organic Environmental Code. "Art. 71.- Control of species populations. The National Environmental Authority shall define the criteria and guidelines for the control of animal species populations that may affect ecosystems. Authorized control hunting is a mechanism by which the areas of apprehension, times, methods, quantities and means of capture shall be regulated. The National Environmental Authority will publish and update the list of species subject to control by this mechanism.

¹⁰⁷ Ibid. Glossary of Terms. "Exotic or introduced species - Species, subspecies, race, or variety of animal, plant or microorganism not native to a given geographic space as a product of human or natural activity. Invasive species - An invasive species is a plant, animal, or microscopic pathogen that, once removed from its natural habitat, becomes established, spreads, and damages the environment, economy, or human health in its new habitat."

¹⁰⁸ As mentioned, the human being is a heterotrophic being. Heterotrophs cannot form their own food and depend on forms of carbon synthesized by other organisms. <http://web.ecologia.unam.mx/oikos3.0/index.php/articulos/17-recuadros/269-organismos-autotrofos-yheterotrofos>. // Proteins, fats and carbohydrates are the three main concrete nutrients on which the human diet is based. Latham, M. (2002) Human Nutrition in the Developing World. Food and Agriculture Organization of the United Nations FAO Food and Nutrition Paper Series No. 29. Chapter 9 Macronutrients: carbohydrates, fats and proteins. Retrieved from: <https://www.fao.org/3/w0073s/w0073s0d.htm>. Amino acids are the chemical basis of proteins, however, essential amino acids cannot be produced by humans and must be obtained from plant, animal and fungal sources. The nine essential amino acids are: histidine, isoleucine, leucine, lysine, methionine, phenylalanine, threonine, tryptophan and valine

kills its prey in compliance with the food chain¹⁰⁹, the right to life of an animal is not illegitimately violated.¹¹⁰

- 108.** These types of activities are legitimate, and 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.
- 109.** Similarly, 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.
- 110.** Thus, the Constitutional Court recognizes that all the aforementioned activities could be framed, depending on the particularities of each case, within the right guaranteed by Article 74 of the Constitution, and thus constitute forms through which individuals, communities, peoples and nationalities exercise their right to benefit from the environment and natural resources that allow them to live well.

5.1.6. Specific rights of wild animals

- 111.** Wild animals are those that have not been domesticated by humans, and that inhabit an ecosystem in which they have not been introduced by anthropic activity. The main right of wild animal species is the right to exist and, consequently, not to be extinct for non-natural or anthropic reasons. This has as a counterpart for human beings, the prohibition to carry out activities that may lead to the extinction of species, the destruction of the ecosystems they inhabit and the permanent alteration of their natural cycles.
- 112.** In general, wild species and their individuals have the right not to be hunted, fished, captured, collected, extracted, kept, retained, trafficked, traded or exchanged, notwithstanding the legitimate interactions mentioned in paragraphs 107 *et seq.* above; likewise, they have the right to the free development of their animal behavior, which

¹⁰⁹ Spinelli, M. Conicet Encyclopedia. Government of the Province of Mendoza-Argentina. Retrieved from: <https://www.mendoza.conicet.gov.ar/portal/enciclopedia/terminos/CadeAlim.htm>: "Food chain (= Trophic chain) Trophic chain (from Greek throphe: feeding) is the process of transfer of food energy through a series of organisms, in which each one feeds on the preceding one and is food for the next one".

¹¹⁰ Dalerum, F. & Swanepoel, L. (2017). Humans as predators: an overview of the Predation strategies followed by hunters with different motivations. ARBOR Science, Thought and Culture. Vol. 193-786. Retrieved from: <https://arbor.revistas.csic.es/index.php/arbor/article/view/2229>.

includes the guarantee not to be domesticated and not to be forced to assimilate human characteristics or appearances.

- 113.** The right to free animal behavior protects the general freedom of action of wild animals; i.e. the right to behave according to their instinct, the innate behaviors of their species, and those learned and transmitted among the members of their population. The right to free animal behavior also protects the right of animals to freely develop their biological cycles, processes and interactions.
- 114.** In this line, the referred right produces two legal consequences, one of a positive nature and the other of a negative nature; these being: (i) on the one hand, the obligation of the State to promote, protect and ensure the development of the free behavior of wild animals; and, (ii) the prohibition for the State or any person to intervene, impede, interfere or hinder this free development.
- 115.** This right guarantees that wild animals are not taken from their natural habitat to be transferred to human environments and forced to adapt or remain in those environments, with the purpose of assimilating characteristics different from those naturally possessed by their species, for the convenience or benefit of human beings. This right also ensures that wild animals are not subjected to humanization processes, which are understood as procedures through which wild animals are forced or accustomed to adopt aesthetic and behavioral characteristics traditionally attributed to the human species, in matters related to clothing, food, hygiene, habitat, or others, whether for purposes of companionship, ornamentation or any other.¹¹¹
- 116.** The domestication and humanization of wild animals are phenomena that have a great impact on the maintenance of ecosystems and the balance of nature, as they cause the progressive decline of animal populations, which, in many cases, being endemic, reduced or with slow reproduction rates, increase their risk of vulnerability and danger of extinction¹¹².
- 117.** The transformation of wildlife species into pets also has direct repercussions on the life cycles of wild species, particularly with regard to the reproductive processes of wild animals and their population dynamics.
- 118.** In fact, it is quite common for wild animals to be captured to be turned into pets when they are newborns or at an early age, since there is a belief that, in that period of

¹¹¹ Cf. Abarca, H. (2005). Wild fauna in domestic captivity conditions in Costa Rica: problems and solutions. *Biocenosis Magazine*. Vol.19.

¹¹² Cf. Janik, D., Guillén, F. & Ramírez, S. (2004) Problem of turning wild animals into pets. *Revista Ambientico* No. 127. School of Environmental Sciences. National University of Costa Rica. Retrieved from: <https://www.ambientico.una.ac.cr/revista-ambientico/problematika-de-lamacotizacion-de-animales-silvestres/>.

their development, these animals are "less wild" and can be subjected to behavioral modification for the purpose of being turned into pets; this generates a serious modification in the processes of generational succession of animal populations, causing the number of offspring within these populations to be lower than the number of parents, and the probability of successful genetic transmission to decrease drastically and the rates of population aging to increase.

- 119.** But the consequences of domestication, "humanization" and turning wild animals into pets are not only manifested in terms of population or species. Wild animals subjected to these procedures suffer direct violations of their rights to freedom and good living; it is common for these animals to have their rights to food in accordance with the nutritional requirements of their species, to live in harmony, to health, to habitat, to the free development of their animal behavior, among others, violated:

It is common that the owner-supplied diet does not meet the minimum nutritional requirements (...).

The frequent cases of aggressiveness during the animal's adult stage are justified when its instinctive behavior arises when defending its territory or looking for a place within its social structure, as it would do in natural conditions. It is also common for the animal to suffer from muscle breaks or fractures when the time of migration approaches, since it hurts itself on the walls of the cage, when it wants to follow the migratory route that other individuals of its kind do.¹¹³

- 120.** In this line of thought, this Court considers justified that a wild animal such as the Estrellita chorongó monkey can be protected in a particular way from the rights of Nature; since its life and integrity could be seriously injured if the wild animal is subjected to petting processes or if its habitat is interfered with or extracted; it could even be animals whose species is categorized as endangered or vulnerable.

- 121.** Finally, this Court emphasizes 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.

¹¹³ Abarca, H. (2005). Wild fauna in domestic captivity conditions in Costa Rica: problems and solutions. Biocenosis Magazine. Vol.19, p. 35.

5.2. PART TWO: REVIEW OF THE ESTRELLITA MONKEY CASE

ii) Have Nature's rights been violated in the case of the Estrellita monkey?

122. In this second part, it will be determined whether the rights to Nature have been violated in the specific case, under the understanding that these involve the protection of a particular wild animal such as the Estrellita chorongo monkey. Although the habeas corpus is initiated due to the seizure of the chorongo monkey, from the facts observed in this resolution, it is considered imperative to analyze the chain of events that concluded in the death of Estrellita, therefore, in the opinion of this Court, it is important to observe the first three moments that present the facts of the case (ii.1) the life of the Estrellita monkey extracted from its natural habitat for 18 years; (ii.2) the State actions in which the "seizure" of the Estrellita monkey took place because there was no authorization for the possession of wildlife, and, (ii.3) its transfer to a Zoo authorized by the National Environmental Authority and subsequent death. For which, the following legal subproblems will be addressed:

ii.1) Were Nature's rights violated when Estrellita, the chorongo monkey, was removed from its natural habitat?

5.2.1.1. Extraction of the Estrellita monkey from its natural habitat

123. From the facts of the case, the first moment that emerges is the life of a wild animal, Estrellita, the Chorongo monkey, in an urban house for 18 years. In this sense, the same claimant Ana accepted that the Estrellita monkey arrived at her home "when she was one month old. Home in which she lived for 18 years."¹¹⁴

124. As stated in the previous section, wild animals are those "that have not been domesticated by humans, and that inhabit an ecosystem in which they have not been introduced by anthropic activity" and that "In particular, wild species and their individuals have the right not to be hunted, fished, captured, collected, extracted, kept, retained, trafficked, traded or exchanged; Likewise, they have the right to the free development of their animal behavior, which includes the guarantee of not being domesticated and not being forced to assimilate human characteristics or appearances".

¹¹⁴ Ana, brief dated July 3rd, 2020, case file No. 18102-2019-00032, page 51. Estrellita stayed with Ana for approximately 18 years.

125. Although Ecuadorian environmental legislation allows the possibility that a wildlife species may have an *in situ*¹¹⁵ or *ex situ*¹¹⁶ conservation regime, this 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.
126. This becomes relevant because protecting only the species of animals - neglecting the protection of individual animals, which in turn make up the species - 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 impact¹¹⁷.
127. In the specific case, moreover, the Court notes with concern that it is precisely a chorongito monkey whose species has been categorized as an endangered species. In this regard, it has been recognized that Estrellita belongs to *"the Lagothrix genus, a species of wild fauna whose threat category in Ecuador according to the Red Book of Mammals is Endangered (...) and in the global threat category Vulnerable according to the International Union for Conservation of Nature (IUCN) (emphasis added)"*¹¹⁸.
128. To this, it should be added that this species of chorongito monkey is threatened in the Ecuadorian Amazon by hunting and loss of its habitat, with the inability to maintain its population, with a low reproduction rate, and that the chorongito monkey taken from

¹¹⁵ Organic Environmental Code. "Article 33 - *In situ* conservation. The terrestrial, insular, marine and freshwater biodiversity shall be conserved *in situ*, by means of the regulatory mechanisms and means established in this Chapter. The sustainable use of its components shall be sought in such a way as not to cause its long-term decrease, in order to maintain its potential to satisfy the needs of present and future generations".

¹¹⁶ Organic Environmental Code: "Art. 66.- *Means of conservation and management. The following are means of ex situ conservation and management of wildlife species: 1. plant nurseries; 2. botanical gardens; 3. zoos; 4. sustainable breeding and reproduction centers; 5. rescue and rehabilitation centers; 6. germplasm banks; 7. aquariums; and, 8. others established by the National Environmental Authority*".

¹¹⁷ In this line, the Court takes note of the *amicus curiae* brief of Brooks McCormick Jr. Animal Law & Policy Program at Harvard Law School and the Nonhuman Rights Project which states: "4.10 *Species are made up of individuals. Thinking exclusively at the species level has fueled the extinction and endangerment of significant numbers of animals. First, many animal species have few individuals left, thus, what happens to these individuals affects the whole species. For example, the fate of the Northern white rhino species (Ceratotherium simum cottoni) is in the hands of Fatu and Najin, two female white rhinos who are permanently protected by armed guards in Kenya's Ol Pejeta Sanctuary, and a team of German scientists working on a breeding program using the frozen sperm of dead male rhinos (Brownlee 2021). 4.11 Additionally, in the Ecuadorian Chocó, there remain only thirty to forty jaguars (Panthera onca). The situation is even worse in the Chongón-Colonche Mountain, where there are less than 10 jaguars left (Basantes 2021). Hence, if one jaguar is killed, the species population would decrease by an alarming 10% in that area (...).*"

¹¹⁸ Technical Report dated September 11th, 2019 from the Ministry of Environment.

its habitat is female, negatively affecting the offspring that during its life it could have contributed to the species in its natural habitat. In this line, we take note of the information provided by Brooks McCormick Jr. Animal Law & Policy Program at Harvard Law School and the Nonhuman Rights Project on the status of the chorongos monkeys in the Ecuadorian Amazon and other data on the species¹¹⁹.

129. The Court observes that in the facts presented in the case - in addition to the removal of a wildlife specimen from its natural habitat - the Estrellita chorongos monkey was kept in an urban house for a long period of time (18 years) and that during that time there was no action or even intention to protect the wild animal by evaluating the alternative of reintegrating it into its natural habitat, neither by Ana -the person who had it under her care-, nor by the State entities -which are responsible for the protection of wild fauna- or the same people who could have noticed the presence of a chorongos monkey in a house in the city of Ambato, taking into account that the Ministry of Environment itself admits that it was possible to see the chorongos monkey from the outside of the house¹²⁰. However, although an anonymous complaint was filed which later generated different actions, this Court cannot fail to note that Article 71 of the Constitution recognizes that: "Any person, community, people or nationality may demand from the public authority the fulfillment of the rights of nature" and that it was possible to adopt timely measures for the protection of the wildlife specimen during all those years that it lived in an urban house.

130. Although the existence of the human imprint has been recognized both by Ana in her lawsuit and by the Ministry in the technical report drawn up at the time of

¹¹⁹ "Woolly monkeys, like Estrellita, are considered the most threatened primates in the Northern Ecuadorian Amazon, due to habitat loss and hunting for food and the illegal pet trade (Álvarez-Solas, de la Torre, and Tirira 2018, 188-89). Woolly monkeys are incapable of maintaining their population under the excessive pressure of hunters, driving them to disappear in those areas (Álvarez-Solas, de la Torre, and Tirira 2018, 188). Considering that Earth is going through the sixth mass extinction of animal species (Ripple et al. 2017, 1026), what happens to one individual animal is relevant for the survival of the whole species.

4.12 Even when a species is not on the brink of extinction, what happens to an individual still has an impact on the species. For instance, woolly monkeys have a low reproductive rate and do not generally tolerate altered habitats or the presence of humans (Alvarez-Solas, de la Torre, and Tirira 2018, 189). Considering one female can have several babies during her life, individual well-being affects the reproductive success of the species.

4.13 If the Constitutional Court were to determine that a single animal is not part of nature, it would create a terrible incentive for humans who aim to hunt and capture such animals. So long as these people took or harmed animals one at a time, they would seemingly not run afoul of articles 71 to 74 of the Constitution. Courts in Ecuador would be forced to make difficult decisions; how many animals would trigger the rights of nature? Two? Ten? 100? A manageable rule, and one that flows from the text of the Constitution and better responds to the ecological crisis, is to consider individual animals as the beneficiaries of the rights of nature.

(...) (emphasis added)".

¹²⁰ On September 28th, 2018, the Police Report was prepared in which the following up of the anonymous complaint with officials of the Ministry of the Environment was reported.

Estrellita's restraint¹²¹, which in principle would not make an automatic reinsertion into the natural habitat of the species viable after 18 years of living with humans, this Court cannot ignore the fact that Estrellita's basic nutritional needs and an adequate environment were not met while she lived, according to the case file. In this sense, Estrellita's medical report indicates a state of malnutrition and other conditions in her skin, fur and teeth¹²²; there is also a technical report from the Ministry of Environment from which it can be deduced that for years the Estrellita monkey suffered from malnutrition, stress levels, confinement, unfavorable environmental conditions, etc., as stated in the technical report:

"The pathological state of the lungs, the malfunctioning of the kidneys produced a respiratory insufficiency or deficiency, accompanied by renal and hepatic problems due to the inability to perform the cleaning, the chemical balance of the blood and the production of hormones, and due to the excessive accumulation of blood at the coronary level, it is deduced that it triggered (sic) a cardiorespiratory arrest that caused the death of the specimen. (ii) This type of pathologies is very frequent in specimens that are seized by the Ministry of Environment because they are abnormalities that are accentuated with the course of time, they are not recent, but have been affecting them for years, and little by little they increase until the animal can no longer cope and collapses its state of health. (iii) The causes of these pathologies are several, among them we can mention: nutritional deficiencies, (...) exposure to unfavorable environmental conditions, (...) stress levels, confinement, (...) mistreatment (...)" (iv) The specimen was showing signs of improvement in its physical and behavioral state during the 23 days it remained in the quarantine area, however, due to the pathologies described above, not visible to the technical staff and workers of the management center, the death of the Chorongo monkey occurred on October 9th, 2019¹²³.(sic)" (emphasis added).

131. These facts show that the life and integrity of Estrellita, the little monkey, was seriously compromised. In this line, the Court has recognized that the protection of life is composed of two dimensions: *"the first, a negative dimension through which the State is forbidden to attempt against the life of persons; and the second, a positive dimension that obliges the public authorities to establish a system of protection that*

¹²¹ Technical Report of the Restraint dated September 12th, 2019, issued by the Ministry of Environment which of its conclusions the following stand out: *"In the house (...) the possession of a chorongo monkey (...) without administrative authorization is verified. (Ana) is identified as a presumed violator of the Environmental Regulations in force, and a restraint report No. 13-2019-DPAT-V.S. is issued (...) From the quick assessment of the physical and behavioral state of the specimen physically restrained, it is determined that it is in regular body condition and with a high level of aggressiveness towards other people due to the imprinting to which it has been subjected for 18 years in captivity (...)"*

¹²² The medical report issued by Dr. Nixón Manuel Núñez, who upon performing the medical evaluation of "Estrellita" was able to verify *"that it is an adult specimen, with a body condition of 2.5/5 due to its low weight and its state of malnutrition (...), bristling and depigmentation of the fur, as a consequence of a deficient and inadequate food ration, partial loss of hair on the inner part of her left arm, with the presence of small reddish spots and dryness or flaking of the skin possibly due to the presence of fungi and wear of the incisor teeth and fangs, causing the specimen difficulty in tearing, breaking or cutting the solid food that is an essential part of her nutritional diet."*

¹²³ Necropsy Report No. 003-MN-ECO-ZOO dated October 11th, 2019, issued by Dr. Nixón Manuel Núñez.

punishes any aggression against life regardless of its public or private origin and without distinction with respect to those involved"¹²⁴.

- 132.** Wild animals, as subjects of rights, are protected in their right to life within these two dimensions, in view of the prohibition to attempt against their life and, likewise, to benefit from protection systems that guarantee their life and development and, at the same time, punish aggressions of this type.¹²⁵
- 133.** On the other hand, regarding integrity, this Court has held in previous rulings that it comprises several complementary, interdependent and necessarily related dimensions¹²⁶. 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*"¹²⁷. 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.¹²⁸ 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.
- 134.** In the case of the Estrellita chorongo 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.

¹²⁴ Final Judgement No. 113-14-SEP-CC.

¹²⁵ On animal life, it is pertinent to note the development of the Islamabad High Court, which has been brought to the attention of this Court through the amicus curiae brief of Brooks McCormick Jr. Animal Law & Policy Program at Harvard Law School and the Nonhuman Rights Project: "*it is also a natural right of every animal to be respected because it is a living being, possessing the precious gift of 'life.' Humans cannot arrogate to themselves a right or prerogative of enslaving or subjugating an animal because the latter has been born free for some specific purposes. It is a natural right of an animal not to be tortured or unnecessarily killed because the gift of life it possesses is precious and its disrespect undermines the respect of the Creator.*" (Islamabad High Court (2020), Resolution no. 1155/2019, page 60.)

¹²⁶ Final judgment No. 365-18-JH/21 and accumulated

¹²⁷ Paragraph 70, numeral i), *ibidem*

¹²⁸ Another protected dimension is sexual integrity, understood as "the protection of the autonomy of all persons with respect to their corporeality and genitality and consent to participate in sexual acts or acts with sexual connotations", prohibits all acts of zoophilia, as well as animal cruelty practices involving forced reproduction and pregnancy of females, when these are at risk of suffering irreversible damage to their reproductive organs, as happens in cases of clandestine breeding of wild animals, where females are forced to become pregnant. Cf. Organic Administrative Code. "*Art. 145F.- The sale of domestic companion animals, dogs and cats, for the purpose of reproduction for commercialization is prohibited*".

135. Moreover, the facts of the case show that both the removal of Estrellita the monkey and the conditions in which she lived for 18 years would be contrary to the purpose of the principles of interspecies and ecological interpretation referred to in the previous section, since it was not achieved in any way to ensure the "*protection of animals with a concrete landing in each of the characteristics, processes, life cycles, structures, functions and evolutionary processes differentiating each species*" nor respect for the "*biological interactions that exist between species and between individuals of each species*"; respectively.

136. On the contrary, a wild animal whose species is "*endangered*" was taken, disregarding the threat to the species in Ecuador described in paragraphs 127-128 above, with the aggravating factor that the Estrellita monkey is a species that "*does not tolerate habitat alteration or the presence of human beings*"¹²⁹ and that it was counterproductive to extract or remove a specimen taking into account its low population density and its low reproductive rate, This is accentuated by the fact that a female specimen was removed and retained outside its natural habitat, thus nullifying the possibility that the offspring she may have had during her lifetime would ensure the reproductive success of the species; This is furthering the problem that the species is disappearing in the Ecuadorian Amazon.

137. Although this Court could not declare any violation of rights at this particular moment in the life of Estrellita the monkey, since the review of this case is limited by the purpose of the habeas corpus action, in order to prevent cases like Estrellita's from happening again, this Court does consider it necessary to establish minimum criteria or parameters regarding the conditions or circumstances of keeping wild animals, regardless of whether the person responsible for their possession or legally authorized care is an individual, a private or a state-owned entity. These should be observed and guaranteed by the jurisdictional operators who deal with claims of jurisdictional guarantees raised for the protection of an animal's rights:

- i) Animals in the location in which they are kept must have access to adequate food and water to maintain their health and strength.
- ii) The environment in which they live must be suitable for each species, with adequate shelter and resting conditions. They must be allowed freedom of movement.
- iii) Animals must be guaranteed adequate sanitary conditions to protect their health and physical integrity.
- iv) Animals must be guaranteed sufficient space and relationship conditions to ensure the possibility of the free development of their animal behavior.

¹²⁹ Amicus curiae submitted by Brooks McCormick Jr. Animal Law & Policy Program at Harvard Law School and the Nonhuman Rights Project on the status of Chorongó monkeys in the Ecuadorian Amazon and other data on the species.

- v) Animals must be guaranteed life in an environment free of violence and disproportionate cruelty, fear and distress.

138. To continue with the analysis of the case and considering the facts that gave rise to the habeas corpus proceeding under review, we will proceed to answer the following legal subproblem.

ii.2) Were Nature's rights violated by the seizure of Estrellita, the chorongo monkey?

5.2.1.2. The "seizure" or "restraint" of Estrellita

139. A second moment raised by the facts of the case is the "*seizure*", "*restraint*" or "*immobilization*" of the Estrellita monkey by the state authorities in the urban house owned by Ana.

140. From the proven facts, this Court observes that based on an anonymous citizen complaint, the environmental authority learned of the possession of wildlife in a house located in the city of Ambato and, later, several acts and proceedings were generated in which it was possible to obtain evidence, identify the species of the wild animal and conclude the existence of the alleged infraction by Ana for the possession of a wildlife specimen without the corresponding authorization, in accordance with the provisions of the Environmental Code (*see paragraphs 27-34 above*).

141. This Court considers legitimate the exercise of powers by State authorities for the protection of wildlife provided for in the legal system as well as the possibility of imposing civil, criminal or administrative liability for violations of the legal system (such as the absence of an authorization for the possession of wildlife); However, when the exercise of such powers has the potential to affect or they actually affect the rights of animals in a way that is not compatible with the principles of interspecies or ecological interpretation¹³⁰, the protection of the wild animal and the specific context in which it is found must be the first priority. Measures aimed at seizing, restraining or rescuing them, among others, must be supported by a study on the particular circumstances of the animal that establishes the need and reasonableness of the measure. It is up to the authority to evaluate whether it is appropriate to return the species to its natural habitat or another *ex situ* conservation regime, including considering a transition period for such purposes.

¹³⁰ For example, a legitimate activity that justifies the removal of a wild animal for the realization of interspecies principles or ecological interpretation is the removal of parental stock, which is intended to provide reproductive specimens for *ex situ* management programs, in order to ensure the survival of species.

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, 2019¹³¹ 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 house¹³²-, 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.

143. For example, it was not considered whether any transition stage was required due to the circumstances of the wild species known by experts¹³³ or any alternative due to the human imprint, as far as possible, before or during the execution of the immobilization or restraint. Even Ana's words and the state reports themselves show that the situation that occurred had a negative impact on the condition of the chorigo monkey. Ana said that "(...) [her] house was raided and Estrellita was abruptly separated from the environment that sheltered her all her life"¹³⁴ and the same authorities have recorded that: "*From the quick assessment of the physical and behavioral state of the restrained specimen, it is determined that it is in regular body condition and with a high level of aggressiveness towards other people due to the imprinting to which it has been subjected during 18 years in captivity. The restrained specimen is placed in temporary custody in an ex situ wildlife conservation and management center authorized by the National Environmental Authority*"¹³⁵.

144. In this context, it is striking to this Court that the restraint of the Estrellita monkey was executed on September 11th, 2019 and the resolution that ordered such restraint was issued later on September 16th, 2019, with no consideration of the condition or examination of the particular circumstances of the wild animal in any of these actions. This Court does not either see any analysis of whether transferring the Estrellita

¹³¹ Record of Restraint or Immobilization of wildlife, specimens or their parts, constituent elements or any biological material, products and derivatives, equipment, means of transport and tools, dated September 11th, 2019, issued by the Ministry of Environment, invoking as grounds for the restraint the "Violation of the Environmental Regulations in force, not having the administrative authorization (committed by) Ana Beatriz Burbano Proaño.

¹³² Search warrant issued by the Criminal Unit based in Ambato canton) according to case file No. 18282201902921G dated September 11th, 2019.

¹³³ For example, Brooks McCormick Jr. Animal Law & Policy Program at Harvard Law School and the Nonhuman Rights Project accompany their amicus brief with a statement by Pablo Stevenson, who describes himself as "*the researcher who has spent the largest time with groups of woolly monkeys in the field (...)*" and after giving specific data on the behavior of the species concludes "*These are just some examples of how woolly monkeys are complex social beings with a high capacity of recognition of other monkeys, resources and their environment. They have the capacity to communicate with each other, complex individual personalities and powerful learning abilities*".

¹³⁴ Case File No. 18331-2019-00629, pages 74 to 76.

¹³⁵ Technical Report on the Restraint No. 13-2019-DPAT-VS, case file No. 18331-2019-00629, pages 68 to 73.

monkey to an Ecozoo was the most appropriate measure; rather, the acts and reports focus on the administrative infraction in which Ana would have incurred with the purpose of initiating an administrative proceeding against her,¹³⁶ where she was penalized¹³⁷. In short, no consideration was given to the specialized care and assistance required by Estrellita in accordance with her particular circumstances. Similarly, Brooks McCormick Jr. Animal Law & Policy Program at Harvard Law School and the Nonhuman Rights Project, in their amicus curiae brief, point out the need for specialized care and assistance for Estrellita¹³⁸.

145. Although there are no certain indications that this situation was a determining factor in the subsequent death of the Chorongó monkey, this Court considers that by omitting to consider the particular circumstances of the wildlife specimen in the ruling that simultaneously ordered the seizure and subsequent transfer of the Chorongó monkey to an environmental management center (eco zoo), the right to integrity of the Chorongó monkey was violated to the extent that such right not only ensures physical integrity but also psychic integrity¹³⁹, and, therefore, the rights of Nature were also violated.

146. In this regard, this Court considers it necessary to state that the orders of restraint, immobilization, seizure, or captivity of wild animal species, whose purpose is their

¹³⁶ By means of a resolution dated September 16th, 2019, the Ministry of Environment ordered to: (i) initiate administrative proceeding No. 34-PNT-2019 against the claimant, (ii) summon the claimant and grant her a term of 10 days to answer¹³⁶, (iii) make the claimant aware of the principle of reversal of the burden of proof, (iv) order the restraint of Estrellita, and (v) order the custody of Estrellita to a management center authorized by the National Environmental Authority.

¹³⁷ By means of a resolution dated January 14th, 2020, the Ministry of the Environment resolved: "1) To declare [the claimant's] responsibility in the commission of the very serious infraction established in Art. 318 number 2 of the Organic Code of the Environment, in accordance with the provisions of Art. 136 of Book IV of Executive Decree 3516; 2) To impose on [the claimant] the fine of (...) (ECS 3940.00) (...); 3) To decommission the wildlife specimen in accordance with the provisions of Art. 320 number 2 of the Organic Code of the Environment, in accordance with the provisions of Art. 136 of Book IV of Executive Decree 3516".

¹³⁸ Thus they stated: "4.18 Article 72 of the Constitution states that nature's right to restoration implies recovering and rehabilitating its functions, vital cycles, structure and evolutionary processes (*restitutio in integrum*), returning nature to its original state regardless of other monetary compensations to the people affected by the damaged ecosystem (Constitutional Court of the Ecuador Case No. 0507-12-EP 2015, 11). The right to restoration includes returning animals to natural habitat and communities when it is possible and recommended by experts. This was not done in this case. 4.19 The environmental authority should have protected Estrellita's rights by examining her specific circumstances before placing her in the zoo, where she died. This examination should have considered the fact that Estrellita grew up exclusively in a human environment. Thus, Estrellita required specialized care and assistance to live and flourish according to her personal circumstances."

¹³⁹ The Inter-American Court has already stated that: "[T]he American Convention expressly recognizes the right to personal, physical and psychological integrity, the violation of which "is a type of violation that has various connotations of degree and [...] whose physical and psychological consequences vary in intensity according to endogenous and exogenous factors that must be demonstrated in each specific situation" (Loayza Tamayo vs Peru, paragraph 57, and I/A Court H.R., Case of Masacres de El Mozote and nearby places v. El Salvador. Merits, Reparations and Costs of the Trial. Final judgment dated October 25th, 2012 Series C No. 252, paragraph 147).

transfer to an Environmental Management Center (eco zoo), must always include a comprehensive study of the particular situation of the animal on which such measure is intended to be executed, with the purpose of knowing its state of health and integrity in order to adopt the best measure for its welfare, without this exempting the persons who may be responsible from criminal or administrative liability.

147. Consequently, this Court establishes the following non-exhaustive minimum parameters or criteria for the adoption of measures by public authorities that lead to the limitation of the right to free locomotion of wild animals:

- i) Any decision that has as a consequence the limitation of the right to free locomotion of wild animals shall be sufficiently justified.
 - a. The justification must comply with demonstrating the reasons why the measure pursues a legitimate purpose, that it is suitable, necessary and proportional. Consequently, the arguments in accordance with which the restriction of the animal's locomotion is the most efficient and effective measure to safeguard its life and integrity must be stated, as well as the non-existence of other less burdensome measures.
- ii) This type of decision must include an integral evaluation of the individual circumstances and status of the animal, including, at least, the analysis of the physical condition, the conditions of the place where it lives, the level of imprinting with its owners, the existence of signs of mistreatment, beatings or torture, the degree of orientation, the degree of loss of instinctive reflexes, the level of aggressiveness; and the apparent reasons why the wild animal is in the possession of a human being. This evaluation should also indicate whether there are indications as to whether the animal constitutes a biological risk.
- iii) In the report issued as a result of the evaluation mentioned in the previous paragraph, it must be stated whether the animal's keeper could *prima facie* comply with the requirements in order to obtain a license or authorization to keep a wildlife specimen.
- iv) In cases in which an offence against wildlife is discovered while it is being committed, the competent public authorities may adopt the most appropriate and proportional measures to safeguard the integrity of the animal, including ordering its separation from the alleged offender or offenders; notwithstanding the possibility of immediately afterwards verifying compliance with the evaluations provided for herein.

148. Finally, this Court clarifies and reiterates that regarding wild animals, in the first place and as a first alternative, their permanence or reinsertion in their natural habitat

should be sought; and, if it is impossible for this to occur due to circumstances specific to the wild specimen (such as a human imprint) or other exogenous circumstances, as a second alternative, an institution or person responsible for the care or custody of the animal should be sought, in strict compliance with the parameters established in paragraph 137 above.

149. On the other hand, this final judgment does not disregard or annul the powers of the public authorities with competence in environmental matters and the protection of animal rights to develop conservation activities; instead, it recognizes and restates the obligation of the Ecuadorian State to promote and carry out *in situ*¹⁴⁰ and *ex situ*¹⁴¹ conservation of animal species, particularly wild species, in order to "enhance opportunities for environmental education, research and scientific development",¹⁴² but especially with the aim of guaranteeing the right to "their existence and the maintenance and regeneration of their life cycles, structure, functions and evolutionary processes".¹⁴³

150. Within this framework, activities such as the extraction of parental stock are recognized,¹⁴⁴ 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*¹⁴⁵.

ii.3) Were Nature's rights violated by the custody of Estrellita the Chorongo monkey in a zoo authorized by the National Environmental Authority?

5.2.1.3. Estrellita's custody in an Eco Zoo and subsequent death

¹⁴⁰ Organic Environmental Code. "Article 33 - *In situ* conservation. The terrestrial, insular, marine and freshwater biodiversity shall be conserved *in situ*, by means of the regulatory mechanisms and means established in this Chapter. The sustainable use of its components shall be sought in such a way as not to cause its long-term decrease, in order to maintain its potential to satisfy the needs of present and future generations".

¹⁴¹ Ibid. " Art. 66.- Means of conservation and management. The following are means of *ex situ* conservation and management of wildlife species: 1. Plant nurseries; 2. Botanical gardens; 3. Zoos; 4. Sustainable breeding and reproduction centers; 5. Rescue and rehabilitation centers; 6. Germplasm banks; 7. Aquariums; and, 8. Others established by the National Environmental Authority.

¹⁴² Ibid. Art. 64.

¹⁴³ CRE. Art. 71.

¹⁴⁴ Unified Text of Secondary Legislation of the Ministry of Environment. BOOK IV OF THE BIODIVERSITY Title I National Working Group on Biodiversity (GNTB). "Article 144.- The definitions of the terms contained in this Glossary shall be their legal meaning, and shall be applicable for this Title: (...) Extraction of parental stock - Is that which has the purpose of providing reproductive specimens for *ex situ* management programs".

¹⁴⁵ Organic Environmental Code. Art. 65.1.

151. The third moment presented by the case is the death of the Estrellita monkey 23 days after being taken to the management center authorized by the National Environmental Authority, specifically the *San Martin Eco Zoo*.
152. In this regard, the administrative procedure includes the Technical Report No. MAE-DPAT-UPNT-V.S-2020-09-EL of January 28th, 2020, which formally refers to the death of Estrellita, stating that "(a) at 16:00 hrs. on October 9th, 2019, by means of a phone call, Mr. Orlando Vega, owner of the San Martin Eco Zoo informs Eng. William Quinatoa, Responsible of the Natural Heritage Unit of Tungurahua, about the death of the chorongito monkey (...) in the morning hours."¹⁴⁶
153. The cause of death is a disputed fact that does not have sufficient evidence. On the one hand, "Ana's" allegation is that Estrellita's right to life has been violated and that the responsibility or cause of her death lies with the "owner of the zoo" where Estrellita was kept; while from the facts exposed in the technical report of the Ministry of the Environment, it is deduced that the cause of death has been brewing for years - it can be deduced that it is attributable to the period in which the Estrellita monkey was under Ana's care - in which she allegedly suffered from malnutrition, stress levels, confinement, unfavorable environmental conditions, etc. Thus, the report states:

"The pathological state of the lungs, the malfunctioning of the kidneys produced a respiratory insufficiency or deficiency, accompanied by renal and hepatic problems due to the inability to perform the cleaning, the chemical balance of the blood and the production of hormones, and due to the excessive accumulation of blood at the coronary level, it is deduced that it triggered (sic) a cardiorespiratory arrest that caused the death of the specimen. (ii) This type of pathologies is very frequent in specimens that are seized by the Ministry of Environment because they are abnormalities that are accentuated with the course of time, they are not recent, but have been affecting them for years, and little by little they increase until the animal can no longer cope and collapses its state of health. (iii) The causes of these pathologies are several, among them we can mention: nutritional deficiencies, (...) exposure to unfavorable environmental conditions, (...) stress levels, confinement, (...) mistreatment (...)" (iv) The specimen was showing signs of improvement in its physical and behavioral state during the 23 days it remained in the quarantine area, however, due to the pathologies described above, not visible to the technical staff and workers of the management center, the death of the Chorongito monkey occurred on October 9th, 2019¹⁴⁷.(sic)" (emphasis added).

154. Notwithstanding the above, this 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

¹⁴⁶ Administrative proceeding No. 34-PNT-2019, case file No. 18331-2019-00629, pages 116 to 118.

¹⁴⁷ Necropsy Report No. 003-MN-ECO-ZOO dated October 11th, 2019, issued by Dr. Nixón Manuel Núñez.

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.

155. Based on the foregoing, this Court declares the existence of violations to the rights to life, in its positive dimension, and integrity of the chorongó monkey named Estrellita in particular, and therefore, the violation of the rights of Nature; answering in a positive way the legal problems and subproblems raised in the second part of this constitutional analysis.

156. Notwithstanding the fact that the violation of constitutional rights has been declared in the preceding paragraphs, this Constitutional Court calls the attention of the parties to the fact that the respect for Nature and the guarantee of their rights is attributable to all the procedural subjects (including the State), and criticizes:

- i) That a wildlife specimen has remained 18 years in humane conditions.
- ii) The form of execution or the suitability of the procedure of "seizure" or "restraint" of the Estrellita chorongó monkey, since it is not observed that there has been any protocol or detailed analysis of the situation of the wild animal for the execution of measures that could affect it, regardless of the administrative procedures that are initiated to establish infractions or administrative sanctions against alleged violators of the environmental standards that prohibit the domestication of wild animals.
- iii) The lack of an analysis of Estrellita's particular circumstances before ordering the custody of the chorongó monkey to an Eco Zoo.

5.3. PART THREE: JURISDICTIONAL GUARANTEES FOR THE PROTECTION OF THE RIGHTS OF NATURE

iii) What constitutional actions or guarantees are suitable for the protection of the rights of Nature in general and for the case of the "Estrellita Monkey" in particular?

5.3.1. Jurisdictional guarantees and rights of Nature

157. From Articles 11.3 and 71 *et seq.* of the Constitution, it is clear that the rights of Nature are fully justiciable. On the other hand, and in accordance with article 86.1 of the Constitution and Article 9 of the LOGJCC, it is also clear that the possibility is

granted for any person to exercise jurisdictional actions or guarantees in favor of Nature or in favor of the different levels of ecological organization.

- 158.** Articles 88 of the Constitution and 39 of the LOGJCC define the purpose of the action for protection as a guarantee that *"shall have as its purpose the direct and effective protection of the rights recognized in the Constitution, and may be filed when there is a violation of constitutional rights, by acts or omissions of any non-judicial public authority (...)."*
- 159.** A restrictive and literal analysis of the transcribed statements could lead to the erroneous conclusion that Nature, in itself, or in any of its organizational levels or elements, lacks the capacity to be the beneficiary of a jurisdictional guarantee or to be considered as a direct or indirect victim. However, such an analysis would empty of content, normative force and justiciability the rights of Nature, expressly recognized in Articles 71 et seq. of the Constitution.
- 160.** In fact, the quality of Nature and its different levels of ecological organization as a subject of rights must necessarily manifest itself in a substantive dimension and in an adjective dimension. In other words, being a subject of rights allows Nature to be a holder of rights (substantive dimension) and to pursue the protection and reparation of these rights before the administrative and jurisdictional organs of the State (adjective dimension).
- 161.** In relation to this adjective dimension, Article 71 of the Constitution recognizes the right of any individual or legal entity, collectivity or human group to exercise legal actions and resort to public authorities, in the name of Nature, to demand the protection and reparation of its integrity or that of its elements,¹⁴⁸ which includes animals.
- 162.** This Court recalls that when interpreting the scope of the content of the values, principles, rights and guarantees of the Constitution, the interpretation that gives them meaning, practical effects and usefulness must be adopted, and those interpretations that render the constitutional provisions unenforceable, useless or non-justiciable (useful effect of the Constitution) must be discarded.
- 163.** The Constitutional Court has adopted this form of interpretation in its recent binding jurisprudence on the rights of Nature. Thus, the Court has recognized the applicability of the jurisdictional guarantee of the action for protection to guarantee the rights of the Los Cedros forest and the Aquepi and Las Monjas rivers, in cases docket No. 1149-19-JP/21, 1185-20-JP/21 and 2167-21-EP/21.

¹⁴⁸ CRE. Art. 71.- (...) Any person, community, people or nationality may demand from the public authority the fulfillment of the rights of Nature. In the application and interpretation of these rights, the principles established in the Constitution shall be observed, as applicable.

164. Finally, it should be noted that there is no forbidding or mandatory rule in the Constitution or in the LOGJCC 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.

5.3.1.1. Jurisdictional guarantees for the protection of animal rights

165. As noted by the Selection Chamber court formed by constitutional judges Ramiro Avila Santamaría, Agustín Grijalva Jiménez and Carmen Corral Ponce¹⁴⁹, in the majority resolution dated December 22nd, 2020, this case was selected inasmuch as:

"[it] allows to discuss whether or not an animal could be considered as a subject of rights. In this regard, the Constitutional Court has not issued a pronouncement, so the matter complies with the parameter of novelty and non-existence of a previous ruling or judicial precedent. Therefore, this Court can develop a judicial criterion that determines the scope of the habeas corpus action when faced with a case of protection of other living beings, and whether they can be considered as subjects of rights protected by the rights of nature".

166. Thus, so far, the Court has analyzed in its binding rulings on the rights of Nature cases derived from actions for the protection of the rights of Nature,¹⁵⁰ however, this does not mean that this is the only jurisdictional guarantee for the protection of the rights of Nature or of any of its elements, including animals.

167. The action for protection is characterized for being a guarantee that proceeds as long as its purpose is not the protection of rights that are protected by another jurisdictional guarantee, in this sense, Article 39 of the LOGJCC determines that: "*rights recognized in the Constitution and international treaties on human rights, which are not protected by the actions of habeas corpus, access to public information, habeas data, for breach, special for protection and special for protection against decisions of the indigenous justice system*". For this reason, for the protection of the rights of Nature, in general, and of animals, in particular, it must be evaluated in order to determine which jurisdictional guarantee best suits the context and the claims of the case to be analyzed.

¹⁴⁹ The dissenting vote of Dr. Carmen Corral Ponce in the selection of the case is recorded.

¹⁵⁰ Constitutional Court. Cases docket No. 1149-19-JP/21 and 1185-20-JP/21.

5.3.2. The merits of the habeas corpus action in this specific case

168. Final judgements issued by foreign courts and scholars have systematized some typologies of habeas corpus actions according to the purpose pursued and the rights guaranteed. Thus, it is stated that a habeas corpus is restorative when it is promoted to obtain the reinstatement of the freedom of a person unduly detained¹⁵¹; restricted, in cases where physical freedom or freedom of movement is subject to inconvenience, obstacles, disturbances or discomfort that constitute a serious restriction to its exercise¹⁵²; corrective, in which it is made clear that habeas corpus not only protects physical liberty itself, but also protects other fundamental rights related to personal liberty or harm to rights other than liberty¹⁵³; translative, when the deprivation of liberty of a person is unduly maintained or the judicial determination that resolves the personal situation of a detainee is delayed¹⁵⁴; instructive, in cases where it is not possible to locate the whereabouts of a detained-disappeared person. Its purpose is not limited to guaranteeing personal liberty and integrity, but also to ensure the right to life, and to banish the practices of concealment or indetermination of the places of disappearance¹⁵⁵; related, when the object of the habeas corpus does not refer to the deprivation or restriction of physical liberty or locomotion, but has a reasonable degree of link and connection with it¹⁵⁶.

169. In the specific case under analysis, the claimant (Ana) initially requested in her habeas corpus petition that:

"For this purpose, the Ministry of Environment will issue a wildlife possession license in which I offer to take care of her in the most adequate way for her species, including the subscription of a commitment of recognition of the exceptional right that I have, in view of the circumstances explained, and in recognition of the need for a dignified treatment and the grounds of the rights invoked". Where her specific request is "the immediate delivery of Estrellita to my home¹⁵⁷".

[Emphasis added]

170. However, after learning of Estrellita's death, at the hearing she said:

"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.

¹⁵¹ Constitutional Court of Peru. Case. No. 2663-2003-HC/TC.

¹⁵² Ibid.

¹⁵³ Constitutional Court of Peru. STC 02700-2006-PHC, pages 2 and 3.

¹⁵⁴ Constitutional Court of Peru. STC 2663-2003-PHC, page 6

¹⁵⁵ Constitutional Court of Peru. STC 2663-2003-PHC, page 6

¹⁵⁶ Constitutional Court of Peru. STC 2663-2003-PHC/TC

¹⁵⁷ Ibid.

(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's 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.¹⁵⁸ (sic)".

[Emphasis added]

- 171.** In this scenario, it can be seen that initially the claimant's claim was related to the release of Estrellita and her delivery through the issuance of a license.
- 172.** Notwithstanding the above, the complexity of the case is that Estrellita was requested to be released from the place where she had been placed by the authorities of the Ministry of Environment, to return to her captivity in the home of the claimant, which constitutes, from an objective point of view, another form of deprivation of Estrellita's freedom.
- 173.** The Court considers it appropriate to point out that the rights of a wild animal must be protected objectively, taking its life, freedom and integrity as their own inherent rights, and not based on the claims, desires or intentions of third parties. In these cases, if the judges prove that the deprivation or restriction of the freedom of a wild animal is unlawful, they must provide the most suitable alternative for the preservation of the life, freedom, integrity and other related rights of the victim; they may order, without being restrictive, its reinsertion in its natural ecosystem, its translocation to shelters, sanctuaries, aquariums, eco zoos, or its treatment in animal rehabilitation centers.
- 174.** However, since animals as elements of Nature have the right to restoration in accordance with Article 72 of the Constitution; whenever possible and without causing detriment to them, the reinsertion of the wild animal into its natural ecosystem should be preferred, either as an immediate measure when circumstances permit, or as a deferred measure, when it is necessary for the wild animal to go through a phase of readaptation and rehabilitation.
- 175.** Notwithstanding the foregoing, the jurisdictional operators must evaluate and consider during their judicial reasoning and at the moment of issuing their decision, if the situation and conditions in which the animal is found respond to the biological and ecological interactions between animals and human beings that this Court has recognized as legitimate; especially in the case of animals destined for domestication

¹⁵⁸ Minutes of public hearing, February 21st, 2020, case file No. 18331-2019-00629, pages 142 and 143.

for consumption (food, clothing, etc.) or for use, provided that the situation of the animal or the conditions in which it has been placed do not constitute abuses or disproportionate acts and that the protection of the animal is sought.

176. Therefore, although in this case it was not feasible for Estrellita to return to Ana's home, since it was not a place with the necessary conditions for the integral maintenance of a wild animal in *ex situ* conditions, it was necessary to evaluate whether, considering the conditions and particular situation of Estrellita (a monkey that lived for more than 18 years in a human home), it was in her best interest to stay at the eco zoo or to be transferred to another place.

177. Finally, in the specific case, the habeas corpus is inadmissible because it revolves around the recovery of the corpse of a wild animal. In this regard, this Court warns that, upon the death of a wild animal within an *ex situ* conservation mechanism, its corpse must receive the corresponding phytosanitary treatment, which must be carried out by the authorities and competent persons with sufficient scientific and technical knowledge, and the corpses of these types of animals cannot be handed over to individuals who do not meet these requirements, as was the case of Ana.

178. Notwithstanding the verification of the inadmissibility of habeas corpus in the specific case, this Court notes that the judges of first and second instance of habeas corpus were obliged to take into consideration the need to address the evident violation of rights that occurred from the chain of events observed in this resolution - which concluded in the death of the Estrellita monkey; thus, despite the denial of habeas corpus, they should have sent an official letter to the Ombudsman's Office to initiate the corresponding actions.

5.3.3. Comprehensive repair

179. The Constitution establishes that, if there is a violation of rights, recognized by a judge, full reparation shall be made. The pertinent part of Article 86, paragraph 3 of the Constitution states:

"The judge will resolve the case by means of a final judgement, and if the violation of rights is determined, he or she must declare it, order full reparation, material and non-material, and specify and individualize the positive and negative obligations to be borne by the addressee of the judicial decision, and the circumstances in which they must be complied with".

180. In turn, the LOGJCC develops the right to full reparation in its Article 18:

"In the event that a violation of rights is declared, full reparation for material and non-material damages will be ordered. Comprehensive reparation shall seek to ensure that the

*person or persons entitled to the violated right enjoy and benefit from the right in the most adequate manner possible and that the situation prior to the violation is restored. Reparation may include, among other forms, **restitution of the right, economic or patrimonial compensation, rehabilitation, satisfaction, guarantees that the act will not be repeated, the obligation to refer to the competent authority in order to investigate and punish, measures of recognition, public apologies, the provision of public services, health care.**"*

[Emphasis added]

181. In the specific case, since the Estrellita monkey has passed away, no measures will be ordered in this case because the restitution of the infringed right or the proceeding of any other form of patrimonial compensation, satisfaction or others is not possible, so this is a form of reparation in itself. However, it is deemed necessary that the criteria or parameters developed in this final judgment be disseminated and materialized in the most suitable way in State regulations and policies. By virtue of this, this Court deems it pertinent to synthesize the main criteria or parameters of this final judgment and to provide for the measures set forth below. The Constitutional Court recognizes that:

- I. Animals are subjects of rights protected by the rights of Nature.
- II. Animals are subjects of rights protected under the rights of Nature guaranteed by Article 71 of the Constitution under the unrestricted application of the principles of interspecies and ecological interpretation.
- III. The rights of animals must also respond to an adjectival dimension by which they can - independently of the actions and appeals in the ordinary justice system - achieve the protection of their rights by means of jurisdictional guarantees according to the purpose and concrete claim.
- IV. For the custody or care of wild animals, priority should be given to their insertion or permanence in the natural habitat and this alternative should be evaluated first; unless it is not possible due to particular conditions or other exogenous conditions, suitable measures for *ex situ* conservation should be adopted. All measures must be duly justified and both their adoption and execution must ensure the protection of the animal considering its particular circumstances in order for them to be successful. In the event of the possession or custody of the wild animal by a person or entity, the guidelines established in paragraph 137 above must be observed.
- V. In the event that no other alternative is possible and the freedom of locomotion of the wild species has to be restricted or any measure with such purpose or result has to be issued, the guidelines established in paragraph 147 above must be observed.

182. As a measure to actually implement the criteria or parameters created in this ruling, the Constitutional Court provides the Ministry of the Environment with the following obligations:

- I. Within a period of up to 60 days, with the support of the Ombudsman's Office, to create a protocol or regulation to guide the actions of the Ministry for the protection of wild animals, mainly those that will be subject to seizures or restraints, 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 final judgement.
- II. Within a term of up to 60 days, to issue 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 judgement.

183. As a measure to actually implement the criteria or parameters created in this final judgement, the Constitutional Court orders 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 judgement 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 judgement 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.

VI. Decision

The Constitutional Court, in accordance with the provisions of Article 436 paragraph 6 of the Constitution and Article 25 of the LOGJCC, resolves:

1. To revoke the rulings issued in the habeas corpus proceeding No. 181022019-00032 and to issue this revision judgement in its place.

2. To declare the violation of the rights of Nature, mainly due to the facts that ended in the death of the monkey named Estrellita, as developed in this final judgment, and to order the following measures of reparation:
 - 2.1. That this final judgment is a form of reparation in itself.
 - 2.2. 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 judgement, particularly the appreciation of such animals as subjects of rights with intrinsic value.
 - 2.3. 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 judgement 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 judgement 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.
3. To notify the parties and the Ombudsman's Office, close the case and publish.

[Digitally signed by LUIS HERNAN BOLIVAR SALGADO PESANTES]

Dr. Hernán Salgado Pesantes
CHAIRMAN

Reason: The final judgment above was approved by the Plenary of the Constitutional Court with seven votes in favor of Constitutional Judges Karla Andrade Quevedo, Ramiro Avila Santamaría, Agustín Grijalva Jiménez, Alí Lozada Prado, Teresa Nuques Martínez, Daniela Salazar Marín and Hernán Salgado Pesantes; one dissenting vote by Constitutional Judge Carmen Corral Ponce; and, one dissenting vote by Constitutional Judge Enrique Herrería Bonnet; in regular meeting held on Thursday, January 27th, 2022.- I certify it.

[Digitally signed by AIDA SOLEDAD GARCÍA BERNI]

Dr. Aída García Berni
GENERAL SECRETARY

FINAL JUDGMENT No. 253-20-JH/22

DISSENTING VOTE

Constitutional Judge Carmen Corral Ponce

1. With the customary respect for the arguments put forward by the presiding judge and the judges who voted in favor of final judgment No. 253-20-JH dated January 27th, 2022, I would like to dissent with the majority vote with respect to some reasoning that supports the analysis of the final judgment that reviews the jurisdictional guarantee of habeas corpus No. 18102-2019-00032¹, proposed in favor of a monkey of the species chorongo.

Previous consideration:

2. The undersigned judge is aware that environmental conservation, ecosystemic restoration and, in general, the protection of the rights of nature, have a regulatory framework with constitutional roots², and that through standards, public policies and the development of jurisprudence or judicial precedents, the integral exercise of environmental protection is promoted, developed and guaranteed; nevertheless, it should also be emphasized that this progressive development of rights must be carried out observing the principles and limits established by the Constitution itself.

3. With this brief clarification, I proceed to point out that the dissent revolves around the following arguments:

On the identification of the wildlife specimen:

4. The majority vote in this final judgment has chosen to call the case "*Estrellita Monkey*" and refer to it as such in relation to the chorongo monkey throughout the project. I do not agree with this position for the following reasons.

5. I consider that it was not appropriate for the case to be guided under the heading of "*Estrellita Monkey*", since the situation of illegal captivity of a specimen of wild fauna catalogued as "endangered and vulnerable"³ was certainly analyzed. Calling the chorongo

¹ In the first instance proceeding, the jurisdictional guarantee was signed as No. 18331-2019-00629.

² In accordance with Articles 14, 66.27 71, 72, 83.6, 276.4, 395, 396, 397, 400 and 404 of the Constitution of the Republic.

³ See paragraph 127 of the final judgment under review.

monkey⁴ by the diminutive of "*Estrellita*" is a form of recognition of the domestication process to which the animal fell victim.

6. Likewise, this position has legal grounds that I summarize below. Animals do not have the right to identity in order for this Court to sustain that the name of the monkey "*Estrellita*" is recognized, which, by the way, was attributed by a person who perceives and calls herself as her "*mother*".

7. Article 66, number 28 of the Constitution provides: "The following shall be recognized and guaranteed to **persons**: (...) *The right to personal and collective identity, which includes having a name and surname, duly registered and freely chosen*" (emphasis added). Our own Constitution recognizes the right to identity exclusively to persons and, among others, the attribute of the name.

8. In this regard, this Court, in final judgment 732-18-JP/20, held that:

*[...] the constitutional text recognizes that the right to identity includes the right to the preservation, development and strengthening of the characteristics that allow **people** to individualize themselves as unique and different and identifiable beings within the community based on their different spheres of freedom that allow them to self-determine* (emphasis added).

9. It is clear that the name is an attribute of the personality of persons, whether individuals or legal entities, and not of animals, thus, the position adopted by the majority ruling suggests that it is trying to equate certain rights of people with those of animals, with which I disagree.

On the legitimacy to file a habeas corpus action:

10. This dissenting opinion notes with great concern that the majority vote overlooked a highly relevant aspect of the original process, such as the fact that the person filing the habeas corpus action does so in order to perpetuate the commission of an unlawful act⁵;

⁴ The scientific community has named the animal, in its genus, as "*Lagothrix*" which is divided into four species "*Lagothricha*", "*Poepigii*", "*Cana*" and "*Lugens*"⁴. In this particular case, it was determined that we are dealing with a *Lagothrix Lagothricha*, also known as a "chorongo monkey" (hereinafter "chorongo monkey").

⁵ *Which was penalized by 1) Declaring [the claimant's] responsibility in the commission of the very serious infraction established in Art. 318 number 2 of the Organic Environmental Code, in accordance with the provisions of Art. 136 of Book IV of Executive Decree 3516; 2) Imposing on [the claimant] the fine of (...) (ECS 3940.00) (...); 3) Ordering the seizure of the wildlife specimen in accordance with the provisions of Art. 320 number 2 of the Organic Code of the Environment, in accordance with the provisions of Art. 136 of Book IV of Executive Decree 3516".*

i.e. to restore the possession of a wildlife specimen and transfer it from the Eco zoo (where it was located according to an order issued by the Ministry of the Environment) to the house where it was held captive for 18 years.

11. This aspect should have been considered as a fundamental argument to address the analysis of the case, since the review process revolves around the jurisdictional guarantee of habeas corpus, and beyond the question of whether this guarantee was applicable to animals as such, an issue that will be addressed later, prior to conducting a control on the merits of the original process, and determining that the final judgments under review violated constitutional rights (because the claim was rejected), it was essential to establish whether the habeas corpus action pursued a legitimate purpose or, on the contrary, whether it had been denaturalized.

12. Thus, from the proven facts, it is clear that the restraint or immobilization of the chorongo monkey by the national environmental authority was preceded by an anonymous complaint and the subsequent initiation of an administrative sanctioning procedure for the alleged infraction of illegal possession of wildlife⁶.

13. In this context, it is important to note that the claimant's claim was aimed at judicially compelling the national environmental authority to issue a **wildlife possession license and to order the immediate return of the chorongo monkey**⁷; which, in the first place, escapes the scope of regulation or purposes for which the Ecuadorian legal system has instituted the action of habeas corpus, since said jurisdictional guarantee is not designed to grant administrative permits; and secondly, it constitutes a claim with serious unlawful vices, since our legislation expressly prohibits the possession and breeding of wildlife without administrative authorization.⁸ The simple passage of time, once the illegal

⁶ The administrative procedure was labelled as No. 34-PNT- 2019.

⁷ Paragraphs 39, 51 and 169 of the final judgment under review.

⁸ Organic Environmental Code:

"Article 147 - Specific prohibitions. It is prohibited:

(...) 5. The breeding, possession or commercialization of exotic or native wild fauna or its constituent parts, in accordance with the provisions contained in this Code".

"Article 317 - Serious violations. The following violations shall be considered serious and, in addition to the economic fine, the following shall be applied:

(...) 3. Hunting, fishing, capture, collection, extraction, possession, exportation, importation, transportation, mobilization, exploitation, handling and commercialization of wildlife species, their parts, constituent elements, products or derivatives, without administrative authorization".

Integral Organic Penal Code:

"Article 247.- Crimes against wild flora and fauna. The person who hunts, fishes, captures, collects, extracts, has, transports, traffics, benefits from, exchanges or commercializes specimens or their parts, their constituent elements, products and derivatives, of flora or wild terrestrial, marine or aquatic fauna, of threatened, endangered and migratory species, listed at national level by the National Environmental

conduct of possession of a wild species has been consummated, does not make it legal, much less does it grant rights of any nature to the person who has violated the law.

14. In other words, in this case there was an evident abuse of the right to file a habeas corpus action in order to evade administrative procedures and demand the return of a wildlife specimen, knowing that an alleged violation had been committed due to the lack of prior environmental permits.

15. On the other hand, and highlighting as an essential issue in the analysis of the relevance of the guarantee presented by Mrs. Ana Beatriz Burbano Proaño ("the holder"), it cannot be ignored that even under the assumption which I do not support that the action would have been appropriate, in this case there was no purpose (of protection) in view of the fact that the chorongo monkey died two months before the filing of the action, thus, the judges of the lower courts are right in criticizing the evident denaturalization of this jurisdictional guarantee.

16. Based on these factual and legal elements, it can be clearly inferred that the proposed lawsuit did not pursue a legitimate constitutional purpose, which is why I express my total disagreement with the decision to revoke the sentences issued in the habeas corpus action 18102-2019-00032, since said jurisdictional guarantee was openly improper, a topic that will also be discussed in the text of this dissenting opinion.

17. Additionally, I would like to state that this same case first came to the attention of the Constitutional Court through the special action for protection filed by Mrs. Ana Beatriz Burbano Proaño, number 810-20EP, which was admitted for processing by the First Court of the Admission Chamber, by means of a resolution dated August 19th, 2020. I was a member of said Admission Chamber and I issued a dissenting vote, for the reasons that I ratify in this dissenting vote⁹.

18. In the main petition of the special action for protection, Mrs. Ana Beatriz Burbano Proaño, stated "***I appear as mother and caregiver of Estrellita, a chorongo monkey for her rights, as a party with active standing, as a person who demands the fulfillment of the rights of nature and based on the fact that I was a party of the Habeas Corpus Case No. 18102201900032***". This criterion alleged to justify the active standing within the jurisdictional guarantee presented was endorsed by the majority decision of the Admission Chamber.

Authority as well as international instruments or treaties ratified by the State, shall be punished with imprisonment from one to three years".

⁹ It should be noted that the Selection Chamber with majority vote selected the case by means of a resolution dated December 22nd, 2020, under the criteria of novelty and non-existence of a previous ruling or judicial precedent, a decision which I voted against because I ratify the criteria for admission.

19. I would like to state that I do not agree with such criterion, as I did at the time, in the first place, because it would be validating an unlawful act as stated in the paragraphs developed above. Therefore, if there is no lawful purpose in the claimant's claims, her standing to file the habeas corpus action is not justified either, even more so when the purpose of the guarantee itself is to return the animal to its irregular state of captivity.

20. I would like to take this opportunity to comment that on several occasions I have expressed my disagreement with respect to the possibility that two different actions admitted and selected (Special Action for Protection and Review) can survive, on the same case, which is what is happening in this matter, since with this review judgment the rulings challenged in the ACTION FOR PROTECTION are being left without effect, leaving the admitted action without purpose. This is an issue pending resolution within the Constitutional Court.

On the admissibility of habeas corpus in favor of animals:

21. Focusing on the core issue, the majority judgment upholds the admissibility of the habeas corpus action in favor of wild animals, in my opinion, such guarantee is not feasible for this type of animals, nor for any other type, for the reasons that I will explain in the following paragraphs.

22. As a first element it must be considered that, by constitutional and legal mandate, the action of habeas corpus is a jurisdictional guarantee that aims to safeguard the liberty, life, physical integrity and other related rights of **persons** who are **deprived or restricted of their liberty**, and, if applicable, to recover such right when the detention has been illegal, arbitrary or unlawful. In this regard, the Constitution and the Organic Law of Jurisdictional Guarantees and Constitutional Control provide as follows:

Constitution of the Republic of Ecuador, art. 89: "*The purpose of the habeas corpus action is to recover the liberty of anyone who is illegally, arbitrarily or illegitimately deprived of it, by order of a public authority or any person, as well as to protect the life and physical integrity of persons deprived of liberty*".

Organic Law of Jurisdictional Guarantees and Constitutional Control, art. 43: "*Purpose. The purpose of the habeas corpus action is to protect the liberty, life, physical integrity and other related rights of the person deprived or restricted of liberty, by an action of a public authority or any person, such as: 1. To not be deprived of liberty in an illegal, arbitrary or illegitimate manner, protection that includes the guarantee that the detention is always made based on a written and duly justified order of a competent judge, except in cases that require immediate arrest (...)*" (emphasis added).

23. From the exegesis of these legal provisions it can be clearly seen that the jurisdictional guarantee of habeas corpus is a mechanism designed **i)** to protect persons in situations that may violate their fundamental rights, **ii)** when they are deprived of their liberty. Thus, there are two essential requirements that make up this guarantee, which should have been analyzed in the specific case and which I will succinctly develop in the following paragraphs.

24. The first requirement is the protection of the rights of persons, so that here we have perhaps the most important obstacle to determine the inadmissibility of habeas corpus in favor of animals; thus, if there is any disquisition or objection as to the purpose of protection of this jurisdictional guarantee, it is that the term "persons" covers only persons of the human species without distinction of age, sex or condition.¹⁰

25. Under this premise it is evident that the habeas corpus action proceeds only in favor of "*natural persons*", so that those appreciations that animals are sentient beings and therefore subject to the substantive scope of the guarantee in question, is an argument that is based on an interpretation that clearly contradicts the text of the Constitution.

26. The category of sentient beings is a scientific and factual condition associated with the nervous, neurological and sensory functions of animals, analogous to the concept of living beings that applies to other components of nature, so that this reasoning is not sufficient to allocate to an individual of the animal species the "degree of person" and thus the ownership of the exercise of the jurisdictional guarantee of habeas corpus. It is unreasonable that based on such a subjective element as "sentience", a term, by the way, recognized by theories of animal ethics, but not by the *Real Academia Española*, the intention is to disregard the actual words of the constitutional text and to equate -as has been done in this case- animal welfare with personal integrity.

27. Regarding this last idea, we must understand the second requirement entailed by the purpose of the habeas corpus action (paragraph 23 above). For this purpose, it is mandatory to elucidate whether animals (such as the chorongó monkey) can be subject to deprivation of personal liberty. The answer to this simple question is a resounding no, since the illegal possession of a wildlife specimen is in no way comparable to the illegal, illegitimate or arbitrary deprivation of a person's liberty.

28. Although wildlife has the right to develop in its natural environment, this does not mean that events of illegal captivity imply *per se* a deprivation of liberty in the terms set forth in Articles 89 of the Constitution and 43 of the Organic Law of Jurisdictional Guarantees and Constitutional Control ("LOGJCC"), since if an animal's ability to move

¹⁰ Civil Code, Article 40.

and behave is restricted, it is clear that we are facing a scenario that represents the commission of an infraction but not an illegitimate or arbitrary act of deprivation of personal liberty.

29. In this order of ideas, it is not feasible to file a habeas corpus action to recover the possession or request the reinsertion of a wildlife specimen to its habitat, since our legal system has provided the administrative and judicial instances with other mechanisms to protect animal welfare. The constitutional precedent set could be the basis for future habeas corpus petitions in favor of wild animals kept in captivity in a zoo, or cattle held in a slaughterhouse for slaughter, or a canary in the cage of a house, situations that would be absurd, even though the sentence refers tangentially to these aspects as constitutional.

30. In the case under examination, it is clear that it is impossible to grant a habeas corpus action in favor of a wildlife specimen, since the claim in this type of case is not limited to recovering freedom or safeguarding the life and integrity of a person who has been deprived of his or her freedom, but rather to analyze what would be the best fate of an animal in captivity. Given this question, it is clear that resolving a habeas corpus action to resolve a conflict of this nature would seriously compromise the nature and purpose of this jurisdictional guarantee and would be used as a mechanism to replace or superimpose other forms of remedy, since habeas corpus is mainly limited to analyzing the legality of the deprivation or restriction of a person's liberty and not the living conditions or survival of an animal in the event of unauthorized restraint of wildlife.

31. Thus, in cases of deprivation of liberty, questions of pure law are analyzed (generally related to the detention process) and factual aspects related to the maintenance of the physical integrity of the person (by means of the location, transfer and verification by the judge of the detainee's condition), which, in accordance with the purely procedural regulation, make it possible to fulfill the jurisdictional guarantee within the 48 hours provided for in the LOGJCC; whereas in the case of wild animals, as stated in the revision sentence, it would involve a series of complex studies (such as proportionality analysis regarding the appropriateness of maintaining a measure of restriction to locomotion; comprehensive evaluation of the individual circumstances and the physical condition, imprinting, loss of instinctive reflexes and biological risk of the animal; analysis of the relevance of reinsertion of the specimen, among others), which would certainly make the habeas corpus resolution process intricate, ineffective and lengthy.

32. Issues such as those mentioned in the preceding paragraph only serve to show that the habeas corpus action is a process that is arranged only for natural or physical persons and that it cannot be extended to cases of relocation of wild animals, whether the circumstances of their captivity stem from the legal or illegal possession of these specimens.

33. In addition, as already mentioned, the monkey had died before the filing of the habeas corpus, thus, there never was any purpose in the action filed, which was inadmissible and in practice unenforceable, even in the assumption that it is applicable to wild animals, with which I disagree.

34. However, instead of reviewing the jurisdictional proceedings of the habeas corpus process, the majority decision was based on the following consideration:

In this case, it may be noted a priori that the judgment under review has not adequately remedied the alleged violations, since the constitutional action filed has been rejected; in addition to this, the Court has the positions and allegations of the parties and third parties in the case file, as well as the supporting documentation in the case file. Therefore, there is sufficient evidence to issue a final judgment of review of the case based on the merits of the case.¹¹

35. Thus, it is evident that the analysis has concentrated on verifying whether in the specific case the violations of constitutional rights (rights of nature) have been adequately remedied, when such circumstance is not a matter that should have been discussed in a habeas corpus action, since in such proceeding the rights that were intended to be protected with respect to the specific purpose of the "habeas corpus" should have been analyzed, and therefore it was evidently not appropriate to declare such violations. The analysis of the majority judgment has clearly gone beyond the procedural boundaries of this review case.

On the adequacy of the arguments to revoke the final judgements:

36. On the other hand, it is verified that one of the main arguments, if not the only one, to revoke the lower and higher court rulings is limited to the fact that the Ministry of Environment would have violated the rights of nature during the procedure of seizure of the animal. It is paradoxical that the technical institution responsible for the welfare of wildlife is limited and even stripped of its natural administrative powers by a ruling of constitutional rank.

37. The *ratio decidendi* of the final judgment is confusing and far from the purpose of the guarantee under review and from the specific boundaries of the case, since it concludes that the habeas corpus action was not appropriate (p. 177 and 178), however, contradictorily, it is decided to declare the violation of rights and to revoke the final judgments under review and order reparations. Reparations are appropriate when the action is admissible, not when it is not.

¹¹ See paragraph 23 of the final judgment under review.

38. Such considerations denote an ambiguity in the *decisum* of the majority decision because, if it was determined that the habeas corpus action lacked manifest aptitude to succeed in its claim, the correct thing to do would have been to ratify the previous rulings.

39. In any case, beyond this incongruence in the decisions, it is necessary to make clear that if there is an objectionable fact, it is the situation of captivity of the chorongo monkey for 18 years (caused by the claimant of the action), and not the procedural actions of the Ministry of the Environment to follow an administrative sanctioning procedure in compliance with its functions determined in the Law.

40. It is not possible to agree that there is shared responsibility between the holder, the Ministry of the Environment and the eco zoo in the death of the Chorongo monkey, since the technical reports in the process are conclusive in determining that it was the pathologies that the animal developed during its years of captivity that would have caused its death.

41. This evidence cannot be ignored or controverted by the simple assertion of the owner that it was the seizure of the animal that caused its death, even more so when the reports showed that there was an improvement in the condition of the Chorongo monkey¹²; here the principle of reversal of the burden of proof was clearly applied and the entities involved were able to demonstrate technically that their actions, far from violating rights, were appropriate to the circumstances of the case.

42. For this dissenting vote, final judgements issued by the lower and higher courts should have been ratified. It should also be noted that the majority vote in this final

¹² Necropsy Report No. 003-MN-ECO-ZOO dated October 11th, 2019, issued by Dr. Nixón Manuel Núñez: "***The pathological state of the lungs, the malfunctioning of the kidneys produced a respiratory insufficiency or deficiency, accompanied by renal and hepatic problems due to the inability to perform the cleaning, the chemical balance of the blood and the production of hormones, and by the excessive accumulation of blood at coronary level it is deduced that it triggered (sic) in a cardiorespiratory arrest that caused the death of the specimen (ii) This type of pathologies is very frequent in specimens that are seized by the Ministry of Environment because they are abnormalities that are accentuated with the course of time, they are not recent, but have been affecting them for years, and little by little they increase until the animal can no longer cope and its state of health collapses. (iii) The causes of these pathologies are several, among them we can mention: nutritional deficiencies, (...) exposure to unfavorable environmental conditions, (...) stress levels, confinement, (...) mistreatment (...)***". (iv) *The specimen was showing signs of improvement in its physical and behavioral state during the 23 days it remained in the quarantine area, however, due to the pathologies described above not visible to the technical staff and workers of the management center, the death of the Chorongo monkey occurred on October 9th, 2019 (sic)*" (emphasis added).

judgment revokes them, without any analysis of the arguments presented in the reasoning of each one of them.

A final thought:

43. The majority vote in this final judgment focuses part of its arguments on the recognition of certain constitutional rights and guarantees in favor of animals. Hence, it is necessary to specify that, although the text of the Constitution refers to constitutional rights in a generic way, it can also be inferred that there are marked differences between those rights inherent to human dignity (human rights)¹³ and other forms of recognition that include the protected status of everything- that the drafter of the Constitution has deemed- worthy of a scope of protection.

44. Regarding the rights of nature, Article 10 of the Constitution is categorical in stating that "*Nature shall be the subject of those rights recognized by the Constitution*", alongside, Article 71 *eiusdem* prescribes that "*Nature or Pacha Mama, where life is reproduced and realized, has the right to full respect for its existence and the maintenance and regeneration of its vital cycles, structure, functions and evolutionary processes*".

45. A reading of the aforementioned articles shows that there is a negative duty to respect and a positive duty to guarantee the existence and regeneration of the life cycles, structure, functions and evolutionary processes of the elements that make up an ecosystem. Such a framework of constitutional protection invokes rights that are proper or exclusive to a natural environment and that, given their essence, would not be attributable to individuals of the human species; the same occurs -in the opposite sense- with those rights and guarantees that protect human dignity (such as habeas corpus).

46. Consequently, it should be emphasized that the possibility of holding human rights is inherent only to *natural persons* because of their human condition; therefore, any other form of entity or individual that has constitutional recognition cannot be the holder of human rights, nor of the jurisdictional guarantees designed for persons.

47. In this regard, the majority vote does not take into account that this Court, in Final Judgement No. 8-12-JH/20 stated:

The guarantee of habeas corpus is a legal institution recognized as a mechanism for the protection of the individual, which, having been established since the beginning of constitutionalism, has been generally consolidated in legal systems. This figure has a

¹³ First recital of the Universal Declaration of Human Rights: "*Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world*".

component eminently connected to human dignity, its raison d'être is the defense of two of the values that most protect the free development of the personality and the life project of persons, such as integrity and individual freedom, since no one can be exposed to harassment and violations of these rights.¹⁴ (emphasis added)

48. In this case, the majority judgment is extending a jurisdictional guarantee (historically erected more than eight centuries ago as a mechanism for the protection of human rights, such as individual freedom and physical integrity) in favor of wild animals, which is extremely excessive and contrary to the provisions of our constitutional text and the law on the matter.

49. The constitutional recognition of the rights of nature, which according to the majority judgment includes animals as subjects of rights, cannot denaturalize their interaction with human beings. In this context, the processes of domestication of animals for companionship or work, their breeding for slaughter and food, their captivity for the protection of species, scientific research and education, and other types of interaction that different societies have developed with animals over time, cannot be altered by a court ruling. Animals, particularly those incorporated into families as pets, have received unusual attention in current times, however, this does not mean that they can be equated to human beings, because such a situation could lead to an imbalance and denaturalization of the interaction of these beings with people.

50. Based on the foregoing, I am submitting this dissenting opinion in the hope that the criteria reasoned herein will be considered in future debates, in order to deepen the scope of the jurisdictional guarantee of habeas corpus in the context of animal welfare, a matter that undoubtedly is not resolved by the jurisprudence of this Constitutional Court.

[Digitally signed by Carmen Faviola Corral Ponce]

Dr. Carmen Corral Ponce
CONSTITUTIONAL JUDGE

Reason. - I hereby state that the dissenting opinion of Constitutional Judge Carmen Corral Ponce, in case 253-20-JH, was filed in the General Secretariat on February 3rd, 2022, by means of an e-mail at 19:19; and, it has been processed together with the Final Judgment. - I certify it.

¹⁴ The following footnote appears in the exact citation: "3. *At the beginning of constitutionalism, the recognition of the figure of habeas corpus dates back to the English Constitution of 1215, the Habeas Corpus Act of 1679 and the Bill of Rights of 1689; in the French Declaration of the Rights of Man and of the Citizen of 1789; and, in the Constitution of the United States of America (Fifth Amendment of 1791)*".

[Digitally signed by AIDA SOLEDAD GARCÍA BERNI]

Dr. Aída García Berni
GENERAL SECRETARY