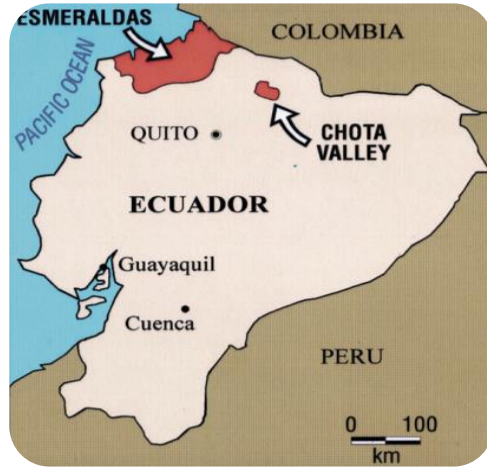


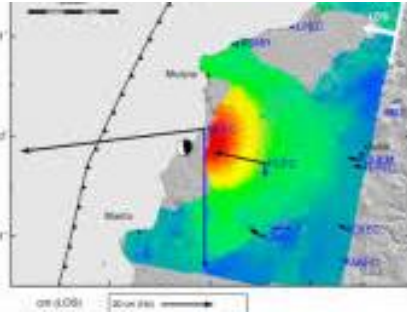
RECOVERING THE COLLECTIVE RIGHTS ON THE VALUE OF THE RIVER

The Chota Valley Case

Sandra Megens, WASS-SDC, 2022



ECUADOR CHALLENGES



- People protest over lack of inclusion and inequalities
- Government ignoring communities in the planning
- Few gender-sensitive issues in DRR policies and Programs
- Strong resistance from the social movements
- Demands of equal access to resources

Natural hazards, are gender neutral but their impacts are not!

Disaster impacts often reflect, and reinforce, inequality.

Drought phenomenon alter the paramo ecosystem and its effect on the nation's water supply and humidity



ACTOR PARTICIPATION

**Screen
Related
water issues**



	The public sector	Knowledge institutes research and academia	Non governmental organisation (NGOs)	Private companies
	Ability to make informed decisions, plan and develop policies concerning water Contract reviews and intervention	Assisted primary government Framing Problems Water assessment	Continuous promotion of water issues Insufficient interest from authorities, corruption	"Realistic attitude" of water providers concerning the fee for water

Water use

Irrigation

Drink Water

Scarcity



Water Quality

Water security

Water Pollution

Water Quantity

Ecuadorian Constitution, 2008

Ecuador's constitution recognizes the rights of "Pachamama," or Mother Earth, to exist and to "maintain and regenerate its cycles, structure, functions and evolutionary processes." In 2008, the country was the first in the world to set down the rights of nature in a constitutional document, affording nature the highest



Ecuadorian Constitution, 2008

LAW

Environmental Organic Code (COA) and the Organic Law of Water Resources and its uses

To adopt a comprehensive and systemic approach that considers social, economic, and environmental aspects for the conservation and sustainable use of hydrographic basins and water resources, in coordination with the Single Water Authority

Title II: Rights

- Chapter 2: Good Living Rights
 - Water and food
 - Healthy
 - Environment
- Chapter 7: Nature Rights

Article 10: Nature Rights and 71–74

Recognize the inalienable rights of ecosystems to exist and flourish, give people the authority to petition on the behalf of nature, and requires the government to remedy violations of these rights

Title VII: Good Living Regime

Chapter 2: Biodiversity and Natural Resources

Section 1: Nature and Environment

Section 2: Biodiversity

Section 3: Natural capital and ecosystems

Section 4: Natural resources

Section 5: Soil

Section 6: Water

Section 7: Biosphere, urban ecology and alternative energies

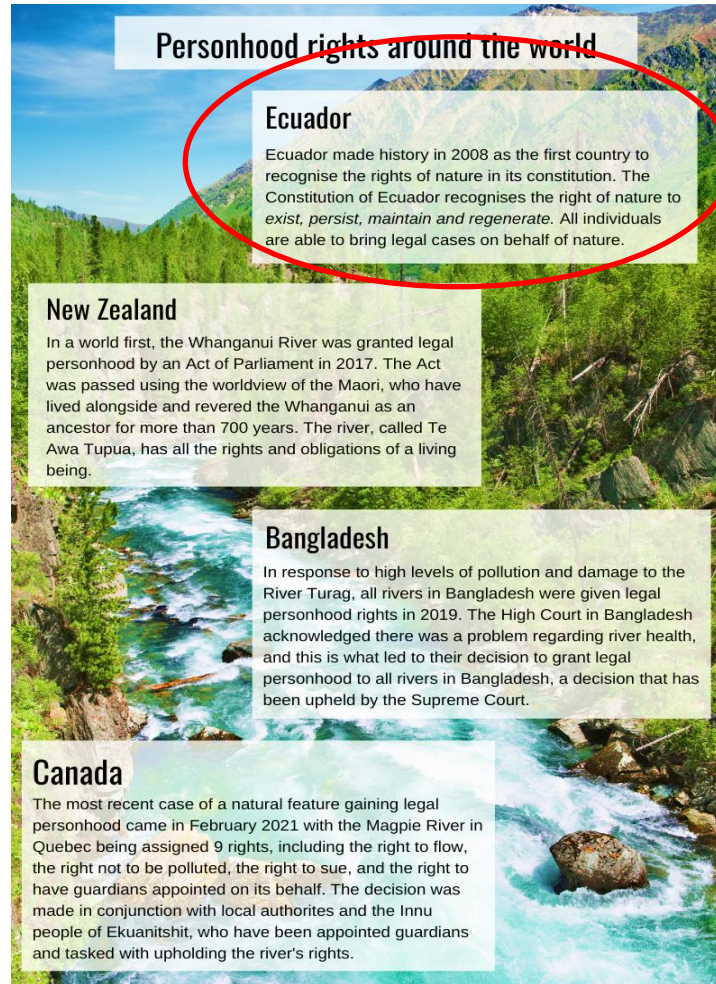
The Philosophy

- ❑ Ecuador's codification of the Rights of Nature is significant as it is the first case where this concept has been evoked at the national level. **The articles set out a rights-based system that recognizes Nature**, or *Pachamama*, as a right-bearing entity that holds value, apart from human use. This **differs from traditional systems that see nature as property**, giving landowners the right to damage or destroy ecosystems that depend on their land.
- ❑ The rights-based approach spelled out in the Rights of Nature expands on previous laws for regulation and conservation by recognizing that nature has fundamental and inalienable rights as a valuable entity in and of itself. **The system also assigns liability for damage to the environment and holds the government responsible for the reparation of any damage.** Additionally, if an ecosystem's rights are violated, it gives people the authority to petition on behalf of the ecosystem to ensure that its interests are not subverted to the interests of individuals or corporations.
- ❑ The inclusion of the Rights of Nature also makes **the constitution more democratic and inclusive**, as it **reflects the indigenes' idea of Nature** as a mother **that must be respected and celebrated.** This is the first constitution that has incorporated indigenous concepts of *sumak kawsay* and *Pachamama*, as well as recognized the **plurinationality** of Ecuador. This has broad significance for the recognition of indigenous groups and their right to preserve their land and culture. The combination of human rights with the rights of nature will allow for more effective protection of indigenous communities.

'Legal Personhood'

A person or thing that has legal personhood has rights and obligations and can sue and be sued by others.

People have legal personhood by default, but this hasn't always been the case - slaves were historically considered 'objects' (CH. Fardon, 2021)



Can we give nature legal rights?

What does that mean, and how would it change things?

what is 'legal personhood'?

What is the difference between individual and collective human rights?

Why is it important to understand the concept of 'legal personhood'?

- Personhood is an analytical **term used by anthropologists** to indicate who, within any given culture, is either a fully functioning and accepted member of adult society
- It provides critical knowledge for this conditional concept of personhood, defined by society, **allows a relativistic application of human rights** which reverberates through human life from beginning to end. Absent an absolute and inviolable attachment of personhood to the human condition, the status of many humans becomes questionable. (Author: Frederick J. White)
- The law often **recognizes that certain groups** of individuals can be **considered as a unit**, an actor, a legal person. This sort of legal personhood allows the unitary group.

What It means....?

- According to the “Rights of Nature” doctrine, **an ecosystem is entitled to legal personhood status** and as such, has the right to defend itself in a court of law against harms, including environmental degradation caused by a specific development project or even by climate change

- “Well-being” is **the experience of health, happiness, and prosperity**. It includes having good mental health, high life satisfaction, a sense of meaning or purpose, and ability to manage stress. More generally, well-being is just feeling well

The first successful case of the Rights of Nature-implementation-in Ecuador

- ❖ The Case: Road widening at Vilcabamba River and recognition of rights of nature, Ecuador.
- ❖ **In 2011, a provincial court in Ecuador recognize the Vilcabamba River's rights were violated by road construction becoming the first legal ruling in favor of Rights of Nature in the world**
- ❖ The court ruled in favor of the river, marking the first time Pachamama's rights were legally upheld.



The Global Alliance for the Rights of Nature/CEDENMA/Fd. PACHAMAMA
https://www.earthlaws.org.au/wp-content/uploads/2016/07/RON_Vilcabamba-Ecuador-Case-complete.pdf

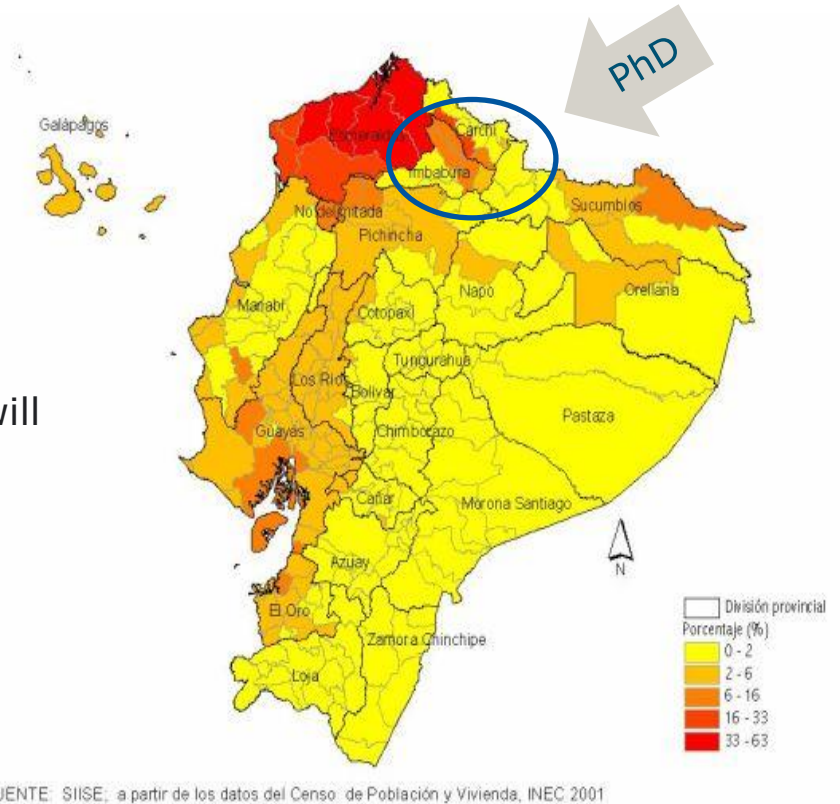
Ecuadorian Constitution, 2008



Water Law explicitly prohibits water privatization and recognizes the right to water first for human consumption and then for food sovereignty and environmental protection. However, the **law does not specify how this right can be implemented** in practice which becomes problematic for its effectiveness particularly from an environmental perspective

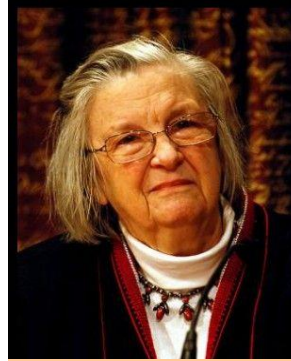
Property Rights

Property rights theory is an exploration of how providing stakeholders with ownership of any factors of production or goods, not just land, will increase the efficiency of an economy as the gains from providing the rights exceed the costs.



Common Property Rights

"Common property" or "common property regime" is used to refer to **a property rights arrangement in which a group of resource users share rights and duties towards a resource.**



What we have ignored is what citizens can do and the importance of real involvement of the people versus just having somebody in Washington make a rule.

- Elinor Ostrom -

Common property resources are (renewable) natural resources where current excessive extraction reduces future resource availability, and the use of which is de facto restricted to a specific set of agents, such as inhabitants of a village or members of a community (D.van Soest, 2013)

.....Though not inevitable, the overexploitation of common property resources is always a potential threat, and often a frightening reality. Many current environmental problems can be traced to the working of a so-called tragedy of the commons.(Colin W. Clark, 2013)

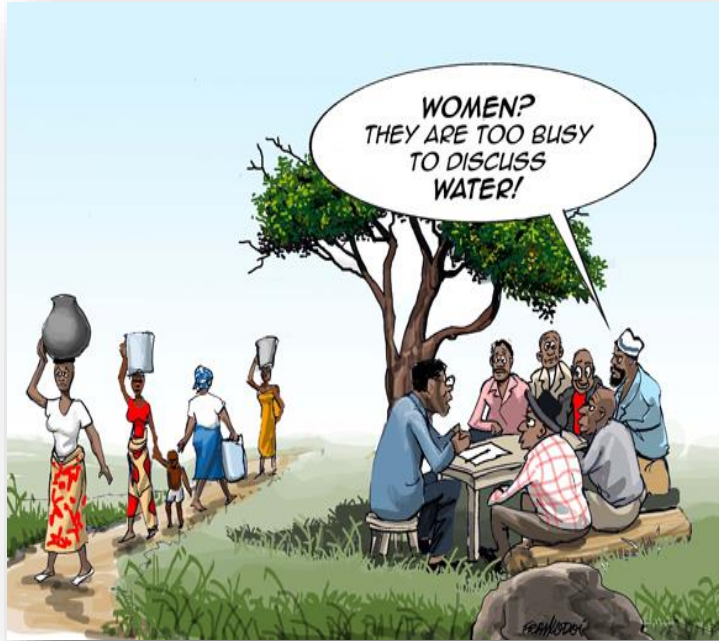
What is a common by Ostrom?

- ❖ A “commons” that which is communal, or more precisely, common-pool resource (CPR) as Ostrom refers to it, is **a resource environment or domain that is characterized by an open access problem**: it is difficult to effectively bar other users from accessing and benefitting from that resource (*8 Principles for Managing a Commons*)
- ❖ Ostrom's work was based on the principle that common resources are well managed by those communities that **benefit the most from them and that their regulation should be addressed at the local level**, through the farmers, communities, local authorities and NGOs



The constraints: Strengthen measures to mitigate deforestation; support indigenous (minorities groups) rights to land and forest (aquatic) resources; expand and update data on land markets; support efforts to update and simplify the land registration system; strengthen women's land rights

DRR and Water GOVERNANCE PROBLEM



- Structured methodology to address conflict not been developed
- Complex framework in relation to WM and DRR (legal and institutional)
- Lack of implementation
- Lack enforcement (laws and policies)
- Lack of Management of conflict interest

KEY CONCEPTS, PRINCIPLES AND MAIN ELEMENTS

- Local knowledge & actor participation
- Rights of nature
- Collective rights
- Legal Personhood
- Property rights
- River rights

An aerial photograph of a river valley. In the foreground, a large, black, multi-sectioned pipe or culvert runs diagonally across the frame. The landscape below is a mix of green fields and dense forest. A river winds through the valley in the distance. The sky is clear and blue.

WATER GOVERNANCE CHALLENGE

**Should rivers have
the same rights as
people?**

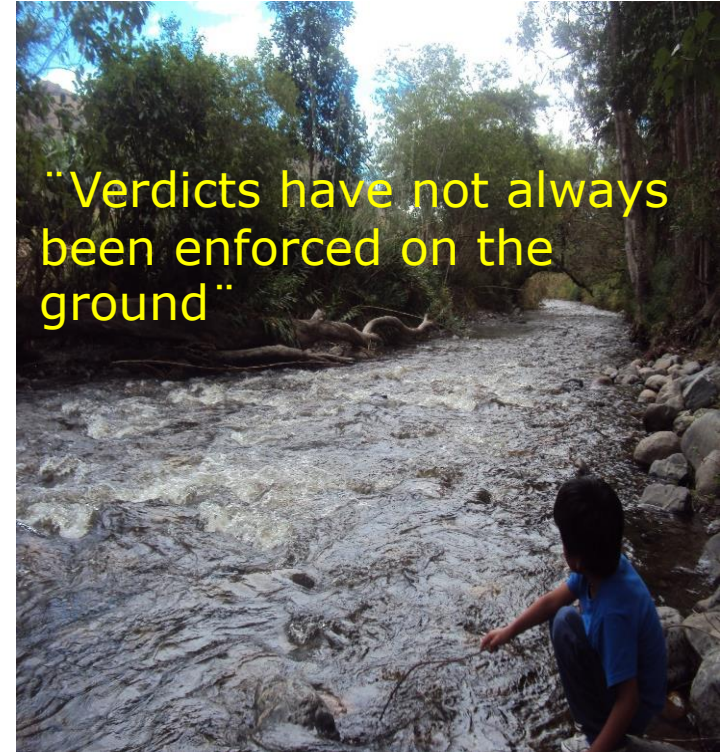
Rivers Rights

Giving rivers legal rights means the law can see rivers as legal persons, thus creating new legal rights which can then be enforced. When rivers are legally people, does that encourage **collaboration and partnership** between humans and rivers, or establish rivers as another *competitor* for scarce resources?

“Collective property rights” is a shorthand used here for the idea that the territory of a nation-state, and in particular **the parts of that territory that are not private property, are owned “collectively” by the people with the government acting as their agent.**

RIVER PROBLEM

- The **Magpie River** –Canada- has got the right to flow, but enforce that right is very unclear
- How can one part of the **River Frome** have rights when the stretch flowing through the next county doesn't?
- in 2011 provincial court ruled in favour of the **Vilcabamba River** against damaging road construction, but the developer didn't take the action required to remediate the pollution.
- Ecuador's courts have since held more than three dozen lawsuits in the name of nature.



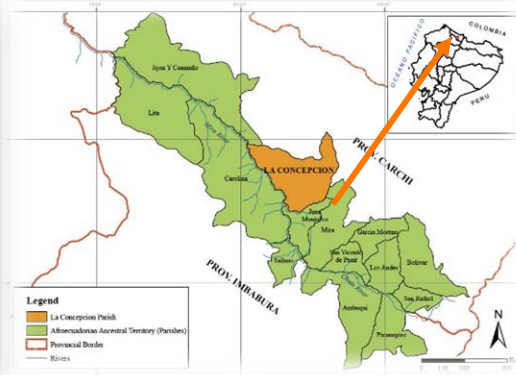
The Chota River

The upper valley of the Mira River, called the Chota River in its upstream portion, in northern Ecuador, and the small villages in it are usually referred to as **'El Chota'**.

"To understand from the people of the Chota Valley the problematic situation of water scarcity and to communicate the various values provided by the river"



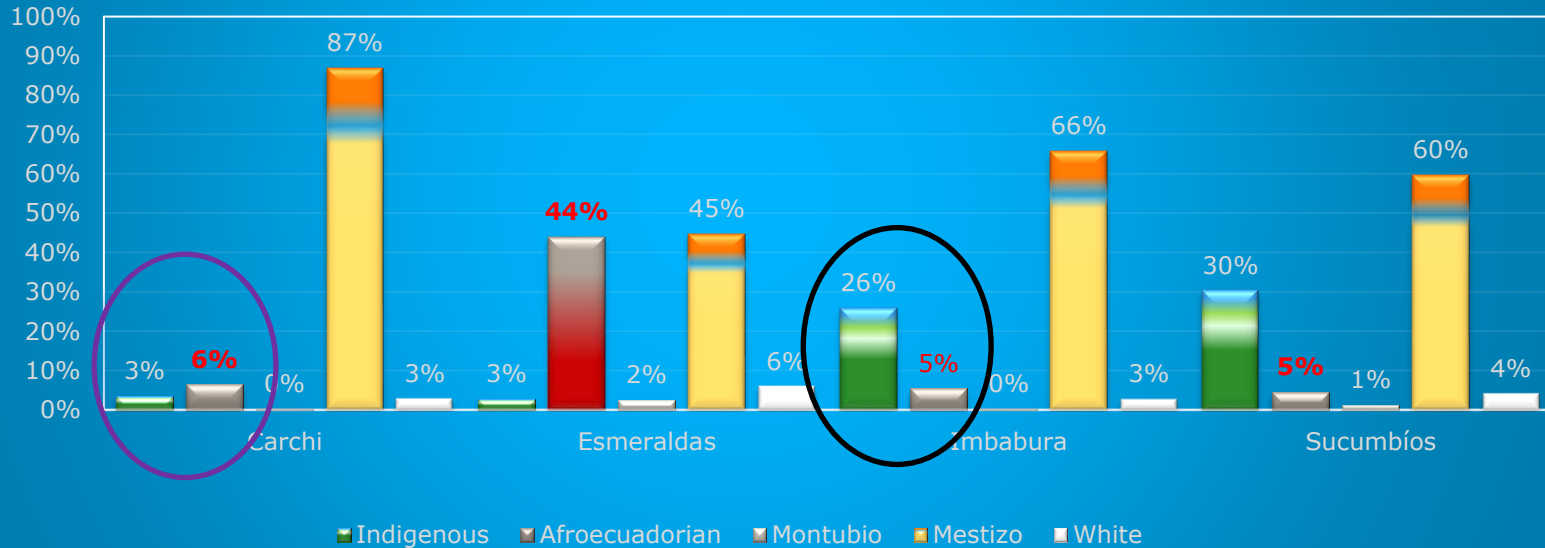
A dusty valley between two ranges of the Andes in northern Ecuador



It lies in the provinces of Imbabura, Carchi and Esmeraldas (aprox 530.000 inh). 35 km from the city of Ibarra. The river and its upper valley situates halfway between the equator and the Colombian border



ETHNIC COMPOSITION OF THE ADMINISTRATIVE ZONE 1, BY PROVINCES (INEC 2010)



The Afro-Ecuadorian 'El Chota'

Cultural rights are commonly perceived as the most neglected or least developed category of human rights/Cultural Rights as Collective Right

By improving water governance capacity facing specific natural or anthropogenic threat scenarios



KEY CONCEPTS

- River Value
- Hydrosocial territories
- Collective participation & management
- Cultural heritage

The study will combine knowledge of the
Afro-Ecuadorian young generation!

Diego Palacios O.
PhD Candidate



THANKS

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“Each generation must discover its mission, fulfill it or betray it, in relative opacity.” (*Frantz Fanon*)