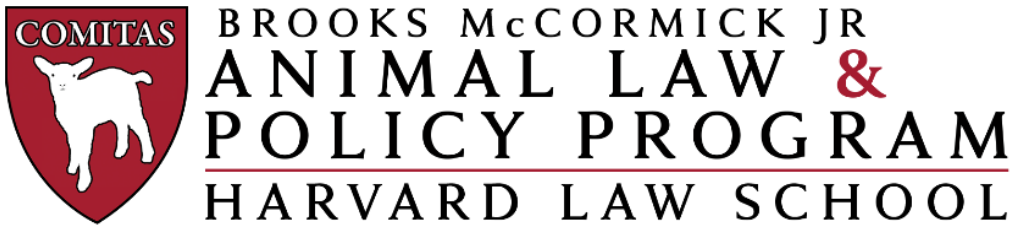
CONSTITUTIONAL COURT OF ECUADOR

CASE NO. 253-20-JH

AMICUS CURIAE



NONHUMAN RIGHTS PROJECT

1. PRELIMINARY ASPECTS

1.1 The Brooks McCormick Jr. Animal Law & Policy Program at Harvard Law School and the Nonhuman Rights Project hereby respectfully present the following *amicus curiae* according to article 12 of the Organic Law of Jurisdictional Guarantees and Constitutional Control, in the matter of Case No. 253-20-JH before the Constitutional Court of Ecuador.

1.2 Ana Burbano received the woolly monkey (*Lagothrix lagothricha)* named Estrellita at the age of one month. The woolly monkey is classified as vulnerable by the IUCN Red List (Stevenson et al. 2021). Particularly, woolly monkeys are suffering from habitat loss and hunting in Ecuador (Álvarez-Solas, de la Torre, and Tirira 2018, 187). Burbano kept Estrellita and raised her in a human family; Estrellita had no contact with other woolly monkeys. The Ecuadorian environmental authority confiscated Estrellita on September 11, 2019, when she was around 18 years old, on the basis of article 147.5 of the Organic Environmental Code, which provides that private individuals may not breed, keep, buy, or sell exotic or native wildlife. The authorities relocated Estrellita to San Martín de Baños Zoo. Estrellita was put in quarantine and died in the zoo on October 9, 2019. Burbano filed a writ of *habeas corpus* on Estrellita's behalf, demanding that the judge return Estrellita to her human family and issue the wildlife license that Burbano required to keep Estrellita in her home. The lower court and the Court of Appeals denied the writ of *habeas corpus*.

1.3 Professor Dr. Pablo Stevenson is a scientific researcher who has "spent the largest time with groups of woolly monkeys in the field (approximately 48 months)," and studied them for more than twenty years. He has published five books, four of which deal with woolly monkeys, 43 book chapters, of which 32 are on primates, and 132 articles in scientific journals (most of which are on woolly monkeys).

1.4 In his accompanying affidavit, Professor Dr. Stevenson explains that "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." Additionally, Professor Dr. Stevenson explains that woolly monkeys "travel on average 2 km each day looking for food and resting sites when most adults go to different places in an autonomous way, but coordinating most group activities," and display "intelligence and adaptability."

1.5 Stella de la Torre, dean of Biological and Environmental Science of San Francisco de Quito University, filed an *amicus curiae* with the trial court, which noted:

> We still have much to discover on the cognitive abilities of nonhuman primates but we do know that these animals live in complex physical and social environments that require an advanced cognitive capacity (Byrne 2000, Hopper and Brosnan 2012). In the case of *Lagothrix* primates like Estrellita, research on wild communities has shown that these animals remember their habitat's elements and create maps identifying travel

> routes that they constantly use (di Fiore and Suárez 2007). These primates require short- and long-term memory to elaborate and make these mental maps, clear evidence of their cognitive abilities. On the other hand, these monkeys live in large social groups that are maintained thanks to complex cooperative, affiliative, and antagonistic behavior (di Fiore and Campbell 2007, Tirira et al. 2018). Cooperation among group members is strong and includes altruistic behavior such as individuals exposing themselves to hunters to help their injured group members, which evidences strong affective bonds among group members, as well as an elaborated cognitive system that helps them survive (MacLean et al. 2013). Human and nonhuman primates share the psychological and emotional effects caused by losing someone important (Osterweis et al. 1984). One of the strongest emotional bonds that exist is between a mother and her child (Langergraber 2012). (Multicompetent Judicial Unit based in the Baños District, Tungurahua Province 2020).

1.6 The Selection Chamber of the Constitutional Court of Ecuador decided to select this case, No. 253-20-JH, to develop jurisprudence that would determine the scope of the writ *of habeas corpus* in relation to the protection of other living beings and to address the question whether nonhuman animals can be considered as subjects of rights protected by the rights of nature.

1.7 The Brooks McCormick Jr. Animal Law & Policy Program at Harvard Law School, located in Cambridge, Massachusetts, U.S.A., is the premier academic animal law and policy program in the world. It is dedicated to analyzing and improving the treatment of animals through the legal system. The Program engages with academics, students, practitioners, and decision-makers to foster discourse, facilitate scholarship, develop strategic solutions, and build innovative bridges between theory and practice in the rapidly evolving area of animal law and policy.

1.8 The Nonhuman Rights Project, a non-governmental organization based in the U.S.A., works to ensure fundamental rights for nonhuman animals through litigation, legislation, and education. The Nonhuman Rights Project has litigated or is preparing to litigate *habeas corpus* cases for nonhuman animals in the United States (the states of New York, Connecticut, Colorado, and California), India, and Israel. In addition, the Nonhuman Rights Project has filed an amicus brief in the Constitutional Court of Colombia.

1.9 The topics determined by the Constitutional Court in its selection order are directly related to the institutional missions of both the Brooks McCormick Jr. Animal Law & Policy Program at Harvard Law School and the Nonhuman Rights Project.

1.10 Courts around the world are analyzing the legal status of animals. In Latin America, the issue is particularly relevant due to the recent decisions adopted in the last years in Argentina, Brazil, and Colombia. Our organizations have had the opportunity to intervene as *amicus curiae* in some emblematic cases in the region. It is a subject of deep legal connotation, as it addresses complex analyzes of fundamental institutions of law.

1.11 Estrellita's case is novel and important for the Constitutional Court of Ecuador and for the development of Ecuadorian Constitutional Law and Animal Law. The case is also novel and important for the international community, which is carefully following Ecuador's pioneering constitutional protection of the rights of nature. In this time of catastrophic climate crisis and the sixth mass extinction of species, Ecuador is a regional and world leader in developing and protecting the rights of nature and this case presents an opportunity to deepen that reputation. The case is also novel and important for the development of *habeas corpus* and its application to nonhuman animals in Ecuador, Latin America, and globally.

1.12 We file this *amicus curiae* to the Constitutional Court of Ecuador and request that:

a) The Constitutional Court consider the grounds that we have provided in this report and takes the Brooks McCormick Jr. Animal Law & Policy Program at Harvard Law School and the Nonhuman Rights Project as third parties interested in the case, legitimizing our intervention as such in this process.

b) The Constitutional Court recognize that nonhuman animals can be the subjects of rights.

c) The Constitutional Court recognize that the writ of *habeas corpus* can be appropriate for nonhuman animals.

d) The Constitutional Court recognize that nonhuman animals are subjects of rights protected by the rights of nature.

e) The Constitutional Court order the relevant governmental entities to create protocols to guarantee the rights of nonhuman animals under the rights of nature and *habeas corpus*.

2. NONHUMAN ANIMALS CAN BE THE SUBJECTS OF RIGHTS

2.1 This Court is presented with the important opportunity of developing jurisprudence that determines the scope of the *habeas corpus* action regarding nonhuman animals and decides whether they can be considered subjects of rights protected by the rights of nature. We urge the Court to determine that (1) nonhuman animals can be the subjects of rights, (2) the writ of *habeas corpus* can be appropriate for nonhuman animals, and (3) nonhuman animals are subjects of rights protected by the rights of nature. In doing so, this Court would be joining a growing number of courts, legislatures, and important thinkers around the world in recognizing the imperative of nonhuman animal rights.

2.2 In civil law and common law, a "person" today is understood as "any being whom the law regards as capable of rights or duties," and "[a]ny being that is so capable is person, whether a human being or not," according to Black's Law Dictionary (Garner 2019b), quoting John Salmond (Salmond 1947, 318).

2.3 As Trahan explains: "If the *summa divisio* of the civil law–the distinction between 'persons' and 'things'–can be traced back through the pages of history to a single source, then that source may well be the following line of the *Institutes* of the second century Roman jurisconsult Gaius: 'Now, all the law that we make use of pertains either to persons or to things or to actions." (Trahan 2008, 9). "Persons" have long been confined to humans:

> Thanks to recent social and technological changes, our society now faces a number of new social problems, problems as to which the distinction between persons and things is highly pertinent. One such problem is the characterization of the human fetus. As long as abortion was criminalized, the ancient question of whether a fetus was merely a part of the mother's body (and, therefore, a "thing") or an independent human being (and, therefore, a "person") was no great practical significance. But when, thanks to the women's rights movement and the so-called "sexual revolution," restrictions on abortion began to fall, this question came to the forefront of public attention. Another such problem is the characterization of animals. The rise of the environmental movement has precipitated a reexamination, on the philosophical plane, of the place of human beings within the larger natural world. The traditional view–that the natural order was created for man and that he, as master of it, is free to do with it more or less as he pleases–has been increasingly challenged. (Trahan 2008, 20).[1]

2.4 In 2014, the Supreme Court of India held that all nonhuman animals in the country possess rights, pointing to Articles 21 and 51A(g) of the Constitution of India and referring to these as "the magna carta of animal rights." The Court went on to hold that animals "also have rights under India's Prevention of Cruelty to Animals [Act] secs. 3, 11[.] Section 3 of the Act deals with duties of persons having charge of animals, which is mandatory in nature and hence confer corresponding rights on animals. Rights so conferred on animals are thus the antithesis of a duty and if those rights are violated, law will enforce those rights with legal sanction." In short, the Court held that, "(a)ll living creatures have inherent dignity and a right to live peacefully and right to protect their well-being which encompasses protection from beating, kicking, over-driving, over-loading, tortures, pain and suffering etc." (Animal Welfare Board v. Nagaraja 2014, paras. 32, 54, 56, 62, 77).

2.5 In 2020, the Islamabad High Court in Pakistan decided the case of *Islamabad Wildlife Management Board v. Metropolitan Corporation*, W.P. No. 1155/2019. In that opinion, the Chief Justice of the Court wrote that, "After surveying the jurisprudence developed in various jurisdictions it has become obvious that there is consensus that an 'animal' is not merely a 'thing' or 'property' […] Directly or indirectly the rights of other animals are also acknowledged." (Islamabad Wildlife

[1] For civil law, see further, Carriere, Jeanne Louise. 1999. "From Status to Persons in Book I, Title 1 of the Civil Code." *Tulane Law Review* 73(4), 1268-69; Thibault, Anton. 1855. *An Introduction to the Study of Jurisprudence*, sec. 101, 88 (Nathaniel Lindley trans.). For common law, see IV Roscoe Pound, *Jurisprudence*. 1959, 197 ("The significant fortune of legal personality is the capacity for rights."); Tur, Richard. 1987. "The 'Person' in Law," in Arthur Peacocke & Grant Gillett eds., *Persons and Personality: A Contemporary Inquiry*, 121-22, ("[L]egal personality can be given to just about anything […] It is an empty slot that can be filled by anything that can have rights or duties."); Bryant Smith. 1928. "Legal Personality," *Yale Law Journal* 37, 283 ("To confer legal rights or to impose legal duties […] is to confer legal personality").

Management Board v. Metropolitan Corporation 2020, para. 58). The Court added, "Do animals have legal rights? The answer to this question, without any hesitation, is in the affirmative." (Islamabad 2020, para. 59). The reason is that "human rights are inherent because they stem from the attribute of being 'alive.' Life, therefore, is the premise of the existence of a right. Whether human rights or rights guaranteed expressly under the Constitution, they all have a nexus with 'life.' An object or thing without 'life' has no right. A living being on the other hand has rights because of the gift of 'life.'" (Islamabad 2020, para. 59).

2.6 The Islamabad High Court also stated, "An animal undoubtedly is a sentient being. It has emotions and can feel pain or joy. By nature each specie has its own natural habitat. They require distinct facilities and environments for their behavioural, 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." (Islamabad 2020, para. 59-60).

2.7 Finally, the Islamabad High Court affirmed, "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 2020, para. 60).

2.8 There have also been legislative advances around the world that recognize animals as subjects of rights. For example, under New York state law "domestic or pet animals" have trust beneficiary rights under the state's "pet trust" statute (*Estates, Powers and Trusts Law* 2014, § 7-8.1). While the statutes and cases interpreting them do not generally refer to the nonhuman animals covered by these trusts explicitly as "persons," these laws nonetheless implicitly recognize nonhuman animals as "persons" since only "persons" can be beneficiaries.[2]

2.9 In Mexico, two legislative initiatives show an advance in the perception of animals as more than a simple object or means to satisfy human ends. In one, the official Mexican parliamentary group challenges the anthropocentric conceptions most deeply rooted in our Western legal systems and proposes that Article 4 of the Mexican Constitution be modified, and a sixth paragraph be included to recognize the sentience of nonhuman animals as subjects of rights (*Bill That Amends Article 4 of the Constitution of the United Mexican States with Respect to the Recognition*

[2] *See* Black's Law Dictionary (11th ed. 2019) ("beneficiary" is "[a] person to whom another is in a fiduciary relation […]; esp., a person for whose benefit property is held in trust."). *See also*, *Lenzner v. Falk*, 68 N.Y.S.2d 699, 703 (Supreme Court 1947) ("'Beneficiary' is defined as 'a person having enjoyment of property of which a trustee and executor, etc. has legal possession.' (Black's Law Dictionary)."); *Gilman v. McArdle*, 65 How. Pr. 330, 338 (N.Y. Super. 1883) ("Beneficiaries […] must be persons […]"), *rev'd on other grounds*, 99 N.Y. 451 (1885).

of the Rights of Nonhuman Animals 2021).[3] Similarly, the other legislative initiative seeks to amend the Mexican Civil Code to recognize that nonhuman animals, as sentient and conscious beings, are subjects of rights, and therefore proposes some obligations for human beings (*Bill That Amends the Federal Civil Code, Regarding the Recognition of Rights to Nonhuman Animals* 2021). These proposals await the approval of the Mexican Senate. If approved, they would constitute the greatest legislative advance to date regarding the legal personhood and rights of nonhuman animals.

2.10 In Argentina, which is the only country thus far in which a court has ordered a nonhuman animal released pursuant to *habeas corpus* and not had that decision overturned (Third Court of Guarantees of Mendoza 2016), a proposed law of the Chamber of Deputies of Argentina would "recognize, consecrate, and assign animals, according to their particular characteristics, the category of 'nonhuman person' and subject of rights." (*Bill to Recognize, Embody and Assign Animals, According to Their Particular Characteristics, the Category of "Nonhuman Person" and Subjects of Rights* 2021).

2.11 In 2022, the highest state court in New York, the Court of Appeals, will hear a *habeas corpus* appeal brought on behalf of an elephant by the Nonhuman Rights Project. This is the first time that an English-speaking high court will consider whether *habeas corpus* extends to any nonhuman animal.

3. THE WRIT OF HABEAS CORPUS CAN BE APPROPRIATE FOR NONHUMAN ANIMALS

3.1 As explained below, the writ of *habeas corpus* can be appropriate for at least some nonhuman animals. In a *habeas* case involving nonhuman animals, the judge must first determine whether the writ of *habeas corpus* is an appropriate legal action. We show here that at least some species of nonhuman animals should be able to file a writ of *habeas corpus* in Ecuador. Second, once the judge has decided that the animal in question may file the writ of *habeas corpus*, the judge must then determine whether the alleged detention is legal by examining the specific factual and legal circumstances. Our *amicus* speaks primarily to the first question and argues that a woolly monkey such as Estrellita is a subject of rights for whom the writ of *habeas corpus* is appropriate.

[3] The legislative proposal aims to incorporate this provision: "This Constitution recognizes nonhuman animals as sentient beings and subjects of rights. Animals shall enjoy, without discrimination by species and insofar as they are compatible with their nature, the rights established in this Constitution, related international instruments, and the laws that may be issued for this purpose, being the obligation of México the guarantee of their compliance. Nonhuman animals shall exercise these rights in accordance with the guardianship that may be exercised by the person under whose care the animal is placed, or by any person having an interest in the benefit of the nonhuman animal. All nonhuman animals shall be treated with dignity and respect." (*Bill That Amends Article 4 of the Constitution of the United Mexican States with Respect to the Recognition of the Rights of Nonhuman Animals* 2021, 23).

THE PURPOSE OF HABEAS CORPUS

3.2 *Habeas corpus* "is a simple but powerful instrument through which jurisdictional bodies verify the legality of deprivation of freedom and demand the detainee be brought before a competent court or tribunal. The mere activation of this legal tool fulfills a power rationalizing function, preventing the authorities from making arbitrary or illegal detentions. The fact that the inter-American human rights system has conceived it as an essential tool of the Rule of Law, which cannot be suspended during states of exception, has strengthened this instrument." (Constitutional Court of Colombia Judgment SU016/20 2020, sec. 4.2).

3.3 In most civil law and all common law jurisdictions, "habeas corpus is a legal tool designed to judicially guarantee the individual freedom of persons, against arbitrary, illegal, or unfair detentions or arrests from public or private agents. The evolution of habeas corpus comprises centuries of history and its modern configuration finds its origins in the first medieval charters that incorporated guarantees against the arbitrary deprivation of personal freedom. Indeed, the concern for legal instruments to guarantee individual freedom has been a constant in world history" (Constitutional Court of Colombia 2020, sec. 4.1). This history includes the Roman Empire, the English Magna Carta of 1215, and the English *Habeas Corpus* Amendment Act of 1679.

STANDARDS THIS COURT SHOULD CONSIDER

3.4 Around the world, high court judges generally take one, and often several, of the following eight standards into consideration when making decisions. These standards are used particularly to make common law, statutory, and constitutional decisions about whether outworn or antiquated law—like restricting personhood and rights to humans—should be changed.

3.5 The first two standards are wisdom and justice, under which a court has "the duty […] to bring the law into accordance with present day standards of wisdom and justice rather than with some outworn and antiquated rule of the past." (Woods v. Lancet 1951, 355), (citation and internal quotations omitted). The idea that a given entity—today all nonhuman animals—should automatically not have rights which protect them is outworn and antiquated and violates present standards of wisdom and justice.

3.6 Four other standards include right, ethics, fairness, and policy. The New York State Court of Appeals, for example, has noted that courts have a responsibility to "bring the common law of this State […] into accord with justice" by "mak[ing] the law conform to right." (Woods v. Lancet 1951, 351), and that "the ever-evolving dictates of justice and fairness […] are the heart of our common-law system […]" (Hymowitz v. Eli Lilly and Co 1989, 507). "Justice" is "[t]he quality of being fair or reasonable" (Garner 2019a). "[L]aw cannot be divorced from morality in so far as it clearly contains […] the notion of right to which the moral quality of justice corresponds." (Vinogradoff 1946, 19-20; Garner 2019a). Similarly, the issue in the New York Court of Appeals case of *Byrn v. New York City Health & Hosps. Corp*. of 1972 was whether human fetuses were "persons" with the right to life. Byrn established that "whether legal personality should attach" to a given entity is a

"policy question" that requires a "policy determination," and "not a question of biological or 'natural' correspondence." (Byrn v. New York City Health & Hosps. Corp. 1972, 201). In other words, legal personhood is not a biological question, but a policy one.

3.7 Similarly, Judge Fahey famously recognized in a concurring opinion that the issue of whether a chimpanzee has the "right to liberty protected by *habeas corpus*" is "a deep dilemma of ethics and policy that demands our attention." (Nonhuman Rights Project, Inc., on Behalf of Tommy v. Lavery 2018, 1059) (Fahey, J. concurring).

3.8 Two final standards are "shifting societal norms" (Greene v. Esplanade Venture Partnership 2021, 516) and the "surging reality of changed conditions," (Gallagher v. St. Raymond's R.C. Church 1968, 558). Each concerns whether society has sufficiently changed to justify the new interpretation of an outworn and antiquated statute, constitution, or common law.

3.9 An extraordinary decision in which social change was relevant is an 1882 Connecticut Supreme Court of Errors' case concerning whether a statute should be interpreted in a different way concerning women and black men in the face of a change in public opinion. In *People v. Hall* (1882), the Court was confronted with a statute that stated that only "persons" could be sworn in as attorneys. The question was whether only a man, and not any woman, could be a "person" within the meaning of the statute (People v. Hall 1882, 131).

3.10 The court stated that:

> (i)t is not contended […] that the language of this statute is not comprehensive enough to include women, but […] that at the time it was passed its application to women was not thought of, while women have never been admitted as attorneys, either by the English courts or by any of the courts of this country […] All progress in social matters is gradual. We pass almost imperceptibly from a state of public opinion that utterly condemns some course of action to one that strongly approves it. At what point in the history of this change shall we regard a statute, the construction of which is to be affected by it, as passed in contemplation of it? When the statute we are now considering was passed it probably never entered the mind of a single member of the legislature that black men would ever be seeking for admission under it. Shall we now hold that it cannot apply to black men? (People v. Hall 1882, 132-33).

The court noted that both white women and Black men were "persons" even though the Legislature had not intended that either be "persons" when they wrote the statute, and thus, that women could be sworn in as attorneys alongside men, including Black men.

3.11 Courts applied similar standards when deciding whether a Black human should be a person or a thing (i.e., a slave) in the United States. This included examining the jurisdiction's fundamental moral values and principles, gathering relevant scientific facts from the most-respected modern experts in their fields,

understanding that human slavery was long understood as representing the dehumanization of a human as a thing, realizing that certain cultural heritages once encompassed a massive network of beliefs and associations regarding human slavery that derived from the Bible, understanding relevant works of classical antiquity as well as ancient, historical, and contemporary religious, philosophical, social, political, physical, scientific, and economic reasons and issues.

3.12 Similar standards should be relevant to judges' determination whether one or more nonhuman animals are persons, not things. As Judge Fahey noted: "The issue whether a nonhuman animal has a fundamental right to liberty protected by the writ of *habeas corpus* is profound and far-reaching. It speaks to our relationship with all the life around us. Ultimately, we will not be able to ignore it." (Nonhuman Rights Project, Inc., on Behalf of Tommy v. Lavery 2018, 1059) (Fahey, J. concurring).

PROMINENT HABEAS CORPUS CASES INVOLVING NONHUMAN ANIMALS IN LATIN AMERICA

CHUCHO'S CASE

3.13 *Habeas corpus* occupies a privileged place in international law and the inter-American human rights system. "From a procedural point of view, it has been configured as a highly flexible and informal instrument: it can be interposed by the affected person himself or by another person, even if unrelated to him; must be resolved by a judicial authority with guarantees of independence and impartiality; is not subject to the exhaustion of administrative channels; and must be resolved 'without delay.'" (Constitutional Court of Colombia 2020, sec. 4.3).

3.14 The majority and dissent in Judgment SU016/20 represent classic examples of how judges use one or more of the above eight standards in different ways. The majority noted that:

> *habeas corpus* has as its inescapable presupposition the arbitrary, unjust and illegal deprivation of personal freedom, and fundamentally seeks the immediate recovery of the same. In the hypothesis presented (for Chucho the spectacled bear) […] there are two substantive differences: (i) first, the legal debate does not aim to obtain the freedom of a person who has been arbitrarily deprived of it, but to guarantee the animal welfare standards of an individual who is in legal captivity, and, in particular, so that he can manifest the natural behaviour typical of his species; (ii) and second, the controversy in this case is not centred on the illegality of Chucho's captivity in the Barranquilla Zoo, since his stay there is legally supported and endorsed by competent environmental authorities, but on his current living conditions in view of animal welfare standards […] habeas corpus seeks the freedom of people, while in this case, the debate is about the desirability of permanence and of the living conditions of a spectacled bear named Chucho at Barranquilla Zoo. (Constitutional Court of Colombia 2020, sec. 5.2.2).

3.15 Only the first point—legal personhood—is relevant to the *habeas corpus* case of any nonhuman animal. But all the majority's point does is to repeat the argument

that was similarly used for centuries to prevent the freedom and liberty of Blacks, women, Indigenous peoples, children, and other humans. They too were "things" before their cases seeking their freedom were brought. Today this Court should carefully reconsider what the above eight standards should mean for a woolly monkey.

3.16 The majority's second point is that a *habeas corpus* case brought on behalf of a captive nonhuman animal is not centered on the animal's *liberty* but rather on the more basic issue of whether her *captivity* "is legally supported and endorsed by competent environmental authorities […] on [the animal's] current living conditions in view of animal welfare standards." This is analogous to saying the obvious, that a human will not win a *habeas corpus* case brought to release him if his imprisonment is proper. But that conclusion necessarily includes the idea that those humans whose imprisonment is not proper can win a *habeas corpus* case. The issue here is that the court improperly assumes that the imprisonment of a human always involves liberty, not mere captivity, which justifies bringing a *habeas corpus*, but that every imprisonment of a nonhuman is automatically not about liberty, and is rather solely about whether her captive living condition meets animal welfare standards no matter how poor those standards may be.

3.17 The court noted that:

> the *habeas corpus* filed on (Chucho's) behalf was aimed at ordering his transfer to a place where he could live in semi-captivity, or even freedom […] The allusion to freedom and Chucho's liberation is only a simile that explains, with anthropological categories, a debate that, in essence, is substantially and qualitatively different from the question of the freedom of people who have been deprived of it […] in this case, judicial scrutiny does not focus on the illegality or arbitrariness of a person's detention, which is the basic premise of *habeas corpus*, since what is under discussion are the conditions of captivity of a wild animal, which are within the regulatory framework […] These are therefore substantially different issues, with different assessment standards. In one case, in *habeas corpus*, judicial scrutiny is structured on the basis of fundamentally legal considerations about the legality of a person's deprivation of freedom, while the debate proposed here has a very different spectrum, aimed at establishing whether Chucho's stay at Barranquilla Zoo is consistent with animal welfare standards. (Constitutional Court of Colombia 2020, sec. 5.2.2).

3.18 Finally, the court stated that "from a procedural perspective, *habeas corpus* is inadequate for addressing the very complex issues surrounding the examination of the welfare of wild animals that are legally in captivity." (Constitutional Court of Colombia 2020, sec. 5.2.3). In other words, determining whether Chucho should be free is much harder than determining whether a human should be freed because a court would have to determine where to place her, as that "analysis requires qualified technical support, including, for example, different expert examinations to determine the living conditions of animals in areas, such as their nutritional requirements, signs or manifestations of stress, anxiety or distress, environmental temperature, the relationship with other individuals of their species or other species,

exposure to human presence, among many others. None of this occurs in *habeas corpus*, which focuses on specific legal issues whose verification does not require all this evidentiary activity." (Constitutional Court of Colombia 2020, sec. 5.2.3). The Court pretends that every human *habeas corpus* decision is overwhelmingly simple.

3.19 As Magistrate Diana Fajardo Rivera explained in her dissent, *habeas corpus* played a huge part in ending slavery in English-speaking countries, most conspicuously in the "famous case of James Somerset." (Fajardo Rivera, Constitutional Court of Colombia Judgment SU016/20 2020, sec. 93).[4] "At that time, the slave trade had not been formally prohibited in the British Empire. Hence, the social and economic consequences of filing a writ of habeas corpus on behalf of an enslaved "negro" were immense." (Fajardo Rivera 2020, sec. 94). But, for the first time, a judge, there the famous Lord Mansfield, ruled that "The state of slavery is of such a nature that it is not possible for it to enter into any reason, moral or political, except through positive law (...). It is so despicable that it cannot be tolerated to support it, only through positive law. Whatever inconveniences this decision may entail, I cannot say that this state is permitted or approved by law in England, and consequently, the negro must be released." (Fajardo Rivera 2020, sec. 95).[5]

3.20 Magistrate Fajardo noted Latin American authoritarian regimes that were the subject of the Inter-American Court of Human Rights and the subject of the writ of *habeas corpus*, which is part of Article 27(2) of the Convention. Comparing it with *Somerset*, Magistrate Rivera noted the *habeas corpus* case of IACHR Court, *Case of Anzualdo Castro v. Peru* (2009), Judgment of September 22, 2009 (Preliminary Objection, Merits, Reparations and Costs), and said that "Unlike James Somerset, Mr. Anzualdo Castro was not denied his most basic rights because of his race, but because of his alleged political affiliations that linked him to subversive groups. However, both cases coincide in the disregard of their entitlement of rights by legal regimes in which they did not fully fit as rights holders, but as '*other*' entities, outside the law and objects of exploitation or elimination." (Fajardo Rivera 2020, sec. 101). Magistrate Fajardo concluded that spectacled bears like Chucho:

> have interests that are legally relevant to our system, interests that can be called rights. This position was based on (i) existing jurisprudential construction, based on the affirmation of animals as sentient beings with an *intrinsic value*; (ii) the legislative developments in democracy, such as the issuance of Act No. 1774 of 2016, which welcomes the status of

[4] Judge Fajardo's dissent cited Steven Wise, *Though the Heavens May Fall*, Da Capo Press: 2006 (Fajardo Rivera 2020, n. 187).

[5] Unfortunately, even decades after Somerset, it was common for judges to deny *habeas corpus* to enslaved humans. For example, the Supreme Court of Appeals of Virginia in *Bailor v. Poindexter* (1858) stated that "in the eye of the law […] the slave is not a person, but a thing. The investiture of a chattel with civil rights or legal capacity is indeed a legal solecism and absurdity. The attribution of legal personality to a chattel slave, –legal conscience, legal intellect, legal freedom, or liberty and power of free choice and action, and corresponding legal obligations growing out of such qualities, faculties and action–implies a palpable contradiction in terms." (Bailor v. Poindexter 1858, 142-43) This was clearly not a proper way to determine whether a Black human being could be a thing and not a person.

> sentience and incorporates animal welfare mandates; (iii) comparative law experiences, such as habeas corpus granted in Argentina to the orangutan Sandra and the chimpanzee Cecilia; (iv) the human commitment to environmental conservation, expressed in various international instruments such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); and, (v) theoretical, philosophical and scientific contributions which show, on the one hand, that legal categories should allow understanding and responding to real constitutional problems, such as the treatment we owe to animals; and on the other hand, the wealth found in other species, their own life experiences and even the similarities to some human capacities exhibited by several animals. (Fajardo Rivera 2020, sec. 116).

3.21 Because Chucho, says Magistrate Fajardo:

> (i) belongs to a wild species, that is, that his prevailing status is that of freedom; and that (ii) his freedom, in natural parks - for example - is relevant for the conservation of the environment, as Andean bears play an important role in reforestation and care of water sources. Therefore, given his intrinsic value and, in addition, the function of bears like Chucho in the environment, this species can claim an interest such as that which we identify with freedom within the specific framework of animal consideration. (Fajardo Rivera 2020, sec. 118).

3.22 Magistrate Fajardo went on to state:

> the concern to preserve the effectiveness of *habeas corpus* as the main recourse to protect human freedom is comprehensible, in consideration of its historical journey and role in the fight against authoritarianism; but this does not imply that this action cannot be adapted to the protection of vulnerable beings, with reasonable adjustments. […] The procedural aspects that characterize the granting of freedom to a human should be adapted to the needs of an animal species like Chucho, without this adaptation becoming a definitive obstacle to achieving satisfaction of the interests of an animal such as Chucho. […] (Thus) the judicial decision to grant *habeas corpus* to Chucho did not constitute a […] procedural defect […] (Fajardo Rivera 2020, secs. 120, 121, 123).

3.23 Magistrate Rivera properly concluded that "in the future, society, and probably institutions, will have to take on similar debates again and […] probably *the others*, in this case animals, will have a voice and a recognition of their own rights, in accordance with their own nature both in society and in the law." (Fajardo Rivera 2020, sec. 130).

CECILIA'S CASE

3.24 The Argentinean *habeas corpus* case, "Presented by A.F.A.D.A About the Chimpanzee 'Cecilia'-Nonhuman Individual," File No. P-72.254/15 (November 3, 2016) concluded that:

> we have to reiterate the question that started this resolution: is the habeas corpus action the applicable procedure? I consider the answer to be in the affirmative. Since neither the procedure regulation of the province, nor any national law specifically contemplates a procedure to evaluate the situation of animals in captivity in zoos to any captivity situation contrary to the basic needs and natural habitat of the animal in question, I consider that the habeas corpus action is the applicable procedure, adjusting the interpretation and decision to the specific situation of an animal deprived of his essential rights while these are represented by the essential needs and conditions of the existence of the animal in whose favor the action is presented. (Third Court of Guarantees of Mendoza 2016, 31).

3.25 The Court then decided to "declare chimpanzee Cecilia, who lives in the Province of Mendoza zoo, a nonhuman subject of rights" and "order the transfer of chimpanzee Cecilia to the Sorocaba Sanctuary in the Republic of Brazil […]" (Third Court of Guarantees of Mendoza 2016, 32).

SANDRA'S CASE

3.26 Similarly, the zoo-imprisoned orangutan named Sandra was the subject of the Argentine *amparo* case, "Association of Officers and Lawyers for Animal Rights on GCBA," File No. A2174-2015/0 (October 21, 2015). That court stated that:

> Regarding new categorizations, *the Constitution of Ecuador that establishes the right of nature to its restoration* (Article 72) can be cited as an example. In this respect, Zaffaroni (The Pachamama and Human, Editions of the Mothers of the Plaza de Mayo, p.111, Buenos Aires) (2013) states that 'It is very clear that in both constitutions Earth assumes the status of a subject of rights, in an expressed way in the Ecuadorian one and a bit tacit in the Bolivian one, but with the same effect in both: anyone can claim their rights, without being required to be personally affected, provided that if it would be primary if it were exclusive right of humans. […] It is not the traditional common wellbeing reduced or limited to humans, but the wellbeing of all living things, including of course humans, among who requires complementarily and balance, not being individually achievable.' […] the legal interest protected by law is not the property of a human or a juridical person but by the animals themselves, who are holders of the right of protection against certain human behaviors. (emphases added) (Contentious Administrative and Tax Court No. 4 2015).

3.27 In short, Sandra the orangutan was declared to be a "legal person," with the court also noting that "the decision of the II Chamber of the Federal Criminal Cassation Court composed of Judge Angela Ledesma and Judges David and Pedro Alejandro Slokar, who in the case 'Orangutan Sandra s/ habeas corpus' resolved on December 18, 2014, that '[…] from a dynamic and not static legal interpretation, it is necessary to recognize the animal its character as the subject of rights, as nonhuman subjects (animals) are rights holders, so their protection is imposed on the corresponding area of competence (Zaffaroni, E. Raul and et al., 'Criminal Law, General Part' Ediar, Buenos Aires, 2002, page 493; also Zaffaroni, E. Raul,

'Pachamama and the human,' Colihue Editions, Buenos Aires, 2011, page 54 and following). (Contentious Administrative and Tax Court No. 4 2015).

3.28 The Argentine appellate court, "Association of Officers and Lawyers for Animal Rights on GCBA, EXPTE. A2174-2015/0 (October 21, 2015)," Appellate Court, Administrative Litigation and Taxation, Autonomous City of Buenos Aires (June 14, 2016), noted that:

> From a viewpoint of legal doctrine, the positions assumed regarding whether animals are a subject of law are not without controversy. Thus, there are several positions ranging from those who consider animals as a subject of law, although recognizing their specific nature as nonhuman beings, to the position assumed by those who reject such an assignment to the nature of the rights of animals to a matter that is definitely a duty of protection by human beings (a summary of the different positions found in legal doctrine can be found in Picasso, Sebastián: "Reflections regarding the alleged nature of animals as subjects of law. Even if the monkey dresses in silk, it is still a monkey," *LL* 2015-B, 950, and in Saux, Edgardo I., "Personification of animals. A necessary discussion regarding the scope of judicial categories," *LL*, 04/06/2016). However, despite the differences existing between both authors, no one questions the fact that the suffering of animals must be proscribed and that the human duty of attending to their care must be imposed (see Vanossi, Jorge Reinaldo, 'The Legal Protection of Animals,*' Anales de la Academia Nacional de Derecho y Ciencias Sociales*, *LL* 2015-A, 850). (Appellate Court on Administrative Litigation and Taxation from the Autonomous City of Buenos Aires 2016).[6]

HABEAS CORPUS FOR NONHUMAN ANIMALS OUTSIDE OF LATIN AMERICA

3.29 Judge Fahey remains the only judge of any US state's highest court to give any opinion about whether a nonhuman animal—in that case two chimpanzees—should be freed through *habeas corpus*. In a concurring opinion, Fahey wrote that a court should:

> ask not whether a chimpanzee fits the definition of a person or whether a chimpanzee has the same rights and duties as a human being, but instead whether he or she has the right to liberty protected by habeas corpus. That question, one of precise moral and legal status, is the one that matters here. Moreover, the answer to that question will depend on our assessment of the intrinsic nature of chimpanzees as a species […] Does an intelligent nonhuman animal who thinks and plans and appreciates life as human beings do have the right to the protection of the law against arbitrary cruelties and enforced detentions visited on him or her? This is not merely a definitional question, but a deep dilemma of ethics and policy that demands our attention. To treat a chimpanzee as if he or she had no right

[6] This Buenos Aires Appellate Court then found that **"**(w)ith respect to the possibility of transferring the female orangutan to an animal sanctuary, not a single report has noted that this would be advisable in this specific case." There was no need for the Court to determine whether a *habeas corpus* order to move Sandra the orangutan was necessary, the Court merely ordered ways in which it was advised how the Zoo could take better care of Sandra.

> to liberty protected by habeas corpus is to regard the chimpanzee as entirely lacking independent worth, as a mere resource for human use, a thing the value of which consists exclusively in its usefulness to others. Instead, we should consider whether a chimpanzee is an individual with inherent value who has the right to be treated with respect. (citation omitted) (Nonhuman Rights Project, Inc., on Behalf of Tommy v. Lavery 2018, 1057-59) (Fahey, J. concurring).

3.30 Judge Fahey concluded "While it may be arguable that a chimpanzee is not a 'person,' there is no doubt that it is not merely a thing." (Nonhuman Rights Project, Inc., on Behalf of Tommy v. Lavery 2018, 1059) (Fahey, J. concurring).

3.31 After Judge Fahey issued his opinion, the Nonhuman Rights Project sought a *habeas corpus* case on behalf of Happy, an elephant who had been imprisoned in a tiny place for more than 40 years at the Bronx Zoo. After thirteen hours of oral argument, Supreme Court Justice Tuitt found that Happy is an "extraordinary animal with complex cognitive abilities, an intelligent being with advanced analytic abilities […] She is an intelligent, autonomous being who should be treated with respect and dignity, and who may be entitled to liberty." (Nonhuman Rights Project, Inc., ex rel. Happy v. Breheny 2020, 16). Justice Tuitt "regrettably" ruled against Happy because she felt bound by an earlier ruling by an intermediate appellate before Judge Fahey issued his opinion.[7] This case is now directly before the New York Court of Appeals, which will order oral argument in 2022.[8]

3.32 This court must decide the novel issue of whether a woolly monkey may have a *habeas corpus* right. In making that decision this court should take into consideration the scientific facts that a woolly monkey has an elaborate cognitive system, is a complex social being with a high capacity of recognition of other woolly monkeys, resources and their environment, can remember their habitat's elements and create maps identifying travel routes that they constantly use, utilizes short-and long-term memory to elaborate and make these mental maps, has the capacity to communicate with other woolly monkeys, possesses a complex individual personality, has powerful learning abilities, can operate with autonomy, can display intelligence and adaptability, lives in a large social group that is maintained thanks to their complex cooperative, affiliative, and antagonistic behavior, and cooperates among group members, including exhibiting altruistic behavior and strong affective bonds. While none of these qualities are requirements for *habeas corpus*, we contend they are sufficient to entitle a woolly monkey to

[7] That decision is *People ex rel. Nonhuman Rights Project, Inc. v. Lavery*, in which the Third Department accepted that a chimpanzee had standing to be in a *habeas corpus* case but denied relief on the merits on two grounds, both of which were obviously wrong (People ex rel. Nonhuman Rights Project, Inc. v. Lavery 2014). The first error arose when the Court quoted Black's Law Dictionary for an error that Black's itself made and which it corrected after the NhRP complained. Its second error occurred when it claimed that the "social contract" grants rights only to those who have the capacity for duties (which it stated nonhuman animals categorically lack), when in fact the social contract does the opposite by recognizing that natural rights arrive with birth and that some are given away to government in exchange for rights.

[8] To date, nine amicus briefs have been filed in support of Happy's appeal, including those by University of Chicago Law Professor Martha C. Nussbaum, Harvard Professor Christine M. Korsgaard, three Buddhist Scholars, five Catholic Theologians, former South Africa Constitutional Court Justice Edwin Cameron, six *habeas corpus* Professors and litigators, fourteen Professor Philosophers, Harvard Law School Professor Laurence H. Tribe and Cornell Law School Professors Sherry F. Colb and Michael C. Dorf, and thirty-six UK-bases legal Professors, Barristers, and Solicitors.

seek relief. This court should carefully consider the eight standards described above in light of the evidence of woolly monkey's extraordinary cognition and autonomy. Woolly monkeys should at minimum possess the right to bodily liberty. This is not only because of who woolly monkeys are, but what justice, right, ethics, and policy should require, especially given how society and scientific knowledge have advanced.

3.33 We have shown that *habeas corpus* is appropriate for at least some nonhuman animals. This outcome is consistent with the Ecuadorian Constitution, which already grants nonhuman rights under the rights of nature. The decision of a court whether to release a petitioner from detention in any *habeas corpus* action depends on a factual inquiry and the specific circumstances of the case.

4. NONHUMAN ANIMALS ARE SUBJECTS OF RIGHTS PROTECTED BY THE RIGHTS OF NATURE

THE CONCEPT OF NATURE INCLUDES NONHUMAN ANIMALS

4.1 The language of the Constitution makes clear that nature is defined as including its constituent elements. The Ecuadorian Constitution states the following:

> Article 71: Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions, and evolutionary processes.
>
> All persons, communities, people, and nations can call upon public authorities to enforce the rights of nature. To enforce and interpret these rights, the principles set forth in the Constitution shall be observed, as appropriate.
>
> The State shall encourage natural and juridical persons, and collectives to protect nature and shall promote respect for **all the elements** that form an ecosystem.

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).

4.2 The Constitutional Court of Ecuador has also made clear that animals are a part of nature. In the recent mangrove judgment, the Constitutional Court stated:

> Nature is not an abstract entity, a mere conceptual category, or a simple legal statement. Nor is it an inert or insensitive object. When the Constitution establishes that the existence of nature must be '*integrally*' respected and it recognizes that it is '*where life is reproduced and carried out*,' it is indicating that nature is a complex subject that must be understood from a systemic perspective. Nature is made up of interrelated,

> interdependent, and indivisible biotic and abiotic elements. 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 the interrelationships with the other elements and function as a network. When an element is affected, the functioning of the system is altered. When the system changes, it also affects each of its elements. (Constitutional Court of Ecuador Case No. 22-18-IN 2021, 7-8).[9]

4.3 The rights of nature cannot be comprehended without the principle of good living or *sumak kawsay* (Murcia 2011, 293). In fact, the rights of nature are necessary to achieve the principle of good living (Zaffaroni 2011, 106; Murcia 2011, 295). The 2008 Constitution explicitly incorporates the principle of good living, so the Constitutional Court has stated that it constitutes one of the State's primary goals (Constitutional Court of Ecuador Case No. 0507-12-EP 2015, 10).

4.4 The principle of good living comes from the Andean indigenous communities' ancestral knowledge (Murcia 2011, 293). The purpose of good living is that all individuals and collectivities live in harmony with society and nature (Acosta 2008b, 5). In order to make this concept meaningful, animals must be considered among the relevant individuals and collectivities. To exclude animals would create the illogical and damaging scenario in which animals of great importance to indigenous communities could be harmed or even driven out of existence without any protection or recourse under the rights of nature.

4.5 Indeed, nature and humanity are not different realities, they are interdependent, belonging to a single life process, where different species play a role as part of a complex chain of life (Acosta 2008a, 239). In fact, the Constitutional Court has argued that humans are one more element of nature that depend on it (Constitutional Court of Ecuador Case No. 0011-13-IN 2016, 13). Precisely viewing nature separately from humans has led to its destruction and the relentless exploitation of natural resources (Acosta 2008b, 3).

4.6 More than two decades ago, scientists proposed referring to the era we are living in as the Anthropocene, due to the negative impact of humanity on nature (Crutzen and Stoermer 2000, 17). During the following years, scientists have shown that sediments and ice cores evidence climatic, biological, and geochemical impacts of human activity, as well as deposits of new materials identified as "technofossils," such as aluminum, concrete, and plastics (Waters et al. 2016). Thus, many scientists have agreed to officially distinguish this human-altered epoch as the Anthropocene, in which humankind's self-destructive impulses have acted as a major geological force since the 1950s (Davison 2019).

[9] A lower court held that fighting cocks were subjects of rights based on the Ecuadorian rights of nature, stating that, "because Ecuador protects nature, and since roosters are part of nature, they are also subject to protection of constitutional rights. […] the Constitution of Ecuador of 2008 expressly recognizes nature as a subject of rights: to threaten the life of these living beings that are part of nature constitutes a serious and irreparable damage." (Criminal Judicial Unit based in Iñaquito, Metropolitan District of Quito, Pichincha Province, Judgment No. 17294201901759 2019).

4.7 The current fragile state of ecosystems across the world and humanity's negative impact calls for heightened scrutiny of human action. Ecuador was the first country to recognize this reality in its Constitution by providing for the rights of nature. Nature includes forests, rivers, species of animals, and individual animals, including Estrellita, the woolly monkey at issue in this case.

THE CONCEPT OF NATURE INCLUDES SPECIES AND INDIVIDUAL NONHUMAN ANIMALS

4.8 The Constitutional Court has stated that article 71 protects nature as a whole as well as its elements (Constitutional Court of Ecuador Case No. 0507-12-EP 2015, 11). Animals are one of nature's elements, so according to article 71 humans must respect their life cycles, structures, functions, and evolutionary processes.

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).

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. 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 the 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 (Álvarez-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.

4.14 Ecuador is a leader in the constitutional protection of nature and its elements. That protection should include individual animals. The Brazilian Superior Court of Justice, one of the highest courts in that country, relied upon Ecuadorian rights of nature jurisprudence in the "Wild Parrot" case (Brazilian Superior Court of Justice No. 1.797.175/SP 2019). That case involved an individual who kept a blue-fronted parrot for more than two decades. The Court discussed the protection of animals and the rights of nature language in the Ecuadorian Constitution and concluded: "This view of nature as an expression of life in its entirety enables the Constitutional Law and other areas of law to recognize the environment and nonhuman animals as beings of their own value, therefore deserving respect and care, so that the legal system grants them the ownership of rights and dignity." (Brazilian Superior Court of Justice No. 1.797.175/SP 2019).

WHAT RIGHTS ARE DUE TO ESTRELLITA?

4.15 Given these conclusions, what rights are due to Estrellita? The Organic Environmental Code provides that private individuals may not breed, keep, buy or sell exotic or native wildlife. Thus, Estrellita did not belong with a human family. However, the environmental authority was not justified in putting her in a situation that compromised her rights.

4.16 According to the Constitutional Court, citing article 71 of the Constitution, nature has a general right to the respect of its existence. Within this general right, nature also has the right to maintenance and to the regeneration of its life cycles, structure, functions, and evolutionary processes (Constitutional Court of Ecuador Case No. 1281-12-EP 2015, 10).

4.17 The Constitutional Court has argued that citizens and the State must comply and act according to the rights of nature (Constitutional Court of Ecuador Case No. 0507-12-EP 2015, 12). Particularly, the State must encourage and promote the respect for *every element* that makes up an ecosystem, as well as the respect for nature as a whole (Constitutional Court of Ecuador Case No. 0507-12-EP 2015, 14).

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 Ecuador Case No. 0507-12-EP 2015, 11). The right to restoration includes returning animals to natural habitat and communities when this 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.

4.20 The rights due to each animal under the rights of nature will depend on the specific context. As we have already shown above in section three, at least some species should possess the right to invoke the protection of *habeas corpus*. Thus, this Court may determine that, conceptually, nonhuman animals can access *habeas corpus* directly or through the rights of nature.

5. REQUESTS FOR THE COURT

5.1 Due to the foregoing, the signatories of this *amicus curiae* most respectfully request that, within the framework of the Constitution, international treaties, and laws of the Republic of Ecuador:

a) The Constitutional Court consider the grounds that we have provided in this report and takes the Brooks McCormick Jr. Animal Law & Policy Program at Harvard Law School and the Nonhuman Rights Project as third parties interested in the case, legitimizing our intervention as such in this process.

b) The Constitutional Court recognize that nonhuman animals can be the subjects of rights.

c) The Constitutional Court recognize that the writ of *habeas corpus* can be appropriate for nonhuman animals.

d) The Constitutional Court recognize that nonhuman animals are subjects of rights protected by the rights of nature.

e) The Constitutional Court order the relevant governmental entities to create protocols to guarantee the rights of nonhuman animals under the rights of nature and *habeas corpus*.

6. NOTIFICATIONS

6.1 For purposes of notifications, we request the Constitutional Court to consider the following email addresses: kstilt@law.harvard.edu, swise@nonhumanrights.org, kschneider@nonhumanrights.org, and macarena.montes@upf.edu.

Signed,

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ANNEXES

Stevenson, Pablo R. 2021. Woolly monkeys and their cognition and social abilities.

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Woolly monkeys and their cognition and social abilities

My name is Pablo Stevenson, a Colombian biologist from Universidad de Los Andes in Bogotá, where I finished undergraduate studies in 1989, and where I started behavioral and ecological studies on woolly monkeys (*Lagothrix lagothricha*). I finished my doctoral studies at Stony Brook University in New York in 2002, when I completed a dissertation on the role of woolly monkey in forest regeneration. I have been director of the Center of Ecological Research La Macarena, since 2002, a research group aiming to study biological diversity in three different regions of Colombia (Magdalena, Orinoco and Amazon basins). Currently, I teach graduate and undergraduate courses at Universidad de Los Andes (including classes on Primate Socio-Ecology, Ecology, Seed Dispersal and Conservation Biology). I became full time professor at Los Andes in 2004 and my research interests are focused on the behavior and ecology of Neotropical primates and their roles on forest regeneration. Our main goals are focused on testing models and hypotheses of ecological processes that will allow us to establish conservation priorities for Colombian forests.

I have been the main advisor of 113 students aiming to get BSc, MSc, PhD degrees, and co-advisor for 50 students (mostly Colombians). I have published five books (four of them dealing with woolly monkeys), 43 book chapters (32 of them on primates), and 132 articles in scientific journals (most of them on woolly monkeys). Most of these publications have been product of collaboration with Colombian students and other researchers. My work has been recognized by two National Science Awards, which are provided by Fundación Alejandro Angel Escobar (the most prestigious for Colombian Scientists).

I might be the researcher who has spent the largest time with groups of woolly monkeys in the field (approximately 48 months). I started behavioral observation near La Macarena mountains (Meta, Colombia) in 1988. Since then it was evident for me that woolly monkeys are social animals that live in groups varying in size between 12 and 45 individuals. My first study group was small, and I was able to recognize individually all 14 monkeys, and rapidly I was able to observe that they travelled cohesively most of the time. Only once during my first 6 mo study period I observed affiliative interactions between one adult male of the group and an adult male from a different group (probably a partner of the same group before splitting in two new social units). Males usually show aggressive behaviors towards adult males form other groups. Actually, sometimes when different groups come in proximity the males perform aggressive displays when they may jump several meters aiming to fall in a branch or palm leaf, and they demonstrate their power by actually breaking the branch (even with the risk of falling to the ground, as I witness a couple of times). Females may also display aggressive behaviors, but not as strong as male (since females usually weight up to 8 kg and males up to 10 kg). This difference also is associated with the high degree of dominance of males over females, in feeding and social contexts. Actually, when females reach 5-7 years, they are frequently attacked by males and during this period females migrate to another group. Given this process, it is unlikely that mating will occur between resident adult males and their daughters. Although, they travel on average 2 km each day looking for food and

resting sites when most adults go to different places in an autonomous way, but coordinating most group activities. They are able to coordinate their cohesive movement by contact vocalizations that are recognized at the individual level (for instance the cry of a young juvenile will attract the attention of only one female, the mother of the infant). However, in other populations is common that members of the group will split and travel apart for hours or even days. Parental care by the mother is important to ensure survival of the infant, since during the first year the offspring is carried exclusively by the mother during long rides (ventrally during the first month in the back until 12 months approximately). In addition, Juveniles suckle milk for a couple of years. Although males do not carry infants, in one occasion we studied a process of adoption of a female infant, when their mother died and two adult males were in charge of carrying the infant and helping her to cross between trees, when the path was difficult. All these observations clearly show that woolly monkeys can recognize and feel empathy for the individuals in their social group, as well as in other groups.

In 1990 a captured young woolly monkey was given to me by the Park's staff, in an attempt to give him the opportunity to go back to the forest. My colleague Marcela Quiñones and I were starting a field course of one month with 10 students. At the beginning, everyone in the course was able to carry the juvenile monkey "Choyo". After a couple of days only human females were able to hold him and from that time on he developed a very tight relationship with my coworker. Choyo used diapers to sleep in Marcela's bed and they developed basically a mother-infant relationship. When Marcela was going to shower, Choyo usually cried for being alone and only one of the students (Nicole Zangen) was able to calmly stay with the juvenile. In one attempt to introduce Choyo to a wild ranging group, I climbed with him and left him below members of a group and we returned to our camp site using another trail, just in case that Choyo attempted to go back. Marcela cried a lot during our trip back, and we were amazed to see the young monkey at the camp site well before our return. Therefore, the monkey was able to recognize his direct way back, in spite of being his first time in that forest. This event suggests the spatial and/or olfactory abilities to get around in new environments, as well as his strong social bonds, even with other primates. Similar cases have been seen with captive woolly monkeys, and primates that we have tried to reintroduced in Colombian forests. These woolly monkeys used to live with humans develop different abilities, such as opening the zippers of bag packs to obtain foodstuffs, demonstrating intelligence and adaptability.

When Marcela was working in the forests in a single spot for some time, Choyo descended to the ground and consumed leaves of some seedlings. Turns out that the plant that he was consuming (a *Dalbergia* species still undescribed by scientists) is the same plant that woolly monkeys prefer for leaf consumption. Although it is not possible to rule out that Choyo was able to perceive some chemicals in the plant that make it palatable, it is more likely that he learned from his real mother which plants are part of their diet. In wild conditions, it is also clear that the diet of woolly monkeys is quite consistent along time. For instance, in all three study periods of at least one year, the most consumed fruit species has been *Gustavia hexapetala*, followed by *Spondias, Inga, Protium, Ficus* and other species. There are also some plant species such as a common palm tree (*Oenocarpus bataua*, the most preferred fruit by spider monkeys), which is

never consumed by woolly monkeys in natural conditions. Therefore, their cognitive abilities also include the knowledge of what is and what is not appropriate food for them.

My final example of cognition is an observation of one of the biggest males in my study group ("Tostao"). For my studies, I usually use the focal animal sampling method, that implies taking data from just one member of the group in each session. After following Tostado for a whole day until 18:00 h when they start their sleeping rest, I found him injured the next day at about 6:30 h. Therefore, he fell from a tree very early in the morning or during the night and Tostao was unable to use his left leg, walking very slowly behind the group. At about 8:00 h, Tostao encountered one of the two sub-adult males, who approach him very slowly, grab his injured leg quite gently and groomed Tostao. They spend some minutes in the spot and the subadult male left. One hour later, the second sub-adult male of the group approached Tostao, he jumped over Tostado and actually grabbed the injured leg until all his weight was on the leg. Tostao reacted but did not display any strong agonistic behavior. It was clear that both subadult males were cautious of Tostao's injury, although their behavior was quite different (the first one being very careful and the second one perhaps trying to but back in position a broken bone). That day the group movement was very slow and much more contact vocalizations were heard than usual, probably in an attempt to move to forage for food but considering Tostao's injury. After that day, Tostao moved almost always well behind the group walking with three legs for about a month, when he recovered.

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.

Sincerely,

Pablo R. Stevenson