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The Protection of the Environment under Ecuadorian Legislation. Case: Imbabura Peak

La Protección Del Ambiente Desde La Legislación Ecuatoriana. Caso: Cerro Imbabura

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Abstract

Imbabura Peak is a protected natural area and a cultural landmark in the province. However, anthropic activities have led to the alteration of herbaceous vegetation cover and, consequently, other natural resources. The general objective of the research was to describe environmental protection under Ecuadorian legislation, using the case of Imbabura Peak. The research was conducted using a quantitative approach, involving the search, collection, and critical documentary analysis, bibliographic references, and research studies or projects. This was done to interpret environmental protection from a legal perspective in Ecuador. A documentary-type bibliographic design was used, focusing on critical reflection, to construct the method of analyzing the study's phenomenon. Laws, regulations, and agreements were considered in this analysis, leading to the acquisition of relevant information and the development of the theoretical framework. Additionally, a questionnaire was administered to employees of the Municipal Government of Antonio Ante, practicing lawyers, and individuals and legal entities. It is concluded that the Constitution of the Republic and other local and international laws contain a series of provisions that address rights related to environmental law and Sumak Kawsay. In this context, the State becomes the guarantor of these rights, and under no circumstances can anyone obstruct or hinder these rights.

Keywords: Environmental Deterioration; Environmental Conservation; Legal Reform.

Resumen

El Cerro Imbabura, es un área natural protegida y referente cultural de la provincia. Sin embargo, las actividades antrópicas han causado alteración de la cobertura vegetal herbácea y, por lo tanto, de los demás recursos naturales. El objetivo general de la investigación fue describir la protección del ambiente desde la legislación ecuatoriana. Caso: Cerro Imbabura. El método se desarrolló desde el enfoque cuantitativo, a través de la búsqueda, recolección y análisis crítico documental, referencial bibliográfico y estudios o proyectos de investigación, desde la interpretación de la protección del ambiente desde una visión jurídica en Ecuador. Desde un diseño bibliográfico de tipo documental, cuya indagación desde la reflexión crítica, se construyó el método de

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análisis del fenómeno de estudio, considerando leyes, normas y acuerdos lo que condujo a la obtención de información relevante y la construcción del tejido teórico. Además, se aplicó un cuestionario a servidores del GAD Municipal de Antonio Ante, abogados de libre ejercicio y personas naturales y jurídicas. Se concluye que, la Constitución de la República y demás legislaciones locales e internacionales, mantienen una serie de disposiciones que abordan especialmente derechos que van de la mano, tanto el derecho ambiental, como el Sumak Kawsay; en donde el Estado se convierte en garante de estos derechos y en ningún caso uno puede obstruir o entorpecer estos derechos.

Palabras Clave: Deterioro ambiental; conservación ambiental; reforma jurídica.

Introduction

The province of Imbabura is characterized by its scenic beauty, including one of the most attractive volcanoes that bears the same name. It has become a symbol and identity for its people. In particular, it is home to traditional communities like the Natabuelas, who live on its slopes, especially in the southern part of the Antonio Ante canton. These communities contribute to the region's geographical diversity, with a variety of natural ecosystems, including paramos, remnants of native forests, streams, and springs that originate from the peak.

In this context, Imbabura Peak has been damaged due to human activities, particularly wildfires, which have altered and affected the vegetation cover. The remaining forested areas have been reduced in recent years due to deforestation and agricultural expansion in the area.

The existing vegetation cover is crucial as it allows for the storage of water in its natural sources and springs, which supply water to the populations in the highland areas of the Ibarra, Antonio Ante, and Otavalo cantons. From this perspective, the mountain has become a symbol of the canton's culture, influencing the cultural life and worldview of Indigenous communities, to the extent that it has become the subject of ancient legends, history, and art.

According to the author Arboleda (2020), the consequences and damages to the environment include:

- a) Improper waste management and disposal.
- b) Unsustainable exploitation of natural resources.
- c) Destruction of ecosystems.
- d) Extinction of numerous species and pollution of effluents.

Therefore, environmental pollution is one of the most critical and serious problems in the world, leading to the need for awareness and the search for alternatives for its prompt resolution (Palacios Anzules and Moreno Castro, 2022, p. 95).

To prevent these damages, the Constitution of the Republic of Ecuador (2008) establishes the following:

Article 71: Nature or Pachamama, where life is reproduced and fulfilled, has the right to have its existence fully respected, as well as 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 applying and interpreting these rights, the principles established in the Constitution shall be observed, as applicable. The state shall encourage natural and legal persons and collectives to protect nature and promote respect for all the elements that make up the ecosystem.

Drawing upon the Supreme Law of the Republic and with the aim of promoting environmentally obligatory practices, concerning the regulatory power granted to the Decentralized Autonomous Governments (GADs), it is imperative to create a municipal ordinance to establish a protective zone around Imbabura Peak in the Antonio Ante Canton, Imbabura Province. This is aimed at having the legal tools and legal inputs to respect the rights of nature, preserve the ecosystem, and achieve the desired "good living," which includes the conservation of our natural flora and fauna in their natural state and our coexistence with them (Organic Code of Territorial Organization, 2019).

In the scope of action and powers applied by the GADs, their legal nature, competencies, and responsibilities concerning the regulations established in the Constitution of the Republic of Ecuador, the Organic Environmental Code, Organic Integral Penal Code, and other legal norms contained in various legal bodies addressing the rights of nature and environmental matters, determine each of their components, whether imperative, permissive, or even punitive when it comes to acts that are sanctioned as crimes or offenses. Reference was made to the existing Ecuadorian legal doctrine and comparative law to gain insights into municipal ordinances, pollution, the environment, types of pollution, rights of good living, and Sumak Kawsay.

Forest fires are a constant problem in the foothills of Imbabura Peak, especially during the summer, when the winds are stronger than usual, leading to drought. This is followed by harmful practices caused by humans, which, when viewed from the mountain, decrease the flora, resulting in the loss of areas of forest with high environmental value and a noticeable decrease in wildlife. This is due to climate change, which occurs alongside environmental changes, and a lack of awareness about environmental care has caused these problems in nature to grow more rapidly and deteriorate the environment (Osejos Merino, Merino Conforme, and Vera Solórzano, 2022).

As a result, Imbabura Peak and its foothills are affected by these types of events. It is people, in their quest to produce mass-consumption agricultural products, who do not concern themselves with converting these lands, rich in organic matter, into agricultural fields where chemicals and pesticides are used without any control. This exacerbates the problems unfolding in Imbabura Peak. However, there is hope that these areas will gradually recover in the future, though it will undoubtedly take years to regain their previous appearance. Solid waste is also evident in some areas of Imbabura Peak, especially in the lower areas of its foothills. This includes ordinary waste like garbage and hazardous solid waste like remnants of chemical fertilizers and pesticides, which have a significant negative environmental impact, thus threatening the sustainability of the ecosystem.

Contamination of the water sources in the Imbabura Peak paramo is also evident, which could affect the long-term water supply for human consumption in the Antonio Ante Canton. The water sources, even those near Imbabura Peak, such as in the Agua Longo sector in the Andrade Marín parish of Antonio Ante Canton, largely depend on the conservation of the flora that supports the mountain's foothills. Therefore, any alteration, let alone deforestation and destruction of the paramos, would likely lead to a large-scale problem for the population in the medium term.

The authors Lozano and Chafloque (2018) emphasize that:

Pollution refers to anything that alters the purity or normal conditions of an object, place, or environment due to the presence of chemical or physical agents, which in some cases can cause harm to those exposed. (p. 17)

Environmental pollution has been a global problem for a long time, affecting the entire planet, biodiversity, and human health. There are many different types of pollution, depending on the area or factor affected and the type of pollutant causing the problem. Environmental pollution is the result of introducing harmful substances and elements into the natural environment or a sentient being, affecting their well-being and causing significant negative impacts on the natural balance of life.

In this regard, among the most visible consequences of environmental pollution, we can mention the loss of biodiversity, contamination of the water in the affected area, soil erosion and infertility, habitat destruction, and global warming. For this reason, environmental pollution is responsible for health problems, climate change, and alteration of soil nutrients affecting plants, and consequently animals, as well as humans. It causes nearly two million child deaths annually as a result of environmental pollution. (World Health Organization, 2017).

On the other hand, the general trend is towards a rapid loss of biodiversity in a region like Latin America, one of the most biodiverse regions globally, where a large proportion of its inhabitants depend on biodiversity as a source of income, food, health, and general well-being. Therefore, the loss of biodiversity results in a lower quality of life for many populations. (Mastrangelo, 2019)

Environmental pollution is the harmful consequence of human actions that disrupt nature, posing a risk to the lives of species and even their own. The environment becomes polluted when the natural characteristics of the environment are altered, which means that variations that threaten species and organisms coexist in the environment, distorting natural resources in terms of their quality.

There are many consequences of environmental pollution on our planet, and all of them raise great concerns due to their effects on the health of both the natural environment and its inhabitants. Pollution and its effects on humanity are truly a disaster for all forms of life on the planet. Many life forms have become extinct for this very reason, and even humans suffer from diseases and deaths as a result of the effects of environmental pollution.

The following question arises: How to promote environmental conservation through Ecuadorian legislation and conserve the ecosystem of Imbabura Peak? Currently, the problem of pollution caused by anthropogenic actions, i.e., those caused by humans, affects the environment and its ecosystems. Therefore, this research project aims to focus specifically on one of the most wonderful ecosystems in the province of Imbabura. In this context, based on the formulated approaches, the general objective is to describe environmental protection from the perspective of Ecuadorian legislation. Case: Imbabura Peak.

Method

The method of this research is developed from a quantitative approach, through the search, collection, and critical documentary analysis, bibliographic references, and research projects. It involves interpreting environmental protection from a legal perspective in Ecuador. In this regard, many objects studied in legal science can be approached from a theoretical, empirical, quantitative, or qualitative dimension, depending on the aspect being studied and the researcher's purpose (Villabela, 2015, p. 929). It follows a bibliographic design of a documentary type, with an inquiry based on critical reflection, constructing the method of

analyzing the phenomenon under study, considering laws, regulations, and agreements, which led to the acquisition of relevant information and the construction of the theoretical framework.

Additionally, an intentional non-probabilistic sample will be used, consisting of a structured questionnaire with questions addressed to the residents of the Antonio Ante Canton. The answers provided by the sample will be used to generate conclusions on the research topic. The sample includes 5 employees of the Municipal Government of Antonio Ante, 39 lawyers in the Antonio Ante Canton practicing independently, and 50 individuals (natural and legal persons)

Results

Here are the results obtained after the survey was conducted.

Question No. 1: Have you ever visited Imbabura Peak?

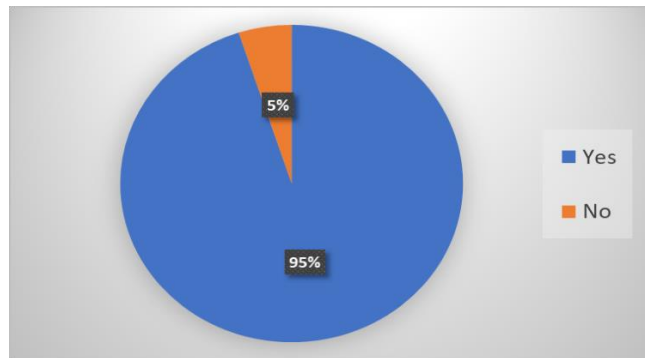


Figure 1: Recognition.

The majority of the surveyed individuals agree that they have visited Imbabura Peak at some point, which is a good indicator for further addressing the following questions to learn more about society's views regarding Imbabura Peak.

Question No. 2: Did you know that it is a constitutional right of people living in Ecuador to demand that the government take measures to prevent environmental pollution in order to ensure living in a healthy and ecologically balanced environment?

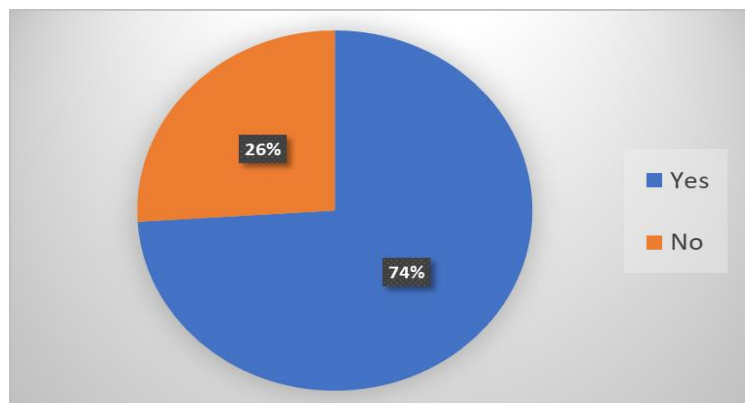


Figure 2: Awareness of the Law.

74% of the surveyed citizens are aware of the constitutional right of people living in Ecuador to demand that the government take measures to prevent environmental pollution in order to ensure living in a healthy and ecologically balanced environment, while 26% are unaware of the aforementioned right. This indicates that society still needs to learn more about environmental rights and the guarantees that the State should provide.

Question No. 3: Do you consider that the main cause of pollution on Imbabura Peak in the Canton of Antonio Ante is due to anthropogenic factors?

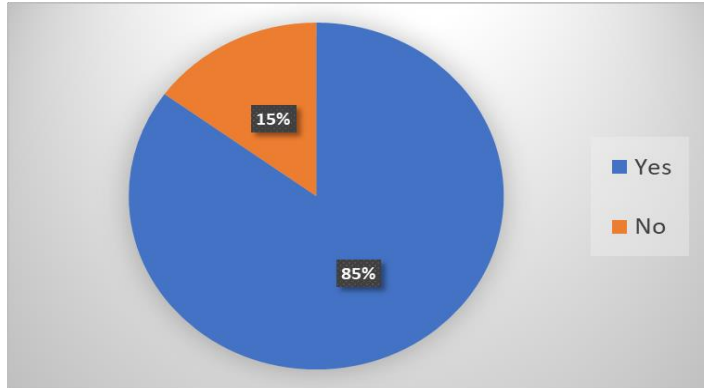


Figure 3: Cause of Pollution.

Eighty-five percent of the surveyed individuals agree that the main cause of pollution on Imbabura Peak in the Canton of Antonio Ante is due to anthropogenic factors. On the other hand, the remaining 15% do not believe so and associate it with other causes.

Question No. 4: Do you believe that there is control by the authorities to prevent pollution on Imbabura Peak in the Canton of Antonio Ante?

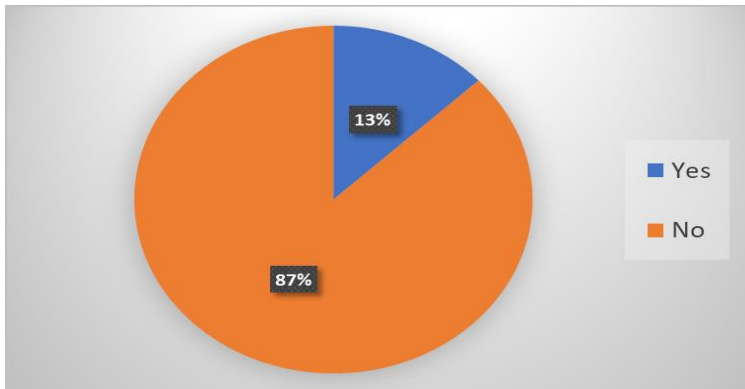


Figure 4: Control to Prevent Pollution.

87% of the surveyed individuals declare that there is no control by the authorities to prevent pollution on Imbabura Peak in the Canton of Antonio Ante. This indicates that the environmental protection functions in this area are not being effectively applied. On the other hand, a small 13% believe that the necessary control does exist.

Question No. 5: Do you believe that the lack of a Municipal Ordinance is what has allowed the pollution of the environment on Imbabura Peak in the Canton of Antonio Ante, Imbabura province?

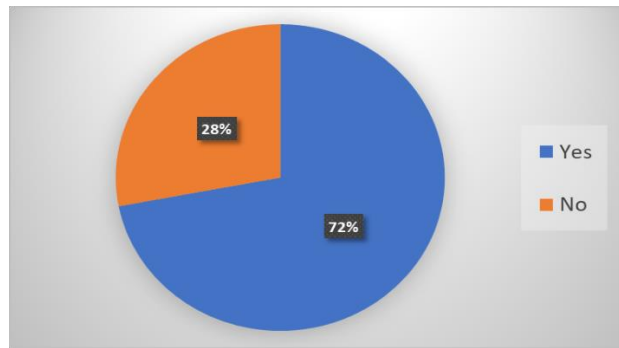


Figure 5: Lack of Regulations.

A significant 72% of the surveyed citizens believe that the lack of a Municipal Ordinance has allowed the pollution of Imbabura Peak. Therefore, the importance of having municipal legislation in place for control programs, soil regeneration, and sanctions against those who violate it is evident. On the other hand, 28% of the surveyed individuals feel that the lack of a Municipal Ordinance is not the cause of environmental pollution on Imbabura Peak. believe that it is necessary to implement strict sanctions for those who pollute the environment?

Question No. 6: Do you

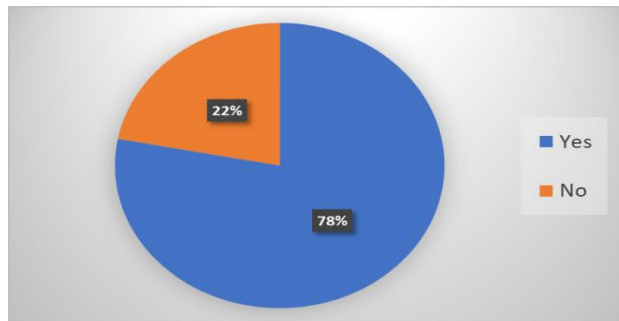


Figure 6: Sanctions.

78% of the surveyed individuals agree that it is necessary to implement stricter sanctions for those who pollute the environment, suggesting that it would make people think twice before attempting to pollute. Meanwhile, 22% of the surveyed individuals believe that it is not necessary to implement strict sanctions for polluters.

Question No. 7: Do you believe that the rights of the population to live in a healthy and ecologically balanced environment are being violated?

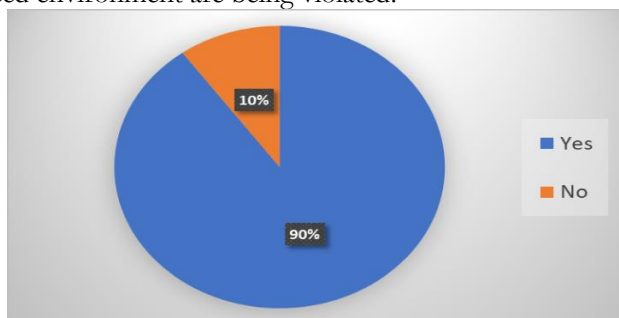


Figure 7: Violation of Rights.

90% of the surveyed citizens believe that the population's right to live in a healthy and ecologically balanced environment is being harmed and violated due to the contamination in Imbabura Peak, while the remaining 10% responded that it is not. With the results of this survey, it can be deduced that contamination does indeed affect both people's health and the environment, thus violating the rights enshrined in the Constitution.

Question No. 8: Do you believe that the Autonomous Decentralized Government of Antonio Ante should implement punitive measures to prevent contamination of Imbabura Peak?

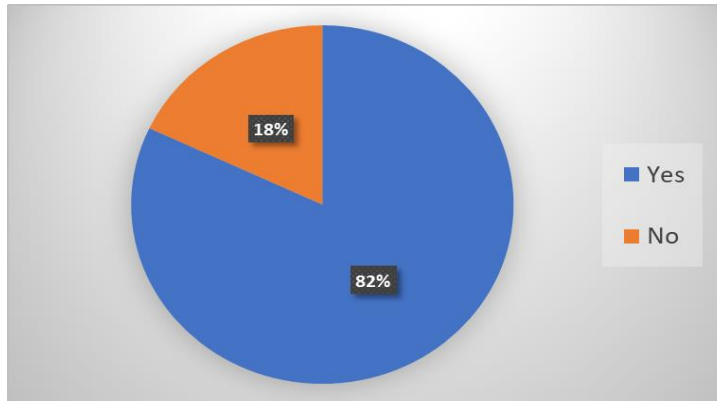


Figure 8: Sanctioning Measures.

82% of the surveyed individuals affirm and mention that the Autonomous Decentralized Government of Antonio Ante should indeed implement punitive measures against those who harm the environment to prevent the contamination of Imbabura Peak, while the remaining 18% believe that there is no need for punitive measures in this regard.

Discussion

Within the Supremacy of the Constitution of the Republic of Ecuador (2008), it establishes the following:

Article 424: The Constitution is the highest rule and prevails over any new one in the legal system. The canons and actions of public power must comply with constitutional practices; otherwise, they lose their legal effectiveness. The Constitution and international human rights agreements ratified in the country recognize rights in favor of those included in the Constitution, taking precedence over any act of public power or other legal norm.

This Ecuadorian legal framework establishes that only the Constitution will have supremacy over other legal bodies and any norm that contradicts it will lack legal effectiveness. Additionally, it mentions that Treaties and International Agreements will hold the same status as the Constitution, provided that the rights contained in them are pro-human and have the utmost favorability.

In the same vein, the Organic Integral Penal Code was published in the Official Gazette Supplement No. 180 on February 10, 2014, and it entered into force on August 10, 2014. The Organic Integral Penal Code classifies crimes against the environment and nature or Pachamama, covered in articles 245 to 267. The classification of environmental crimes raises two particularly relevant issues: the application of the non bis in idem principle and the principle of legality with reference to criminal law in white. (Antúnez and Guanoquiza, 2019)

Conclusions

The Constitution of the Republic and other local and international legislations maintain a series of provisions that specifically address rights that go hand in hand, including environmental rights and Sumak Kawsay. In this regard, the State becomes the guarantor of these rights, and under no circumstances can anyone obstruct or hinder these rights. At present, the Antonio Ante canton, along with Otavalo and Ibarra, is part of the National System of Protected Areas. Consequently, Imbabura Peak must be protected by the municipal authorities that have territorial jurisdiction, based on the laws that protect the rights of nature and Sumak Kawsay.

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