
APPLICATION OF THE RIGHTS OF NATURE IN ECUADOR

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ABSTRACT

The Constitution of the Republic of Ecuador has established rights in favour of a constitutional nature including constitutional reserves for its creation. In this way, there have been several constitutional protection actions to enforce these rights and specially for guarantee the right of nature and its integral conservation, the suspension of works had already been stopped temporarily before obtain the environmental permits from the government in order to generate environmental impacts; It has applied the precautionary principle and activities have been suspended due to lack of scientific evidence; and rights have been weighted in order to allow restriction to private property so that remediation tasks are performed an environmental event is achieved and to guarantee the right of nature restoration..

Keywords: ecocentrism; integral conservation; restoration; precaution; action protection.

APLICACIÓN DE LOS DERECHOS DE LA NATURALEZA EN ECUADOR

RESUMEN

La Constitución de la República del Ecuador ha consagrado derechos a favor de la naturaleza incluyendo una reserva constitucional para su creación. En tal virtud, se han presentado varias acciones de protección y medidas cautelares constitucionales a fin de hacer efectivos estos derechos y en las cuales, fundamentalmente para garantizar el derecho de la naturaleza a la conservación integral, se ha determinado la suspensión de obras hasta que se obtengan los permisos ambientales correspondientes por parte del Estado para generar impactos ambientales; se ha aplicado el principio precautorio, se han suspendido actividades por no existir evidencia científica de daño; y, se ha ponderado derechos para permitir la limitación del derecho a la propiedad privada a fin de que se realicen tareas de remediación de un evento ambiental y se logre garantizar el derecho de la naturaleza a la restauración.

Palabras clave: *ecocentrismo; conservación integral; restauración; precaución; acción de protección.*

1 THE RIGHTS OF NATURE

The conception of nature as the object of the legal relationship is based on the anthropocentric theory, which follows the traditional Romanist legal position. For this reason, environmental law has conceived the human being as the center of the universe and nature as an entity that is useful to meet their needs and only for this reason protects it; consequently, the human being is subject of rights and the environment object.

The anthropocentric position has predominated worldwide and is the one that guides the legal systems of most countries, as well as international instruments; for example, the 1972 Stockholm Declaration and the 1992 Rio Declaration, determine that human beings are the most valuable of all things in the world. Consequently, the welfare of people is paramount and if nature needs to be taken care of, then it must be done, but this protection is not given directly to it because it deserves to be protected, but according to the needs and benefits Of human beings.

The determination of nature as a subject of rights, on the other hand, responds to the ecocentric theory, which places the environment and nature as the central axis of environmental issues. This current has influenced instruments such as the United Nations Charter of Nature of 1982 in which it is established that the human species is part of nature and life depends on the uninterrupted functioning of natural systems; also points out that every form of life is unique and deserves to be respected, whatever its usefulness to the human being.

It is necessary to emphasize that the theory of considering the nature as subject was developed initially by Christopher D. Stone (2008), American author that on the purpose of a judgment wrote an essay in which he maintains that the Secuoyas trees had to be preserved by themselves since they are subjects of rights. This position, however, was redefined by the same author, stating that to protect nature rather than recognizing its status as a subject of rights, is necessary to impose duties on human beings. Professor Stone argued that trees should have the right to legal representation and in cases where they were harmed they should also have the right to reparation.

Cormac Cullinan (2011), author of the book *Wild Law: A Manifesto for Earth Justice*, mentions that the scientific world has realized that there is no aspect of nature that can be understood without looking at it in the context of the systems of which it forms part. However, this concept

has not yet been transferred to the world of laws and policies, nor to society in general.

The traditional conception of subjects of law as well as the conception of nature as an entity that is useful for human beings has been modified by the Ecuadorian Constitution of 2008 since it explicitly recognizes nature as a subject of law and has sought to generate a substantial conceptual change on various issues such as the development regime and the inclusion of “good living” or “sumak kawsay” as a guiding concept of life. Mario Melo (2013) understands good living as a symbolic category that denotes, in the worldview of many ancestral peoples, a set of values that give meaning to existence at the individual and collective level. Life in harmony that combines the relationship with the natural environment, the “land without evil” and with the culture or “wisdom of the ancestors”. For it is evident that for the effective fulfillment of the rights of nature requires a situation in which there is harmony of human beings with nature, which is precisely what seeks good living.

In short, the Ecuadorian Constitution determines that nature will be subject to those rights recognized by the Constitution, from which it follows that on the one hand subjective rights were given to nature, recognizing the intrinsic value of nature regardless of its utility and, on the other hand, a constitutional reservation was established for the establishment of these rights.

The seventh chapter of the Constitution, entitled “Rights of Nature”, which falls under Title II, entitled “Rights of Good Living”, establishes the rights of nature in the following way:

Art. 71. The nature or Pacha Mama, where it reproduces and carries out life, has the right to fully respect its existence and the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes. Any person, community, town or nationality may require the public authority to fulfill the rights of nature. In order to apply and interpret these rights, the principles established in the Constitution, as appropriate, shall be observed. The State will encourage natural and legal persons and groups to protect nature, and promote respect for all elements that form an ecosystem. Matches:

Art. 72. Nature has the right to restoration. This restoration will be independent of the obligation that the State and the natural or legal persons have to indemnify the individuals and groups that depend on the natural systems affected. In cases of serious or permanent environmental impact, including those caused by the exploitation

of non-renewable natural resources, the State shall establish the most effective mechanisms to achieve restoration and shall take appropriate measures to eliminate or mitigate harmful environmental consequences. (ECUADOR, 2008)

1.1 The Right to the Integral Conservation

This right is enshrined in Article 71 of the Constitution of Ecuador, which establishes that nature has the right to fully respect its existence and the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.

It is important to adequately understand this right not to inappropriately assume that the granting of rights to nature can affect daily life by preventing the use of natural resources necessary to meet personal needs.

In this regard, Alberto Acosta (2011, p.353) says that

[...] These rights defend an untouched nature, that lead us, for example, to stop having crops, fishing or livestock. These rights defend the maintenance of the life systems and life sets. Its attention is focused on the ecosystems, the great collectivities, not on the individuals. One can eat meat, fish and grains, for example, while ensuring that ecosystems are functioning with their native species.

In short, this right seeks the integral protection of ecosystems, that is to say that they remain intact, which does not imply that certain components of nature cannot be used to satisfy the people's needs to ensure, but that the use or consumption of certain resources does not affect the integral conservation of nature as a whole. Thus it has been enshrined in the Constitution, which, in article 74, establishes that the individuals and communities can benefit from the resources of nature for a good living.

1.2 The right to Restoration

It is provided for in the Article 72 of the Constitution, which states that nature is entitled to restoration regardless of the right of individuals or communities to indemnity and to be compensated, respectively, in case of environmental damage. In turn, the Article 397 of the Constitution sets that in cases of environmental damage, the State will act immediately

and in the subsidiary manner to guarantee the health and restoration of the ecosystems.

In case of environmental damages, the State will act immediately and subsidiary to guarantee the health and restoration of ecosystems. In addition to the corresponding sanction, the State shall repeat against the operator of the activity that produced the damage the obligations that the integral reparation entails, under the conditions and with the procedures established by law. The responsibility will also fall on the servers or servers responsible for performing environmental control. In order to guarantee the individual and collective right to live in a healthy and ecologically balanced environment, the State undertakes to:

1. Allow any natural or legal person, collectivity or human group, to take legal action and to go to judicial and administrative organs, without prejudice to their direct interest, to obtain from them the effective protection in environmental matters, including the possibility of request precautionary measures to enable the threat or environmental damage to be resolved in the matter of litigation. The burden of proof on the absence of potential or actual damage will lie with the activity manager or the defendant.
2. Establish effective mechanisms for prevention and control of environmental pollution, recovery of degraded natural areas and sustainable management of natural resources.
3. Regulate the production, import, distribution, use and final disposal of toxic and dangerous materials to people or the environment.
4. Ensure the intangibility of protected natural areas in such a way as to ensure the conservation of biodiversity and the maintenance of the ecological functions of ecosystems. The management and administration of natural protected areas will be in charge of the State.
5. Establish a national system of prevention, risk management and natural disasters, based on the principles of immediacy, efficiency, precaution, responsibility and solidarity. (ECUADOR, 2008)

The separation of the affected individuals and communities as subjects of indemnities and compensations, of the nature as subject of restoration, has allowed to articulate a system in which the demands must be presented separately as it has established the jurisprudence and is already expressly in the article 38 of the enacted General Organic Code of Processes that will come into force in May 2016.

It is necessary to emphasize that to effectively achieve the

restoration it is necessary to go through three stages: mitigation, remediation and restoration.

1.2.1 Mitigation

This is called the set of procedures through which it is sought to go down to non-toxic levels and / or isolate pollutants in a given environment.

Mitigation has also been defined as those immediate measures that are taken to avoid further damage when an environmental impact or damage occurs; for example, in case of a harmful environmental event, excavation of ditches to avoid the dispersion of pollutants; Another example is the treatment of insoluble hydrocarbons lighter than water, for which, a well is installed in which two types of pumping will be done, one lower to create a cone of depression in the water and one higher to remove the hydrocarbon.

Mitigation measures are provided, both in the Environmental Management Law and in the environmental regulations of hydrocarbon operations and mining activities, but are mainly established in the prevention and mitigation plans that must be included in the environmental impact studies necessary for granting the environmental license.

1.2.2 Remediation

The term remediation as such has not been included in the definitions of dictionaries of the Spanish language, we only find the word remedy which means to correct, amend or rectify a damage. This word as a derivation of the English term remediation has been used to denote the cleaning of contaminated sites.

The remediation has recently been defined in the Ecuador legal system as the “set of measures and actions tending to restore environmental effects caused by negative environmental impacts or environmental damage, as a result of the development of economic or productive activities, works or” (ECUADOR, 2012).

1.2.3 Restoration

According to the Dictionary of the Royal Spanish Academy, to

restore is to repair, to renew or to put back something like it was before.

The Environmental Management Law uses this term to determine the actions to restore the environment or one of its components to a quality similar to the one they had prior to the damage caused or to reestablish their basic priorities.

Jesús Conde Antequera (2004, p.94) explains that:

the environmental restoration from an ecological perspective will have to be defined as the restoration of the ecological interaction or interrelation of the environmental functionality that the damaged environmental elements have stopped contributing as a result of the damage. Restoration which would consist in the return, to the possible extent, to the soil, air and water, to the fauna, flora and environmental conditions of development of such species, of properties that have been lost or altered, so that resources deteriorated and the ecological system recover their altered functionality..

It should be noted that for other authors such as Gudynas (2011, p. 242), restoration is “the recovery of degraded or modified ecosystems to a condition similar to or equal to their original wild state, before human-caused impacts.”

In Ecuador, following a position closer to that of Conde Antequera, it has been normatively defined to the integral restoration establishing that it is

the right of the nature by which, when it has been affected by a negative environmental impact or damage, it must be returned to the conditions determined by the environmental authority to ensure the restoration of balance, cycles and natural functions. Equally it implies the return to decent conditions and quality of life, of a person or group of people, community or town, affected by a negative environmental impact or damage (ECUADOR, 2012).

This definition places in the hands of the environmental authority the determination of the conditions to which the environment must return, which obviously must be implemented through an administrative act, which, in any case, must ensure the restoration of equilibrium, cycles and functions.

1.3 Caution for Species Extinction and Non-Introduction of Genetically Modified Organisms

This right is provided for in Article 73 of the Constitution and includes precautionary measures and restrictions that the State must apply to activities that may lead to the extinction of species, the destruction of ecosystems or the permanent alteration of natural cycles.

At the same time it prohibits the introduction of elements that can definitively alter the national genetic heritage. The country is declared free of transgenic crops and seeds, being possible to be introduced only exceptionally when it has been declared of national interest by the National Assembly at the request of the President of the Republic. These provisions, in turn, are based on the pro natural principle, that is to say, on the presumption in favor of the protection of nature in the sense that it is preferable to err in taking measures than in not taking them.

1.4 Non-Appropriation of Environmental Services

The right of no one, not even the State, to appropriate of environmental services, is provided for in Article 74 of the Constitution. This rule also establishes that its production, provision, use and benefit will be regulated by the State.

Environmental services have been defined as the “benefits that human populations derive, directly and indirectly from, the functions of the biodiversity (ecosystems, species and genes), especially native ecosystems and forests, and forest and agro forestry plantations. Environmental services are characterized because they are not spent or transformed in the process, but generate utility to the consumer of such services; and are different from environmental goods, since the latter are tangible resources that are used by the human being as an input of production or in final consumption, and are spent or transformed into the process”. (ECUADOR, 2015).

2 THE JURISPRUDENCE RELATED TO THE RIGHTS OF THE NATURE

The Constitution has a section on jurisdictional guarantees,

which serves as a mechanism for the protection of constitutional rights. Therefore, in cases of violation of the rights of nature, it is possible to claim their protection through the action of protection or precautionary measures.

The protection action is aimed at the direct and effective protection of the rights recognized in the Constitution (2008); it can be interposed when there is an infringement of constitutional rights, in the following cases¹: for acts or omissions of any non-judicial public authority; against public policies when they imply the deprivation of the enjoyment or exercise of constitutional rights; and, where the violation arises from a particular person, if the violation of the right causes serious damage in the cases of (i) rendering public services improper; (ii) when acting by delegation or concession; (iii) if the person affected is in a state of subordination, defenselessness or discrimination.

The requirements for the validity of this action are: existence of the violation of a constitutional right; the action or omission of a public authority or an individual and the absence of another adequate and effective judicial defense mechanism to protect the violated right (ECUADOR, 2009)².

Similarly, another of the jurisdictional guarantees that serves to protect these rights are precautionary measures. These are intended to prevent or end the violation or threat of violation of a right recognized in the Constitution and in international human rights instruments; These can be ordered jointly or independently of constitutional actions (ECUADOR, 2009)³.

The precautionary measures come when the judge is aware of a fact that imminently and seriously threatens to violate a right or when it violates it. A serious violation is considered to be the case in which irreversible damage or the intensity or frequency of the violation (ECUADOR, 2009)⁴.

However, precautionary measures do not come when these measures exist in the administrative or ordinary channels, in the case of execution of court orders or when they are interposed in the extraordinary protection action (ECUADOR, 2009)⁵.

1 Constitución 2008, Art. 88

2 Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional, Art. 40

3 Constitución, Art. 87; Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional, Art. 26

4 Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional, Art. 27

5 Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional Art. 27

The actions of jurisdictional guarantees are adequate in cases of infringement of natural rights, since they provide for a simple, fast, effective and oral procedure in all its phases and instances and are characterized by a wide active legitimation for their demand (the action may be brought by any person, group, collectivity or by the Ombudsman's Office), in addition, they are able to present the action every day and hour; they can be proposed orally or in writing, without formalities, and without the need to quote the norm infringed, nor is it required the sponsorship of a lawyer (ECUADOR, 2009)⁶.

2.1 Protection Action for Violation of the Rights of Nature in Relation to the Vilcabamba River

In 2008, the Provincial Government of Loja began work on the extension of the Vilcabamba-Quinara road. However, since they did not have the corresponding environmental licensing, they were dumping the debris and excavation material directly into the Vilcabamba River. As a consequence of these works the river bed was affected.

In December 2010 two foreigners presented for the first time a protection action “in favor of Nature, particularly in favor of the Vilcabamba River” and against the Provincial Government of Loja.

In the first instance, the protection action was denied due to the lack of passive legitimation in the case. After the appeal, in March 2011 the Criminal Chamber of the Provincial Court of Loja issued a judgment stating that the rights of nature have been violated.

The grounds for accepting this action are set out below (CORTE PROVINCIAL DE LOJA, 2011)⁷:

- They considered that protection action was the only appropriate and effective way to protect the rights of nature, especially because of specific damage.
- They stated that in the case of activities that involve the likelihood or risk of causing pollution or environmental damage, precautionary measures should be taken to avoid such damages, even if there is no certainty of the production of these negative effects.
- Reference was made to the principle of reversing the burden of proof recognized at constitutional level; in this sense it was considered that

6 Constitución, Art. 86; Ley Orgánica de Garantías Jurisdiccionales y Control Constitucional, Art. 8

7 Sentencia Corte Provincial de Loja. Juicio No. 11121-2011-0010, pág. 1

the claimants should not prove the damages caused but that the Provincial Government of Loja had to provide evidence regarding the environmental safety of the activities for opening the road.

- They adopted the risk theory by stating that "the rejection of a protection action in favor of nature would be inadmissible for not having been tested, because in case of probable, possible or else can be presumed already caused environmental damage by pollution, Must prove its inexistence not only who is better able to do so but who holds so ironically that such damage does not exist "(PROVINCIAL COURT OF SHOP, 2011, p.4). Therefore, the Government of Loja had to demonstrate that the opening of the road was not causing damage to the environment.

- They considered the damage to nature as generational damages, since these damages "due to their magnitude affect not only the current generation but its effects will have impact on the future generations" (CORTE PROVINCIAL DE LOJA, 2011, p.3).

- They described as unacceptable the fact that the Government of Loja, constituting Environmental Authority of Responsible Application and being accredited to the Unique System of Environmental Management for the granting of environmental licenses, has breached the environmental regulations and the obligation to obtain an environmental license for the Extension of the road from the Ministry of Environment.

- Finally they concluded that there is no collision of constitutional rights, between the need for the extension of the road and the rights of nature, but only that this work is required to be carried out respecting the rights of nature and complying with environmental regulations.

In the judgment, the following obligations were established: (i) to comply with the recommendations of corrective actions carried out by the Ministry of the Environment⁸ regarding the work; in case of not compliance with them it is advised to suspend the work; (ii) to offer public apologies for starting a work without the corresponding environmental licensing. As an additional measure, to the Provincial Direction of the Ministry of the Environment and Provincial Direction of the Ombudsman's Office is delegated the follow-up of compliance with the judgment.

⁸ MAE made the following recommendations: (i) The Provincial Government of Loja (GPL) must present within 30 days a Plan for Remediation and Rehabilitation of affected areas in the Vilcabamba River and the properties of affected settlers; (ii) the GPL must immediately submit to the MAE the environmental permits granted for the construction of the highway; The GPL must implement the following corrective actions: safety covers to avoid fuel spills to the ground; cleaning the contaminated soil from spilled fuel and prevent spreading; implement an appropriate labeling and signaling system; locate dump sites for the deposit and accumulation of material and avoid side boats.

2.2 Precautionary Measures in Favor of Nature's Rights for Extension of One Way in Galapagos

In Santa Cruz, Galápagos, in 2012, the Municipal Government had started a bidding process for the public procurement of construction and regeneration of an avenue without the categorization of environmental impacts and therefore did not have the environmental file or corresponding environmental licensing.

A group of people filed a request for independent precautionary measures against the administrative act of the Municipal Government. The precautionary measures were requested in favor of nature due to the fragility of existing ecosystems in Galapagos and taking into account the special regime that governs this island area with respect to the limitation of activities that may affect the environment.

A judgment was issued in June 2012 accepting the precautionary measure, for which the decision was based on the following constitutional rights and principles: rights of nature; right to live in a healthy and ecologically balanced environment, free of pollution and in harmony with nature; special regime of Galapagos; inversion of the burden of proof; the possibility for individuals and groups to obtain effective environmental protection; precautionary principle and *in dubio pro natura*. In addition, the normative provisions on environmental management, especially the environmental impact assessment and prior consultation, as well as the provisions on the special regime of Galapagos regarding the limitations of activities that can affect the environment.

The judgement is based on the considerations as follows (JUZGADO SEGUNDO DE LO CIVIL Y MERCANTIL DE GALÁPAGOS, 2012)

- The precautionary measure was considered as an effective and rapid mechanism for the protection of fundamental rights and the protection of violated rights..

- It was stated that in constitutional environmental law the theory of evidence is based on the reversal of the burden of proof, therefore it is up to the public authority to prove that the activity does not cause damage, since this obligation does not correspond to who alleges the violation of the law of nature.

- It assimilated the lack of environmental permits for the execution of the work with the violation of the rights of nature, stating that "in this particular case it is legally and constitutionally inconceivable that the public entity involved intends to execute a public work without the authorization of the environmental authority". (JUZGADO SEGUNDO DE LO CIVIL Y MERCANTIL DE GALÁPAGOS, 2012, p.15).

- It was considered that the rights of nature in Galapagos imply limitations on the activities of natural or juridical persons, public or private, and are mandatory for all public and private institutions, as well as for individuals.

- A valuation of the rights of nature was made against the autonomy of the Decentralized Autonomous Governments, concluding that these entities must adhere to the fulfillment of the rights of nature, the precautionary principle and special regime of Galapagos, since the rules do not allow exceptions for non-compliance and even less that it is carried out by public entities; in addition, in relation to the limitations that derive from the special regime of Galapagos it should be understood that those were established in the search for the less impact to the environment.

- It was concluded that in Galapagos the requirement to respect the rights of nature is greater due to the biodiversity existing in the region, as well as the presence of two protected areas that make up the natural heritage of the State: Galapagos National Park and Galapagos Marine Reserve, which also constitute Natural Heritage of Humanity and Biosphere Reserve.

In this case an extrajudicial conciliatory agreement was made by which the parties agree that the beginning of the work is carried out in a determined date that does not affect the tourism high season.

This conciliatory agreement was approved in judgment and provisional suspension of the work is ordered until the socialization of the project is carried out and the environmental license is granted.

2.3 Protection Action for Violation of the Rights of Rio Blanco

The owners of a property located in Tabacundo, Pichincha, obtained a small-scale mining concession for the exploitation of stony materials; they began to carry out these activities without having the respective environmental licensing, which was causing the sliding of materials in the Rio Granobles (Rio Blanco), causing damages.

Faced with this situation, two individuals filed a protection action in January 2013 for the alleged violation of the rights of the Blanco River and for threat of violation of the right to water; in the action they also requested precautionary measures, specifically: eviction and removal of machinery, dump trucks and more tools found on the site; the immediate suspension of the exploitation activity of the quarry until the resolution of the action.

In qualifying the claim, these measures were accepted and the quarrying activities were ordered to be suspended..

In order to issue a first instance judgment, several considerations are made (JUZGADO DÉCIMO SEXTO DE LO CIVIL DE PICHINCHA, 2013):

- All rights are fully justifiable and equally hierarchical.
- The inversion of the burden of proof was assimilated in cases of environmental damage with an affirmative action or special condition for the exercise of the rights.
- The principle *in dubio pro natura* was accepted, stating that it must inform the decision of the court in favor of nature when there are doubts.
- The precautionary principle was adopted, stating that when there is a threat to nature, comprehensive studies should not be expected to take measures to prevent damage.
- A weighting was made between the workers' right to work and the request for permanent suspension of the activity, requested in the application, being decided that the provisional suspension until the necessary measures are taken to ensure the minimum environmental impact; in addition, reference is made to the importance of the Blanco River as a source of provision of drinking water and irrigation for the nearby population, as well as the aquatic life to be protected..

In the judgment, it was decided to partially accept the action

and temporary suspension of the mining activities was ordered until the corresponding environmental license was obtained; in addition, a study of water from the Blanco River is carried out in order to provide the corresponding remediation processes.

The first instance decision was appealed by the defendants, and the Court resolved to deny the appeal and ratify the first instance decision, basing the decision on the priority regime for the protection of natural elements and the rights of nature, precautionary principle, regulatory regime about environmental licensing, the right to live in a healthy environment, and the burden of proof (TERCERA SALA DE GARANTÍAS PENALES DE LA CORTE PROVINCIAL DE PICHINCHA, 2013).

2.4 Precautionary Measures to Remedy the Estero Wincheles in Esmeraldas

On April 8, 2013, a heavy oil pipeline was broken in the Wincheles province of Esmeraldas by a land settlement and the Emergency Response Plan or Contingency Plan and the respective Environmental Remediation Program were activated with the purpose to make effective the right of the nature to the restoration and the right of the people to live in a healthy environment; to execute all this process the operator was obliged to enter the affected properties which had the collaboration of almost all the owners with the exception of Mr. Carlos Hanze who prevented to carry out the tasks of remediation and mitigation of the impacts caused by the event in his property and also did not allow access to the Wincheles estuary and its banks, despite the fact that as the law establishes rivers, marshes, in general the water is owned by the state and does not belong to any particular.

Therefore, the violating act and for which precautionary measures were requested was the impediment of entering his property and the Wincheles estuary to carry out the remediation tasks, which threatened to cause serious environmental and social damage to the city of Esmeraldas. Due to the urgency of the event and in order to cease the violation of the rights recognized by the Constitution, the Civil Court of Esmeraldas is requested to grant constitutional precautionary measures, a measure that is adequate to avoid consummation of damages both for the affected community as to the Nature.

In May 7, 2013 the competent Court acknowledged the case and

immediately ordered the precautionary measures and that

the Defendant Carlos Alberto Hanze Moreno, owner of the property located on the Esmeraldas Quinidé road, right bank of the river Winchele, Canton Esmeraldas, allow workers, technical equipment and machinery, to enter the property of his , with the purpose that through it, to enter the Winchele estuary and its banks, in order that officials and contractors of the oil company Oleoducto de Crudos Pesados (OCP) Ecuador SA can fulfill the tasks of mitigation and remediation of the event of force majeure KP474, in which they guard Non-affectation of property of the property owner

In addition, the commander of the National Police was officiated so that police personnel provide the guarantee and assistance necessary to effectively carry out the remediation and ensure the right of nature to restoration.

CONCLUSIONS

- In Ecuador, the Constitution of 2008 explicitly established rights in favor of nature.
- There is constitutional reserve for the creation of rights of the nature.
- There is a special chapter which includes the rights to integral conservation, restoration, non-introduction of genetically modified organisms and non-appropriation of environmental services.
- The integral preservation does not prevent that individuals and collectivities benefit from the environment as long as it is indispensable for the good living.
- The restoration by normative definition implies returning the environmental components to the levels determined by the authority in administrative act.
- The actions for environmental damage for restoration of the nature are independent of the action of damages to the civilians or to the communities although they originate in the same environmental event.
- The actions of jurisdictional courts have allowed the initiation of processes to defend the constitutional rights of nature.
- In the constitutional processes fundamentally the rights of integral conservation and of restoration have been preserved.

• To guarantee the right of nature to integral conservation, it has been determined the suspension of work until the corresponding environmental permits are obtained from the State to generate environmental impacts; the precautionary principle has been applied, activities have been suspended because there is no scientific evidence; and, rights have been weighed to allow the limitation of the right to private property in order to carry out tasks of remediation of an environmental event and to ensure the right of nature to restoration.

(dulcefragaalvares/14 .08.2017)

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