Judges of the Constitutional Court of Ecuador.

I. LCGITIATIoN CN THE CAUSE

Ángel Benigno Angamarca Sisalima, with citizenship card no. 1102313457, Ángel Benito Angamarca Angamarca Angamarca, with citizenship card no. 1103530034 , *Teresa CuTipoma CuTfpoma* with citizenship card no. *1102567573, Maura del Carmen Tene Angamarca* with citizenship card no. 1101849790 , *Manuel Enrique Angamarca Angamarca Angamarca* with cédula de ciudadania no. 1102354469, adult , *Ramón Curipoma* with cédula de ciudadania no. 1101815635 , *Edgor Angamarca Mejicano* with cédula de ciudadania no. 1103044812 , *Julia Marina Mejicano Tene* with cédula de ciudadania no. 1101398020, *María Leovina Mejicano* Lffff@Üin with cédula de ciudadania no. 1101577540, *Jovita Margarita Curipoma Angamarca* with cédula de ciudadania no. 1101998563, adult, Guilermo Mejicano Curipoma, with cédula de ciudadania no. 1707314827, José Delicio Angamarca Lliguin, with cédula de ciudadania no. 1101782496, Clara Isabel Angamarca Angamarca Angamarca, with citizenship card no. 1101796728, Diana Patricia Saca Morocho, with citizenship card no. 1104929086, Segundo Flavio Curipoma, with citizenship card no. 1103959704, Gilma Magdalena Curipoma Morocho, with citizenship card no. 1104623424, Zoila Magdalena Curipoma Morocho, with citizenship card no. 1104623424, and Zoila Patricia Saca Morocho, with citizenship card no. 1104623424. 1104623424, Zoila Esperanza Angamarca Angamarca, with cédula de ciudadanía no. 1103455075, Mafia Nimia Curipoma Morocho, with cédula de ciudadanía no. 1103351498, Luis Gonzalo Angamarca Tene, with cédula de ciudadania no. 1103931505, Isauro Patricio Morocho Angamarca, with cédula de ciudadania no, 2100958855, Jaime Miguel Sisalima Morocho, with cédula de ciudadania no. 1104304991, Diocelina Felicia Curipoma Curipoma Curipoma, with cédula de ciudadania no. 1105075293, María Isolina Curipoma Curipoma Curipoma, with cédula de ciudadania no. 1104995228, Manuel Dominguez Sanchez, with cédula de ciudadania no. 1103062418, Tarquino Angamarca Angamarca, with cédula de ciudadania o. 1709776304, several of us older adults, as plaintiffs within the process of protective action no. 11333-2022-00183, in accordance with the provisions of Article 94 of the Constitution of the Republic of Ecuador and in accordance with Article 58 and following of the Organic Law of Jurisdictional Guarantees and Constitutional Control; we appear to present the following ***extraordinary action of protection.***

II. BACKGROUND

2.1. On January 20, 2022, we filed a protective action requesting direct and effective protection of our rights to environmental consultation (Art. 398, Constitution) and legal certainty (Art. 82, Constitution), to a healthy and ecologically balanced environment (Art. 14, Constitution), to water (Art. 12, Constitution).

Additionally, on behalf of nature, we demand the protection of the rights of nature in the Fierro Urco páramo (Art. 71 and 73 in relation to arL 406, Constitution).

2.2. Between March 4 and 25, 2022, during four days, the public hearing for the substantiation of the protection action was held, and the judge decided to reject the action in her oral resolution.

2.3. At the hearing itself, we orally appealed the judge's decision.

2.4. On May 22, 2022, 46 days after verbally ruling, the trial judge notified the parties with her written judgment,

2.5. After the corresponding drawing of lots, the appeal was heard by the Specialized Civil, Commercial, Labor, Family, Childhood, Adolescence and Adolescent Offenders Chamber of the Provincial Court of Loja, hereinafter also "Chamber" or "Provincial Court of Justice", composed of the following judges: Dr. Carlos Tandazo, Dr. Max Brito Cevallos and Dr. José Alexi Erazo Bustamante (reporting judge).

Z.6. In June 2022 we filed the substantiation of our appeal.

Z.7. On November 22, 2022, the hearing was held, in which, under unequal conditions, the judges did not guarantee the plaintiffs to be heard in court, which implies, according to the jurisprudence of the Constitutional Court, an affectation of the right to defense.

2.8. On December 21, 2022, the Chamber judges notified the parties of their judgment, confirming the first instance judgment.

2.9. On December 26, 2022, we filed an extension appeal regarding the lack of pronouncement in the judgment on our arguments of lack of motivation of the judgment and the violation of the right to water.

2.10. On January 3, 2023, we were notified of the order of the Provincial Court of We have been denied our request for an extension.

III. CONSTITUTIoN ThAT ThE SENThIoN IS ExECUTIoNED

3.1. On May 10, 2022, Judge Geovanna Chango Maldonado, Judge of Jurisdictional Guarantees of the Civil Judicial Unit with headquarters in the Loja canton, notified with the sentence within the Protection Action with Joint Precautionary Measures:

"Article 40 of the Organic Law of Jurisdictional Guarantees and Constitutional Control establishes the requirements that must be met in order to file an action for protection. "1. Violation of a *constitutional right; 2. Action or omission of a public authority or* a *private individual of Existence of another adequate and effective judicial defense mechanism to protect the violated right". Any act or omission of a non-judicial public authority that violates or has violated the rights, that impairs, diminishes or nullifies their enjoyment or exercise ....!! For* its *part, Article 42 of the*

Organic Law on Jurisdictional Guarantees and Constitutional Control, refers to the fact that an action for the protection of rights does not proceed, in its first numeral when: "1. When it does not appear from the facts that there is a violation of constitutional rights.- In the matter brought to the attention of the plaintiffs in this proceeding, as indicated above, no constitutional rights have been violated in accordance with the analysis that has been carried out, and the action *for protection does not proceed, as determined by Article 42 of the Organic Law of Jurisdictional* Sarantíns *and Constitutional Control- For the foregoing reasons, the undersigned judge, ADMINISTERING JUSTICE, IN THE NAME OF THE SOVEREIGN PEOPLE OF ECUADOR, AND BY AUTHORITY OF THE CONSTITUTION AND LAWS OF THE REPĖ!BL CA, Denies the protection action filed by TARQUINO ANGAMARCA ANGAMARCA AND OTHERS,(...)".*

3.2. On December 22, 2022, the Specialized Court for Civil, Commercial, Labor, Family, Childhood, Adolescence and Adolescent Offenders of the Provincial Court of Loja, notified with the sentence of the appeal:

"(...) Both the respondent entity, as well as the State Attorney General's Office and all third parties have requested the rejection of the present action, for being within the grounds of inadmissibility of the action, as provided in paragraphs 1 and 4 of Article 42 of the Organic Law of Jurisdictional Guarantees and Constitutional Control. It has already been noted in the preceding recitals, that there is no transgression to any of the constitutional rights indicated by the plaintiffs in the libel of their *initial complaint;* therefore, *the allegation that the present action for protection would fall under the provisions of numeral 1 of the referred legal provision, which states: &ldquo, When from the facts it does not appear that there is a violation* of the constitutional rights of the plaintiffs in the *libel of* their *initial complaint; therefore, the allegation that the present action for protection would fall under the provisions of numeral 1 of the referred legal provision, which states: &ldquo, When from the facts it does not appear that there is a violation* of the constitutional rights of the plaintiffs in the *libel of* their *initial complaint.*
constitutional rights&rdquo,-, is appropriate; and. with respect to numeral 4, *which reads: “*
When the administrative act can be challenged through the courts, unless it is demonstrated that the vfo *is neither adequate nor effective”, it has already been said that although the action for protection is not oriented to substitute the ordinary* jurisdiction*, the judges are obliged to elaborate an analysis of the merits of the concrete case, that surpassing the limits of mere ritualism and formality, allows us to verify if the concrete case has another adequate and effective channel, or if on the contrary, the constitutional channel is the ideal one; and that in the present case, since it is not* a *matter that affects constitutional guarantees, it is not the appropriate way, being able to resort to the corresponding administrative or ordinary instances, if they consider that the environmental records and the certificates of non-affectation to the water sources are considered to be adequate and effective, and if they consider that the environmental records and the certificates of non-affectation to the water sources are not appropriate.*
granted them without complying *with legal norms. This being the procedural reality, the undersigned judges, members of the Third Court of the Civil, Mercantile, Labor, Family, Childhood, Adolescence and Adolescent Offenders Chamber of the Provincial Court of Justice of Loja, ADMINISTERING JUSTICE, IN THE NAME OF THE SOVEREIGN PEOPLE OF ECUADOR, AND BY AUTHORITY OF THE CONSTITUTION AND THE LAW*
LAWS OF THE REPUBLIC, dismissing the appeal filed by the plaintiffs, for the reasons of the judge

in the case and those stated herein, confirms in all its parts the ***contested*** *judgment* ***(...)"(sic}"(sic}***

3.3. On December 26, 2022, we filed an extension appeal regarding the violation of the right to due process in the guarantee of motivation, in relation to the judgment of first instance and its lack of appreciation of the right to water, alleged

in the process. On January 3, 2023, the judges of the Chamber were notified of the order in response to the appeal:

"(...) SECOND. In the case sub *júdice the appellants point out that in their written and oral argument they argued the violation of the right to motivation and the right to!-8ua, without the* Court *having pronounced itself on said rights; and, THIRD.- From the review of the judgment, it can be seen that it has resolved all the points raised* by *the parties; especially in the sixth recital it dealt with the right to water; and on the right to* motivation, 4s¢e *has not entered into the procedural debate, nor has it been indicated which administrative act would be found to be unmotivated; therefore, it is ordered to abide by the decision. Notify and comply."(sic)*

REASON: I feel for such, that the JUDGMENT dated DECEMBER 19, 2022 and the ORDER dated JANUARY 03, 2023 are executed by the Ministry of Law. Particular which is recorded for the pertinent purposes - Loja, January 09*, 2023, I CERTIFY -".*

IV. D£MOSTRACJON OF HAVING EXHAUSTED ALL ORDINARY AND EXTRAORDINARY RESOURCES

With respect to the decision adopted by the Specialized Civil, Commercial, Labor, Family, Childhood, Adolescence and Adolescent Offenders Court of the Provincial Court of Loja, after requesting an extension of the sentence, there is no further appeal.

V. THE|UDICATURE, CHAMBER 0 TIUBUNAL D£L THAT EMAXA THE WLNERATORY DECISION OF THE CONSTITUTIONAL LAW

The courts that issued the rulings that are the subject of this action are:

- The Civil Judicial Unit based in Loja canton, whose judge is Tamara Geovanna Chango Maldonado, issued the first instance sentence that denied the protection action.
- Specialized Civil, Commercial, Labor, Family, Childhood, Adolescence and Adolescent Offenders Chamber of the Provincial Court of Loja, composed of the judges: Dr. Carlos Tandazo, Dr. Max Brito Cevallos and Dr. José Alexi Erazo Bustamante (reporting judge) ("Provincial Court"), which upheld the judgment that denied the protection action.

VI. CLEAR ARGUMENTS AND ACCURATE IDEHTIFICATION OF CONSTITUTIONAL RIGHTS VIOLATED IN JUDICIAL DECISIONS

6.1. Infringement of the right to due process in the **guarantee of sufficient motivation.**

Insufficient motivation with respect to the rights of Nature

The Consfitution states that:

Art 76.7./}.- *In all proceedings in which rights and obligations of any order are determined, the right to due process shall be ensured, which shall include the following basic guarantees: 1) Resolutions of the public authorities must be reasoned. There shall be no reasoning if the resolution does not state the legal norms or principles on which it is based and does not apply the relevance of its application to the factual background. Administrative acts, resolutions or rulings that are not duly motivated shall be considered null and void. The responsible servants will be sanctioned.*

The Constitutional Court has established that:

"The guiding criterion for examining a charge of violation of the right to state reasons establishes that a legal argument is sufficient when it has a minimally complete structure, i.e., integrated by these two elements: (i) a sufficient normative foundation, and (ii) a sufficient factual foundation".

In the present case, the judgments that are the object of this action do not comply with the minimally complete structure required to guarantee the guarantee of motivation. In the present case we will demonstrate that the judgment has an appearance of motivation, but this is insufficient, since it falls into motivational defects such as inconsistency,

There is inconsistency when in the factual or legal grounds, either a relevant argument of the parties to the proceedings has not been answered (inconsistency vis-à-vis the parties), or a question that the legal system -law or jurisprudence- requires to be addressed in the resolution of the legal problems connected with
certain types of decisions - see, R-prS. 104ff.-, generally with a view to protecting a fundamental right in a reinforced manner (inconsistency with the law)'.

As the Court has stated, the inconsistency of the motivation reflects that at least one of the parties has not been heard within the process.[3] Both in the first instance sentence and in the sentence issued by the Provincial Court of Justice of Loja, it can be evidenced,

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Constitutional Court of Ecuador, Judgment No. 1158-17-EP/21, paragraph 61.
Ibid., paragraph 86.
Ibid., paragraph 88.

as we will point out below, that their rulings were inconsistent, since they did not answer under the Court's standards several of our relevant arguments in the process.

In our protection action we claimed the violation of the rights of Nature of the Fierro Urco páramo, the people's right to water, the right to environmental consultation and the right to a healthy environment. Our arguments on the violation of the rights of nature were set out on pages 12 to 16 of our protection action. Here we clearly established that the plaintiffs constituted themselves, in the protection action, as defenders of nature and also filed the action in favor of Fierro Urco, as established in Art. 71 of the Constitution. In this section we established that Fierro Urco was composed of fragile ecosystems (Art. 406) such as moorlands and wetlands. We also detailed, based on evidence provided in our action, the richness of its flora and fauna and the dangers and threats faced by hundreds of species.

In our action we used the arguments set forth above and proven with public documents, to explain that *"...the granting of the previous administrative acts by the MAE, unjustifiably omitted the application of the precautionary principle and such omission entails a violation of the right of the complexes of*$_{R}$ *Óramo within the mountain range, to their existence and the* maintenance and *regeneration of their vital cycles.'"* Thus, the process explained, based on the evidence presented, how the precautionary principle, established in the Constitution in its articles 73 and 313 and developed in Court Ruling No. 1149-19-JP-21, should be applied.

In order to demonstrate the ecosystemic unity of Fierro Urco, its water and ecological importance, the "Technical Report on the Delimitation of the Water Protection Area of Southern Ecuador "A.P.H.H.S.E." was presented as evidence. " prepared by the Ministry of Environment, as evidenced in the process. Maps of the water sources and of the administrative territories that are in the area in question were also attached. To demonstrate the damage that was already being caused, the Afro **report** was presented. **MAAE-DZ7-2022-0559-0** prepared by the Ministry of Environment, Water and Ecological Transition (MAATEE), which indicates road construction in the Fierro Urco páramo, without respecting environmental regulations.

Subsequently, on appeal and given that it was a document issued after the first instance hearing, Resolution No. AR-APH-D27-2022-001 was filed.

Demand for protection action.

issued by the MAATE declaring several water bodies and springs located in Fierro Urco to be of public interest.

In her first instance sentence, the judge of the Civil Judicial Unit based in Loja stated that:

In the case under resolution, the plaintiffs did ***not make use of*** **an effective** ***evidentiary*** **element,** which *evidences or demonstrates the existence of a serious and irrefutable damage, consequently, the provisions of the superiors have been complied with, the careful review of the present file (sic)'.*

9.7) The plaintiff also pointed out that there is important information on biodiversity, as well as its ecosystemic importance in the moorlands of the Fierro Urco mountain range. In this regard, it should be noted that the plaintiffs did ***not*** **incorporate** ***reliable evidence*** *of such allegation; the essays* submitted, *photos and testimony were not sufficient to justify the assertion contained in their claim,* but rather *constituted hypothetical circumstances* that did *not favor the plaintiffs' claims.*

b) According to what was sustained in the public action hearing. The UTPL's teaching and research staff has not *demonstrated the existence of endangered or endemic species, because the species mentioned in the writ of action of the UTPL* have not been found to be in *danger of extinction or endemic.*
RrotecCfdn, are located in other sectors that are part of the study of the Water Protection Project, which includes Loja, El Oro, Zamara Chinchipe, Azuay and Morona.
Santiago, and there was no evidence of the presence of these specimens in the Gualel sector specifically, in the public hearing there was no evidence to be considered'.

d) Repeatedly as stated in this case, the plaintiffs ***have not presented any proof,*** *scientific study or substantiated evidence that the concessioned areas are considered as a zone of high diversity and with an extensive amount of endemic species, even more so with the report supported in the hearing that clarified that in effect the species indicated by the plaintiffs in their lawsuit* ***are not*** **located in** ***the*** **convicted** *sector.* ***For all of the above***, it allows *this judge* to *conclude that the principle of reversal of the burden of proof was clearly* opficd *and the entities involved were able to technically demonstrate that their actions, far from harming rights, were adequate to the circumstances requested by the MAATEE, and in compliance with the ordinary and constitutional legal provisions'.* (The highlighted part belongs to us).

Judicial Civil Unit of the Loja canton, judgment process 11333-2022-00183, section 9.6, page 60.
Ibidem, section 9.8, page 68.
Ibid.

In our protection action, pages 13 to 18, we use, in an essential way, the information provided as evidence to make our argument, and to evidence the violation of Nature's rights. In particular, we refer to the "Technical Report on the delimitation of the Southern Water Protection Area in the Fierro Urcu-Chilla mountain range". However, as demonstrated, the judge expressly states that no relevant information has been provided to the case. The report allows us to determine the existence of fragile ecosystems' such as moorlands and wetlands, and the importance of these ecosystems to preserve the ecological flow of the water basins that originate from Fierro Urco. The first instance sentence did not refer to these relevant arguments of our case that demonstrated the violation of Nature's rights. It simply ignored and made them invisible.

In our appeal, we request that the Provincial Court expressly rule on our evidence and our arguments aimed at requesting that the rights of nature be guaranteed. On page 22 of our appeal we state that:

We attach a Technical Report on the delimitation of the Southern Water Protection Area in the Fierro Urcu-Chilla mountain range, prepared by the ex-SENAGUA and authorized by the Ministry of the Environment, which is included in the file of these proceedings. It details the biodiversity of this territory and its water importance. The information provided also details the species in different danger thresholds, including critically endangered, that inhabit Fierro Urco. However, the judge of first instance did not value this document as what it is - official information, something that was not even controverted by the defense of MAATEE as the defendant entity.

Despite once again expressly requesting that our arguments be analyzed together with the evidence provided, the Provincial Court of Justice of Loja again ignored our arguments. In its judgment the Provincial Court stated that:

Finally, the plaintiffs' allegation that in Fierro Urco there is important *information on biodiversity and* its *ecosystemic importance in its ecosystems, has remained* **mere *statements, since* no *fast and* decisive *evidentiary elements have been presented to* justify it.**

As can be *seen, the plaintiffs have not justified* that *the mining concessions are located within a protective forest, nor* that *these* zones *are considered as buffer zones of any protected and duly declared area;* ***nor that there are endangered or endemic species.***

Constitution, Article 406.

All this despite the fact that in the hearing we insisted in a clear and concise manner on the relevant information that exists in that report and that demonstrates that in the territory of Fierro Urco **there are endangered** or endemic **species**, information that is not included in the sentence, nor has it been evaluated by the Provincial Court, since their statement is that we simply have not presented information on these issues.

Among the technical richness of the MAATE report on Fierro Urco, whose analysis was omitted by the judges in both instances, is the following information that was expressly reiterated in the appeal hearing: "there are 231 plant species with high environmental value, 40 species of avifauna, including the Andean condor and the blue-throated colbirí, 11 species of amphibians, 6 species of reptiles, 11 species of mammals, of which 8 are threatened species, and unique species such as the blue-throated hummingbird and the Gk Gk frog, alleged in our lawsuit for protection action" and that was said in the hearing in the practice of our evidence. All this is in complete contradiction with the assertion that no evidence was presented or with the assertion that there are no endangered" or endemic species." The problem was not that they misappreciated or misvalued the evidence, the problem is that they did not consider our evidence, nor did they explain why the evidence provided was not applicable to the case or why it was not useful to prove our assertions.

The trial judge claims that our evidence was not "reliable" but does not present an analysis of why it was not reliable, then contradicts herself by saying that we have not "presented any evidence".

Neither was mentioned in any of the sentences, the report made by the environmental authority in relation to the roads that have already begun to be built in Fierro Urco without complying with environmental regulations. The MAATE report presented at the hearing details, among other things, the following:

- *It is verified that said opening does not have a drainage system for the management and conduction of water and to avoid structural damages, the* presence *of runoff is verified, said obstruction is determined* as *a NC based on* the *provisions of Art. 500 of the Regulations to the Organic Code of the Environment, item c.*

"See: pp. 13-16. Demand for Protective Action.

"Technical Report on the delimitation of the 5ur Water Protection Area in the Fierro Urcu-Chilla mountain range, page 43: in *addition to interesting records for southern Ecuador such as a large population of* Galfinapo *jamesoni and the record of individuals of Falco femoralis and Agriornis albicoudo, the latter, in addition to being considered a very rare species, is considered in the threat categories Endangered (EN) at the global level and Vulnerable (fVU) at the national level (Freile & Poveda, 2019).*

"On page 44 of the report there is a whole section on endemic species.

- *The construction of lateral ditches along the construction of the road is* not *verified, this observation is determined as a NC- based on the provisions of Article 500 of the Regulations to the Organic Code of the Environment, item c.*
- *The presence of lateral dumps and soil erosion caused by dumped material was verified, and possible damage to neighboring lands, which could affect the La Ramada stream. This observation is based on the provisions* of *Article 503 of the Regulations of the Organic Environmental Code.*
- *The impact on private property fences was verified due to the presence of side boats from the opening of the vfo. This observation is based* on *the provisions of Article 503 of the Regulations to the Organic Environmental Code.*
  Lack of socialization of the project by the *parish council of Gualel to the community; social problems among the community have been verified; this observation is based on* Article *503 of the Regulations to the Organic Environmental Code.*

The opening of roads in fragile ecosystems is usually one of the things that causes the most environmental damage, yet neither the Civil Judicial Unit nor the Provincial Court referred to this evidence. The judges in this case decided to completely ignore this report,

During the appeal stage, prior to the hearing convened by the Provincial Court, we presented as evidence **Resolution No. AR-APH-D27-2022-001** issued by the MAATEE declaring the water sources found in Fierro Urco to be of public interest. This document is of essential importance because it confirms the water importance of this mining concession territory. The document details, with coordinates, the concessions for human use and irrigation that exist throughout the territory of Fierro Urco, including the Gualel parish of the Loja canton. The Resolution states that they guarantee food sovereignty. Although we also referred to the resolution in our pleading presented at the hearing, the Provincial Court did not refer to it in its sentence.

By not evaluating relevant arguments, and relevant evidence to determine that Fierro Urco and its elements constitute a territory of high biological importance, nor the request that such jurisdictional evaluation lead to the declaration of specific ownership of Nature's rights, for the respect and guarantee of its rights, the Civil Judicial Unit and the Provincial Court of Justice of Loja violated the right to protection:

A legal argument may appear to be sufficient, but *some of its parts could be flawed by being inconsistent with the judicial debate and, therefore, the sufficiency of the reasoning could be only apparent, since inconsistent answers to the legal problems of the case do not serve to support a* decision.'[3]

"Constitutional Court of Ecuador. Judgment 1158-17-EP/21, para 85.

It is necessary to clarify that these allegations concerning the lack of motivation do not relate to the appreciation of the evidence by the judges as such (Art. 64.5, LOGJCC), but the fact that they have been completely ignored by the judicial authorities configures an ***insufficient legal*** *argumentation* according to the facts. '*

Inadequate reasoning with respect to the right to aRua

In the protection action filed, it was requested that the violation of the right to water be declared and that such violation be repaired. The specific argumentation on the violation of the right to water was made in 4 pages of the same (from page 16 to 19):

> *In this case, the violation of the right to water occurs in two moments: 1. In the omission of the precautionary* principle *by not considering the fragility and importance of the páramo ecosystem at the time of the granting of the previous administrative acts sued; 2,*
> *disobeying the constiWtional order of precedence."*

In our protective action we argued about the omission of the precautionary principle (pp. 17-18), and about the prioritization of water use (p. 18). Not to mention all the information provided by the various *amici curiae* filed specifically to argue this right and which were ignored by the judge.

In her sentence, the judge of the Civil Judicial Unit of the Loja canton acknowledged that this right was allegedly violated:

> *8.2. Under this main aspect, this judge establishes* that *the problem to be resolved is WHETHER THERE IS A VULNERATION OF THE RIGHTS ALLEGED BY THE ACTIONERS IN THE CIRCUMSTANCES DESCRIBED AND WHICH AFFECTS THEIR RIGHTS TO ENVIRONMENTAL CONSULTATION (ART.* 398J *AND TO LEGAL SECURITY (ART. 82); RIGHTS OF NATURE, IN CONCRETION TO THE PARAMOUNT ECOSYSTEM (ART. 71, 72 AND 7J, IN RELATION TO 406); HUMAN RIGHT TO A HEALTHY AND ECOt66lCALLY BALANCED ENVIRONMENT (ART.* 14d *AND;RIGHT TO*
> *HUMAN RIGHTS TO WATER (ART. 12), so that they can be known and resolved.*
> *for constitutional justice (sic).*

However, in the content of its judgment, its reasoning is insufficient at the time of rejecting the claims regarding the right to water. In the NINTH recital of the judgment it is announced that it will deal with the violation of the right to water. But there is no

"Constitutional Court of Ecuador. Judgment 1158-17-EP/21, para. 23.
'* Protective action, page 16.

reference to it. It is automatically and without explanation subsumed under the rights of nature and in the end the claim is rejected.

The analysis of the right to water in the judgment of the Civil Judicial Unit falls into at least an insufficiency of motivation, if not simply a lack of motivation.

In our written grounds to our appeal we expressly stated this violation of our right to motivation (Pages 2 -5), as well as in the appeal hearing, where we expressly stated this argument. However, the Provincial Court of Justice of Loja, in its judgment, omitted to pronounce on this argument. The judgment ignores our argument, does not mention it, does not express anything about it. The charges made against the first instance sentence for its lack of motivation with respect to the violations of the right to water were neither answered nor referred to by the Provincial Court of Justice of Loja in its sentence. In spite of the fact that an appeal for clarification and amplification was filed, where we requested that this be expressly corrected, the Provincial Court of Justice of Loja expressly refused to do so.

By not referring to the arguments on this right, they also did not refer to the evidence presented to justify the violation of this right. We do not say that the evidence was poorly evaluated, we say that it was not evaluated. We have already mentioned Resolution No. AR-APH-D27-2022-001 issued by the MAATE that declares as of public interest that they are in Fierro Urco, of which nothing was said in the sentence of the Provincial Court. But there is also other evidence that was ignored by the two sentences issued in this process and that are very important charges to analyze the violations of the human right to water:

It is the case of the certificates of no affectation to water sources: within the proceeding No. DHJ-2018-1158-AA, within the process of granting the previous administrative act [fávorable] of no affectation to water sources in the concession "Santiago", the extension report of one of the experts of the Demarcación Hidrográfica Jubones [Ex SENAGUA], indicates that:

"(...) There are water sources and use or exploitation authorizations that could be affected in water quality as a result of the mining activity. From a technical point of view and being objective, I ***cannot specify whether*** or *not in the near or distant future there could be an impact on the sources of (sic) Salado Creek and Bernabé Creek.*

'® Trámite- DHJ- 2018-1158-AA. Prior administrative act of non-affectation of water sources in favor of Guayacan Gold Company GGC S.A., assignee of the mining rights of the Area "Santiago" code 600618.

Likewise, it was recognized by a water resources administration technician of the former SENAGUA, Demarcación Hidrográfica Puyango Catamayo, in his analysis prior to process No. 012-2018-AA, at §s.1454, which authorizes the non-affectation of water resources for the concession "El Cisne 2B" that:

"In the interior of *the Polygon analyzed there are 10 authorizations for the use and exploitation of water (irrigation), 9 watering places (watering place) and 8 authorizations (human consumption), all distributed in the southeastern part of the authorized area (...) The area where the exploitation is intended to be carried out* f..) *is part of* a *system of water springs, these zones are considered areas of water protection. This technical observation was ignored by the public administration, when it determined that: "Since there was no effect on the water resource* ***at the*** **time** ***of the*** **inspection,** *nor the presence of exploration machinery it is recommended to issue the certification (... j",* as can be seen at fs. 1481 of the file."

What has just been exposed, even has greater dimensions when considering that from the moorlands contained in the Fierro Urco mountain range, the Jubones, Santiago, Catamayo and Puyango rivers are born, which supply water to the provinces of Loja, Zamora Chinchipe and El Oro", so the indirect impact on the supply and access to water in the future is much broader and the omission of these considerations are not sufficient in light of the obligation to consider the precautionary principle,

By omitting to refer to our arguments on the violation of the right to water, our right to motivation was violated, causing the motivation of the judgment to be incongruent, since it omitted to pronounce on an essential element of our action, the violation of the right to water.

6.2. Infringement of the right to defense in the guarantee of being heard in a timely manner and under equal conditions (7f'.7.c).

The Constitution states that:

Art. 76.7.e).- In all proceedings *in which rights and obligations of any order are determined, the right to due process shall be ensured, which shall include the following basic guarantees: 7. The right of persons to a defense shall include the* following*: c) to be heard in a* timely manner on *equal terms.*

"Ministry of Environment, Water and Ecological Transition. Technical Report on the delimitation of the Southern Water Protection Area in the Fierro Urcu-Chilla mountain range, p. 13.

The LOGJCC establishes as procedural principles of constitutional justice that due process and the direct application of the Constitution must be guaranteed (Art. 4.1 and 2).

In Ruling No. 4-19-EP/21, the Constitutional Court of Ecuador stated that:

Article 76*(7)(a) of the Constitution recognizes the guarantee that no person shall be deprived of the right to defense and "[...] implies that the possibility of exercising the right to defense shall* not *be arbitrarily limited at any time during the proceedings". In* addition, its importance lies in the fact that *[...] it is a means of protection within a judicial process consisting of the possibility for the parties to a case to have access to present in a timely manner all the factual and legal situations that support their material and legal claims before the jurisdictional authorities. competent. In such a way that, in turn, the principles of equality of the parties and of contradiction are guaranteed, so that a reasoned decision is obtained.*

In other words, it is closely related to the right of the parties to the proceedings to be heard in a timely manner and under equal conditions, a guarantee recognized in paragraph c) of the aforementioned Article 76, paragraph 7 of the Constitution. Likewise, it is related to the possibility of presenting to the jurisdictional authority the arguments or evidence that may assist him and the possibility of contradicting those presented by the opposing party, as recognized in paragraph h) of the aforementioned article 76, numeral 7 of the Constitution.

In the case sub judice, this right to be heard was not guaranteed under conditions of equality, since during the entire process the judicial activity objectively listened primarily to the arguments of the defendant, which was even notorious in its judgment, in which it devotes an almost exclusive analysis to the arguments of the defendant rather than to those of the plaintiffs.

The sentence reflects details that if isolated could pass as insignificant, but as a whole demonstrate the unequal way in which we, the plaintiffs, were treated, violating our right to defense. In the judgment of the Provincial Court of Loja it is stated that:

3.1.- Within the respective hearing, the plaintiffs, through their technical defense exercised by the lawyer Baila £lieabef Bernú Aulestia, have proceeded to ratify the

The petitioner concludes his intervention by requesting that the Action for Protection be accepted and that the rights that have been violated to those he represents be protected; /Emphasis added.)

This short paragraph summarizes our intervention at the appeal stage. While we agree that judgments, as a general rule, should be more succinct and clear and that it is not necessary to transcribe the entire intervention, as is customary, however, this is not the style of the judgment, but only of our arguments, then it is evidence of a problem. In this case, the arguments of the defendants occupy 32 pages of the judgment, reflecting the inequality of arms that existed in this process.

The way in which the arguments of the parties are included in the sentence also shows what happened in the hearing. For example, in the appeal hearing where the plaintiffs had 20 minutes, and the opposing party, as a whole, more than 2 hours in total, without being given the opportunity to reply to their extensive intervention. Evidencing the inequality of arms and the lack of impartiality of the judges, the fact that in the copied text of the sentence (which is the totality of our arguments collected in the protection action, replicated in the first instance sentence and no mention is made of the allegations made in the hearing, on our appeal) they mention a lawyer who is not involved in the case, a professional who is not the plaintiffs' lawyer, nor did she participate in the process, when the lawyers who presented the arguments of the plaintiffs were Carla Luzuriaga Salinas and Pablo Piedra Vivar.

Another detail that happened during the appeal hearing was that despite having requested a few additional minutes at the beginning of the hearing for our presentation, due to the multiple counterparts that exist, not counting the amicus curiae presented by the mining companies themselves, we were denied and were only granted 20 minutes. On the other hand, our counterpart, composed of different State institutions and mining companies, had more than 2 hours. It is even striking how the Presidency of the Republic is recognized as a procedural party even when the Ministry of Environment, Water and Ecological Transition was already a procedural party, and both respond to the same function of the State.

In addition to the disproportionate time allowed for our defense, in comparison with our counterparts, the Provincial Court judges allowed, to

despite our claim, that different departments of the legal entities participating as defendants appear as amicus curiae. Thus, the operations management of a mining company, the representative of the workers of the mining company, and other technicians intervened as amicus curiae in the process, something that also happened in the first instance hearing, and that despite our claim, was not corrected by the judge of the first instance, nor by the Provincial Court. Our claims, which at the end of the first instance hearing reflect the frustration felt in more than 4 hours of hearing, even led to the sanctioning of our defense attorney by the Provincial Court of Justice.

If someone outside the process who has not heard the hearings relies on the sentence, they would think that our intervention did not have a single relevant argument, compared to those of our witnesses.
32 pages of intervention that the Provincial Court of Justice of Loja collected from the arguments of the defendants.

In Ruling No. 37-17-EP/22, the Constitutional Court stated that:

40. ... In order to identify a violation of the guarantee of being heard under equal conditions, it is necessary that a counterparty participates in the process, so that the Court can evaluate the conditions of its participation. (...)

Therefore, this is an excellent opportunity for this body to develop parameters to identify when this right is violated, expanding its jurisprudential development given in Judgment No. 2061-15-EP/20, in which this Court has indicated that:

(...) In the same vein, this Court has established that the parties, under equal conditions, must state their positions, present their arguments or evidence in support of their claims, and be heard by *the courts, and that defenselessness exists "when the party is prevented from carrying out one of the defense mechanisms indicated above. For example, this happens when a procedural party is not allowed to present evidence or arguments."*

For its part, Article 8.1 of the American Convention on Human Rights states that:

Everyone is entitled to a fair and prompt hearing within a reasonable time by a competent, independent and impartial tribunal, previously established by law, in the determination of any criminal charge against him.

or for the determination of its rights and obligations of a civil, labor, fiscal or any other nature.

In this regard, the jurisprudence of the Inter-American Court of Human Rights has indicated, in the Case of Barbani Duarte et al. v. Uruguay. Judgment on the Merits, Reparations and Costs, of October 13, 2011, that:

The examination required in the instant case requires the Court to specify the scope of the right to be heard established in Article 8(1) of the American Convention. This right implies, on the one hand, a formal and procedural scope of ensuring access to the competent body to determine the right that *is being claimed in accordance with due process of law (such as the presentation of pleadings and the presentation of evidence).*
On the other hand, *this right encompasses a scope of material protection that implies that the State guarantees that the decision produced through the procedure satisfies the purpose for which it was conceived. The latter does not mean that it must always be accepted, but rather that its capacity to produce the result for which it was conceived must be guaranteed.*

Meanwhile, in the Case of Petroperú and other dismissed workers v. Peru, it stated that:

*(...) every person has the right to be heard by a competent - R*FCialy body, with due process of law, including the opportunity to present pleadings and provide evidence. This Court has indicated that this conventional provision fiTiplies that the State*
guarantee that the decision produced through the procedure satisfies the purpose for which it was conceived. The latter does not mean that it must always be embraced but rather that its capacity to produce the result for which it was conceived must be guaranteed."

In the case of Extra-workers of the Judicial Branch v. Guatemala, he stated:

70. In this regard, this Court has developed the right to be heard protected in Article 8(1) of the Convention, in the general sense of including the right of every person to have access to the court or State body responsible for determining his rights and obligations. Regarding this right, the Court reiterates that the guarantees established in Article 8 of the American Convention imply *that the victims must have ample opportunity to be heard and to act in the respective proceedings, so that they may formulate their claims and present evidence, and that these may be analyzed in a fair and impartial manner.*

"IACHR Court. Case of Petroperú Dismissed Workers et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs. November 23, 2017.

COlT!R!Cta and serious by the authorities prior to the resolution of facts, responsibilities, penalties and reparations."

The above shows that we were not heard under equal conditions during the process, thus violating our right to defense in the guarantee of being heard in a timely manner and under equal conditions. As the Court has expressed:

"the right to due process requires that proceedings in which the legal sphere of individuals is decided should construct debates in which the freedom and equality of the parties involved are ensured to the greatest extent possible, nsf *as well as rationality in the decision-making process, in order to maximize the likelihood that the decisions resulting from that process will be correct, that is, based on truth and justice.'*'

6.3. Infringement of the right to effective judicial protection of hlaturaIeza.-.

The Constitution enshrines the right to effective judicial protection under the following terms:

Art. 75.- "Every person has the right to free access to justice and to the effective, impartial, and expeditious defense of his rights and interests, subject to the principles of immediacy and celerity; in no case shall he be left defenseless. Failure to comply with judicial decisions shall be punished by *law."*

The right to effective judicial protection, in its content, covers the entire procedural spectrum, from the conditions for initiating an action or filing a lawsuit, to the full execution of the final decision of the competent body.[21] With respect to its elements, which are also rights, there are three: *iJ* the right of access to the administration of justice; iii the right to due process of law; and *iii}* the right to enforceability of the decision. In turn, the right to access to the administration of justice is concretized in the right to action and the right to have a response to the claim."

In relation to the access to justice to demand compliance, guarantee and reparation of the rights of Nature, this Court has said that:

"IACHR Court. Case of Former Workers of the Judiciary vs. Guatemala. Preliminary Objections, Merits and Reparations. November 17, 2021.
[20] Constitutional Court. Judgment No. 1-11-El/22, para. 43.
[2]' Constitutional Court of Ecuador. Judgment 8B9-20-JP/21, para. 108.
" Idem, para. 110-112.

"(...) the quality of being a subject of rights of Nature and of its different levels of ecological organization, must necessarily manifest itself in a substantive dimension and in an adjective dimension. That is to say, ***being a subject of rights allows Nature to be a holder of rights*** *(substantive dimension) and to pursue the* protection and *redress of these before the administrative and jurisdictional* bodies *of the State (adjective dimension).'"""*

In relation to this adjective dimension, Article 71 of the Constitution recognizes the right of any natural or legal person, collectivity or human group, to exercise legal actions and go before the public authorities, in the name of Nature, to demand the protection and reparation of its integrity or that of its elements (...)"".

It is clear that Article 71 of the Constitution grants the possibility that jurisdictional guarantees may be exercised by any person, people or community in favor of Natura1eza,'[S] in the defense of its rights, regardless of the violations of constitutional rights that may coexist, of the person exercising the representation and who is claiming the constitutional guarantee.

This was raised in our lawsuit for protection action. The allegations presented at the beginning of the aforementioned judicial process included violations of Nature's rights:

"In the same sense, in accordance with the duty to protect Nature and promote respect for all the elements that make up an ecosystem, legitimized and legitimized in Article 71 of the Constitution, we also constitute ourselves as representatives of the Rights of Nature in this action."

Both in the first instance sentence and in the appeal sentence, the judges of the respective levels assimilated the tutelage claim to the Rights of Nature as alien to the plaintiffs, ignoring their quality of representatives of the same and thus, omitting the application of art. 71 of the Constitution and violating the rights of Nature:

Contents of the First Instance Judgment	Content of the Second Instance Judgment
"(...) the information reported by the professionals of the University TechnicalParticular of Loja, also did not meet the requirements of the	"(...) including to **erpecfer**'s statement *endemic and endangered species*, that in accordance with the explanation of the professionals

"Judgment No. 253-20-JH/22, para. 160."
Idem, para. 161.
"Idem, para. 157.

The actors, but to justify their assertions, rather clarified about the project: "The area proposed as the Fierro Urco Water Protection Area (APH Fierro Urco)", which is precisely a project that to date has not been approved, and which ***covers*** **not only the** area **or the site** ***where the plaintiffs*** **live [...]** *[...].)* ***All of which reflrieron the actors in*** sii demnndn *of* **nrridn** ***of*** **protecridn** ***around the*** pdmmo, *and* ***endemic and*** **endangered** ***species***, according to the excerpt of the report which is recorded in this resolution, **is rfnro** that the ***speclec indicated are located along*** *a branch of fa* rordifiera *central of* the *Andes of the StfJt* DS£ 2fCfi4DOJt, which generated the Fierro Urcol Water Protection Area (APH Fierro Urco) project, and which is made up of the provinces of Loja, El Oro, Zamora Chinchipe, Azuay and Morona Santiago, includes six hydrographic units, which in turn belong to the hydrographic demarcations: Jubones, Santiago and Catamayo-Puyango **i.e. not specifically in the GUALEL sector** (...)"	The UTPL's technical experts and research professors pointed out in general terms, that in the *Gualel area, there is* no ***precise information*** *on the existence of the species that* Jos. The report presented by these professionals makes it clear that the species mentioned are found along a branch of the central mountain range of the Southern Andes of Ecuador, which generated the proposal for the Fierro Urco1 Water Protection Area (APH Fierro Urco) project, and that it is made up of the following provincesprovinces of Loja, El Oro, Zamora Chinchipe, Azuay and Morona Santiago, includes six hydrographic units, which in turn belong to the hydrographic districts: The residents of ***the parish of*** *Gualef are* **not** ***affected in*** **any** ***way"*** (sic).

In a brief analysis of the alleged violations of Nature's constitutional rights, the judges undermine the violations that they recognize have occurred, *see* for example the excerpt from the APHSE Report cited in both rulings, because in their opinion they are not justiciable since the violations, in the judges' opinion, did not occur within the administrative division of the Gualel parish, but rather in other parishes that include Fierro Urco. For the judge of the Judicial Unit and the judges of the Provincial Court of Justice of Loja, this is relevant because the plaintiffs, who live in the parish of Gualel, canton Loja, could only sue for violations to the rights of nature that occur in their parish, restricting in an unconstitutional manner the content of Art. 71.

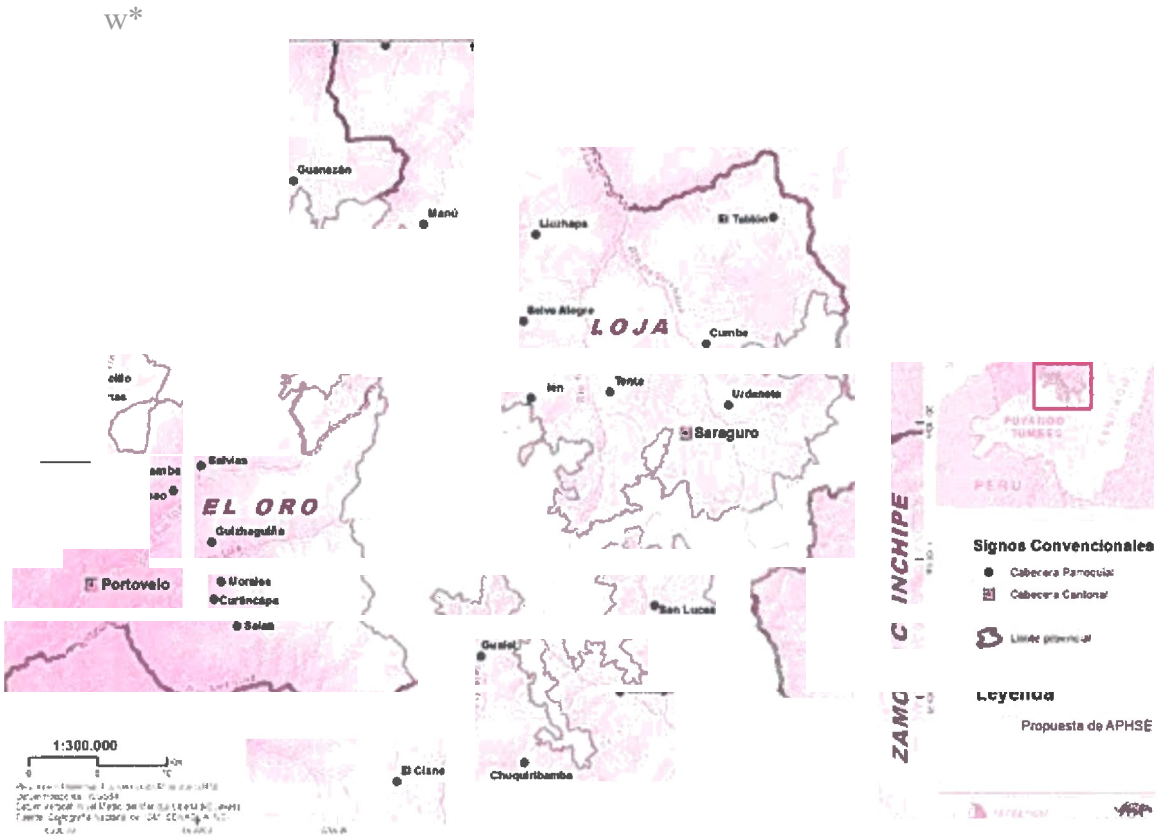
The Constitutional Court has established that effective judicial protection*, as any right recognized in the Constitution and in international human rights instruments, has a person, a duty and a content.... The claimant is any person who has a pretensf'Ón that seeks a jurisdictional response'.*[6] In the present

In this action, the holder of the rights of Nature was Fierro Urco, this ecosystem composed of moorlands, wetlands and native forests, of enormous water and forest importance.

"Constitutional Court, Judgment No. 889-20-JP/21, paras. 107 and 108,

home of several species.[2] ' As mentioned *above,* art. 71 of the Constitution allows any person to demand the enforcement of the rights of Nature, however in the present case the Civil Judicial Unit and the Provincial Court of Justice of Loja refused to evaluate the set of arguments and evidence presented in the present process, because they considered that the plaintiffs were from Gualel and the problem exposed exceeded the circumscription of the Gualel parish.

Below is a map of the then SENAGUA, which is part of the process of the proposed creation of the Fierro Urco Water Protection Area, where the name of the different parishes and cantons that are next to or within it:



La Corte Constitucional ha explicado que el derecho al acceso a la administración de justicia es un elemento del derecho a la tutela judicial efectiva y que *se concreta en el derecho a la acción y el derecho a tener respuesta a la pretensión.*[28] Sobre el derecho a tener respuesta de la pretensión la Corte ha dicho que:

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[2]Ministry of Environment, Water and Ecological Transition. Informe Técnico sobre delimitación de Área de Protección Hídrica del Sur, en la cordillera de Fierro Urcu-Chilla; UTPL, Informe presentado en juicio, page 10. Constitutional Court, Judgment No. 889-20-JP/21, para. 107 and l0B, para. 112.

The right to receive resR-esta by the competent authority is violated when the claim is not allowed to be known, for *example, when the case is arbitrarily dismissed or if an action is declared abandoned when the lack of procedural momentum is attributable to the jurisdictional organ (...).*
The right to receive an answer could also be violated when, *from the perspective of an instance or superior judge who can appreciate all the elements of the case under analysis, the action does not produce the effects for which it was created (effectiveness). In the file of a constitutional guarantee there is evidence that demonstrates a violation of rights and the judge does not declare it...'?*

This has repercussions on the effectiveness of the action, because the judges, despite having the legal tools to review the charges alleged by the plaintiffs regarding the rights of Nature and despite having recognized that there are real risks against species, the destruction of ecosystems and the permanent alteration of natural cycles, the response given by the courts did not have the expected effects in an action for protection, i.e., direct and effective protection of the rights of Nature,

In the present case, the Civil Judicial Unit and the Provincial Court of Justice of Loja decided, in a sentence, to reject the claims of Fierro Urco, as holder of Nature's rights, because the persons who filed the lawsuit are from Gualel and Fierro Urco covers more parishes and cantons. Therefore, the decisions of the judges violate the right to effective judicial protection of Nature to the direct and effective protection of its rights, in the element of the right to receive a response from the jurisdictional authority, being plausible that this right be declared violated with respect to Nature as holder.

6.4. **Infringement of the right to legal certainty.**

Regarding the normative guarantee of direct application of the Constitution

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"Ibid. Paras. lls and 116.
*R*Constitutional Court, Sentencla 1185-20-JP/21, para. 98-99 'Sf /judge focused *on determining the appropriateness of the protection action because, in* his *opinion, the plaintiffs alleged rights in 'legal dimension'. While the provincial judges* focused *on analyzing the violation of legal certainty due to the lack of "prior consultation," and no* consensus *was given to the relevant charges, which were alleged by the plaintiffs. The Constitutional Court can appreciate that in this case, charges related to violations of the rights of nature, affectation of the Aquepi River, protection of the ecological flow, right to environmental* consultation *and water were formulated.* J *the judges did not address all of the relevant* charges.
of the parties, which were alleged or throughout the process, and the protection action did not have the expected effects in *relation to the rights of the river, environmental flow and environmental consultation. Therefore, the right to effective judicial protection was violated".*

The right to legal certainty is based on respect for the Constitution and on the existence of prior, clear and public legal rules applied by the competent authorities, in accordance with Article 82 of the Constitution.

This right *"is transversal with the other rights recognized in the* constitution, *since* its pppe/ *is fundamental as a watchdog of the interpretation and direct application of the* **constitution,** *as well* as *of the other norms that are subordinate to it but that must be in harmony with the maximum* provisions of the constitution".[1]

The Court has also stated that the right to legal certainty implies:
"The individual must have a foreseeable, clear, determined, stable and coherent legal system that allows him to have a reasonable notion of the rules of the game that will be applied to him. This must be strictly observed by the public authorities in order to *provide the individual with certainty that his legal situation will not be modified except by regular procedures previously established and by a competent authority in order to avoid arbitrariness."*[2]

Art. 426 of the Constitution states that:

"(...) The judges *and judges (...) shall directly apply the constitutional norms (...) The rights enshrined in the Constitution (...) shall be immediately enforceable and* npíicncidn. *Lack of tey or ignorance of the norms could not be used to justify the violation of the rights and guarantees established in the Constitution, to dismiss the action brought in its defense, nor to deny the recognition of such rights."*

The direct application of constitutional norms and of international instruments is a normative guarantee that must have jurisdictional impact, otherwise it would have no practical effect.[3] ' ' The Constitutional Court has said that: "when there is a constitutional rule applicable to the case, by supremacy that rule must be applied, even when this implies inapplying the rule of legal rank that contradicts the constitutional rule"""".

The principle of direct application of the Constitution, a consequence of the evolution of constitutionalism, seeks to grant normaGve efficacy to constitutional prescriptions. Therefore, based on this important postulate, the absence of secondary legislative development does not constitute a reason for not applying the Constitution. Thus,

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"Constitutional Court of Ecuador. Decision No. 120-16-SEP-CC, p.8.
"Constitutional Court of Ecuador. Judgment No. 989-11-EP/19, para. 20. "
Constitutional Court of Ecuador, Judgment No. 11-18-CN/20, para. 286.
"Constitutional Court of Ecuador. Judgment No. 1116-13-EP/20 , para. 19.

it is not possible to derogate from* a *constitutional rule by invoking a leap in a law, *regulations or* any *provision of* higher *rank*."

Both the judge of first instance and the judges of the Chamber applied a legal and regulatory framework alien to the right to environmental consultation, when analyzing our allegations on its violation, ignoring the validity of the Constitution and its supremacy:

First, they applied the Organic Law of Citizen Participation (LOPC) which states in Article 82 that:

Article 82 - Environmental consultation with the community - Any decision or authorization by the State that may affect the environment must be consulted with the community, for which purpose the community shall be fully and timely informed. The consulting subject shall be the State. The State shall value the opinion *of the community in* **accordance with *the*** *requirements* ***stipulated in the*** **Constitution, *the human rights institutions and the laws.***

The LOPC, published in 2010", does not modify the content of art. 398 of the Constitution. The constituent differentiated the right to citizen participation (art. 61, Constitution) and the types of consultation (arts. 57.7, 398, Constitution), which was ratified in Decision No. 001-10-SIN-CC of the Constitutional Court for the transition period" and the legislator did the same. Although the latter constitute a guarantee of the right to citizen participation or participation in public affairs, in this case environmental, they also constitute rights in themselves. In spite of the reference included in the challenged sentences, their application was not judged based on constitutional precepts, such as the rule of hierarchical superiority of the Constitution and what Article 82 of the LOPC itself establishes.

Secondly, the judges concluded that the Environmental Management Law and the Regulation that governs the participation mechanisms that said law conGnues, was the directly applicable "Law", due to the subject matter, for the regulation and guarantee of the right to environmental consultation of art. 398 of the Constitution. The Organic Law of Environmental Management was published in 2004" and regulated public environmental management in accordance with the 1998 Constitution, including the articles invoked by the first level judge and ratified by the judges of the Chamber:

"Constitutional Court of Ecuador. Judgment No. 1116-13-EP/20. Concurring Vote of Constitutional Judge Hernán Salgado Pesántez, para. 17.
"Official Gazette. Supplement 175 of April 20, 2010.
"Constitutional Court for the transition period. Ruling No. 001-10-SIN-CC, pp. 30-32.
Official Gazette Supplement 418 of September 10, 2004.

Art. 28.- Any natural or juridical person *has the right* to participate in environmental management through the mechanisms established by the Regulations, which shall include consultations, public hearings, initiatives, proposals or any form of association between the public sector and the private sector.*
private. Popular action is granted to denounce those who violate this guarantee, without prejudice *to civil and criminal liability for reckless or malicious denunciations or accusations. The* inriimp/imiento of ***the consultation process referred to in Article 88 of the Political*** Constitution ***of the*** **Republic shall render** ***the activity in question unenforceable and shall be cause for nullity of the***
*¢:**respective** traces.*

Art. 29.- Every natural or juridical person has the right to be timely and sufficiently informed about any activity of State institutions that, in accordance with the Regulations of this Law, may produce environmental impacts. To this end, they may formulate petitions and file individual or collective actions before the competent authorities.

The judges then accepted the arguments of the technical defense of the Ministry of the Environment regarding the application of the Regulations of the Participation Mechanisms. establecidos en la Ley de Gestión Ambiental, known as Decree 1040, which was published in May 2008, five months before the entry into force of the Constitution of October 2008, and restrictively regulates the mechanisms of participation in environmental management, since it does not include consultation as a participation mechanism, which was included in art. 28 of the Environmental Management Law and art. 88 of the Political Constitution of 1998. The impossibility of the temporary and material application of all the laws and norms referred to due to their contradiction with the Constitution were alleged in the public hearings, within the final argument of the plaintiffs.

Finally, the judge of first instance referred as applicable technical norm the Ministerial Agreement No. 066 of the MAATEE, *or Regulation of application of the mechanisms of social participation established in Decree 1040,* issued in 2013, five years after the entry into force of the Constitution of the Republic, which in its text indicates as objective the regulation of art. 395 of the Constitution and does not refer as one of its objects or recitals, the regulation of art. 398 of the Constitution. *It even* incorporates the figure of environmental facilitators, which according to the £os *Cedros* judgment is contrary to the non-delegable obligation of the State to be the consulting subject in the processes of prior environmental consultation".

Likewise, the judge ignored the allegations regarding the application of obligatory jurisprudential precedents to guarantee the direct application of the Constitution. The basis of our protection action were the "Los Cedros" and "Manglares" rulings and their precedents regarding environmental consultation and the content of the precautionary principle.

"Constitutional Court of Ecuador. Judgment 1149-19-JP/21, para. 287.

The judge decided not to apply these precedents because she considered that "it would lead to a regressive application of rules and regulatory standards applied to authorizations (licenses and environmental registrations) that were granted as of 2014". the standards and regulations that the plaintiffs intended to be applied to the social participation process carried out, were not in force at the date of the referred process and due to the invoked norms could not be applied by the defendant entity of MAATEE, but as they justified it in the process they agreed to the citizen participation process with which the violation of any constitutional precept is not verified as well as no right has been violated in this sense,"

The judge's thesis that the precedent was subsequent to the date of the proceeding" is not pertinent because it prevents the application of a better understanding of the law and the progressive development of rights. Therefore, the Court has determined that "constitutional decisions may be used as a source of legal justification for judgments and orders in judicial proceedings, even if the decision in question was issued after the beginning of the process, as long as the process has not been definitively concluded. "*° In other words, contrary to what the judge maintains, precedents are applicable because the process is ongoing and there has not been a final judgment. Jurisprudence is a source of law different from the law.

Under the judge's criteria, no new precedent would be applicable to the case that the courts resolve. The interpretation of the norms, particularly when they are innovative, are produced at the moment of resolving the case with the sentence. If legal certainty as understood in terms of law, in the sense that the judicial interpretative criterion did not exist prior to the fact being resolved, it would make it impossible to resolve cases in the courts.

For a precedent to be considered binding, it is required that the facts are analogous and that, consequently, the raGo decidendi (the precedent) is applicable to the case to support the decision. If the case is analogous and the precedent is applicable, then the judgment did not observe the applicable law. Therefore, we insist, "the ratios decidendi of the constitutional decisions and the binding jurisprudential precedents of the Constitutional Court must be obeyed from their issuance (...)'.

¶0 First Instance Judgment in the Action for Protection. Judgment 11333-2022-00183, pg. 51. " I b i d .
*Constitutional Court, Judgment N. 2403-19-EP/22, para. 31.
" Constitutional Court, Judgment N. 2403-19-EP/22, para. 30.

The infra-constitutional and technical regulations indicated do not correspond to the normative framework applicable to the right to environmental consultation or are not sufficient from art. 398 of the Constitution, therefore, the conclusion of the judges on the administrative or ordinary way as the suitable way to channel the claims of the plaintiffs, is a response contrary to the Constitution and to the guarantee of rights. From the beginning of the action for protection, the plaintiffs have explicitly considered that the right to environmental consultation is fully justiciable because it is enshrined in the Constitution and in the binding jurisprudential precedents issued by the Constitutional Court, as the highest body of interpretation of the Constitution, which have endowed it with content.

Given this, there was a violation of the right to legal certainty by the judges of both instances when they determined in their rulings that the application of regulations that did not correspond in temporal and material terms, and when they did not analyze obligatory jurisprudential precedents when determining whether or not the right to consultation, duly alleged, had been violated.

Regarding precedents established by the Constitutional Court

The Constitution establishes that the precedents of the Constitutional Court are binding:

The Constitutional Court shall exercise, in addition to those conferred by law, the following powers:

1. To be the highest instance of interpretation of the Constitution, of the international human rights treaties ratified by the Ecuadorian State, through its rulings and sentences$_P$ *. Its decisions shall be binding.*
6. To issue rulings that build binding jurisprudence with respect to actions for protection, habeas corpus, habeas corpus, habeas data, access to public information *and other constitutional proceedings, as well as cases selected by the Court for review.*

The LOGJCC establishes that:

Av 2 #3: Obligation of constitutional precedent - The interpretative *parameters of the Constitution established by the Constitutional Court in the cases submitted to it.*
have binding force. The Court may depart from its precedents in a manner that guarantees the progressivity of rights and the validity of the constitutional state of rights and justice.

The Constitutional Court has established that:

... the Court considers that, when the argument of the violation of rights presented in an extraordinary action for Protection is based on the inobsewancla of a constitutional Precedent, in order to be considered clear, it must meet the minimum necessary common elements (thesis, factual basis and legal justification) and, within the legal justification, at least the following elements must be included:

i. The identification of the rule of Precedent and
ii. The statement as to why the rule of precedent is applicable to the case,'...'.

In the present case, the plaintiffs rely on two precedents of the Constitutional Court that the Civil Judicial Unit and the Provincial Court of Justice expressly refused to apply:

1. Ruling 22-18-IN/21
2. Ruling 1149-19-JP/21

The following are our arguments to support the failure of the judges who heard our action for protection to observe precedent and how in doing so they violated our right to legal certainty.
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Ruling 22-18-IN/21 fCase Manalares)

This was the first precedent not observed by the judges of first and second instance that heard the case. This judgment was issued within a public action of unconstitutionality against several provisions of the Organic Environmental Code and its Regulations. The judgment contains a legal analysis for five issues, obtaining decisions for each of those issues.

In our protection action we used the precedent of this case to support our arguments of violation of the rights of nature and environmental consultation.

tte/er *to the rights of Nature:*

i. ldenGfication of the precedent:

"Constitutional Court, Judgment J943-1S-EPf21, para. 42.

In the Manglares Case, the Constitutional Court ruled:

"36. The jurisdictional recognition of a *given ecosystem or its elements, in the cases before it,* could *contribute to determine with greater precision the obligations deriving from the ownership of rights in specific situations and, above all, strengthen the guarantees for the* protection *of rights and thus protect them in a* more *effective manner.* (legal consequence)

4y. *The mangrove, being a type of ecosystem, has vital cycles, structure, functions and evolutionary processes, and like other ecosystems such as moorlands,* wetlands, *forests, watersheds, it* has the *right to have its existence fully respected (de facto assumption)'.*

In its decision, the Court ruled:

Recognize that mangrove ecosystems are holders of the rights recognized to nature and have the right to "full respect for their existence and the maintenance and regeneration of their vital cycles, structure, functions and evolutionary processes".

In this judgment, the Court stated that a specific declaration of an ecosystem as a specific holder of rights of Nature is necessary in order to provide it with effective protection, without such judicial declaration being a detriment to other ecosystems as subjects of protection, nor a requirement for the effectiveness and enforceability of rights already constitutionally recognized.

Therefore, the Court determined that if rights of Nature are alleged, especially of fragile and threatened ecosystems (factual assumption), the jurisdictional authority must evaluate the ecosystemic importance of each element of Nature and a declaration of such ecosystem as a concrete holder of the rights of Nature must be considered, in order to provide it with effective protection (legal consequence),

ii. The statement of why the rule of precedent is applicable to the case:

In this case, the plaintiffs expressly requested that the Fierro Urco moorlands be declared as concrete holders of the rights of Nature and that their rights to their existence and the maintenance and regeneration of their vital cycles, structure, functions and evolutionary processes be declared violated.

According to the Constitution, páramos are fragile ecosystems that deserve special protection:

Art 406.- *The State shall regulate the conservation, management and sustainable use,* recuperation, *and limitations of dominion of the* /rdjjfJes *and threatened ecosystems, among others, the pramos, wetlands, cloud forests, dry and humid trophic forests and mangroves, marine and coastal-marine ecosystems.*

Within the Fierro Urco Water Star, the predominant ecosystem is the páramo,*[S] there are also other ecosystems such as wetlands and Andean forests whose relationship with water sources is of vital importance for human consumption and irrigation, to ensure food sovereignty and the permanence of the ecological flow'.[6]

The judges in both instances avoided referring to this precedent and only limited themselves to dismissing the sentence as temporarily inapplicable, without carrying out the required jurisdictional exercise, nor referring specifically to the páramos, nor to the rights of Nature without carrying out a systemic interpretation of the Constitution," to avoid violations to the rights of Nature, by omitting a review of all the rights at stake. '[4]

Consequently, the judge of the Civil Judicial Unit and the judges of the Provincial Court of Justice of Loja did not observe this precedent.

tte/erente *a la consulta ambiental:*

i. Identification of the precedent

In relation to environmental consultation, the Constitutional Court established in sentence 22-18-IN/21 that:

136. The right to environmental consultation is a non-delegable power of the State that establishes the obligation, at the different levels of government as appropriate, to consult the community on any decision or authorization that may *affect the environment. It is clear from the constitutional text that this right has two important elements: (i) access to environmental information and (ii) environmental consultation itself.*

With respect to access to environmental information, the Court stated:

[S] Ministry of Environment, Water and Ecological Transition. Informe Técnico sobre delimitación de Área de Protección Hídrica del Sur, en la cordillera de Fierro Urcu-Chilla, p. 52.
^ idem, p. 20.
"Constitutional Court of Ecuador. Judgment No. 11-18-CN-19 para. 70.
Constitutional Court of Ecuador. Judgment No. 218-IS-SEP-CC, p. 15 and 16.

142. The State must deliver the information to the subject to be consulted, to the citizens who will suffer the possible environmental impacts that the project to be implemented may cause.
143. Information shall be timely when it is provided at the initial stages of the decision-making process. In addition, the information shall be provided in an effective and understandable manner.
144. The Constitution establishes that the information must be broad, but does not define or develop its scope. The Escazu Agreement allows us to understand that for information to be broad it must be accessible and establishes the principle *of maximum publicity. The state must generate and disclose the necessary information to be able to make informed decisions on environmental impact.*

With respect to the second element of the right, which is the environmental consultation itself, the Court established that:

145. The second element of the constitutional article is consultation itself, which extends the active participation of citizens in decision-making. The Jn *of citizen participation is not achieved by informing alone.*
146. The purpose of the consultation is a two-way dialogue before a decision is made about
--- Policy or project, during the implementation of the policy and project (if it was decided to implement it in a participatory manner), and for the duration of its execution.
148.L R*---!"Racídn active is manifested when the democratic deliberation of the citizenry is enabled, that is, when spaces are generated in which* different *points of view are involved and environmental public policies are originated and executed within the framework of a debate that includes the voices of the citizens. The active participation referred to in the Constitution is not.*
*R r therefore, a- R**tiCip£ftion without debate or that passively accepts the position of the State or the companies.*
151. Environmental consultation should be timely and participatory. It will be timely when it ensures that participation is carried out from the initial stages of the decision-making process. In order to be timely, it must also contemplate reasonable deadlines so that the consulted subject has enough time to be informed and participate effectively. Public participation implies participation *in environmental* decision-making *processes and includes the opportunity to present objections by appropriate and available means.*
152. Consultation must be inclusive. In order to be inclusive, it must be adapted to the social, economic, cultural, geographic and gender characteristics of the subjects consulted.
153. The environmental catastrophe that the planet is experiencing requires *that public policy decisions and projects that risk having a negative environmental impact be taken within the framework of a social consensus that will help to* achieve *a resR-nsablility.*

to ensure that future generations will be able to exercise their right to live in a healthy environment.
154. On the other hand, insofar as applicable, the consultation must incorporate the elements of deree-ho to prior consultation with indigenous peoples, such as the prior nature and good ***fe.***
faith.

ii. The statement of why the rule of precedent is applicable to the case.

The present case stems from an action for protection whose plaintiffs explained how their right to environmental consultation (Art. 398 of the Constitution) had been violated when decisions had been made and state authorizations had been issued to carry out an extractive activity that could affect the environment without respecting the plaintiffs' right.

In the present case, there was an obligation of the State to carry out an environmental consultation that would *provide ample information.* This obligation, according to precedent, is not limited to the duty to provide access to certain information, but must also ensure that the community is aware of the possible risks, including environmental and health risks, so that it can give its opinion on any State decision or authorization that may affect its environment.

In the case of the aforementioned concessions, at no time did the community have information that meets these characteristics, prior to the State institutions (MAE, SENAGUA) issuing the administrative acts that could affect the environment, in order to be considered broad and therefore, no process of socialization or participation can be considered a constitutionally valid consultation process.

In the first instance sentence, the judge of the Civil Judicial Unit ignored this precedent, she never explained why sentence 22-18-IN/21 is not applicable to the case, she only focused on explaining why, in her opinion, the precedent of sentence 1149-19-JP/21 was not applicable, however, she cites the saved votes contained in that sentence. Similarly, the Provincial Court of]usticia de Loja in its judgment omits to refer to the precedents of this judgment. Infringing the precedent of the Constitutional Court cited by our part in the process and our right to legal certainty that in this particular case had to do with the direct application of the Constitution.

As previously stated, the Court has said that the right to legal certainty is "... *fundamental as a guardian of the interpretation and direct application of the* ***Constitution.*** .. [4]The Constitution establishes that the decisions of the Court are binding,

*Constitutional Court of Ecuador. Decision No. 120-16-SEP-CC.

Therefore, refusing to apply them is an express violation of legal certainty. As we have detailed, repeatedly in the constitutional process we cited and used the precedent of case 22-18-IN/21, but the judge of first instance did not refer to it, did not give her reasons for not applying it and finally did not take it into account in her decision.

The Provincial Court of Justice of Loja expressed that it would not apply precedent 22-18-IN/21 because it does not have the character of retroactive, and used the same argument, which we will quote *below,* that it used not to apply sentence 1149-19-J P/21.

Ruling 1149-19-IP/21

In the present case, this is the second constitutional precedent that the judges did not observe. This judgment was issued within a process of review of sentences. The process originated in an action for protection. The judgment analyzed the rights of nature, the precautionary principle, the right to water, and environmental consultation.

i. IdenGfication of the precedent in relation to environmental consultation.

Ruling 1149-19-JP/21 included the elements used by Ruling 22-18-IN/21 to analyze the charges of the case related to environmental consultation and also established its own precedents with respect to this right, particularly referring to the mechanisms of citizen participation established in secondary legislation:

The Court also notes that this secondary regulation does not refer specifically to the development of environmental consultation, established in Article 398 of the Constitution, but rather to various mechanisms of citizen participation, such as hearings, information workshops, informative meetings, assemblies, dissemination through web pages, among others. By itself, the *execution of one* or *several of these mechanisms does not configure or guarantee environmental consultation, in the terms mandated by the Constitution.*

In relation to the obligated or consulting party, the precedent established that:
285. Likewise, the Court considers that the environmental consultation should have been carried out with the accompaniment and monitoring of the Ombudsman's Office, as the competent *entity for the protection and protection of rights, who acted in accordance with the provisions of Resolution No. 21-DPE-DD-2019, of February 20, 2019. The environmental consultation must also include the participation of the public authorities of the provincial, cantonal and parish autonomous decentralized governments, depending on the possible environmental impact of the decision or state authorization.*

With **respect** to the characteristics of the environmental consultation, the ruling established that:

297.The State, through its competent authorities, must ensure that the consulted community is informed, at least, of the following aspects: the nature, size, pace, reversibility and scope of any State decision or authorization; the reason for and purpose of the decision or authorization; the duration of the authorized project or activity; the location of the areas to be affected; a preliminary assessment of the likely environmental impacts, including potential risks; the personnel likely to be involved in the implementation of the decision or authorization; and, the technical and legal procedures that the decision or authorization may entail.
The literal wording of Article J98 *of the Constitution provides that environmental consultation shall operate prior to "any State decision or authorization that may affect the environment". In order to guarantee the active and permanent* participation in *environmental matters guaranteed by the Constitution, the* Court *considers that, in the case of state authorizations and decisions that may affect the environment and are related to medium and large scale mining activities, such as the case under analysis, environmental consultation must take place at least prior to the issuance of the environmental registration and prior to the environmental license.*
307.Environmental consultation is free. This consultation is free if there is no$_R$ression, intimidation, coercion or mniiipuJntion of the *consulted community, either$_{b\ by}$ public entities or third parties. Therefore, it is not acceptable, in the consultation processes, to try to direct the community's pronouncement through inappropriate inferences such as monetary incentives, strategies of social division, threats, reprisals or criminalization. Environmental consultation must be carried out in good faith. Another similarity between environmental consultation and other types of consultation is that they must be aimed at reaching agreements with the community, within a framework of dialogue, $_{full}$ and equitable participation, which enables mutual trust between the State and the consulted subject.*
This Court has also stated that the purpose of environmental consultation "is that of a two-way dialogue before a decision is taken on a policy or project, during the implementation of the R!*--"^{C*} X $_{Rp*i}$'eCto (if it was decided pO--*!R£ftivamente to implement it), and for the duration of its execution". It has also pointed out that "the dialogue*
cannot start with a previously made decision. If there is a prior decision, then it is not a consultation but the mere fulfillment of a formality that consists of informing, and it would be contrary to the good faith with which this consultation must be developed".

ii. The statement of why the rule of precedent is applicable to the case.

In our arguments in our complaint, at the first instance hearing, in our arguments in support of our appeal and at the appeal hearing, we expressed the need to apply this precedent when analyzing whether or not the right to privacy is guaranteed.

environmental consultation of the plaintiffs, who claimed that their right to environmental consultation had been violated.

The Constitutional Court has consistently stated that environmental consultation is a right of all persons and that its compliance is not exhausted with the fulfillment of mere formalities. This precedent allows public servants, justice operators and any person to clearly understand the content of a previously established right and the way in which it must be guaranteed; the precedent does not create rights.

The State argued throughout the process that, in practical terms, because of the Gempos in which the state authorizations had been granted by the state, the right to environmental consultation was not applicable. They stated that their duty was to enforce secondary legislation over the guarantee of environmental consultation and that precedents such as the one in the present case were not applicable. They also stated that the Constitutional Court had excluded small-scale mining from the established precedents, something that is nowhere to be read in the judgment. These criteria were adopted by the Civil Judicial Unit *and* by the Provincial Court of Justice of Loja and thus denied the application of the Constitutional Court precedents.

The thesis of the judges, that the precedent was subsequent to the date of the proceeding, is not pertinent because it prevents the application of a better understanding of the law and the progressive development of rights, thus violating the principles of application of rights established in the Constitution. Therefore, the Court has determined that *"constitutional decisions may be used as a source of legal justification for judgments and orders in judicial proceedings, even if the decision in reference has been*
issued subsequent to the commencement of the proceeding, provided that the proceeding has not been concluded de/nítívn.[5] ' In other words, contrary to what the judges in this case maintain, the precedents are applicable because the proceeding is ongoing and there has not been a
final judgment. Jurisprudence is a source of law different from the law.

With the criteria of the judges expressed in their rulings, no new precedent would be applicable to the case that the courts resolve. The interpretation of the norms, particularly when they are innovative, occurs at the moment of resolving the case with the judgment.

i. Identification of the precedent in relation to the precautionary principle

[0] Corte Constitucional, Sentencia N. 2403-19-EP/22, para 31.

With respect to the precautionary principle, the Court established as precedent the elements of the precautionary principle that are binding precedent:

62. Based on these provisions, on environmental legislation and on the block of *constitutionality, this Court develops the following elements of the precautionary principle.*

1) The potential risk *of serious and irreversible damage to the rights of nature, the environment, the environment and the environment.*

right to water, to a healthy environment or to health. In order to apply the precautionary principle, it is not enough that a risk simply exists; it is necessary that this risk refers to serious and irreversible damage. Article 73 illustrates this situation well when referring to the extinction of species, the destruction of ecosystems and the permanent alteration of natural cycles, since all of these risks must be related to serious and irreversible damage.

They are such serious and irreversible damages that the Constitution has included them in the section of

rights of nature, considering them a violation of those rights.

2) Scientific uncertainty about these negative consequences, either because they are still the subject of scientific debate, due to lack of knowledge, or because of the difficulty of determining such consequences due to the high complexity or numerous variables involved. This is the characteristic

fundamental to the principle of P recaution, and that which differentiates it from the principle *of Rrevention. Scientific uncertainty for the purposes of the precautionary principle consists of: the lack of scientific certainty, which refers to relatively clear or possible effects of an activity or activity that may have a significant impact on the environment.*

product, but without adequate evidence O£fra assigning probabilities, or in ignorance, which refers to ignorance both of these Probabilities and of some of the possible harms or effects. In contrast, the precautionary principle is applied only when the

The effects and their probabilities are known in advance. Examples of the application of the precautionary principle are ... phenomena such as ozone depletion, loss of biodiversity , climate change, genetically modified organisms, or

human exposure to electromagnetic radiation, among many others. Although all or some of the potential damages or negative effects that these produce are known a priori, the specific cause-effect relationships between the activity or product and these damages have not been scientifically established, establishing probabilities. This limitation of scientific knowledge may be due to the high cOmRlejidOd of a system or phenomenon. Uncertainty

scientific debates or lack or absence of scientific evidence may also be evidenced by unresolved scientific debates or the absence or

insufficient knowledge of these effects.

3) Adoption of timely and effective protective measures by *the State. Since there is a risk of serious and irreversible damage and precisely because of the uncertainty of scientific knowledge in this respect, it is necessary that the State does not assume the risk and that it takes certain measures in a timely and effective manner to avoid these potential negative effects. That is to say, when there is no scientific certainty about the impact or damage caused by any action or*

omission for nature, the environment or human health, the State must adopt these *effective and timely measures aimed at avoiding, reducing, mitigating or ceasing such affectation. Therefore, the precautionary principle favors, in the face of scientific uncertainty, the plausible hypothesis of the worst-case scenario: serious and irreversible damage, even if it occurs at the time of the accident.*

long term. It should be clarified that the prohibition of a product or *process is not the only protective measure to be adopted, although such a prohibition* may be justified *if the potential damage is very serious and irreversible.*

63. The precautionary principle differs from the prevention principle in that the latter is applied when there is scientific certainty about harm, i.e. when it is known with certainty that the harm will occur.

anticipation of both the effects and their probabilities. In terms of article 396 *of the Constitution, "The State shall adopt the appropriate policies and measures* to *avoid negative environmental impacts, when there is certainty of damage". In other words, the principle of prevention entails the State's obligation to demand compliance with provisions and regulations,*

Procedures and measures aimed primarily at eliminating, avoiding, reducing, mitigating and cessation of the affectation.

64. Consequently, Article 73 of the Constitution, relating to !- Precaution against the risk of extinction of species and the destruction or serious disruption of ecosystems, constitutes a principle of application of the rights of the naWraleza, which is complemented by article 396 of the ConstiWctioN.

65. Article 73 also establishes a duty of the State by imperatively stating that it "shall apply precautionary and restrictive measures". This is not a power or a conditioned option*, but a constitutional obligation derived from the intrinsic value that the Constitution places on the existence of species and ecosystems, through the rights of nature. Indeed, the risk in this case does not necessarily relate to affecCfons to human beings, although they* may be *included, but to extinction of species, destruction of ecosystems or permanent alteration of natural cycles or* other *types of serious or irreversible damage to nature, independently of such affecCons.*

66. It should be noted that according to article 396 of the Constitution, precautionary and restrictive measures must be effective and timely. They are effective insofar as they actually comply, in a material and not only formal sense, with the objective of avoiding the violation of the rights of the naWroWty that implies the extinction of species or destruction of ecosystems. They are aporWna

as soon as they are issued and complied with immediately and -R!-'q-in time, so that they meet the protection objectives.

67. In order to apply the precautionary principle, the Jueres de garantías constitucionales require a case-by-case determination, considering the individual and concrete characteristics of the case, of the existence of a risk of serious and irreversible damage, as well as *scientific uncertainty. This uncertainty refers to the debate still existing in the scientific community on the harm generated by an activity or product, or to insufficient scientific knowledge in this respect. Therefore, such* judges, *even if they do not currently have conclusive scientific information, but using the available scientific and technical information, must identify and argue the risk of serious and irreversible damage caused by the development of an activity or product in order to duly justify in each case the application or non-application of the precautionary principle.*

68. A violation of nature's right to full respect for its existence occurs through activities that lead to the extinction of species. This is a violation of such magnitude that it would be equivalent to what *genocide means and implies, in the field of human rights. Once a species is extinct, the laborious process that has taken nature sometimes millions of years results in an irreparable loss of diversity and knowledge. precisely because of the serious and irreversible damage such as the extinction of species, Article 73 of the Constitution applies the precautionary principle to these cases.*

ii. The statement of why the rule of precedent is applicable to the case.

In the present case, it was demanded from the lawsuit that the precautionary principle be applied to the rights of nature and the right to water. It was argued that the administrative decisions taken in reference to the mining activity in Fierro Urco had failed to apply the precautionary principle.

In Fierro Urco, known as the Fierro Urco water star, the predominant ecosystem is the paramo,[5] ' there are also other ecosystems such as wetlands and Andean forests whose relationship with water sources is of vital importance for human consumption and irrigation, to ensure food sovereignty and the permanence of the ecological flow".

In this sense, the páramo soil is an essential element of this ecosystem because of its fundamental role in climate change mitigation, due to its carbon storage capacity. The páramo soil conserved in the first 20 cm of the páramo. It generates carbon concentrations that can vary between 119 and 125 tons per hectare (tC/ha).

There is also a high richness of native species, both flora and fauna. Forty species of birds have been recorded in the moorlands of the area of interest. In addition, there are records of *agrionfs albicauda,* considered a very rare species and in threatened categories at the national level. Similarly, there have been recorded sightings of Andean condors, whose national status is critical.

At Fierro Urco, 11 species of mammals have been monitored, including the presence of the two largest Andean mammals in the country: the spectacled bear and the mountain tapir, which are also catalogued as endangered species. Its

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"Ministry of Environment, Water and Ecological Transition. Informe Técnico sobre delimitación de Área de Protección Hídrica del Sur, en la cordillera de Fierro Urcu-Chilla, p. 52.
^ idem, p. 20.
SIbid., p. 53.

presence denotes that the ecosystems of this sector still maintain adequate ecological conditions for their existence.'*.

It should also be noted that in Fierro Urco the presence of species such as the Tiktik rain frog and the blue-throated star-throated hummingbird, which have been recorded only in localities within the Fierro Urco water star, are *endemic and* ***unique.*** Their care implies a state obligation, declared as a public interest, for the conservation of biodiversity and ecosystems.[14]

The effects of mining activities on water resources have a direct and indirect impact on the populations that use water. In this sense, access to water for mining activities, which generate a harmful impact on ecosystemic health, due to pollution and contamination by mining waste. The United Nations Committee on Economic, Social and Cultural Rights has indicated that "the right to water implies being able to maintain access to a water supply and not being subject to interference, which may include contamination of water resources". Within the area of direct influence, the existing mining concessions are a variant of vulnerability for the water flows and sources found there.

From the public information that has been accessed: the certificates of no impact issued for the prospecting processes of the concessions of the "EL CISNE 2A-2B-2C" project, the technical report indicates that it crosses rivers, their tributaries, streams and water catchment areas for human use, livestock and irrigation. In the case of process 012-2018-AA, which corresponds to concession 60000518, the technical report made by an official of the then SENAGUA recommended to the management of the Demarcation that "a request should be made to define an area of less exploitation that does not affect the basins, sub-basins, tributaries(...)[15] ' described in the report.

What has just been exposed has greater dimensions when considering that the moors of the Fierro Urco mountain range are the source of the Jubones, Santiago, Catamayo and Puyango rivers that supply water to the provinces of Loja, Zamora Chinchipe and El Oro" and part of northern Peru, Therefore, *the i--pa--- -'-directO on* ***future*** *water* ***supply and*** *access* ***is much*** *broader* and the omission of these considerations are not sufficient in light of the obligation to consider the precautionary principle.

"idem, p. 54.
[15] Constitution, article l4.
"Committee on Economic, Social and Cultural Rights. General Comment 15. The right to water (articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), paras. 10, 11 and 12,
"Exhibit 7. Certificate of No Affectation. Process No. 012-2018-Afi. Demarcación Hidrográfica de Puyango-Catamayo. SENAGUA, pp. 1,2.
"Ibid., p. 13.

In this case the plaintiffs identified a serious risk faced by Fierro Urco as a holder of rights of nature, scientific uncertainty was proven. Even the biologist Rodrigo Cisneros, in his amicus submitted during the appeal stage, stated that there was no scientific research on the effects of mining in moorlands. This is important because the impact of mining can vary depending on the ecosystem, and when we talk about moorlands the impacts of this activity have never been measured, something that the defendants could never deny. It was evident in the process that no timely and effective protective measures had been taken by the State. For all these reasons, it was necessary to evaluate the facts of the case under the standards established by the Constitutional Court on the precautionary principle.

However, in spite of this, the Civil Judicial Unit and the Provincial Court of Justice stated that this precedent was not applicable to the case due to an argument of non-retroactivity,

As we have previously stated, the Court has said that the right to legal certainty is "... *fundamental as a guardian of the interpretation* ***and direct application of the*** constitution...'^' The Constitution establishes that the Court's decisions are binding, so that refusing to apply them is an express violation of legal certainty. As we have detailed, repeatedly in the constitutional process we cited and used the precedent of case 1149-19-JP/21, but the first and second judges decided not to apply the precedent.

The judge of first instance in her reasoning for not applying sentence 1149-19-JP/21 expresses that the precautionary principle is not applicable, but rather that of prevention, citing for this purpose saved votes of the aforementioned precedent:

"... it is important to bring to this resolution the criterion issued in the dissenting opinion on this subject by Dr. Carmen Corral Ponce (fVoto Salvado sentencia 1149-1 g- jp/21) (...)6. It is for this reason that in Title VI "Régimen del buen vivir", Chapter Two "Biodiversity and natural resources", Section One "Nature and environment" of the Supreme Law, in article
396 first clause determines in the first part that: "The State shall adopt *the appropriate policies and measures to avoid negative environmental impacts, when there is certainty of damage" (emphasis added); and, in the second part it establishes that: "In case of doubt about the environmental impact of a project, the State shall* adopt *the appropriate policies and measures to avoid negative environmental impacts, when there is certainty of damage" (emphasis added); and, in the second part it establishes that: "In case of doubt about the environmental impact of*
any action or omission, even in the absence of scientific evidence of harm, the State shall take effective and timely protective measures". (emphasis added) 7. From the systematic reading of these constitutional provisions, the following is evident: *i) that the mechanisms that prevent possible environmental harm*
-as an affectation of people's right to a healthy environment - correspond to the concept of prevention, therefore, the legal system provides means to prevent this risk such as the following

[S]Constitutional Court of Ecuador. Ruling No. 120-16-SEP-CC.

ex ante and ex post environmental impact studies in the stages that are required and that are based on the certainty of the damage; and, ii) that the protective measures against the danger of the destruction *of ecosystems, are part of the rights of nature, which are framed within the precautionary principle, enabling the* intervention of *the State in case of doubt or when there is no scientific evidence of damage based on the principle of indubio pro naWra. 8. In this context, it should be noted that the principle of prevention, which regularly operates during the course of an activity subject to authorization, is materialized through legal mechanisms such as the environmental impact assessment or the procedure for obtaining licenses and administrative authorizations, whose purpose is to foresee possible environmental damage and act on the basis of this knowledge at the mercy of the The Precautionary Principle applies in cases where such prior knowledge is completely absent and the risk of harm that may ensue is extremely uncertain, to the point that there is at least no generalized knowledge of the effects of a given activity. 9. These two fiBsures should not be confused, since they relate to*
its own reasonableness, so that if an *activity on natural resources has been*
authorized and has studies, plans and permits, the possibility of preventing possible environmental damage and contingencies will undoubtedly be prevention, but not environmental precaution. That is to say, a *state intervention cannot be dictated on the grounds of precaution of the risk, if authorizations, permits and permissions have been granted on the basis of the principle of prevention, which acts due to the prior and generalized knowledge of the certainty of the damage, this without prejudice of the fact that an environmental damage is in fact produced, in spite of the prevention, and the objective and imprescriptible environmental liability is generated according to the second to* fourth *paragraphs of the aforementioned article 396 of the Constitution. O. On the other hand, it cannot be ignored, as the sentence does, that in the present case the respective permits have been issued, which have been consigned in application of the R-TI-iPi of*
The mining activity is *not an activity in recent years, but it is an activity that has been*
discovery on which there is no ample record of its effects; therefore, it is evident that the judgment does not start -as it should- from the premise of the existence of *environmental prevention given* by *the concrete information on the impacts of the authorized mining projects, to instead give way to a misunderstood precaution, leaving aside the lack of specific information, which becomes improper. This criterion contributes to the conclusions reached by this judge and in accordance with the analysis that has been made".*

The judges of the Provincial Court of Justice of Loja refuse to apply this precedent because they claim that doing so would violate legal certainty:

the judgment of the Constitutional Court cannot be applied retroactively, the plaintiffs claim that the Cedros judgment contains a binding precedent, as it is unnecessary to point out, but it seems necessary to reiterate that decisions that contain a Precedent, like any normative act, cannot be applied retroactively.
second, the Los Cedros judgment does not even build a binding precedent on the
application of the precautionary principle, as the State Attorney General's Office pointed out very precisely, not even the necessary votes were obtained within the Court *for it to become a binding precedent, and finally, the standards established by the judgment in the case, the standards that are applicable to the forum, as they will explain below, are only applicable to*

In the case of your client and in the case of other concessionaires, their activities are small-scale mining activities, i.e., not even within the scope of such standards. The judgment in the Los Cedros case was issued in November 2021, and therefore, even if it were to contain a binding precedent, that is to say, that it has normative force, it cannot be applied retroactively to question administrative acts issued prior to the issuance of that judgment, in some cases several years before, the same happens with the judgment 22-18- \7lE/2:I, (sic) *which is instead known as the Mangrove judgment, which was issued in seR-November 2021; and therefore, cannot be applied retroacGvely, to evaluate administrative actions that occurred several years before, to sustain what the plaintiffs claim and pretend to apply the supposed binding precedent, dictated at the end of the year 21, to establish to evaluate legal situations from the year 2019 to 2020 is a clear attack to the legal security and even more,* when *the Constitutional Court* at no *time has indicated that this decision has retroactive effects; In this sense, in a recent ruling of the Constitutional Court, even issued after the Cedros or Los Manglares case, in January 2022, established with absolute clarity that the decisions of the Constitutional Court and their application cannot have* retroactive effects, *unless the court has expressly established it, in fact, the Court says in sentence 2403 that the ratio dicendi, i.e., the grounds of the decision of the Constitutional Court and its application, cannot have* retroactive effects, *unless the court has expressly established it; that is to say, the grounds for its decision, that the constitutional decisions and binding jurisprudential precedents of the Constitutional Court, must be obeyed from their issuance, unless the Constitutional Court, in the exercise of its powers, grants such decisions other types of effects. As in the case of unconstiWtional declarations, which may be given retroactive or deferred effects; in other words,* a *binding precedent, which in this case does not exist,* may *be applied to fuWre legal situations, it may not be used retroactively as is claimed in the claim filed by the plaintiffs, the non-retroactivity of the*
The non-retroactivity of legal precedents, the non-retroactivity of any normative act, is a fundamental guarantee of the right to the guarantee of legal certainty, to the
The existence of clear prior rules allows people to be clear about the rules of the game, and to foresee the legal consequences of their acts, this has been said by the Constitutional Court, establishing that non-retroactivity is strictly exceR-ional, that it cannot be established in advance.
In general terms, a retroactive application of precedents, this is very clear, not only in the
In the case of a constitutional action, but in any field of law, the action taken today, March 2022, cannot be evaluated, questioned with a rule that is issued two years from March 2024, because if it were asf, today it does not have the capacity to foresee the legal consequences of its actions and this violates its right to legal certainty. Through this action of fi'roteccidn, what is sought is to make u-^ ^f!!!"-aCidn of a *decision that numero constitutional rights, Ilama*
The fact that *the plaintiffs claim violation of constitutional rights, when they argue that precisely what they are seeking is to vindicate them, is strongly attentive to the fact that the plaintiffs claim violation of constitutional rights.*

On appeal, the judges **of the** Provincial **Court** of Justice of Loja also refuse to apply precedent 1149-19-JP/19 because in their opinion it is not a binding precedent: *"It is necessary to point out that the referred judgment does not constitute a binding jurisprudential precedent on the application of*P *rincipio de* preraufl Ón *or the principle of prevention, since according to its content, there was no consensus on the part of the majority of its members.*

members, since it is so stated in the order of clarification...". Additionally, they affirm that *the "development of the precautionary principle in the terms of said sentence,* purely to *declare a possible violation of the rights of the naWraleza, is not binding, as the plaintiffs have argued."* The Provincial Court also affirms that the precedent case referred to a cloud forest and is not applicable to páramos: *"Neither has said judgment dealt with the páramo, nor has it established general prohibitions to mining activity in the páramos, therefore, there is no analogy with the fR-GCos grounds of this action."*

The thesis of the judges, that the precedent was subsequent to the date of the proceeding, is not relevant because it prevents the application of a better understanding of the law and the progressive development of rights. For this reason, the Court has determined that *"the decisions*
The constitutional rights of Rodrdn shall be used as a source of legal justification for judgments and orders in judicial proceedings, even if the decision in question was issued after the commencement of the proceedings, provided that the proceedings have not been *concluded in a timely manner.*
definitive form."[6] ' In other words, contrary to what the judges maintain, the precedents are applicable because the process is ongoing and there has not been a final judgment. Jurisprudence is a source of law different from the law.

With the criterion of judges, no new precedent would be applicable to the case that the courts resolve. The interpretation of the norms, particularly when they are innovative, are produced at the moment of resolving the case with the sentence. If legal certainty as understood in terms of law, in the sense that the judicial interpretative criterion did not exist prior to the fact being resolved, it would make it impossible to resolve cases in the courts.

Jurisprudence is applied to concrete cases and helps to resolve similar cases. If there is a precedent and it is not applied, there is an affectation to legal certainty. For example, if the Court resolves a case, such as the Manglares case (Judgment N. 22-18-IN/21) or the Los Cedros forest case (Judgment N. 1149-19-JP/21), from then on ALL similar cases must be resolved in that sense. If the applicable precedent is not respected, legal certainty is undoubtedly affected and constitutional supremacy is undermined.

The Constitutional Court has repeatedly shown that this criterion of non-retroactivity is not the correct one, one can simply review the sentence 1149-19-JP itself which cites the precedent of sentence 2 2-18-IN, according to the logic applied by the Provincial Court this should not have happened.

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* Constitutional Court, Judgment No. 2403-19-EP/22, para. 31.

Regarding the applicability of precedents, the Constitutional Court has defined that a vertical precedent is one that comes *"from a judicial decision adopted by an organ hierarchically superior to the one of reference"."*

Precedents are legal norms of obligatory observance both for the Constitutional Court itself (even if its composition changes) and for the rest of the judges. '[6]

For a precedent to be considered binding, it is required that the facts are analogous and that, consequently, the ratio decidendi (the precedent) is applicable to the case to support the decision. If the case is analogous and the precedent is applicable, then the judgment did not observe the applicable law. Therefore, I insist, *"the ratios decidendi of the constitutional decisions and the binding jurisprudential precedents of the Constitutional Court, must be obeyed from the moment they are* issued..."[6] ' '

The case known as "Los Cedros", Judgment N. 1149-19-JP/2 1, dealt with a forest that had some characteristics: (1) it has an impressive biological biodiversity"; (2) it is a sensitive ecosystem in which, if there is human intervention, its ecological balance could be affected"; (3) there are unique, rare and endangered species"[6] ; (4) there are mining concessions".

In these circumstances, the Constitutional Court applied the precautionary principle, the right to environmental consultation and analyzed the case under the umbrella of the rights to water, a healthy environment and the rights of nature".

In the case of Fierro Urco, as stated in "REPORT No. 001-DZ7- DZ10-APH-202 1", prepared by Zonal Directorate 7 and Zonal Directorate 10 of the Ministry of Environment and Water: (1) impressive biodiversity; (2) fragile ecosystem (Art. 406: Like cloud forests, paramos and wetlands are also fragile); (3) species that are in danger of extinction. And, for what motivates the lawsuit, (4) mining concessions.

In these circumstances, the case is analogous and, consequently, the precedent in Los Cedros is applied to consider: i) prior consultation; 2) the precautionary principle; and iii) the declaration of an ecosystem as a subject of rights. 23.

"Constitutional Court, Judgment N. 1035-12-EP/20 (Binding nature of judicial precedent), para. 17. '[2]
Constitutional Court, Judgment N. 1035-12-EP/20 (Binding nature of judicial precedent), para. 18 "
Constitutional Court, Judgment N. 2403-19-EP/22, para. 30.
* Constitutional Court, Judgment No. 1149-19-JP/21, paragraphs 73 to
111.
Ibid., paras. 82 and 88.
" lbidem, facts of the case.
® Ibfdem, para. 274.

One more argument against the claim that legal certainty and retroactivity are affected. The precedents of the Constitutional Court develop the content of rights that are in force in the 2008 Constitution. They are not, therefore, post-concession norms. The precedents did not create consGtutional norms. What the Court did was to give content and application guidelines for rights that already existed since 2008: Right to environmental consultation and rights of nature (Articles 71, 72, 73, 74 and 74).
398 Constitution).

Consequently, the constitutional precedents are applicable from the moment of their issuance, do not affect legal certainty (if not observed, they do violate legal certainty) and should have been considered in the judgment of the lower court judge.

VII. COhiSTITUTIONAL RELEVANCE, NATIONAL TRASCEND AND CORRECTING INOBSERVANCE OF PRECEDENTS

The present action stems from an action *for* protection that had the objective of guaranteeing the rights of Nature, the right to water, the right to environmental consultation, among others. These rights have constitutional relevance because they allow the development of important elements of the rights of Nature that so far constitutional justice has not done so: Although Ecuador is the only country that has incorporated in its Constitution the rights of Nature, and 15 years have passed, there is still no full development of the elements that make up the rights of Nature. Although rulings such as 22-18-IN/21, 1149-19-JP/21, 1185-20-JP/21, have helped to better understand and apply the rights of Nature, there are still elements that have not been addressed by national jurisprudence.

In the present case, we are facing a territory composed of two ecosystems that, according to the Constitution, are fragile: the moors and wetlands, which have not been addressed by the constitutional jurisprudence and are of vital importance for the water sources of Loja and the country. This fragility extends to the vulnerability caused by climate change[6] ', being the case that the moors in turn constitute one of the ecosystems with greater carbon absorption capacity, which was confirmed at a hearing by researchers on carbon emissions from the hill of Fiero Urco, specifically.

Ramsar Convention and EHAA Contact Group (2008). Regional Strategy for the Conservation and Sustainable Use of High Andean Wetlands. Governments of Ecuador and Chile, CONDESAN and TNC-Chile, 2008. Available in:

In a historical stage where climate change threatens the future of humanity, it is of transcendental importance that the highest body of constitutional justice of the country analyzes cases where the rights of Nature can help preserve and guarantee the existence of ecosystems that are particularly relevant to mitigate and adapt to the effects of climate change. The páramo is one of the most effective ecosystems for capturing carbon emissions and for capturing water, which in addition to being a resource is a right.

At this point it is important to remember Ecuador's principle of intergenerational equity (Art. 395.1), together with its self-imposed obligation to adopt adequate and transversal measures for the mitigation of climate change, by limiting greenhouse gas emissions, deforestation and atmospheric pollution; take measures for the conservation of forests and vegetation, and protect the population at risk, according to Art. 414 of the Constitution. The importance of conservation in the face of the climate emergency and the right of future generations to benefit from the environment is a matter of national relevance.

Possibility that the **Court may rule on the constitutional protection of the Nature outside Protected Areas.**

ithin its jurisprudential line on the rights of Nature, this Constitutional Court has had few approaches to the constitutional protection due to Nature outside the category of Protected Areas or any other level of protection granted to elements of Nature, for example, as part of an adjudicated indigenous territory. This case constitutes an approach to analyze the intrinsic value of Nature outside the administrative categories related to conservation and to enforce the already constitutionalized Law.

In addition, as analyzed above, this case **will allow correcting the non-observance of precedents** 22-18-IN/21 and 1149-%-IP/21, established by the Constitutional Court.

VII. PRETEXSIÓX

Based on the above arguments, we request:

a. The present extraordinary action of protection filed against the judgment of December 21, 2022 issued by the Specialized Court for Civil, Commercial, Labor, Family, Childhood, Adolescence and Adolescent Offenders of the Provincial Court of Loja, conformed by the judges: Dr. Carlos Tandazo, Dr. Max Brito Cevallos and Dr. José Alexi Erazo Bustamante (reporting judge) and against the judgment of May 10, 2022, issued by Dr. José Alexi Erazo Bustamante (reporting judge). Carlos Tandazo, Dr. Max Brito Cevallos and Dr. José Alexi Erazo Bustamante (reporting judge) and against the judgment of May 10, 2022, issued by Dr. Geovanna Chango Maldonado, as judge of the Unit.

Judicial Civil with headquarters in the Loja Canton, within the action of protection with precautionary measures signed with the number 11333-2022-00183.

b. That, therefore, the judgment declares the violation of the rights to due process in the guarantee of sufficient motivation, the right to defense in the guarantee of being heard in an equal manner and under equal conditions, legal security and effective judicial protection of Nature.

c. That due to what was established by the Court in sentence 176-14-EP/19, this case meets the necessary criteria and merits a review of the merits of the case by the Constitutional Court, therefore, we request that it be declared as such:

   i. **The original proceeding arises from** a **jurisdictional** lawsuit**:** Yes, the original proceeding is a protective action under No. 11333-2022-00183.

   ii.i **has not been selected** by the **Court:** As of the date of filing of this action, the Court has not selected the case.

   ii. **National relevance:** As we have argued in section VII of this action, as a matter of fact and law, this case has national relevance.

   iv. **novelty of the case:** As we have argued in section VII of this action, as a matter of fact and law, it is novel.

   v. **non-observance of mandatory jurisprudential precedents:** In section 6.4 of this action we develop and explain how in the two instances of the protection action mandatory jurisprudential precedents of Constitutional Court Rulings No. 22-18-IN/21 and 1149-19-JP/21 were violated.

   vi. **Violation of the right to due process:** In sections 6.1 and 6.2 of this action we detailed how our right to due process was violated in the original process of this action.

   vii, **That prima facie, the facts that gave rise to** the **original proceeding** may **constitute** a **violation of rights that were not protected by** the **lower judicial authority:** As can be seen in the present action, the violation of the rights to due process, legal certainty and effective judicial protection caused the violation of other constitutional rights such as the right to environmental consultation, rights of nature, right to water, right to live in a healthy environment.

d. That the chronological order of the processing of the cases be altered because it complies with the provisions of Resolution No. 003-CCE-PLE-2021 (Art. 5 #1, 3, 4 and 7) since several of the plaintiffs are vulnerable persons, since they are older adults and also because there is a risk that the damages caused to Fierro Urco may be irreversible due to the violation of rights in this case.

   In particular, we must also mention that hours before this extraordinary action of protection was filed, we were notified with the disciplinary file No. 11001-2023-0001C, opened by the Judiciary Council, by request of the Specialized Civil, Commercial, Labor, Family, Childhood, Adolescent Offenders of the Provincial Court of Justice of Loja, against Attorney Pablo Piedra Vivar, our lawyer, for denouncing in the appeal hearing the violations of due process that occurred in that hearing. This is an intimidating act, against defenders of

rights, which has the potential to generate serious and irreversible violations of constitutional rights.

e. That, as a result of the declaration of violations of our alleged rights, the Court order reparations, as follows:

The Court is requested to declare the violation of the constitutional right to environmental consultation of the citizens of the parish of Gualel, canton Loja, as well as the violations of their rights to water and to a healthy and ecologically balanced environment, in accordance with the terms of the original complaint filed in the protection action.

At the same time, that Fierro Urco be declared as the specific holder of the rights of Nature to exist, maintain and regenerate itself, recognizing that the described actions of the public authorities harm the populations and Nature, undermining and diminishing the exercise of their rights, and that provision be made for the reestablishment of rights:

1. The environmental license, environmental registry and certificates of non-affectation of water sources within the administrative processes of the concessions: "Santiago", "El Cisne 2A", "El Cisne 2B", "El Cisne 2C", "Caña Brava" and "Tioloma" are annulled in order to reestablish the actions to the moment and situation prior to the violation of rights,
2. Likewise, it is requested that it be considered as a measure that guarantees full reparation to Nature:
    - To the Ministry of the Environment, as a guarantee of non-repetition, to *resume* and define the pertinent administrative actions in the process of declaring the Southern Water Protection Area, whose process is pending, so that the moorlands of the Fierro Urco hill are fully protected, as well as other vulnerable ecosystems, in accordance with articles 406, 411 and 395 of the Constitution, prioritizing ecosystemic protection, restricting high impact anthropic activities and prioritizing ecosystemic sustainability and the hydrological cycle in the management of water in the area. Specifically, that the declaration be made in the terms established by the original report of 2020, unless otherwise technically-scientifically justified and justified in law. All this in a reasonable time.
    - The Ombudsman's Office and the Ombudsman of Nature and a commission that includes representatives of the plaintiffs and community members of Gualel be granted the power to follow up on this provision of guarantee of non-repetition.
3. That a public apology be issued by the Ministry of the Environment for the violation of the alleged rights of the community members of Gualel, especially for the violation of the right to environmental consultation.

V1tl. NOTIFICATIONS AND DSSIGNIFICATION Dg ATTORNEYS REPRBSENTAXT8&.

We have appointed as our sponsoring attorneys Abg. Carla Luzurlaga Sallnas and Pablo Piedra Vivar,

The corresponding notifications must be sent to the electronic addresses:
Ca rla{qZ,uyi;jgpn(_ñumail.com; nabloarturo10@hotmail.com

II. SIGNATURES

We signed in the company of our plaintiffs' attorneys:

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Abg. Carla Luzuriaga

PABLO ARTURO VIVAR STONE

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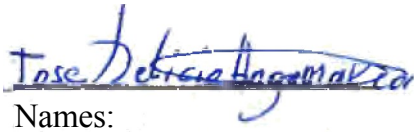

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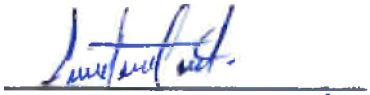

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