

## Defending nature: Challenges and obstacles in defending the rights of nature Case Study of the Vilcabamba River

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- In October 2008, Ecuador adopted a new Constitution, which recognizes that nature has rights. These rights are directly and immediately enforceable by and before any public authority, which means that any person or group can demand fulfillment of the rights of nature.
- Among the rights granted to nature are complete respect for its existence and maintenance and for the regeneration of its life cycles, restoration and the application of precautionary measures and restrictions by the state on activities that could lead to its destruction or permanent damage. In addition, it is forbidden to introduce organisms and organic and inorganic material that could permanently alter the genetic patrimony of the country.
- In this context, in light of the impact on the Vilcabamba River of the implementation of the construction project to widen the Vilcabamba-Quinara highway, being carried out by the Provincial Government of Loja, two foreign citizens brought a lawsuit claiming a violation of the rights of nature, specifically the Vilcabamba River. This became the first case involving a claim that these constitutional rights were being violated.
- In analyzing the case, a number of challenges and obstacles emerge in the effective exercise of the rights of nature. For example, the lack of a law that defines them, the limited knowledge among public authorities and citizens of the existence of these rights, and the lack of judicial bodies that specialize in environmental issues, which can hear cases that arise regarding the rights of nature.

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## Introduction

In October 2008, Ecuador enacted a new Constitution, which recognizes the rights of nature. This makes it the first country in the world to recognize nature as subject to rights, within a constitutional framework. It should be mentioned that Bolivia also recognizes nature as having rights, although it does so through ordinary laws. Here, the Law of Mother Earth and Holistic Development for Good Living and the Law on the Rights of Mother Earth establish the rights of nature as a collective subject of the public interest.<sup>1</sup>

The adoption of the new Constitution in Ecuador implied a change of paradigm. This included the concept of *Buen Vivir*,<sup>2</sup> or “good living,” as the fundamental pillar that guides the exercise of state and citizens’ rights and responsibilities, and also a new development concept. Consequently, the rights of nature constitute a key factor in achieving this new concept of development.

Title II of the Constitution, entitled “Rights,” expressly recognizes nature as subject to rights, stating: “nature will have those rights recognized as pertaining to it by the Constitution.”<sup>3</sup> Also, within the Constitution there is an entire chapter dedicated to the rights of nature, within the same Title II.

In this context, it is established that nature has the right to:

- Comprehensive respect for its existence, the maintenance and regeneration of its life cycles, structure, function, and evolutionary processes.<sup>4</sup>

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1 Framework Law of Mother Earth and Integrated Development to Live Well (enacted in October 2012), Art. 4, # 1 paragraph a and Art. 9 # 1. The Rights of Mother Earth Act (enacted in December 2010), Art. 1 and 7. The following rights are recognized for Mother Earth: life, the diversity of life, water, clean air, balance, restoration, and to live free of pollution.

2 *Buen Vivir*, or Good Living, is understood in the following way: “to live in a healthy environment, eat well, have a living space, and education appropriate to our circumstances, health ... a whole set of elements that a human being needs to maintain him- or herself and generate the life of future generations” (Murcia, 2011: 294).

3 Constitution of the Republic of Ecuador, Art. 10.

4 Ibid, Art. 71, section 1.

- Restoration, independent of the obligation of the state or persons or entities to compensate individuals and groups who depend on the affected ecosystems.<sup>5</sup>
- The application of precautionary and restrictive measures, by the government, in relation to activities that could lead to the extinction of species, the destruction of ecosystems or the permanent alteration of natural cycles.<sup>6</sup>
- Prohibition of the introduction of organisms and organic and inorganic material that could permanently alter the genetic patrimony of the country.<sup>7</sup>

Additionally, the Constitution provides for the possibility that any given person, community, ethnic group or nationality can demand that the public authorities enforce the rights of nature.<sup>8</sup> This means that any individual can file a lawsuit with the administrative and judicial authorities when these rights are violated.

While the rights of nature have not yet been codified in a law, it is noteworthy that the Constitution has included the principle of direct and immediate application of rights, which means that it is not necessary to have specific laws for these rights to be enforced. As these rights have the rank of constitutional rights, it is possible to demand their fulfillment through constitutional actions that guarantee them. Thus, in this case, it is possible to bring forward a so-called protective action.

The objective of the protective action is to directly and effectively protect the rights recognized in the Constitution; this action can be brought in the following cases:<sup>9</sup>

- when there is a violation of constitutional rights due to actions or omissions by any non-judicial public authority;

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5 Ibid, Art. 72, section 1.

6 Ibid, Art. 73, section 1.

7 Ibid, Art. 73, section 2.

8 Ibid, Art. 71

9 Constitution of the Republic of Ecuador, Art. 88; Organic Law of Jurisdictional Guarantees and Constitutional Oversight, Art. 41.



- against public policies when they entail deprivation of the enjoyment or exercise of constitutional rights;
- when the violation is committed by an individual person under the following circumstances:
  - if the violation of the right causes serious damage;
  - in cases involving the improper provision of public services, when acting by delegation or concession;
  - if the person affected is in a position of subordination, defenselessness or discrimination.

Actions to protect constitutional rights can be heard by any judge in the place where the act or omission is committed, or where its effects are felt.<sup>10</sup>

Consequently, the action can be heard by civil, criminal, labor, tenancy or other judges, since in the current judicial system, there are no environmental judges. This despite the fact that the Organic Code of the Judicial Branch calls for the creation of special courts of first instance to hear claims related to the violation of the rights of nature and the right to water.<sup>11</sup>

In this analysis, we will examine the first case regarding the application of the constitutional rights of nature, brought about by damage caused to a river due to the inadequate disposal of materials in the process of widening a highway. First, the context of the lawsuit and the reasons why this novel legal approach was used are explained. Second, we address the judicial aspects of the case, in other words the claim at the judicial level and the challenges that the claimants had to face. Finally, the case is used to extrapolate conclusions and challenges for the design of public policies that allow for the effective implementation of the constitutional rights of nature.

## Context

### *Plaintiffs in the case*

Richard Frederick Wheeler and Eleanor Geer Huddle (Norie) are two foreign citizens who arrived in Ecuador in 2007 and are currently residing in the outskirts of Vilcabamba. They purchased a property that they called the Garden of Paradise,<sup>12</sup> which is on the banks of the Vilcabamba River, along the road to Quinara. It was the peaceful environment and especially the river which provided them with fresh water that attracted them to the property. Norie and Richard decided to come to Ecuador, and live in the country, in order to launch a model project to demonstrate that it is possible to create a life that is interesting and sustainable, so that it could serve as a paradigm for the rest of the world. The motivation for this project is the fact that today, many young people are migrating to the cities, abandoning the countryside. This is a global dilemma, and is causing serious problems both in the cities and in rural areas. Therefore, Richard and Norie, by settling down in Vilcabamba, decided to create a peaceful community project based on good neighborly relations, in which a heightened sense of collaboration and inclusion could emerge organically.

### *Other stakeholders involved*

Through the protective action, the Provincial Government of Loja (PGL) was being sued because of the damage being caused by the widening of the Vilcabamba-Quinara highway. Furthermore, the lawsuit requested a notification to be sent to the provincial representatives of the Ministry of the Environment (MoE), the State Attorney General, and the National Secretariat of Water. Nonetheless, the institutions directly involved –when the judgment was issued– were the PGL, the MoE and the Ombudsman's Office.

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10 Constitution of the Republic of Ecuador, Art. 86 # 2.

11 Organic Code of the Judicial Branch, Art. 246.

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12 Garden of Paradise, [www.gardenofparadise.net](http://www.gardenofparadise.net).



## ***Motives for presenting the protective action***

In 2008, the Provincial Government of Loja (PGL),<sup>13</sup> through the Southern Public Highways Company, embarked on the project to expand the Vilcabamba-Quinara highway. It did this without conducting an environmental impact study in the first place, nor acquiring the environmental license issued by the environmental authority (in this case, the competent authority was the Ministry of the Environment).<sup>14</sup> This was despite the fact that the execution of public works that could have environmental impacts must have the corresponding environmental license.<sup>15</sup>

In the course of widening the highway, the construction company began to deposit rocks and excavated material on the banks of the Vilcabamba River, causing serious damage to nature, particularly the river and its bed. Furthermore, during the winter (rainy season) of 2009, due to the presence of debris, rocks, sand, gravel and even trees in the river, serious flooding occurred. The river's banks disintegrated and a number of properties bordering the river were affected by the flooding, including Norie and Richard's.

## ***The path to the protective action***

In light of the events occurring due to the expansion of the Vilcabamba-Quinara highway, Richard and Norie requested, in September 2009, a judicial inspection,<sup>16</sup> processed by the First Civil Court of Loja. They requested this step because during

the work for widening the road, debris was being dumped into the river and this was damaging the area and their property. As part of the process, an expert assessment was done which found that the damage was not caused by the works executed by the PGL.<sup>17</sup>

In December of that year, they filed a complaint with the Ministry of the Environment (MoE), which after two months conducted a technical inspection at the site (in February 2010),<sup>18</sup> in which Norie participated along with the chairperson of the community council. The MoE officials (from the National Department of Environmental Pollution Prevention and the Provincial Department of Loja of the MoE) were able to clearly observe all of the damage caused to the river.

As a result of the inspection, a report was prepared which was delivered to the PGL in May 2010, in which the authors reached a number of conclusions, for example:<sup>19</sup>

- It was determined that the work done by the PGL in opening up the road between Vilcabamba and Quinara had caused environmental damage to the lower part of the Vilcabamba River, primarily from the lateral displacement and deposit of the resulting material, causing rises and flooding in the river.
- It was observed that the property of the complainant, Eleanor Huddle, and other residents, upstream and downstream on the Vilcabamba River, had been affected for 5,000 meters as a result of the floods.
- The work done to widen the road, which included extracting and using sterile material, did not plan for the proper disposal of these materials, as there were no rubbish dumps available.

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13 Loja is a province in the southern part of Ecuador, and Vilcabamba is one of its best-known towns, as its residents tend to live to an old age, and they attribute their longevity to the water in the surrounding rivers.

14 Judgment, Provincial Court of Loja, Case NO. 11121-2011-0010.

15 Codification of the Law of Environmental Management.

16 Judicial inspection is a preliminary act prior to the submission of a lawsuit (Art. 64 # 5 Codification of the Civil Procedure Code). This inspection is done by a court; there is also the possibility that other public institutions can conduct inspections, for example the inspection that the Ministry of the Environment conducted in this case.

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17 Expert report No. 001-AMP-2009 of October 19, 2009, and Expert Report No. 035-09.

18 The inspection carried out by the MOE emerges from the complaint that the plaintiffs filed with the Ministry; this is different from the judicial inspection that was done by the First Civil Court of Loja.

19 Official Communication No. MAE-SCA-2010-1727 dated May 10, 2010.



In addition, the MoE called on the PGL to present, within a period of thirty days, a Remediation and Rehabilitation Plan for the areas affected along the Vilcabamba River and the properties of the affected residents. Similarly, the MoE asked the PGL to produce, immediately, the environmental permits issued by the environmental authority in advance of the construction of the Vilcabamba-Quinara highway for evaluation. Finally, the MoE concluded that the PGL should take corrective actions, including relocating fuel tanks and machinery, installing security basins in these tanks to prevent spills, cleaning the contaminated soil, implementing an adequate signage system, and an appropriate plan for depositing and accumulating construction material.

A commitment letter was signed between the plaintiffs and the chief of the road-widening project, which was intended to comply with the recommendations made by the MoE on the work being done by the PGL. Through this commitment letter, Norie agreed to allow part of the debris to be deposited in an area of her land, while the PGL agreed to remove the debris and to observe the road construction and river embankment called for by current regulations.

At that time, a serious flood occurred which caused a great deal of damage to the property of the plaintiffs. No floods of that magnitude had occurred in the past fifty years, and therefore it could only be explained by the dumping of materials from the highway widening project in the river.

In summary, before the presentation of the protective action, two activities were carried out before different state entities: i) the judicial inspection request, which determined that the effects on the river were not the result of the widening of the road; ii) a complaint filed with the MoE, who conducted a site inspection and issued a report with recommendations on how to properly execute the work.

### Judicial processing of the case

In early 2010, the highway expansion work continued with the use of dynamite and heavy machinery, after which the resulting debris was deposited in the river. At that time, Norie and Richard took photos and video recordings to document the work that

was being done. With this material, they went to Loja to speak with Carlos Bravo, their attorney. After analyzing possible strategies for filing a lawsuit to end the damage being done to the Vilcabamba River, the idea emerged to use the approach of the rights of nature, approved recently in the 2008 Constitution. The attorney said that they would most likely not receive any compensation if they sued for the fulfillment of these rights. Nevertheless, Richard and Norie said that the money was irrelevant. Instead, they wanted to act on behalf of the river, taking into account that its full existence is guaranteed in the Constitution.

Finally, the lawyer argued that he did not have any experience with these types of cases; nevertheless, they filed the lawsuit within the next three days; and in response, he says: “For me it was a great opportunity to do something for nature. This is the beginning of the development of jurisprudence in favor of nature, which we hope will be well received, analyzed and studied.”<sup>20</sup>

The protective action was filed in defense of the rights of nature, particularly the Vilcabamba River and against the Provincial Government of Loja (PGL), over the violation of those rights.

The interest of the plaintiffs was to immediately protect the rights of nature, for which they requested: i) that the PGL immediately stop dumping debris in the Vilcabamba River; ii) that the natural course of the river be restored; and iii) that the rocks, earth, gravel and vegetation deposited in the Vilcabamba River be removed immediately.<sup>21</sup>

After the lawsuit was filed, the proceeding was assigned randomly, in the first instance, to the Third Civil Court of Loja. The judgment was handed down six days after the lawsuit was filed, and the judge decided to reject the case.

The plaintiffs filed an appeal, and again randomly, the case was assigned to the Criminal Division of the Provincial Court of Loja, which in second and

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20 Statement taken from the video: Dr. Suzuki visit's Richard and Norie's "Garden of Paradise" in Ecuador.

21 Action of Protection.





final instance, ruled, on March 30, 2011, that the rights of the Vilcabamba River had been violated. On that occasion, the process lasted seventy days before the sentence was handed down.

This lawsuit is the first judicial exercise, both nationally and internationally, of a claim for the constitutional rights of nature. Through this process, it is possible to evaluate the challenges and obstacles of the real application of such recently awarded rights. Below, we examine more thoroughly the judicial process that the plaintiffs carried out on behalf of the Vilcabamba River.

### **Protective Action (first instance)**

The plaintiffs submitted the protective action on December 7, 2010, claiming a violation of the rights of nature, against the Provincial Government of Loja. The action was based on the following provisions of the Constitution:

- Preamble to the Constitution, which celebrates the *Pachamama* and the construction of a new form of citizen co-existence with nature.
- The institution of a new development concept based on Good Living, which requires people to exercise their responsibilities and enjoy their rights within the framework of harmony with nature (Art. 175, third paragraph).
- The rights of nature: holistic respect for its existence, maintenance and regeneration of its life cycles, structure, functions and evolutionary processes; as well as restoration (Art. 10, 71-73).
- Recognition of water as a vital element for nature (Art. 318).

On December 13, a public hearing was held at which the plaintiffs and the defending entity were present. Later, on December 15, a judgment was issued which rejected the protective action due to the lack of passive legitimacy in the case. That is, the failure to adequately notify the defendants, thereby making it impossible for them to adequately defend themselves.

Despite the negative ruling, on that day, nature had showed up in Court. With this ruling, it was clear that the rights of nature were not recognized, and in

the sentence, the court limited itself to addressing procedural issues.

Norie and Richard felt that the rights of nature had not been recognized, and therefore decided to appeal the sentence.

### **Appeal (second instance)**

Richard, Norie and Carlos reviewed the entire case again, to present all of the constitutional arguments to the Provincial Court. The appeal was filed on December 20, 2010; however, it was only passed on to the Court for consideration on January 5, 2011, when the case was assigned at random to the Criminal Division of the Provincial Court of Loja.

The court of the second instance took from January 5 to March 30 to hear the appeal, due to the fact that two judges recused themselves, saying they could not participate in hearing this appeal.<sup>22</sup>

Finally, once the court had been formed with the three judges, they resolved the case on that same day and issued their sentence; in the process of doing so, they conducted a thorough analysis to determine whether or not the rights of nature had been violated.

The judges determined that there was in fact a violation of the rights of nature, and they based their decision on a number of aspects:<sup>23</sup>

- Unlike the judgment from the first instance, this ruling found that the defendant had been adequately notified, and that furthermore they had appeared in the first instance through their defense lawyer.
- They found that the protective action was the only appropriate and effective vehicle for protecting the rights of nature, especially since there was a specific damage.

<sup>22</sup> Information found on the website of the Judicial Branch of Loja (Case No 11121-2011-0010 - (05/01/2011; Criminal Division): [http://www.funcionjudicial-loja.gob.ec/index.php?option=com\\_wrapper&view=wrapper&Itemid=205](http://www.funcionjudicial-loja.gob.ec/index.php?option=com_wrapper&view=wrapper&Itemid=205)

<sup>23</sup> Proceeding No. 11121-2011-0010, March 30, 2011.



- The ruling highlights the importance of nature, and the importance of protecting it from degradation, and also that the damages caused to nature, given their magnitude, have effects not only on current generations, but future ones as well.
- The judges stated that in the case of activities that involve a likelihood or risk of causing environmental pollution or damages, precautionary measures must be taken to prevent those damages, even when it is not certain that these negative effects will occur.
- There is a reference to the principle of the reversal of the burden of proof, recognized in the Constitution; as a result, the judges find that the plaintiffs did not have to prove the damages, but rather the PGL was obligated to provide evidence that the highway widening work was harmless to the environment.
- At the same time, they felt that it is unacceptable to reject a protective action in favor of the rights of nature because of the lack of evidence, because in cases in which there is a probability, possibility or presumption that an environmental damage has been caused through contamination, the non-existence of said damages must be proved by the party who is in the best position to do so, and who claims that said damage does not exist. Therefore, the PGL had to demonstrate that the opening of the highway was not causing environmental damage.
- They deemed unacceptable the fact that the PGL had failed to comply with the obligation to obtain an environmental license from the MoE to widen the road, given that the PGL itself issues such licenses in projects that it does not directly implement.<sup>24</sup>
- They concluded that they are not denying the execution of the highway-widening project, but rather are requiring that the project respect the rights of nature and comply with environmental rules and regulations.

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24 Within the Unified Environmental Management System, through which the environmental impact assessments are done on projects that need an environmental license, the PGL was an accredited authority (Responsible Environmental Enforcement Authority) appointed by the Ministry of the Environment to issue environmental licenses to the promoters of projects within its jurisdiction.

With these considerations, the appeal was admitted, and it was declared that the PGL had violated the rights of nature, especially full respect for its existence and the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes. As a result, a number of measures were ordered:<sup>25</sup>

- The PGL, within a period of five days, was required to begin implementing the recommendations made by the Ministry of the Environment in May of 2010; if not, the Tribunal would suspend construction.
- The task of monitoring compliance with the sentence was delegated to the Regional Director for Loja, El Oro and Zamora Chinchipe of the Ministry of the Environment and the Ombudsman's Office of Loja, who must periodically report on compliance with the judgment.
- The Provincial Government must issue a public apology for beginning the construction of a highway without having the prerequisite environmental licenses; this apology would be made through publication in a local newspaper.

After the appeal was accepted, Norie and Richard were in a curious situation: they had won the first case in Ecuador, and in the world, defending the rights of nature –a historic judicial decision. Norie said: “The resolution basically established that they had to repair the damages that they had caused. Apparently that was all. We had won the first lawsuit for the rights of nature, what an honor!”<sup>26</sup>

This first sentence regarding the rights of nature constitutes a great reference point for new cases involving the violation of these rights, however getting the ruling implemented has not been easy.

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25 Proceeding No. 11121-2011-0010, March 30, 2011.

26 Statement taken from the video: Eleanor Huddle, Experience in access to justice: The Vilcabamba River case.





## Execution of the judgment<sup>27</sup>

Enforcing the first judgment that recognizes a violation of the rights of nature has been long and difficult for the plaintiffs. Here we describe the efforts of the plaintiffs to make sure that the ruling was enforced and complied with.

On this point, Norie says:

Having won the lawsuit is only the beginning because then the reality of implementing the sentence hit us hard. In the ruling, it was ordered that the PGL must submit a remediation plan within the following thirty days. Many months passed, and this plan was sent to the Ministry of the Environment for review, and they said that it was not adequate and they made a list of suggestions. The PGL complied with a part of the sentence; by 2011 we had paid for some works to protect the riverbank which served as protection for our property and that of our neighbors, because we knew that the PGL was not going to do it.<sup>28</sup>

The first action that the PGL took with respect to the obligations established in the sentence, was to comply with the order to issue a public apology. It did this by publishing a press release in the *Cronica de la Tarde* newspaper in the June 20, 2011 issue.

Later, on November 8, the Provincial Department of Loja of the MoE conducted an inspection to verify the technical environmental status of the work that was being done in the project to expand the Vilcabamba-Quinara highway. The report prepared based on the inspection concluded that it was still necessary to implement the recommendations for the work included in the sentence; furthermore, the PGL had to present the Remediation and Rehabilitation Plan for the affected areas.<sup>29</sup>

The Third Civil Court, in December, ordered a judicial inspection to be carried out on January 11,

27 The Third Civil Court of Loja was in charge of enforcing the sentence.

28 Statement taken from the video: Eleanor Huddle, Experience in access to justice: The Vilcabamba River case.

29 Technical Report No. 0300-DR-L-ZCH-UCA-MAE-2011, November 8, 2011.

2012, to directly verify compliance with the sentence. In the inspection, it was observed that the remediation work done by the PGL was still very preliminary;<sup>30</sup> as a result, the MOE again sent a report in which it concluded that a number of measures still had to be implemented in order to effectively comply with the sentence.<sup>31</sup>

On January 31, the PGL asked for a new judicial inspection to be carried out because it had completed the remediation ordered in the sentence, and on February 8, they sent a report on activities implemented as part of the environmental remediation plan.<sup>32</sup>

On February 24, another judicial inspection was conducted, requested by the PGL to verify compliance with the institution's internal remediation plan. This inspection found that not all of the recommendations made in the sentence were being carried out. Especially the fact that the remediation plan had not been presented to the MoE for approval; the PGL still did not have the environmental license, although the licensing process had been initiated.<sup>33</sup>

It should be noted that during the entire time from when the sentence was issued until the last judicial inspection, the plaintiffs were constantly insisting that the Third Civil Court enforce the sentence. On this point, Norie tells us that:

During the entire time, the PGL came twice, and had the audacity to say that they had complied with the sentence and they presented official reports in Court. The last time the PGL complied with a part of the sentence, but to this day they

30 Judicial inspection certification, Third Civil Court of Loja, January 11, 2012.

31 Technical report No. 007-DR-L-ZCH-UCA-MAE-2012, January 12, 2012.

32 In the execution report of this plan (Memo No. 0087-DGA-2012), it says that 100% of the activities called for in the Environmental Remediation Plan of the Vilcabamba, Linderos, Moyococha, Quinara Road had been completed. However, as of that date, the plan had still not been approved by the Ministry of the Environment.

33 Judicial inspection certification, Third Civil Court of Loja, February 24, 2012.



have not removed the debris from the river. They do not want to do so, because, in some places, it is going to cost them a lot since they will need to put a containing wall next to the highway, and they don't want to do that.<sup>34</sup>

### Action of non-compliance

On March 23, 2012, the plaintiffs filed an action of non-compliance through which they asked the case to be sent on to the Constitutional Court to be resolved, since the sentence had not been fully executed, even though a reasonable amount of time had passed.

The reasons for presenting this action, according to Norie, were as follows:

... so far, the Provincial Government has not corrected any damage to the Vilcabamba River. The Provincial Government has not removed any of the thousands of tonnes of dirt and rocks dumped in to the river during the construction of the Vilcabamba-Quinara highway. In short, the Provincial Government has not done any true remediation to the Vilcabamba River. They only planted some small trees (but they didn't care for them and almost all of them died) and they placed elegant and costly signs, proclaiming that they had done the remediation of the riverbank.<sup>35</sup>

They also argued that the damages caused to nature could be repaired only through a remediation plan approved by the competent environmental authority. However in this case, the Provincial Government did not have an approved plan,<sup>36</sup> and as a result, it was not possible for it to effectively fulfill its obligations.

On June 7, 2012, the case draw was held, and the presiding judge of the case was announced on June 12. However, since that date, there has been no progress in the case.

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<sup>34</sup> Statement taken from the video: Eleanor Huddle, Experience in access to justice: The Vilcabamba River case.

<sup>35</sup> Taken from a direct interview with Norie on May 29, 2013.

<sup>36</sup> The Remediation Plan was approved by the MAE on April 11, 2012, through official memo No. MAE-CGZ7-DPAL-2012-0457.

### Conclusions

The effective implementation of the rights of nature represents a great challenge for public authorities. The non-existence of a law that regulates these rights implies that their application will take place through the development of jurisprudence. However, there are a number of problems in the judicial sphere as well as in the public sector in general that inhibit the adequate exercise of the rights of nature.

This is reflected in the long path taken by Richard and Norie in their defense of the rights of nature. Having filed a number of complaints with different public authorities, and having had to appeal to the courts implies an ignorance on the part of those authorities of the constitutional precepts regarding the rights of nature and their obligation to protect them.

In this case, we can also observe limited involvement of the citizenry in general in environmental judicial processes. On one hand, this is the result of the lack of awareness about environmental issues and the rights of nature on the part of the public, but also the fear of taking on a public authority in a judicial proceeding. In this case, Richard and Norie did not convince more local residents to join their cause because they see the Provincial Government as a very powerful entity with whom they could have serious problems. Furthermore, most of the residents of Vilcabamba, especially in low-income, rural communities, lack the knowledge to make use of the justice system, in addition to the fact that they live in rural areas that are far from judicial institutions, and they lack the economic resources to access judicial remedies.

The case of the Vilcabamba River clearly shows how, at first, the lack of knowledge of the judicial entity led to a ruling in which it rejected the action, and in which it did not even analyze the violation of the rights of nature. The judge rejected the complaint, alleging the lack of passive legitimacy in the case, that is that the defendants were not correctly notified so that they could exercise their right to a defense. Therefore, any analysis of the matter at hand was put aside. This is evidence of a lack of knowledge about the rights of nature in the judi-



cial realm, despite the fact that all trial judges are constitutional judges, and therefore they should be familiar with those rights. Nevertheless, we have confirmed the lack of training received by the operators of justice, as two of the judges interviewed from the Provincial Court said that they had not received any training about environmental issues since they started working in the institution approximately four years ago.<sup>37</sup> The Judiciary Council itself indicates that no training has been carried out on environmental issues nor on access to information in the past three years.<sup>38</sup>

Although in the first instance, the timetable set forth for processing the action was complied with, the judge's lack of knowledge resulted in a brief sentence that did not address the core issue.

At the second instance, an appropriate sentence was issued, which declares that the rights of nature have been violated and orders measures to be taken to remediate it. However, the ruling on this appeal took much longer than the time codified in law for processing these types of remedies (according to the Organic Law of Jurisdictional Guarantees, an appeal must be resolved within eight days after it is filed).

It is not surprising that it took so long to resolve the case, when we take into account that, in general, members of the judiciary do not attach great importance to environmental cases, much less to the rights of nature.

On the other hand, we see that the rights of nature need to be developed through specific legislation. It is a priority to determine exactly what restoration implies, and how it is different from environmental remediation and rehabilitation activities.

Another aspect to highlight is that while the ruling declared that the rights of nature had been violated and established a number of actions to be carried

out by the defending entity, the ruling has not been effectively enforced. The plaintiffs had to apply pressure for a long period of time before some of the measures ordered in the ruling were implemented, which implies personal efforts and resources.

We can conclude that the enforcement of a ruling is not an easy task, especially when it deals with new rights, and it is even more difficult when it is the first ruling in this area. At the same time, neither the institutions that should execute the ruling nor those in charge of monitoring compliance are showing a great deal of interest. This is most likely the result of the limited knowledge of public officials about the rights of nature and their importance. Therefore, there is inadequate budgetary planning to respond to a case like this.

Achieving effective implementation of the sentence has been, in this case, nearly impossible. The fact that the corresponding appeal (action of non-compliance) was filed, but was not ruled on within the deadline provided for by law (thirteen days from the time the complaint is deemed admissible), could mean that a concept as new as the rights of nature still has a long way to go before it is accepted and valued as an important right that requires adequate, effective and timely protection.

Although two years have passed since the ruling was issued, it has not been effectively enforced, which Norie understands as follows: "What is happening is that, as the saying goes, 'it is a long way from speech to action,' which is totally true, and reflects our experience in this case. There are very good ideas, but you have to fight a lot so that they are respected and fulfilled. Mother Nature is worth fighting for".<sup>39</sup>

Finally, Norie adds:

"What I learned from this case is that the rights of nature (an institution accepted as normal by society) is an issue just as complicated as was the elimination of slavery during the era of Lincoln. The problem is that with nature, we don't

37 Interview with Dr. Galo Arrobo Rodas and Dr. Hernan Castillo (Judges of the Criminal Division of the Provincial Court of Loja), January 16, 2012.

38 Official communication No. 275-CJT-EJ-PU, from March 267, 2012.

39 Statement taken from the video: Dr. Suzuki visit's Richard and Norie's "Garden of Paradise" in Ecuador.



have time for this to be institutionalized and for pro-nature laws to be passed, since the State needs economic resources, leaving aside the protection of nature. We need a change in mentality so that it becomes accepted that nature has rights.”<sup>40</sup>

The challenges to the effective protection of the rights of nature are many: first of all, we need to build the capacity of public authorities and the judiciary to effectively enforce constitutional precepts. Similarly, the more people who are aware of

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<sup>40</sup> Statement taken from the video: Eleanor Huddle, Experience in access to justice: The Vilcabamba River case.

the rights of nature and the possibility of appealing to the justice system to remedy violations of those rights, the more jurisprudence will be developed in this area.

It is also important to have specialized judicial bodies comprising judges with expertise in environmental issues and the rights of nature, as well as in all of the means and instruments necessary to ensure the proper resolution of cases.

Finally, complementary legislation is needed to regulate and to flesh out the constitutional principles that recognize nature’s basic rights.



## Referencias bibliográficas

- Judicial inspection certification, Third Civil Court of Loja, January 11, 2012.
- Judicial inspection certification, Third Civil Court of Loja, February 24, 2012.
- Codification of the Civil Procedure Code, Official Registry Supplement No. 58, July 12, 2005.
- Codification of the Environmental Management Law, Official Registry Supplement No. 418, September 10, 2004.
- Organic Code of the Judicial Branch, Official Registry Supplement No. 544, March 9, 2009.
- Constitution of the Republic of Ecuador, Official Registry No. 449, October 20, 2008.
- Constitutional Court, Case No. 0032-12-IS.
- Report of the Provincial Government of Loja on the activities implemented in the Environmental Remediation Plan of the Vilcabamba, Linderos, Moyococha, Quinara Road, Memo No. 0087-DGA-2012 dated February 2, 2012.
- Expert report No. 001-AMP-2009 of October 19, 2009.
- Expert Report No. 035-09.
- Technical Report, Environment Ministry, No. 0300-DR-L-ZCH-UCA-MAE-2011, November 8, 2011.
- Technical Report, Environment Ministry, No. 007-DR-L-ZCH-UCA-MAE-2012, January 12, 2012.
- Law of the Rights of Mother Earth, enacted in December 2010, <http://bolivia.infoleyes.com/shownorm.php?id=2689> Framework Law of Mother Earth and Integrated Development to Live Well (enacted in October 2012), <http://www.planificacion.gob.bo/sites/folders/marco-legal/Ley%20N%C2%B0%20300%20MARCO%20DE%20LA%20MADRE%20TIERRA.pdf>
- Organic Law of Jurisdictional Guarantees and Constitutional Oversight, Official Registry Supplement No. 52 of October 22, 2009.
- Murcia Riaño, Diana, “El sujeto naturaleza. Elementos para su comprensión.” In: ACOSTA, Alberto and Esperanza MARTINEZ (eds). *La naturaleza con derechos. De la filosofía a la política*. 2011. Editorial Abya Yala, Quito, Ecuador.
- Official Communication No. MAE-SCA-2010-1727 dated May 10, 2010
- Official Communication No. MAE-CGZ7-DPAL-2012-0457 dated April 11, 2012.
- Official memo, Transitional Judiciary Council, No. 275-CJT-EJ-PU, March 26, 2012.
- Video: Eleanor Huddle, Experience in access to justice: The Vilcabamba River case. <http://www.youtube.com/watch?v=f2aUscJMPs>
- Video: Dr. Suzuki visit's Richard and Norie's “Garden of Paradise” in Ecuador. <http://www.youtube.com/watch?v=yVFTKsk5Zel&feature=youtu.be>

### Interviews

- Interview, Dr. Galo Arrobo Rodas, Criminal Judge of the Provincial Court of Loja, January 16, 2012.
- Interview, Dr. Hernan Castillo, Criminal Judge of the Provincial Court of Loja, January 16, 2012.

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