



LEONARDO DICAPRIO FOUNDATION
Amicus Curiae

Culver City, California, USA
January 14, 2019

Constitutional Protection Action No. 10332-2018-00640

JUDGES OF THE IMBABURA PROVINCIAL COURT OF JUSTICE:

The Leonardo DiCaprio Foundation (LDF), a nongovernmental (NGO) organization incorporated in California, USA and represented herein by Linda Sheehan, Esq., Senior Counsel with LDF, in relation to the Appeal within the Constitutional Protection Action No. 10332-2018-00640, appears in the most respectful manner before you, based on the provisions of Articles 12 and 14 of the Organic Law of Jurisdictional Guarantees and Constitutional Control, which establish that “any person or group that has interest in the cause can present a written Amicus Curiae that will be accepted as part of the file to better resolve the case before the final sentence,” and welcomes the opportunity to present the following Amicus Curiae Letter with regard to the Los Cedros Protective Forest.

The purpose of this Amicus Curiae letter is to offer assistance to the Imbabura Provincial Court of Justice in its consideration of the case by providing information with regard to national and international considerations and impacts related the Court’s decision in this important matter. We respectfully request that the court take into account the information and inputs presented below in considering the Constitutional Protection Action No. 10332-2018-00640 with regard to the Los Cedros Protective Forest, which is a matter of significant national and international importance.

INTERESTS OF AMICUS CURIAE

The Leonardo DiCaprio Foundation, California, USA (LDF), leonardodicaprio.org, is a nongovernmental (NGO) organization incorporated to advance the long-term health and well-being of all Earth’s inhabitants. LDF, which is incorporated and based in California, USA, supports projects around the world that build climate resiliency, protect vulnerable wildlife from extinction, and restore balance to threatened ecosystems and communities.

As part of its mission, LDF supports and conducts advocacy at the local, state and international levels, including before the United Nations, in support of laws that recognize the rights of nature, to ensure a thriving, biodiverse natural world, a flourishing human

population, and a healthy climate. LDF further has advanced these concepts in Ecuador and before Ecuadorians, including most recently in Fall 2018 in Quito, and conducts grantmaking activities that benefit Ecuadorian ecosystems and species. LDF's commitment to advancing the rights of nature in law around the world, and its support for the protection of vulnerable wildlife and ecosystems, led to this Amicus Curiae letter.

ARGUMENTS

Ecuador's Actions Regarding the Rights of Nature Are Closely Followed Worldwide, Given Ecuador's International Leadership in This Area

Laws and court rulings recognizing nature as a subject with inalienable rights have emerged at various levels of government around the world,¹ including in Ecuador,² Bolivia,³ Colombia,⁴ India,⁵ Mexico,⁶ New Zealand,⁷ and the U.S.,⁸ including in California.⁹ Laws are further being developed in Argentina, Brazil, Cameroon, Nepal, and elsewhere.¹⁰

¹ See generally <http://www.harmonywithnatureun.org/rightsOfNature/>.

² *Constitución de la República del Ecuador*, Title II, Ch. 7 (Sept. 2008); at: <http://files.harmonywithnatureun.org/uploads/upload657.pdf>.

³ Plurinational State of Bolivia, Law of the Rights of Mother Earth, Law No. 071 (2010); at: <http://files.harmonywithnatureun.org/uploads/upload656.pdf>.

⁴ Constitutional Court of the Republic of Colombia, Judgment in case T-622 of 2016, Proceeding T-5.016.242, regarding the Atrato River (2016); at: <http://cr00.epimg.net/descargables/2017/05/02/14037e7b5712106cd88b687525dfeb4b.pdf>; Supreme Court of the Republic of Colombia, Judgment in case STC-4360-2018, Filing no. 11001-22-03-000-2018-00319-01, regarding deforestation in the Amazon rainforest (2018); at: <https://cdn.dejusticia.org/wp-content/uploads/2018/01/Fallo-Corte-Suprema-de-Justicia-Litigio-Cambio-Clim%C3%A1tico.pdf>.

⁵ Judgment by High Court of Uttarakhand at Naintal regarding Writ Petition (PIL) No. 126 of 2014 (2017); at: www.yumpu.com/en/document/view/58002817/writ-petition-pil-no126-of-2014; Judgment by High Court of Uttarakhand at Naintal regarding Writ Petition (PIL) No. 140 of 2015 (2017); at: <http://files.harmonywithnatureun.org/uploads/upload662.pdf>.

⁶ Constitution of Mexico City (2017); at: <http://files.harmonywithnatureun.org/uploads/upload687.pdf>.

⁷ Te Awa Tupua (Whanganui River Claims Settlement) Act (2017); at: <http://files.harmonywithnatureun.org/uploads/upload711.pdf>; Te Urewera Act (2014); at: <http://www.legislation.govt.nz/act/public/2014/0051/latest/whole.html>.

⁸ By mid-2017 at least 43 U.S. local governments had adopted rights of nature ordinances. See examples at: <http://www.harmonywithnatureun.org/rightsOfNature/>.

⁹ "An Ordinance of the City Council of the City of Santa Monica Establishing Sustainability Rights," Santa Monica Municipal Code, Chapter 4.75 (April 2013); at: http://www.smgov.net/departments/council/agendas/2013/20130409/s20130409_07A1.htm. In August 2018 the City adopted the Sustainable Groundwater Management Ordinance, which addresses the inherent rights of the local aquifer to flourish by banning new, private water wells or expansion of

International environmental policy is expanding to address rights of nature as well. For example, the United Nations released an “Expert Report on Earth Jurisprudence” recommending that nations respect the “fundamental legal rights of ecosystems and species to exist, thrive and regenerate.”¹¹ At its quadrennial Congress in 2012, the world’s largest conservation organization, the International Union for Conservation of Nature (IUCN), passed Resolution 100,¹² calling for nature’s rights to be a “fundamental and absolute key element in all IUCN decisions.” The IUCN’s World Commission on Environmental Law recognized nature’s inherent right to exist, thrive and evolve, in its Declaration on an Environmental Rule of Law.¹³ Judges worldwide are becoming more aware of this concept and considering its application in their decisions.¹⁴

These and other rights of nature court decisions, laws, and policies are emerging in response to extreme pressure on ecosystems, and on communities that live and rely on them. A 2016 UN report notes that “intensified competition for natural resources in recent decades has led to multiple social and environmental conflicts all over the world.”¹⁵

The mining concessions proposed for the Los Cedros Protective Forest have the potential to significantly slow the rights of nature movement worldwide, a movement born in Ecuador and growing most rapidly in Latin America. Ecuador initiated this movement in 2008, when it became the first nation in the world to adopt a constitutional provision endowing nature with inalienable, enforceable rights.¹⁶

Ecuador immediately followed this constitutional leadership with a National Plan for Good Living that offered administrative and regulatory strategies consistent with the Plan’s challenge to “the notion of material, mechanic and endless accumulation of goods,”

existing wells. This law represents a far more protective action than called for under existing California groundwater law. Santa Monica Municipal Code, Ch. 7.18 (Aug. 2018).

¹⁰ See www.harmonywithnatureun.org/rightsofnature.html for regular updates.

¹¹ See <http://bit.ly/UNHwN>.

¹² IUCN, Resolution 100, “Incorporation of the Rights of Nature as the organizational focal point in IUCN’s decision making,” (2012); at: <http://bit.ly/RES100>. At its 2016 quadrennial meeting, the IUCN’s over 1,300 members from more than 170 countries further included nature’s rights in the IUCN’s just-completed 2017-2020 Programme¹² of work priorities, which “aims to secure the rights of nature.” See <http://bit.ly/IUCNP2017>.

¹³ IUCN World Commission on Environmental Law, “IUCN World Declaration on the Environmental Rule of Law,” (12 February 2017); at: https://www.iucn.org/sites/dev/files/content/documents/english_world_declaration_on_the_environmental_rule_of_law_final.pdf (Principle 2: “Nature has the inherent right to exist, thrive, and evolve”).

¹⁴ See, e.g., Global Judicial Institute on the Environment *et al.*, Global Symposium, “Judiciary and the Environment: Adjudicating Our Future” (23-24 August 2018, Washington, D.C.); see also <https://www.iucn.org/fr/node/29794> for more information generally on the Global Judicial Institute on the Environment.

¹⁵ United Nations General Assembly, “Report of the Special Rapporteur on the Situation of Human Rights Defenders,” UN Doc. A/71/281 13 (2016); at: <https://digitallibrary.un.org/record/840291>.

¹⁶ Constitución de la República del Ecuador, Title II, Ch. 7 (September 2008).

and its proposal to “shift from the current prevailing anthropocentrism to what we may call bio-pluralism.”¹⁷

As a world leader in recognizing the rights of nature in law and policy, Ecuador has a particular responsibility to uphold its commitment to the rights of nature, or risk shifting this critically needed movement significantly backwards globally. Ecuador’s actions in this area are watched carefully by the international community in light of such leadership.

Ecuador’s Constitutional Rights of Nature Provisions, and Their Subsequent Implementation, Strongly Support Conservation of the Los Cedros Protective Forest¹⁸

Article 71 of Ecuador’s groundbreaking constitution states that the natural world has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution, and it allows for enforcement by individuals and communities. Article 72 further provides the natural world with a right to restoration independent of humans’ right to compensation. Relief must run back to the injured party, nature, regardless of whether harm is also caused to humans. Article 73 establishes the precautionary principle and articulates minimum thresholds beyond which nature’s rights would be violated (“activities that might lead to the extinction of species, the destruction of ecosystems and the permanent alteration of natural cycles”). Accordingly, any action that might lead to the extinction of a species, the destruction of an ecosystem (making it unable to regenerate itself), the permanent alteration of natural cycles, or the alteration of genetic assets (e.g., through the introduction of organic or inorganic material) would be considered a violation. Article 73 of the Constitution calls on the State to prevent an action when there is reason to believe the action may incur one of the above violations.

These provisions have been considered by the courts in Ecuador in a number of relevant instances. For example, several judicial decisions and administrative actions by the Ministry of Environment establish the standard that killing individual members of endangered or protected species constitutes a rights of nature violation. For example, in 2015, the 9th Tribunal Criminal Court in Guayaquil found violations of the rights of sharks through poaching, stating that:

¹⁷ Republic of Ecuador, “National Plan for Good Living 2009-2013” (2010); at: <http://www.planificacion.gob.ec/wp-content/uploads/downloads/2016/03/Plan-Nacional-Buen-Vivir-2009-2013-Ingles.pdf>.

¹⁸ See Craig M. Kauffman and Linda Sheehan, “The Rights of Nature: Guiding Our Responsibilities Through Standards,” in Stephen J. Turner et al., *Environmental Rights: The Development of Rights* (Cambridge Press, forthcoming 2019). See also Craig M. Kauffman and Pamela L. Martin, “Constructing Rights of Nature Norms in the US, Ecuador, and New Zealand,” *Global Environmental Politics* 18:4, 43-62 (Massachusetts Institute of Technology Nov. 2018); at: https://www.mitpressjournals.org/doi/pdf/10.1162/glep_a_00481; Craig M. Kauffman and Pamela L. Martin, “Can Rights of Nature Make Development More Sustainable? Why Some Ecuadorian Lawsuits Succeed and Others Fail,” 92 *World Development* 130, 137 (2017).

The Constitution of the Republic of Ecuador in its articles 71, 72, 73, 83 numeral 6, 395 numeral 4, 396, 397 final part and 405; establish several precepts, norms and principles that relate to the rights of nature or Pachamama; with the duty of the State to establish mechanisms to achieve the restoration of damage to nature¹⁹

A 2012 judicial ruling in the municipality of Santa Cruz, Galapagos Islands, found that obstructing the migration and breeding patterns of species violates the rights of nature.²⁰ This lawsuit involved construction that crossed a migratory path for marine iguanas and other species. Invoking rights of nature at Articles 71-73, and citing the Vilcabamba rights of nature case²¹ as precedent, the judge ordered construction suspended until the municipality could guarantee that construction would protect species habitat, particularly during migration season. The Santa Cruz lawsuit is one of several where judges have invoked rights of nature in their rulings even when it is not invoked by either claimants or defendants, suggesting a heightened standard of judicial oversight regarding rights of nature.

The principle that courts have an obligation to protect rights of nature was upheld by Ecuador's Constitutional Court in 2009.²² After citing numerous violations of nature's rights in this case, which involved biodigesters, the court stated:

It is the obligation of this Court, as guardian of the fulfillment of Constitutional mandates, to materialize the will of constituents expressed in our Fundamental Charter, which grants rights to Nature as part of a legal philosophy of rights, biocentric and non-anthropocentric, so that when there is uncertainty about the scope of the principle and legal provisions in environmental matters, *these should be applied in the sense most favorable to the protection of Nature.*²³

In 2015, Ecuador's Constitutional Court further ruled that because rights of nature are transversal, they affect all other rights, including property rights. The Court

¹⁹ Judgment No. 09171-2015-0004, Ninth Court of Criminal Guarantees, Guayas Province, Republic of Ecuador 55-59, 54 (23 April 2015). Similarly, in 2014, the Ministry of Environment won two lawsuits against individuals who killed a condor and a jaguar, both endangered species. Judgment No. 2003-2014 - C.T., National Court of Justice, Specialized Chamber of Criminal, Military Criminal, Criminal Police and Transit Cases, Republic of Ecuador (7 September 2014). The judge in the Condor case agreed with the Ministry's argument that Constitution Article 73 requires the State "to apply preventive and restrictive measures" on activities that might lead to rights of nature violations, including the extinction of species. Legal claim filed by Ecuador's Ministry of Environment with the District Attorney's office of Tena, Ecuador, Personal Action No. 0323046 3 (19 November 2012).

²⁰ Judgment No. 269 – 2012, Civil and Mercantile Court, Galápagos Province, Republic of Ecuador (28 June 2012).

²¹ Wheeler y Huddle en contra de Director de la Procuraduría General del Estado en Loja (30 March 2011), Juicio No. 11121-2011-10, Casillero No. 826, Corte Provincial de Justicia de Loja.

²² Judgment No. 0567-08-RA, Resolution 567 of the Constitutional Court of Ecuador, Republic of Ecuador (8 December 2009).

²³ *Id.* (emphasis added).

acknowledged that this reflects “a biocentric vision that prioritizes nature in contrast to the classic anthropocentric conception in which the human being is the center and measure of all things, and where nature was considered a mere provider of resources.”²⁴ The Court ruled that by not guaranteeing the rights of nature, the lower courts violated the constitutional right of due process. The Constitutional Court overturned the lower court sentences and ordered the case to be retried in the Provincial Court, but this time considering rights of nature. In doing so, it indicated a procedural standard that courts must consider rights of nature provisions.

Finally, with regard to processes for implementation of rights of nature provisions, Ecuador's 2015 General Organic Code of Processes charges the Defensoría del Pueblo (the national's Ombudsman's office) with further representing nature's interests and defending its rights. Articles 38-39 of the 2015 General Organic Code of Processes state that:

Nature may be represented by any natural or legal person, collectivity, or the national Ombudsman [Defensoría del Pueblo], which can also act on its own initiative. Nature cannot be sued in court or reprimanded. The Ombudsman [Defensoría del Pueblo] shall respond in accordance with the law and with this Code. Actions for environmental damage and damage caused to people or to their assets as a result of this will be exercised separately and independently Remedial and restorative measures for environmental damage, as well as its implementation, will be submitted to the approval of the national environmental authority [Ministry of Environment]. In cases where there are no such measures, a judge will order them.²⁵

The Defensoría del Pueblo can offer valuable assistance in the effective implementation of nature's rights, consistent with the Constitution.

REQUEST

For the reasons described above, this case is of international importance in that it represents significant application of Ecuador's constitutional provisions on the rights of nature. Ecuador's actions will be examined closely by the United Nations and governments worldwide, from the national down to the community level, for adherence to Ecuador's critical and groundbreaking recognition of the rights of nature. Given Ecuador's leadership role to date in serving as model for other rights of nature laws, a decision that moves Ecuador backwards on rights of nature will also move the world backwards.

²⁴ Judgment No. 166-15-SEP-CC, Case No. 0507-12-EP, Constitutional Court of Ecuador, Republic of Ecuador 10 (20 May 2015).

²⁵ Código Orgánico General de Procesos, No. 506, National Assembly, Republic of Ecuador (22 May 2015); at:

<http://www.funcionjudicial.gob.ec/pdf/CODIGO%20ORGANICO%20GENERAL%20DE%20PROCESOS.pdf> (English translation by Craig M. Kauffman, University of Oregon, USA).

LDF respectfully submits to the Honorable Justices of the Imbabura Provincial Court of Justice this Amicus Curiae letter in Constitutional Protection Action No. 10332-2018-00640, with regard to the Los Cedros Protective Forest, and requests that the court take into account the information and inputs presented herein, in favor of the effective and full recognition of the rights of nature and the biodiversity of the Los Pedros Protected Forest, the various species therein that are threatened or may be in danger of extinction, and those species and ecosystems therein that otherwise may be impacted by the mining concessions in violation of their constitutional rights. We further respectfully request that the administrative acts granting mining concessions and environmental permits associated with this Action No. 10332-2018-00640 be rejected or declared without effect, and that any mining activity associated with the concessions be ceased, consistent with the rights of nature enshrined in the Constitution.

Respectfully submitted this 14th day of January, 2019,

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