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By Viviana Morales Naranjo*

ABSTRACT

In 2008, Ecuador became the first country in the world to recognize the rights of nature (RoN) in the Constitution. Seventeen years later, it is necessary to analyze the work carried out by nature defenders and Ecuadorian Constitutional Court to develop jurisprudential lines about the foundations, content, and limits of RoN. This research has two objectives. On the one hand, we will identify the historical periods in which nature defenders filed the most lawsuits demanding protection and reparation of Nature at the Constitutional Court and the responses they have received. On the other hand, this research will explain the periods in which the Constitutional Court issued the most jurisprudential lines to explain the foundations, content, and limits of RoN and the degree of judicial independence that has existed in each composition of judges of the Constitutional Court from 2008 to 2025. This analysis will allow us to understand whether Ecuador has a Constitutionalism of Nature, that is, a Constitution and constitutional jurisprudential development that materializes Nature as a subject with rights and not a commodity.

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INTRODUCTION

To contextualise the recognition and historical legal development of the rights of nature (RoN) in Ecuador, we must move back to the 1980s, a period in which a series of collectives and social movements emerged: indigenous, peasants, ecologists, and animal rights activists. Each social group has different political-legal discourses and repertoires of mobilisation, but they all have one point in common: the vindication of nature as a subject with the right to protection and reparation.[1] During the drafting of the Constitution in 2007- Ecuador's supreme law that has been in force since 2008 - a series of strategies of political opportunity[2] made it possible to recognise nature as a subject of rights.[3] As a result of the discussions in Montecristi city, Article 71 of the Constitution was approved under an ecocentric and biocentric approach.[4]

According to Article 71 of the Constitution, the legal representation of nature can be in charge of any person, community, people or nationality. The Constitution recognises 'popular action,' that means that anyone can propose a constitutional action to represent a third party - human beings, legal persons, and nature - if an action or omission violated constitutional rights.[5] As we will see throughout this research, most of the constitutional lawsuits filed for violation of the rights of nature have been filed by civil society, specifically, by human rights and nature defenders.

Although RoN were recognised in the 2008 Constitution, it took 3 years for a constitutional judge to declare the violation of RoN for the first time in Ecuador. The first judicial decision that recognised the violation of RoN was issued in 2011 through a judgment that resolved a protection action for the violation of the rights of the Vilcabamba River (located in Loja province). Procedurally speaking, claims for violation of RoN are analysed and resolved, in the first place, by the constitutional judges of first instance. These judges issue a ruling that resolves the demand for protection action.[6] These first-level decisions can be reviewed by provincial courts (second-level judges). Precisely, in the case of the Vilcabamba River, a second-level court in Loja analysed and declared the violation of RoN due to the impact on the river caused by the polluting actions of the Loja provincial government and ordered a series of reparation measures.[7] However, the judicial decision of the Vilcabamba River did not develop any aspect about the content, foundation and scope of the rights of nature.

1 See generally Viviana Morales, The Instituting Practices of the Great Movement in Defense of Nature. The Emancipatory Source of Law (Doctoral thesis, Universidad Andina Simón Bolívar 2024) < https://repositorio.uasb.edu.ec/handle/10644/9909>.

2 Sidney Tarrow, *Power in Motion. Social Movements, Collective and Political Action* (Alianza Editorial 1994) 21.

3 Morales (n 1) 220.

4 Constitution of the Republic of Ecuador, 2008, Art 71. Ecocentrism implies the demand for the protection of ecosystems to guarantee the full respect of their existence and the maintenance and regeneration of their life cycles, structure, functions and evolutionary processes. Biocentrism focuses on highlighting the intrinsic value of each life form.

5 Ecuador, Constitutional Court, Judgment No. 170-17-SEP-CC, 7 June 2017.

6 Ecuador, Organic Law on Jurisdictional Guarantees and Constitutional Control (LOGJCC), Art 40.

7 Ecuador, Provincial Court of Justice of Loja, Protection Action No. 010-2011, 30 March 2011.

The judicial body that has explained, as of 2015, the meaning and content of RoN is the Constitutional Court. This Court is the highest body for control, constitutional interpretation and administration of constitutional justice in Ecuador. All its judgments are mandatory. The Court is composed of nine members. Constitutional decisions are made with the favourable vote of at least five of the nine votes of the constitutional judges.[8] As magistrate Teresa Nuques points out:

> The Constitutional Court is the highest interpreter of the Constitution and a closing body of the internal justice of the State, which was conferred to be the highest and last instance of constitutional justice. Understanding the attributions and essence of the court, the nature of its decisions is inferred, in such a way that, being the highest interpreter and the highest organ of constitutional justice, its decisions must necessarily be binding and definitive, having the last word in the interpretation of the Constitution, in the progressive development of rights and in the constitutional analysis of the actions of the powers of the State. among others.[9]

In this research, we will analyze all cases of violations of the RoN that have been resolved by the Constitutional Court from 2008 (the date on which RoN were constitutionalized) to February 2025 (the closing date of this research). This research has two objectives. On the one hand, we will identify the historical periods in which nature defenders have filed the most lawsuits demanding that the Constitutional Court protect and repair nature. On the other hand, this research will explain the periods in which the Constitutional Court has issued the most jurisprudential lines to explain the foundations, content, and limits of RoN. This analysis will allow us to understand whether Ecuador has a Constitutionalism of Nature, that is, a Constitution and constitutional jurisprudential development that materialize Nature is a subject with rights and not a commodity.

To understand this research, it must be taken into account that, since 2008, the Constitutional Court has gone through 4 conformations of constitutional judges. For methodological reasons, this research is divided into 3 parts: I. The transitional Constitutional Court and the first Ecuadorian Constitutional Court (2009-2018). II. The Constitutional Court that entered at the initiative of the Council for Citizen Participation and Transitory Social Control (2019-2022). III. The Constitutional Court made up of the partial renewal of three judges (2022-2025).

1.- THE CONSTITUTIONAL COURT OF THE PERIOD 2008-2018: THE RIGHTS OF NATURE *À LA CARTE*

The 2008 Constitution established the creation of a Constitutional Court with important powers such as the review of judicial decisions of lower judges when these decisions violate rights, reparation for rights violations, the

[8] LOGJCC (n 6) Art 190.

[9] Teresa Nuques, 'Citizens have the Possibility of Defending their Rights against Possible Excesses of Power' Defensa y Justicia magazine, Ombudsman's Office of Ecuador, No. 45 (2021) 21-23 <https://www.defensoria.gob.ec/wp-content/uploads/2025/01/DEFENSA-Y-JUSTICIA-edicion-especial-2024.pdf>.

issuance of judgments that constitute binding jurisprudence, among others.[10] Prior to the 2008 Constitution, the 1998 Constitution created the constitutional court with rather limited powers. On 22 October 2008, the judges of the Constitutional Court interpreted the 2008 Constitution and declared themselves as provisional judges of the Constitutional Court while the new judges were appointed through a merit-based competition. It was a closed contest because the 27 candidates had to come from nominations made by the legislative function, the executive function and the function of Transparency and Social Control.[11] This Constitutional Court, known as the 'Transitional Court', was in office from 2008 to 6 November 2012. On this date, the 9 judges who were the best evaluated in the merit and opposition competition were sworn in. Three of the nine judges who were part of the Transitional Court were later appointed judges of the Constitutional Court for the period 2012-2015.

According to Franklin Hermosa, the commission that appointed the judges of the Constitutional Court for the period 2012-2015 and the commission that made the appointment of the renewal of three constitutional judges in 2015 had links with the government of the president of Ecuador - Rafael Correa - and, the constitutional judges who worked between 2012 and 2019, for the most part, they acted in favour of Rafael Correas' government.[12] The alleged lack of independence between the executive branch and the Constitutional Court in the 2008-2018 period has been pointed out by certain media outlets such as: *El Telégrafo*[13], *El Comercio*[14], and *La Fuente investigative journalism*.[15] In addition, in case No. 5-13-IA/21 about an unconstitutionality action filed by the social collective YASunidos against President Rafael Correa's decision to exploit oil in the Yasuní National Park, the dissenting vote of former constitutional judge Ramiro Ávila stated:

> This case represents how detrimental it can be for a constitutional democracy not to have an independent and impartial Constitutional Court, and the truth of the aphorism 'justice that takes time, is not justice'. 37. The president, who in our constitutional system already has broad powers (reinforced presidentialism), when he co-opts all the organs of control, particularly the Constitutional Court, runs the risk of becoming an authoritarian government and of pulverising the rights and guarantees recognised in the Constitution. 38. The president decided, and the entire state apparatus aligned itself with his will: human rights ministers altering maps to evade a constitutional prohibition, an Assembly that does not discuss the rights of indigenous peoples, and a Constitutional Court that keeps in a drawer a lawsuit that could have guaranteed rights recognised in the Constitution.[16]

10 Constitution of the Republic of Ecuador, 2008, Art 436.

11 Ecuador, Constitutional Court, interpretative judgment No. 001-08-SI-CC, 22 October 2008.

12 Franklin Hermosa, Independence of the Constitutional Court of Ecuador, considering the form of appointment of its judges (Master's thesis, Universidad Andina Simón Bolívar, 2024).

13 'Pamela M Governed the Constitutional Court' *El Telégrafo* (Ecuador, 26 August 2019) <https://n9.cl/4ej6w6>.

14 'Chats Reveal Pamela Martínez's Influence on the Constitutional Court' *Diario El Comercio* (11 August 2019) <https://n9.cl/qmqx7>.

15 Editorial Team, 'Green Rice: The Hand in Justice' *La Fuente Investigative Journalism* (28 July 2019) <https://n9.cl/fc23n>.

16 Ecuador, Constitutional Court, Judgment No. 5-13-IA/21, 30 June 2021.

During this political and judicial context that marked the period 2008-2018, different people, social groups and public institutions filed lawsuits to materialise popular constitutionalism. The theory of popular constitutionalism rejects judicial supremacy and the elitist view that judges are the best interpreters of the Constitution. On the contrary, popular constitutionalism promotes the participation of people in the construction and interpretation of constitutional law.[17] In this sense, Larry Kramer points out that the role of the people is not limited to occasional acts of constitutional creation, but to an active and continuous control over the interpretation and implementation of the Constitution.[18] Along the same lines, Ramiro Ávila develops the constitutionalism of oppressed people, which promotes that ordinary people, are subjects with rights, assets, energy and must participate individually or collectively in politics and in the State to animate and structure the entire discourse of constitutional law. Under the constitutionalism of the oppressed, the people and nature are the protagonists and the main interpreters of the law; it is they who define the meaning of the Constitution and the scope of rights.[19]

In the period 2008-2018, 10 lawsuits filed by citizens – specifically, by RoN defenders – were resolved, arguing the violation of RoN and related human rights such as the right to live in a healthy environment, the right to water, the right to health, among others. According to Liz Willetts, environmental defenders are often labelled as socially marginalised, sometimes criminalised. Most defenders have traditional roles in society and economies, and many of the defenders have jobs closely linked to the land, such as in small-scale agriculture or in ranger roles. Also, many defenders identify with indigenous communities and live in the global South.[20] For this research, we call Nature defenders people who, individually or through indigenous, peasant, environmental, or animal rights organisations, promote the defence of RoN and correlated human rights (right to water, health, food sovereignty, etc.).

The ten complaints submitted by nature defenders during the period 2008-2018 were rejected.[21] On the contrary, the two lawsuits filed by the government

17 Roberto Niembro, 'A Look at Popular Constitutionalism' (2013) 38 Isonomía 191.

18 Larry Kramer, *The People Themselves: Popular Constitutionalism and Judicial Review* (Oxford University Press 2004) 220.

19 Ramiro Ávila Santamaría, *The Utopia of the Oppressed: The Rights of Pachamama (Nature) and Sumak Kawsay (Good Living) in Critical Thinking, Law and Literature* (UASB 2019) 73.

20 Liz Willetts, 'Environmental Defenders: Public Health Champions' (2022) 6(12) The Lancet Planetary Health e938.

21 The 10 cases were: Constitutional Court of Ecuador, ruling No.: 030-17-SIN-CC, 8 November 2017 (Action of unconstitutionality against presidential decrees that allowed shrimp activities in mangroves); Decision No. 024-12-SIN-CC of June 21, 2012 (action of unconstitutionality against the Law that allows activities in mangroves); Decision No. 020-15-SIN-CC, of June 24, 2015 (action of unconstitutionality against the Law that allows activities in mangroves); Judgment No. 065-15-SEP-CC, of March 11, 2015 (extraordinary protection action to analyse whether the right to property of a shrimp farmer or the RoN should prevail); Judgment No. 001-10-SIN-CC, 18 March 2010 (Action of unconstitutionality against the mining law) Judgment No. 002-16-SAN-CC, of April 6, 2016 (action for non-compliance with the mining mandate approved by the Constituent Assembly in 2008); Judgment 012-18-SIS-CC, March 28, 2012 (Action for non-compliance alleging non-compliance with the judgment ordering the Government to decontaminate the Loja River); Judgment No. 0001-12-CP and 0008-15-CP, March 26, 2019 (popular consultation to prohibit mining activities in the moors and water sources of Kimsakocha-Cuenca); Judgment no. 172-14-SEP-CC, October 15, 2014 (extraordinary protection action for the destruction of the Soroche ravine); Judgment No. 083-16-SEP-CC, March 16, 2016 (extraordinary protection action against the judicial decisions that don't accept the pollution and destruction in farmers' crops and jungle as result of the oil company activities).

demanding RoN protection were accepted.[22] The Constitutional Court also accepted a lawsuit filed by a couple of farmers (who were polluting a river) and stated that a municipality violated RoN rights due to a breach of municipal obligations.[23] Finally, we have the media case known as *Chevron case* that dealt with the pollution caused by the oil activities of *Chevron Corporation* —formerly *Texaco oil company*—. In this litigation, the Constitutional Court accepted the violation of RoN, although the peasants and indigenous people who proposed the lawsuit did not argue the violation of RoN.[24] We proceed to explain the main jurisprudential contributions of the 4 cases in which the Constitutional Court accepted the violation of rights:

Case	**Claims**	**Relevant arguments of the Constitutional Court (ratio decidendi)**
1.- Judgment No. 166-15-SEP-CC May 20, 2015 Protection in the mangroves of *Cayapas Mataje*.	A shrimp businessman said he had the authorisations for his shrimp farm to operate in a mangrove swamp located in a protected area called *Cayapas Mataje*. The shrimp farmer was sanctioned by the Ministry of the Environment for having a shrimp farm within a protected area. The shrimp farmer filed a protection action. In the first and second instances, the judges made the property and labour rights of the shrimp farmer prevail over the RoN. The Ministry of Environment filed an Extraordinary Protection Action to demand that a precedent be created for the protection of mangroves from the perspective of the RoN and *buen vivir* principle.	- Nature is a living being and subject with rights, independent, with specific rights. The RoN should be analysed considering the preamble of the Constitution that promotes *sumak kawsay* in harmony with nature. - The right to restoration involves doing everything possible to return things to their original state, before contamination. - The judge should have requested evidence on the environmental impacts generated by shrimp farms on fragile ecosystems, such as mangroves, to verify if there is a violation of rights. - The court accepted the Extraordinary Action for Protection and ordered the judge of the second degree rule the case again.

[22] Ecuador, Constitutional Court, Judgment No. 166-15-SEP-CC, May 20, 2015; Judgment No. 218-15-SEP-CC, of 9 July 2015.

[23] Ecuador, Constitutional Court, Judgment No. 023-18-SIS-CC, 16 May 2018.

[24] Ecuador, Constitutional Court, Judgment No. 230-18-SEP-CC, 27 June 2018.

2.- Judgment 218-15-SEP-CC 9 July 2015 Illegal mining in Riobamba	The public institution that authorises mining activities (ARCOM) confiscated machinery that had been rented by a person for illegal mining. The owner of the machinery demanded that the machinery be returned to him because he rented the machinery – an excavator – to the illegal miner, but he did not know that the machinery would be used for illegal mining activities. In the first instance, the claim was rejected and in the second instance, the return of the excavator was ordered. ARCOM filed an extraordinary action for protection alleging violation of the Civil Procedure Law.	- The court recognised the biocentric perspective: nature as a living being and as a giver of life. - Production and consumption must not become predatory processes, but must respect the existence, maintenance and regeneration of nature's life cycles and evolutionary processes. - Respect for nature must prevail over any individual economic interest. - The environmental permit is a requirement that allows determining if there was a violation of constitutional rights recognised in favour of nature. - *Iura novit curia* principle can be invoked to initiate legal actions that allow reparation to nature. - The person who rents machinery that is later used in an illegal activity, commits an infraction. - As a reparation measure, the Ministry of the Environment must carry out an inspection to determine the possible environmental damage generated and its quantification in order to carry out the restoration work.
3.- Judgment No. 023-18-SIS-CC 16 May 2018 Polluting farm in the municipality of Mera.	Two owners of a farm with 600 pigs have been sanctioned because their activity is polluting Alpayacu River and they are operating without environmental authorisations. The owners file a protection action to annul the sanction of the Municipality that ordered the evacuation of the pigs. In the first instance, the claim is accepted and in the second instance it is denied. Months later, the owners filed a lawsuit for non-compliance requesting the Constitutional Court to accept the impossibility of complying with the judgment because the property was sold to new owners and they cannot be forced to comply with a judgment in which they did not appear as procedural parties.	- Carrying out a polluting activity without authorisation violates the RoN. - In any case that generates environmental damage, nature has the right to be restored in its entirety. - It is the duty of the government to establish measures aimed at protecting and restricting those activities that represent a high risk to ecosystems. - It is the government's obligation to control all activities from the first day of operation. - As reparation measures, the justice ordered a massive campaign to the farms that border Alpayacu River so that they know the environmental law and develop environmental remediation plans with the municipality.

4.- Judgment No. 230-18-SEP-CC 27 June 2018 Chevron Case	In 2004, a group of peasants and indigenous people affected by the pollution left by the U.S. oil company Chevron filed a lawsuit for environmental damages in court. In 2011, the lawsuit was admitted and the payment of $8,646,160,000 in reparation measures was ordered. The National Court of Justice upheld the decision. Chevron filed an extraordinary protection action arguing the violation of due process. The Constitutional Court ratified the obligation to repair the damage caused.	The court accepted the retroactive application of the Bill of Rights because the 2008 Constitution does not expressly prohibit the retroactive application of environmental laws. - Although the RoN were not analysed in the second-degree judgment, the constitutional justice seeks to verify that the judgment responds to constitutional principles. Therefore, the Constitutional Court can make an analysis of a right that was not discussed by the judge of first or second degree.

As we can see in the table above, the jurisprudence of the period 2008-2018 was generated from lawsuits that were not filed by nature defenders. We can speak of a jurisprudence *à la carte* because the Constitutional Court only declared the violations of RoN depending on who the petitioner was. The judgments declared the violation of rights and explained the meaning and scope of RoN only when the government, through the Ministry of the Environment, filed the lawsuits or when the judgments did not affect the State.

Regarding the content of RoN, the judgments of the period 2008-2018 replace the anthropocentric approach with the ecocentric and biocentric approach. Although in the period 2008-2018, the Constitutional Court did not recognise any specific element or ecosystem of nature as a subject of rights, it affirmed, in a general way, that nature is a living being. The court also clarified that economic activities that generate environmental impact – for example, a pig farm – must respect the existence, maintenance and regeneration of nature's life cycles and evolutionary processes. However, the Constitutional Court of the 2008-2018 period still maintains a rather limited approach to nature protection because it establishes that the legal basis to determine whether an economic activity respects or violates RoN is the environmental authorisation granted by the Ministry of the Environment. On the contrary, as we will see later, the Constitutional Court for the period 2019-2022 established that environmental authorisations do not guarantee that RoN is respected because it may happen that the Ministry of the Environment authorises an economic activity that violates rights, as happened in the case *Los Cedros Forest*, which will be analysed later.[25]

Another aspect developed by the Constitutional Court for the period 2008-2018 is that the Ecuadorian government has the obligation to control that all economic activities respect environmental laws from the first day of operation. To ensure compliance with the law, the Ecuadorian government must exercise its coercive power and apply administrative

[25] Ecuador, Constitutional Court, Judgment No. 1149-19-JP/21, 22 July 2019.

sanctions for non-compliance with environmental regulations. The latest contribution of the Constitutional Court for the period 2008-2018 is that according to the ruling in *Chevron case*, RoN can be applied retroactively for cases that occurred before the constitutional recognition of nature as a subject of rights. The Chevron company was sued for the pollution it caused when extracting oil from the Ecuadorian Amazon, from 1964 to 1990.[26] The Constitutional Court retroactively applied RoN recognised in 2008 Constitution for a judicial litigation that began in Ecuador in 2004.

2.- THE COURT OF THE 2019-2023 PERIOD: THE OPENING OF THE POLITICAL OPPORTUNITY FOR RON DEFENDERS

In the period 2008-2018, the Constitutional Court only protected RoN when the government filed the lawsuits or when the court decisions did not affect the government. On the contrary, in the 2019-2022 period, the new group of judges of the Constitutional Court accepted the violation of RoN in nine cases filed by natural persons and social groups in defence of nature and in one case filed by a municipality. These 9 judges were sworn into their positions on 5 February 2019 after winning a merit and competitive examination. This contest was held after the constitutional judges of the 2015-2018 period were dismissed from their functions by the Council of Citizen Participation and Transitory Social Control (CPCCS-T). The reasons why the CPCCS-T dismissed the 9 judges of the Constitutional Court from their functions were the following: partiality in the authority that appointed them; failure to comply with the principle of independence and reasonable time due to excessive delay in the procedures of citizens; non-compliance in the management and supervision of public funds for the exercise of its functions; failure to comply with the obligation to publish information; negative citizen perception that indicated a 27.1 percent of Ecuadorians have confidence in the management of the constitutional body.[27]

The Constitutional Court of the 2019-2022 period resolved 10 cases in favour of RoN, which shows that there was a structure of political opportunity that was taken advantage by nature defenders. The American sociologist Sidney Tarrow, based on the importance of the political context in which social movements operate, develops the approach of the political opportunity structure, that is, the dimensions of the political environment that offer incentives for people to participate in collective actions by affecting their expectations of success or failure.[28] The presence of a constitutional court with new judges was seen as an incentive not only for the filing of lawsuits but also for hundreds of *amici curiae* with scientific, anthropological, legal and economic arguments that made visible the importance of protecting RoN.[29] According to Ecuadorian activist Nathalia Greene, the Constitutional Court of the 2019-2022 period took seriously its duty to develop the content of the rights of nature. She notes:

[26] Ministry of Foreign Affairs and Human Mobility, 'The Chevron/Texaco Case in Ecuador: A Struggle for Environmental and Social Justice' (Ministry of Foreign Affairs and Human Mobility 2015) 1

[27] Ecuador, CPCCST, Resolution No. PLE-CPCCS-T-O-089-23-08-2018 of 23 August 2018.

[28] Sidney Tarrow, *Power in Motion: Social Movements, Collective Action, and Politics* (Alianza Editorial 1997) 155.

[29] Morales (n 3) 419.

It is worth highlighting the commitment to Nature of judges such as Ramiro Ávila Santamaría, Agustín Grijalva and Daniela Salazar, whom environmental civil society always thanks for their outstanding work in this area. However, it is worth noting that there is a genuine interest of the Court as a whole since cases with sentences that in favour of Nature have to pass with at least 5 votes, and this has happened with the cases mentioned, which marks a difference of this Court in relation to the previous ones, hoping that the trend and jurisprudential lines marked by this Court recomposed with new judges will be maintained and deepened. Fully respecting constitutional rights is the highest duty of the State. The Constitutional Court is definitely fulfilling this duty, as is civil society mobilised to defend Nature in the courts.[30]

The 10 cases presented by activists in defence of RoN and related rights such as the right to water, health, a healthy environment or the city were the following:

Case	Claims	Relevant arguments of the Constitutional Court
1.- Judgment No. 6-20-CP/20 18 September 2020 Popular consultation in Cuenca.	The Constitution provides that any matter of general interest may be put to a national or local vote. The municipality of Cuenca presented a request for a popular consultation so that the population of Cuenca can decide whether it agrees to prohibit large- and medium-scale metal mining in 5 rivers in Cuenca. The Court conducted a formal and material review of the proposal and issued a favourable decision.	- Following a previous decision, decision No. 9-19-CP/19, the Court clarified that there is no constitutional prohibition preventing the holding of popular consultations on issues related to mining activity. - When the Constitutional Court receives a proposal for a popular consultation, it must analyse each of the proposals for a popular consultation and carry out a formal and material control. - The effects of popular consultations are only for the future, not for past authorisations. The competencies of the central government and local governments, in this case, the Municipality of Cuenca, must be respected. - Coordination and complementarity between the central government and municipal governments is required.

[30] Legal Observatory of the Rights of Nature, CEDENMA, *Legal Vademecum on the Rights of Nature*, Quito, 2022, 9.

2.- Judgment No. 32-17-IN/21 9 June 2021 Unconsti-tutionality of mining regulations.	A group of people filed an action of unconstitutionality against the government law that authorises the water authority to allow the change of a watercourse. According to the plaintiffs, the rule issued by the Ministry of the Environment violates the precautionary principle, the RoN, the protection of ecological flows and the constitutional hierarchy.	- The government law was declared unconstitutional for violating the principle of legal reserve. The possibility of diverting or changing the natural course of water must be established in a legislative law, not in a law approved by the Ministry of the Environment. - If a law authorises the possibility of diverting or changing the natural course of water, it must consider the principles of precaution and prevention; the need for technical, scientific and independent information; the integral respect for nature and the regeneration of its life cycles, structure, functions and evolutionary processes; the prevention of serious or permanent environmental impacts; the existence of effective restoration mechanisms; and the elimination or mitigation of potential adverse environmental impacts.
3.- Judgment No. 22-18-IN/21 8 September 2021 Mangrove protection, monoculture and environmental consultation.	Several organisations in defence of nature filed an action of unconstitutionality against several articles of the Environmental Law and its regulations on the grounds that there are unconstitutional laws. This disagreement refers to issues of: 1) permitted activities in mangroves, 2) authorisation to plant monocultures, 3) the understanding of prior consultation and environmental consultation.	- Nature is not an abstract entity but a complex subject that must be understood from a systemic perspective, as an interrelated, interdependent and indivisible set of biotic and abiotic elements. - All the elements that make up nature, including the human species, are linked and have a function or role. -The jurisdictional recognition of a given ecosystem facilitates the identification and protection of the cycles, processes and elements of the ecosystem in question. - Mangrove nature rights are not absolute rights, as these ecosystems allow productive subsistence activities or activities that do not have negative consequences for the ecosystem. The Court clarified the differences between the right to prior consultation of indigenous peoples and the right to environmental consultation. - It is a public obligation to avoid monocultures on desertified or degraded soils. The authorisation of monocultures is only allowed if it is justified, in a reasonable way, avoiding it being a common practice.

4.- Judgment No. 1149-19-JP/21 November 10, 2021 Los Cedros Forest	The Municipality of Cotacachi filed a protection action against the National Mining Company and the Ministry of the Environment for violation of the RoN. These institutions authorised a mining project in Los Cedros forest, where endangered species of fauna and flora live. In the first instance, the protection action was rejected and in the second instance, the violation of the constitutional right to environmental consultation was recognised, but the violation of the RoN was not accepted. This case was selected by the Constitutional Court to issue binding jurisprudence.	The judgment develops several concepts: - Ecological justice and its relationship with the RoN. - The intrinsic valuation of nature. - The difference between the precautionary principle and the prevention principle. - The ecological principle of tolerance. - The biological importance of the Los Cedros Forest. - Buffer zones of protected areas and biodiversity corridors. - Water and ecosystem sustainability. Finally, the court declared the violation of the RoN in the Los Cedros Protected Forest and annulled the permits granted for the mining concessions.
5.- Judgment No. 1185-20-JP/21 15 December 2021 Aquepí River	Two peasant communities filed a protection action against the National Water Secretariat and the provincial government of Santo Domingo. The peasants do not agree with the authorisation granted for the construction of an irrigation project and allege that there was a hoarding and diversion of the natural course of the Aquepí River. In the first instance, the claim was denied and in the second instance, it was accepted. This case was selected by the Constitutional Court to issue binding jurisprudence.	- The court explained the meaning of an ecological flow and what are the rights that nature has when it comes to a case that deals with water conservation. - The content of the right to environmental consultation was developed as a right of the peasants who live near the Aquepí River. - Rights were granted to a specific ecosystem: the Aquepí River.

6.- Judgment No. 7-21-CP and cumulative 12 January 2022 Popular consultation in Quito.	32 peasants presented 2 requests for popular consultation to bring to the polls 4 questions that aim to prohibit artisanal, small, medium and large-scale mining in 6 rural parishes located in the northwest of Quito, in a biodiverse area called Chocó Andino. The petitioners request that the Cantonal Council of Quito include in the Land Use Plan the prohibition of mining exploitation in the territories and that the mining authority not grant mining concessions in the areas indicated.	- The introductory sentences of the popular consultation proposal allow the contextualisation of the problem consulted. - There must be a causal relationship between the recitals and the subject matter of the question. There should be no argumentative load that influences or induces a certain response to voters. -From decision 1-21-CP there must be congruence between the body of voters to which a popular consultation is addressed (those represented) and the level of government of the authority legally bound by the results of the consultation (mining authority). However, the proponents may propose to depart from coherence, giving sufficient reasons for the effect, and request that only a part of the electoral body corresponding to the level of government in question be convened; for example, if there are direct local effects. - In the event that the popular consultation wins, the mining prohibition measures will operate in the future and respect the competences of the central government and the cantonal governments.
7.- Judgment No. 22-17-IN 12 January 2022 Cultivation of GMOs	Several peasant and indigenous organisations filed several actions of unconstitutionality requesting that the form of several articles of the Seed Law be declared unconstitutional for the form of several articles of the Seed Law that allows the cultivation of GMOs for research purposes. What happens is that the Constitution does not allow the law to authorise the cultivation of transgenic seeds for research purposes. They also point out that experimentation with GMOs violates the RoN, because it promotes a model that affects nature and its capacity for regeneration. The plaintiffs also point out that GMOs are resistant to herbicides that pollute and prevent the regeneration of ecosystems.	- The court accepted that there is a violation in the way the law was passed. The Court pointed out that, as part of the RoN, Article 73 of the Constitution contains the obligation of the State to apply precautionary and restrictive measures for activities that may cause destruction of nature, as well as the prohibition of entry or introduction of material that may definitively alter the genetic heritage. - The relationship between the right to a healthy environment and the RoN must be understood. The right to a healthy environment implies that the interaction between the beings that inhabit it does not cause or endanger the existence of one or the other or the elements they require for their life. - The right to live in a healthy environment is not only designed in favour of people, but also of nature.

8.- Judgment No. 2167-21-EP/22 19 January 2022 Monjas River.	The owners of a private piece of land – a house considered a cultural heritage site – bordering Monjas River, located in Quito, are filing a protection action against the serious level of pollution in the river due to the omissions of the municipality of Quito in the management of wastewater. The owners allege the violation of several rights, including the RoN. In the first and second instances, the application is rejected. Finally, the owners filed an extraordinary action for protection.	- The responsibility of the Municipality of Quito cannot be avoided by alleging the execution of certain actions to decontaminate the river. It was necessary to show tangible results on the part of the Municipality. - The specific jurisdictional recognition of a right holder, in this case, Monjas River, allows the characteristics of a river to be understood and specified; For example, the identification of its name, location, history, specific precision of its life cycle, structure, functions and evolutionary processes, the damage it may have suffered and the appropriate repair. - The content of the right to the city was developed in dialogue with the RoN. - The river, like other elements of nature, must be valued and in accordance with what it contributes to the life of biotic communities, including that of the human species, and to the abiotic elements, stationed along its banks. - Monjas River and the ecosystem to which it belongs is the holder of the rights and that its existence and the maintenance and regeneration of its vital cycles, structure, functions and evolutionary processes are fully respected.

9.- Judgment No. 253-20-JH/22 27 January 2022 Mono Estrellita.	A person had in his possession, for 18 years, a *chorongo* monkey named Estrellita. After receiving a complaint for illegal possession of wild animals, the Ministry of the Environment seized the animal and took it to a zoo. The alleged owner of the monkey filed a habeas corpus action to recover the monkey's freedom and obtain an authorisation of possession so that the primate can keep the plaintiff. However, before the court decision of the first instance was issued, the monkey died. It should be noted that the request for habeas corpus was denied by the judges of first and second instance on the grounds that animals are not subjects of rights. The Constitutional Court selected this case to issue binding jurisprudence.	- Animals are subjects of rights protected by the RoN. - To protect the rights of animals, jurisdictional guarantees can be presented depending on the object and the specific claim. - Nature must be protected in its universality and in each of its members or unique elements. - Animals are subjects of rights different from human persons that respond to their own particularities. - There are two principles that determine the degree of legal protection of an animal. On the one hand, the interspecies principle refers to the right to protection based on the characteristics, processes, life cycles, structures, functions and differentiating evolutionary processes of each species. On the other hand, the principle of ecological interpretation refers to the respect of the biological interactions that exist between species and between the populations and individuals of each species. - There is no exhaustive list of animal rights.
10.- Resolution No. 273-19-JP/22 27 January 2022 Mining in the territory of the Sinangoe indigenous community	Sinangoe is an indigenous community that filed a protection action against several entities that authorised the execution of mining activities around the Chingual and Cofán rivers. These rivers give rise to the Aguarico River and border the Cayambe-Coca National Park. This park is a biodiverse area inhabited by the Sinangoe indigenous community. The plaintiffs allege that mining activities are deforesting plants with spiritual and energetic properties. In the first and second instances, the protection action was accepted and the suspension of mining concessions in the area was ordered. The case was selected by the Court to issue binding jurisprudence.	- Illegal mining is a structural problem that affects indigenous communities and the exercise of the constitutional rights of the population and ecosystems throughout the national territory. - All mining activity must have measures and mechanisms that guarantee the protection of nature. The measures must be included in the plans or programs that are socialised to the communities. -The burden of proof that there is no damage to nature corresponds to what has been done (reversal of the burden of proof).

As we can see in the table above, in the period 2019-2022, the Constitutional Court established several parameters that develop RoN thanks to the activism of human rights and nature defenders. First, on the legal issue of protection, the Constitutional Court accepted that nature is an interrelated set of biotic and abiotic elements. At the same time, the Court affirmed that each element of nature is connected and plays a role in the ecosystem. In this order of ideas, the court accepted that animals are subjects of rights protected by RoN recognised in Article 71 of the Constitution. In addition, the court pointed out in judgment 253-20-JH/22 that nature must be protected in its universality and in each of its members or unique elements (for example, an animal). The court also granted legal recognition to specific ecosystems (Los Cedros Forest or Monjas River). An express recognition of certain ecosystems as subjects of rights is necessary to understand their context, their functioning, the rights violations that have been exercised against them and the adequate mechanisms of protection and redress that each ecosystem requires. The tribunal also affirmed that rivers have intrinsic value and value based on what they contribute to the lives of biotic communities, including human lives, and to abiotic elements.

Second, regarding the government's obligations, the Constitutional Court established that, before granting environmental authorisations in favour of economic activities – such as a mining company – the government must verify that the entrepreneur executes measures and mechanisms that guarantee the protection of nature. The court also limited the government's arbitrary actions, noting that any rule regulating RoN—for example, the change of the natural course of a river—must be recognised in a law passed by the legislator and not in a regulation or other law passed by the Ministry of the Environment. In addition, the legislator, when approving a standard, must consider the environmental principles and the regulatory and jurisprudential parameters that allow the protection of RoN.

Third, with respect to the right to participation, the Constitutional Court developed the parameters that the government must consider when applying environmental consultation and prior consultation.[31] In addition, the Constitutional Court accepted that popular consultations be held on issues related to mining activity so that citizens can decide the areas in which extractive activities are carried out. Another aspect that is clarified is that human beings can carry out activities in biodiverse territories, for example, productive subsistence activities or those that do not have negative consequences for an ecosystem, as is the case of mollusc collection and fishing in mangroves. The tribunal also clarified the importance of understanding RoN from the contributions of other disciplines such as biology or anthropology. Finally, the court established that the RoN must be developed in dialogue with other rights such as, for example, the right to live in a healthy environment or the right to the city.

The period 2019-2022 is marked by the social activism of nature defenders. In fact, nine of the ten lawsuits alleging the violation of RoN were filed by nature defenders materialising Article 71 of the Constitution that recognises that nature is a subject with rights and that it can be represented during a judicial process by any person or social group.

[31] Viviana Morales, 'Prior Consultation with Indigenous Peoples and Environmental Consultation: A Reading in the Light of the Pro-nature Principle and the Principle of Participation' (CEP 2022) 147-184. <https://www.academia.edu/91527601/LA_CONSULTA_PREVIA_A_LOS_PUEBLOS_IND%C3%8DGENAS_Y_LA_CONSULTA_AMBIENTAL_UNA_LECTURA_A_LA_LUZ_DEL_PRINCIPIO_PRO_NATURA_Y_EL_PRINCIPIO_DE_PARTICIPACI%C3%93N>.

3. THE CONSTITUTIONAL COURT OF THE 2022-2025 PERIOD: THE CLOSURE OF OPPORTUNITIES FOR NATURE DEFENDERS

In February 2022, a partial renewal of the Constitutional Court was carried out, which meant that 3 of the 9 judges of the Constitutional Court were replaced by 3 new judges after a draw provided for in the Organic Law on Jurisdictional Guarantees and Constitutional Control. The current constitutional court has been in office for 3 years and in February 2025 there will be a new partial renewal that will involve the departure of 3 judges and the arrival of 3 new judges [update]. During the period February 2022-February 2025, the Constitutional Court has only issued three decisions that address RoN.

Case	Claims	Relevant arguments of the Constitutional Court
Judgment No. 6-22-CP/23 **9 May 2023**	On 22 August 2013, Julio César Trujillo presented to the Constitutional Court the proposal for a popular consultation created by YASunidos Collective. The question was the following: Do you agree with the Ecuadorian government keeping ITT crude, known as block 43 indefinitely, underground? The only prohibition of oil exploitation in block 43 was proposed because it is the area where the ITT fields (Ishpingo, Tiputini and Tambococha) are located. The proposal for a popular consultation was a response from YASunidos collective that sought to stop the decision of President Rafael Correa, who on 15 August 2013 publicly announced the end of the Yasuní ITT initiative, which sought to keep 846 million barrels of Yasuní oil underground in exchange for the economic contribution of the international community.	After several judicial litigations that took place between 2013 and 2022, the Constitutional Court carried out the constitutional control of the popular consultation proposal. The high court concluded that the question was constitutional and ordered that the popular consultation be carried out by the electoral authority. In ruling No. 6-22-CP/23, the Constitutional Court clarified that, if support for the prohibition of oil exploitation triumphs, the government should: - Refrain from initiating new contractual relations to continue with the exploitation of oil in block 43. - In no more than one year, suspend the exploitation of oil in block 43. - Adopt immediate measures for the repair of nature. - Protect the territory of indigenous peoples in voluntary isolation.

Judgment 95-20-IN/24 **28 November 2024**	3 activists filed an action of unconstitutionality against the Organic Law for the Development of Aquaculture and Fisheries that delimited 8 nautical miles as an area established for artisanal fishing. The plaintiffs consider that the law would prevent the Ministry of Production, Foreign Trade, Investments and Fisheries (MPCEIP) from establishing limitations on fishing activity in the 8 miles to preserve hydrobiological resources.	The Court denied the action of unconstitutionality because the MPCEIP does have powers to protect marine-coastal ecosystems when in the 8 miles based on available scientific evidence. In this judgment, the high court made the following clarifications on the content of the rights of nature: - To effectively protect marine-coastal ecosystems, elements and systemic relationships, it is recognised that these ecosystems are holders of the rights recognised to nature. - Marine-coastal ecosystems have an intrinsic value and each of their elements plays an individual role that, in turn, contributes to their preservation. - Fishing activities must be regulated so that they are sustainable and respect the cycles, functions, structures and evolutionary processes of marine-coastal ecosystems, as well as their conservation and restoration, to ensure the rights of nature and the balance of food chains. - The right to develop economic activities can be limited or regulated, to prevent abuses from being committed, for example, against workers or nature. The right to develop economic activities does not allow excessive environmental impacts, under the pretext of the exercise of business.

Judgment 522-20-JP/25, 6 February 2025	A family and a company (the owners) own hundreds of hectares of land on the slopes of Pichincha Volcano (located in Quito). In 2023, the Municipality of Quito issued a law declaring the owners' land an 'ecological protection area' to promote the conservation of areas that provide ecosystem services to urban populated areas and require special management. Because the owners disagreed with this limitation on their property rights, they requested that the municipality expropriate their land and compensate them. However, the municipality informed them that there is no law requiring the expropriation of private properties declared as 'ecological protection areas', and therefore they must endure the limits imposed on their property rights. The owners subsequently filed a protection action alleging that the municipality is confiscating their property (because their land can no longer be freely used) and that their property rights are being violated. In the first instance, the constitutional judge denied the claim, and in the second instance, the judges declared a violation of the plaintiffs' right to property and ordered that municipality decision must be taken to proceed with the payment of the price corresponding to the expropriation of the land.	The Constitutional Court selected this case to issue opinions on the environmental function of the right to property. The court's main arguments are: - Ecuadorian government may establish limits and restrictions on private or public property for purposes such as the conservation of elements of the ecological system. This limitation on the right to property guarantees the existence and regeneration of nature's vital cycles and its ecological functions, and, on the other hand, the rights of present generations to meet their needs through environmental services and prevent disasters caused by soil morphology. - In the present case, the social and environmental function of the territorial space emerges from the right of Quito's inhabitants to live in a healthy and safe environment, and from the rights of nature manifested on the slopes of Pichincha volcano, which require the adoption of measures to reduce pressure on conservation areas.

The above table shows that social activism is still going on today, demanding that the Constitutional Court protect RoN. The case of the Yasuní popular consultation is an example of social activism that demands compliance with the decisions issued by the Constitutional Court. On 20 August 2023, the popular consultation on the Yasuní National Park was held, in which 58.95 percent of Ecuadorians voted in favour of not exploiting the crude oil from the Yasuní oil block No. 43. According to Article 106 of the Ecuadorian Constitution, the result of the popular consultation must be immediately and obligatorily complied by the State. On 31 August 2023,

the National Electoral Council formally proclaimed the results. Even though more than a year has passed since the results of the popular consultation were published, only one of the 247 wells that exist in the Yasuní ITT has been closed; that is to say, there is a breach of the citizen mandate that expressed its will through the vote of the popular consultation. In May 2024, the Constitutional Court denied the request of the oil company Petroecuador to extend the compliance with the popular consultation by 3 years. The Constitutional Court clarified that until August 2024, oil exploitation should be suspended, and measures should be initiated to repair nature and protect the peoples in voluntary isolation who live in Yasuní. Popular constitutionalism – and more specifically the constitutionalism of oppressed people – materialised in the petition made by YASunidos collective in September 2024 for the constitutional court to verify compliance with the popular consultation. At the time of the closure of this investigation, the Constitutional Court has not yet ruled on the compliance or non-compliance with the popular will of the Ecuadorians who spoke out in favour of nature and the indigenous peoples who inhabit Yasuní.

The current Constitutional Court (2022-2025) is the one that has issued the fewest rulings in favour of nature during its 3 years in office. Furthermore, in the judicial decisions in the Yasuní and Pichincha Slopes cases, the Constitutional Court did not develop the content, foundations, or limits of the rights of nature. On the contrary, these are cases that analyse human rights such as the right to participation (Yasuní case) and the right to property (Pichincha Slopes case), and based on this constitutional analysis, two biodiversity areas were better protected: the Yasuní National Park and the Pichincha Slopes.

The most worrying thing is that the current court has annulled a case that was selected by the Constitutional Court for the period 2019-2022 in order to develop jurisprudence on the rights of nature.[32] This case known as 'The San Rafael Waterfall' began with a protection action filed by several activists and social groups in defence of human rights and nature against the public oil company Petroecuador, the Ministry of the Environment and other public entities for the rupture of the oil pipelines of the Petroecuador company in the San Rafael Waterfall (Quijos village). According to the plaintiffs, the rupture of the pipes due to the movement of the earth caused the spill of fifteen thousand barrels of crude oil and base gasoline that contaminated the banks of the Coca and Napo rivers and caused irreparable damage to 109 ancestral communities. According to the plaintiffs, the defendants knew about the regressive erosion of the land and did not act diligently to prevent violations of human rights and nature. In the decision of 23 August 2022, constitutional judges Enrique Herrería and Carmen Corral archived this case arguing that there was no reason to resolve this case because the Constitutional Court of the 2019-2022 period had already generated a broad line of jurisprudence on the impact on the rights of nature and there was no seriousness or national significance because this case could be resolved through an extraordinary action for protection that accepts the violation of rights. The extraordinary action for protection of the San Rafael waterfall case was resolved in November 2024 and only annulled the judicial decision issued by the first and second level judges but did not order reparation measures.[33] So far, the case of 'La Cascada de San Rafael' has not

[32] LOGJCC (n 6) Art 25.

[33] Ecuador, Constitutional Court, Judgment 1489-21-EP/24, 8 November 2024.

been resolved by the judge of first instance and those affected by the contamination are still waiting for reparation.

Finally, the current Constitutional Court still has pending the issuance of judgments in 4 cases that were selected by the Constitutional Court for the period 2019-2022 in order to develop binding jurisprudence on the rights of nature.[34] The absence of a judicial pronouncement by the current court shows a drastic change between the importance of nature rights for the Constitutional Court of the 2019-2022 period and the Constitutional Court of the 2022-2025 period. In March 13, 2025, three new judges were sworn in and will serve for 9 years. They will have to join the team of judges who will have to resolve pending cases. Only the passage of time will allow us to conclude whether the ecological agenda was present – or absent – in the Constitutional Court for the period 2025-2028.

CONCLUSIONS

The recognition of RoN in Ecuador was given thanks to the permanent work of human rights and nature defenders who have been working historically so that constitutional law expressly recognises that nature is not an object but a subject with rights. Even though RoN were recognised in the 2008 Constitution, it was necessary to wait 3 years for a constitutional judge of first instance to recognise the violation of RoN and order that reparation be made.

Ecuadorian Constitution give a range of important powers to the Constitutional Court, including being the highest interpreter of the Constitution, issuing binding jurisprudence, declaring the violation of rights and compensating and restoring the violation of human rights and nature. The great legal power that the Constitutional Court has in Ecuador made it the correct space for nature defenders to demand the protection and reparation of rights that are not being guaranteed by the government, the national assembly and the judges of first and second instance.

Once the judgments issued by the Constitutional Court in the period October 2008-January 2025 have been reviewed, it is concluded that there are 3 periods where the Constitutional Court gave a different treatment to the rights of nature. In the first period, which covers the years 2009-2018, the decisions issued by the Transitional Court and the first Constitutional Court of Ecuador were reviewed. The positive aspect of this period is that certain parameters were developed to understand the meaning of RoN. However, this period was characterised by the fact that the RoN were only protected when the lawsuits were filed by the government or when the judgments did not affect the State economic budget. On the contrary, when the lawsuits were filed by nature defenders, the violation of RoN was not accepted. Therefore, it is concluded that there was a protection of RoN *à la carte* for the benefit of the presidential government of the period 2008-2018 and to the detriment of nature defenders.

In the second period of analysis, we have the judgments issued by the Constitutional Court for the period 2019-2022. This was the period in which the most decisions were issued declaring and redressing violations of RoN. In addition, the meaning and content of RoN was widely established in this period. This is because at least 2 of the 9 constitutional judges (Ramiro Ávila and Agustín Grijalva)

[34] Among the cases pending resolution: Dulcepamba river case (case 502-19-JP selected on 6 May 2019); Piatúa river case (case 1754-19-JP selected on 9 July 2020); Nangaritza River basin case (case 1632-19-JP selected on 5 March 2020).

had carried out research on RoN prior to occupying the position of judges at the Constitutional Court. This prior knowledge in the field allowed to enrich the legal discussion in the Constitutional Court about the importance of RoN.

Finally, the Constitutional Court for the 2022-2025 period made up of the partial renewal of three judges issued 3 decisions on RoN. The Constitutional Court of this last period is the one that has issued the fewest decisions in favour of RoN, including 2 judges of this period refused to develop binding jurisprudence on a case of human rights and RoN violations that had been selected by the Constitutional Court for the period 2019-2022. In addition, this court has not yet issued a ruling on 4 cases selected by the Constitutional Court for the period 2019-2022 that were intended to develop the content of RoN and resolve cases of gravity, novelty and national relevance.

During the 3 periods studied in this research, a series of lawsuits have been filed by nature defenders to demand that the judiciary power protect nature as a subject of rights. In each period studied, nature defenders have seen the Constitutional Court as a space to vindicate the violation of RoN by the actions or omissions of private or public law persons such as the Ministry of the Environment, the Municipalities, the National Assembly or by judges of first and second instance. The Constitutional Court has become the ideal place to demand the materialisation of the constitutionalism of oppressed people, and more specifically, the constitutionalism of Nature. Nature defenders have remained active both in the periods of political-legal opening and in the periods of closing of political-legal opportunity, obtaining as a result several favourable advances and some setbacks. This tension between social activism and the constitutional court provokes the following question: Can constitutional law, through the interpretation of the Constitutional Court, fulfil the pretensions and expectations of seeing Nature free of oppression? The answer fluctuates depending on the conformations of constitutional judges at the constitutional court as we could see in this research.

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