

CIVIL CHAMBER - HEADQUARTERS

EXPEDIENTE 00010-2022-0-1901-JM-CI-01

SUBJECT MATTER : AMPARO ACTION :

AMPARO ACTION

RELATOR DEFENDANT: TORRES CAIÑA

**CARLOS RESPONDENT DEFENDANT : MINISTRY OF
ENERGY AND MINES,**

**MINISTRY OF AGRICULTURE AND IRRIGATION NOW
MINISTRY OF AGRARIAN DEVELOPMENT AND IRRIGATION,
PERUVIAN AMAZON RESEARCH INSTITUTE IIAP,
PETROLEOS DEL PERU PETROPERU SA, MINISTRY OF
THE ENVIRONMENT,
REGIONAL GOVERNMENT OF**

**LORETO PLAINTIFF FLORES SIMON, EMILSEN
TAMANI TAPAYURI, ROSA ISABEL
CANAQUIRI MURAYARI, MARI LUZ
FASABI PIZANGO, CELIA
FASABI SAAVEDRA, GILDA**

JUDGMENT OF SECOND INSTANCE

RESOLUTION NUMBER THIRTY-ONE

Iquitos, August 29th, 2024

CONSIDERED: - With oral report, as evidenced by the record of the report in the file.
Having heard the case and having taken the vote, the following resolution is issued.

I. MATTER APPEALED:

RESOLUTION CATORCE - JUDGMENT, dated March 8, 2024, at folios 3691 to 3723, in the points it resolves:

- 1. To declare the exceptions of lack of standing to act and lack of jurisdiction by reason of the subject matter, filed by the Ministry of Agrarian Development and Irrigation, to be UNFOUNDED.***
- 2. To declare the Amparo Action filed by Mrs. MARILUZ CANAQUIRI MURAYARI, member of the KUKAMA indigenous people of the Native Community of Shapajilla and president of the Federation Huaynakana Kamatahuara Kana (...), in part, as FOUNDED IN PART, consequently:***
 - To declare the Marañón River and its tributaries as a right holder; it has the right to flow to guarantee a healthy ecosystem, the right to provide a healthy ecosystem; the right to flow freely from all contamination; the right to feed and be fed by its tributaries; the right to biodiversity; the right to be restored; the right to the regeneration of its natural cycles;***

the right to the conservation of its ecological structure and functions; the right to protection, preservation and recovery; the right to be represented and that the State must legally protect, because they are an important part of the fundamental rights of every human being and of our future generations as they are life, health and represent one of our basic needs for our subsistence, so they have to be represented.

- **ORDER** that the **Regional Government of Loreto - GOREL**, take the necessary steps before the **National Water Authority**, in order to request the guidelines for the creation of the Watershed Councils of Water Resources for the Marañón River and its tributaries, being its competence to promote the commitment and participation of the institutions including the participation of the indigenous organizations of Loreto, with decision-making capacity.
- **ORDER the recognition and appointment of the State** (Ministry of Environment, Ministry of Agrarian Development and Irrigation and the National Water Authority), the Regional Government of Loreto and the indigenous organizations as guardians, defenders and representatives of the Marañón River and its tributaries.
- **ORDER** **Petróleos del Perú - Petroperú SA**, within a period of six months, to prepare and submit the draft update of its Environmental Management Instrument (IGA) to the Ministry of Energy and Mines, in order to include in said instrument the comprehensive assessment of the impacts identified in the hydrocarbon transportation activity through the Norperuvian Pipeline, It must also assume environmental commitments to guarantee the adequate management and mitigation of said impacts, as well as carry out prior consultations with indigenous institutions and organizations in order to coordinate the approval of the IGA.
- **Declare it UNFOUNDED as to the maintenance of the Norperuvian oil pipeline by Petro Perú SA.** With costs of the process (...).

II. GROUND FOR APPEAL:

- **The defendant, the Ministry of the Environment, filed an appeal, which is set forth in folios 3737 to 3749, which is essentially based on the following grounds:**
- 1. An apparent motivation is evident in all parts of the sentence, which contravenes the provisions of Article 50(6) of the Code of Civil Procedure, applied supplementarily to these proceedings, which establishes that it is the duty of the magistrates to substantiate their sentences.

2. The analysis of the sentence generates a contradiction with the constitutional norm itself, which has been recognized as anthropocentric and, consequently, with the legal norms of general scope and the jurisprudential development that has been granted to the legal concept of the subject of rights.
 3. The constitutional legal framework does not contemplate declaring the environment as a subject of rights, what it establishes is its protection with the purpose of maintaining environmental assets in adequate conditions for their enjoyment.
- **The Public Prosecutor of the Ministry of Agrarian Development and Irrigation, on behalf of the National Water Authority - ANA, filed appeal, which is filed in folios 3751 to 3775, whose essential arguments are the following:**
1. The National Water Authority lacks passive ownership of the material right in question, since, by law, the native and indigenous communities of the basin must organize and channel their request to the Regional Government of their jurisdiction. Likewise, the judge of first instance has not considered that the constitutional route is not the appropriate one to discuss the right claimed.
 2. The National Water Authority could not have violated the rights alleged by the plaintiff, since, by law, the native and indigenous communities of the basin must organize and channel their request to the Regional Government.
- **The plaintiff, Mariluz Canaquiri Murayari, on behalf of the Kukama Huaynakana Federation, filed an appeal, which is essentially based on the following arguments:**
1. The challenged judgment assumes that Petroperu has indeed achieved the integral maintenance of the Nor Peruvian Oil Pipeline, taking into account the last two cases of oil spills that will not be corrected in one year or in ten years.
 2. In the present case, they are faced with a harmful act caused by the defendant through an action or omission of its own, the cessation of which must be complied with without delay or progressiveness.
- **The defendant, Petroperú S.A., filed an appeal, which is essentially based on the following arguments:**
1. The judgment has based much of its reasoning on jurisprudence and/or pronouncements that question the "anthropocentric approach", openly included in the Political Constitution of Peru, in order to consider that such approach could be reconsidered in light of the intrinsic value that should be recognized in favor of nature.
 2. There is no violation or certain and imminent threat; therefore, the judgment should not have stipulated that an environmental management instrument be ready in 6 months,

ignoring the fact that this instrument must have the participation and approval of a number of entities other than Petroperú.

3. There is no national or international norm that establishes that nature is a subject of rights, such as those that have been declared in the first instance sentence.

III. GROUNDS OF THE CIVIL COURT OF LORETO:

BACKGROUND OF THE CASE:

About the lawsuit filed:

FIRST.- By means of a writ at folios 232 to 297, **Mariluz Canaquiri Murayari**, on behalf of **the Huaynakana Kamatahuara Kana Federation**, filed a constitutional amparo action against **Petroperu, the Ministry of the Environment, the Peruvian Amazon Research Institute (IIAP), the National Water Authority (ANA), the Ministry of Energy and Mines and the Regional Government of Loreto**. This lawsuit is based on the following claims:

- i) Recognition of the Marañón River and its tributaries as subjects of rights, with intrinsic value, which must be protected, especially in view of the spiritual value of this river for the indigenous peoples. The following rights of the river should be recognized: (a) Right to exist; (b) Right to flow, which is understood to be satisfied by guaranteeing an ecological flow for a healthy ecosystem; (c) Right to exercise its essential functions with the ecosystem; (d) Right to be free of all contamination; (e) Right to feed and be fed by its tributaries; (f) Right to native biodiversity; (g) Right to restoration; (h) Right to regeneration of its natural cycles; (i) Right to conservation of its structure and functions; (j) Right to protection, preservation and recovery; and (k) Right to representation.
- ii) Require ANA to establish the Marañón River Interregional Basin Council with the participation of Loreto's indigenous organizations, with decision-making capacity. Also, the creation of sub-basin or micro-basin committees for each tributary of the Marañón River.
- iii) Recognition and appointment of the State and indigenous organizations as guardians, defenders and representatives of the Marañón River and its tributaries. A collegiate body representing the indigenous organizations of Loreto should be appointed as "Guardians of the Marañón River" to act on behalf of the river and its interests.
- iv) Maintenance of the Nor Peruvian Oil Pipeline by Petroperu. Order Petroperu, within the framework of what is established in its Adequacy and Maintenance Program, to carry out the following

Environmental Management (PAMA): a) The effective, immediate and integral maintenance of those sections of the pipeline that have suffered severe and significant deterioration; b) The replacement of the pipeline, of those sections that have suffered severe or significant damage, in the shortest possible time.

- v) Update the environmental management instrument of the North Peruvian Oil Pipeline. Order Petroperu to prepare and submit a project to update its Environmental Management Instrument (IGA) to the Ministry of Energy and Mines, in order to include in said instrument a comprehensive assessment of the impacts identified in the hydrocarbon transportation activity, as well as the applicable environmental commitments to guarantee the adequate management and mitigation of said impacts. The approval of the IGA must be consulted with the native communities through which the Nor Peruvian Oil Pipeline crosses.

SECOND.- As grounds for the claims filed, the plaintiff basically states the following: **i)** During the last few years there have been 37 oil spills in the Nor Peruvian Pipeline, due to the responsibility of Petroperu, as determined by the environmental authorities. This damage has caused harm to the surrounding flora and fauna and has been caused by the lack of maintenance of the pipelines that transport hydrocarbons; **ii)** The Kukama people have a special relationship with the rivers. Their life is around these, not only for subsistence purposes, but for religious and cultural reasons. As they themselves point out: "The Kukama Kukamirias, also called men of the water, because they have a direct relationship with it, for hundreds of years they live on the banks of the rivers"; **iii)** Speaking of the Marañón River as a subject of rights implies recognizing the rights of nature, that nature is a subject of rights, capable of exercising its own rights and appearing before the courts and being heard, acting through humans; **iv)** Our constitution clearly assumes an anthropocentric approach; however, the jurisprudence of the TC has a biocentric approach when it sustains and insists on need to preserve the environment and develops the principle of sustainability; **vi)** The rights of nature constitute an emerging right that has been recognized in several countries, through different procedures and has even been recognized by two municipalities in our country. Sooner or later it will be approved, either through jurisprudence or through legislative reform or constitutional reform.

Respondents' replies:

THIRD: Since in the present case there are several entities that have been summoned, we will now break down the acquittals of the lawsuit, stating the most relevant grounds of defense, indicated by each of the defendants:

1. The **Peruvian Amazon Research Institute (Instituto de Investigaciones la Amazonía Peruana, IIAP)**, raises exceptions and acquits the claim in writing on pages 441 to 454, based on the following: **i)** The defendant is a scientific and technological research institution, conceived to achieve the sustainable development of the Amazonian population, with emphasis on rural areas; **ii)** From the analysis of the claims of the arguments in the complaint and annexes, it can be objectively verified that the plaintiff does not identify or prove current violations or threats of violation of the plaintiff's fundamental rights by my client. No real or effective harm has been accredited.
2. The **Regional Government of Loreto**, by means of written pleadings from folios 460 to 469, filed exceptions and answered the complaint, alleging the following: **(i)** The plaintiff did not exhaust administrative remedies, prior to the filing of her lawsuit, as required by the Constitutional Procedural Code; **(ii)** The purpose of the amparo proceeding is the protection of constitutional rights, restoring things to the state of affairs prior to the violation or threatened violation of the constitutional right; **iii)** The plaintiff does not substantiate or prove the risk of irreparability of the rights alleged to be violated in the event of going to the ordinary proceeding, because although the plaintiff mentions his violated constitutional rights, the mere mention does not justify how, if his claim is processed in the contentious administrative proceeding, an adequate protection could be provided.
3. The **National Water Authority (ANA)**, through the Public Prosecutor of the Ministry of Agrarian Development and Irrigation, by means of briefs 491 to 520, raises exceptions and answers the claim, stating the following: **i)** The claim in question should have been processed before an ordinary judge through an administrative litigation process; **ii)** The Regional Government of Loreto should play an active role, leading the

iii) ANA, within the framework of its functions, has carried out various activities related to the response to complaints or declarations of emergency, due to oil spills in the Nor Peruvian Pipeline.

4. The **Ministry of the Environment**, by means of a brief from folios 537 to 550, answers the claim, stating the following: i) Nature is not a subject of rights. In order to guarantee an adequate environment, each entity, based on its competencies, which are exclusive and excluding, has legal norms, public policies and sectorial programs of application at the different levels of each government; ii) The plaintiff does not identify or accredit current violations or threats (certain and imminent) of transgression of fundamental rights; iii) The present amparo lawsuit is filed without evaluating the procedural requirements of the amparo process established in Article 2 of the Code of Constitutional Procedure, not observing that this should be filed when rights are threatened by action or omission.
5. The **Ministry of Energy and Mines**, by means of briefs from folios 604 to 616, raises exceptions and answers the claim, arguing the following: i) From the grounds of the claim, there is no argumentation that refers to an action of the MINEM that affects, directly or indirectly, the plaintiffs' rights; ii) The plaintiff does not identify or prove current violations or threats (certain and imminent) of violation of fundamental rights by the plaintiff. No real, effective, tangible and concrete damage incurred by the defendant has been accredited.
6. **Petróleos del Perú - Petroperú SA**, by means of briefs from folios 638 to 662, acquits the claim stating the following: i) In Peru, entities other than natural persons (human beings) and legal persons (groups of human beings or manifestations of their political activity) cannot be classified as subjects of law; ii) It is not only the plaintiffs who have a certain degree of relationship with the company, but also those who are not subject to the law.

dependence on the Marañón River, so that an anomalous declaration such as the one being requested would require, at the very least, a process of political reflection and a modification of Peruvian regulations to accept the proposal made here as a claim for protection; **iii)** The claim should be declared unfounded because Petroperu has been periodically carrying out maintenance activities that allow the environmentally safe operation of the pipeline; **iv)** Most of the incidents reported in the pipeline are the result of the actions of third parties who, deploying criminal actions, cause damage to the infrastructure.

PROCEDURAL ITER:

FOURTH. As relevant incidents of the present proceeding, we have that: **(i)** By resolution six, on folios 410, it was ordered to admit for processing the claim filed; **(ii)** By resolution seven, on folios 733, the exceptions and the responses to the claim were considered as formulated, setting a date and time for the holding of a single hearing, **(iii)** On November 9, 2023, the single hearing was held, which was closed by resolution twelve, as can be seen from the minutes on folios 3649 to 3652; **iv)** By means of resolution fourteen, from folios 3691 to 3723, the exceptions proposed by the defendants were resolved and the amparo petition filed was declared partially founded; **v)** By resolution fifteen, from folios 3825, the appeals filed by the plaintiffs were granted; **vi)** By resolution sixteen, from folios 3831, the superior court took cognizance of the present proceedings.

QUESTION TO BE SOLVED:

FIFTH.- The determination of the issue to be decided by this lower court must be delimited by virtue of the challenging claims formulated by the appellants, which - as already stated in the previous paragraphs - are aimed at revoking the decision issued by the lower court, in the points that declare exceptions of lack of standing of the defendant (ANA) and of lack of jurisdiction by reason of the subject matter unfounded. Likewise, in the points in which it declares the amparo suit filed to be well-founded, and, in view of the plaintiff's appeal,

the claim that declares the claim unfounded, regarding the maintenance of the Nor Peruvian Oil Pipeline by Petroperú SA.

On the exceptions of lack of legal standing to act and lack of jurisdiction by reason of the subject matter:

SIXTH: In view of the objections filed by the Public Prosecutor's Office of the Ministry of Agrarian Development and Irrigation, it is appropriate to resolve the points of the decision by which the preceding court has rejected the exceptions of lack of standing to act of the defendant and of lack of jurisdiction by reason of the subject matter.

SEVENTH. Regarding the **exception of lack of standing to act passively**, it is noted that this is based on the alleged lack of material ownership of the defendant (ANA), in relation to the responsibilities or obligations involved in the end of the petition that requires the formation of an "Interregional Basin Council of the Marañón River" and "Sub-basin or Micro-basin Committees for each tributary river", alluding that the formation of such bodies would correspond to the competent regional government, who should lead and promote their creation process.

EIGHTH. In this regard, it is appropriate to specify that, although it is true that regional governments (including local governments) have the power - within the framework of their territorial competences - to create and/or convene institutional spaces for dialogue, where the stakeholders related to water management in the basins discuss their problems in order to reach consensus, reaching agreements and committing themselves to the implementation of actions in their respective basins; this Collegiate considers it important to pay attention to the relevance of the participation of the defendant (ANA) in the discussion and decision making related to such matters, since, within the framework of its institutional obligations, it constitutes an essential technical support entity to contribute to efficient and informed decision making. In this context, the arguments of the plaintiff in this regard must be dismissed, and the decision declaring the objection of lack of standing to act passively unfounded must be confirmed.

NINTH.- Regarding **the objection of lack of jurisdiction by reason of the subject matter**, we have that this is oriented to question the way of the

constitutional protection, as the appropriate procedural channel for the processing and solution of the claims formulated by the plaintiff communities, alluding to the existence of equally satisfactory channels for their knowledge. In this regard, it is specified that, given the peculiarity of the terms in which the claim is made and that the type of claim invoked basically consists of the recognition of rights to natural spaces in order to optimize their protection against possible affronts; this Court considers that, in view of the social and constitutional connotation of such rights, it is fully legitimate to resort to a constitutional process such as the present one. Therefore, it is appropriate to confirm the decision in this regard.

On the declaration of the Marañón River as a subject of rights:

TENTH.- As has been expressed in the petition for protection in this case, it is aimed at obtaining the declaration of the Marañón River and its tributaries as the holder of rights, these being: i) The right to flow to guarantee a healthy ecosystem; ii) The right to provide a healthy ecosystem; iii) Right to flow freely from all contamination; iv) Right to feed and be fed by its tributaries; v) Right to biodiversity; vi) Right to be restored; vii) Right to the regeneration of its natural cycles; viii) Right to the conservation of its ecological structure and functions; ix) Right to protection, preservation and recovery; and x) Right to be represented and protected by the State.

ELEVENTH.- The demanded claim implies a recognition of legal status to a natural resource, being in the present case, the Marañón River the one to which this condition and the respective attributes that emanate from it are recognized. It is clear that this request is due to the growing pressures on ecosystems, which put their existence and environmental, social and vital function at risk. In this case, this claim is due to the multiple oil spills that have affected the Marañón River in recent years.

TWELFTH.- As can be seen from the appellants' claim, they allege that the claim at this point (declaration of rights in favor of the river) is currently not conceivable in our legal system, which has an eminently anthropocentric character, since the

nature and its components have a functional relationship with respect to the development of people.

THIRTEENTH.- In this regard, a new theory has emerged regarding how the legal treatment of nature and its components can be conceived. The approach of the "Rights of Nature" has generated spaces of doctrinal, academic, political and even philosophical-legal discussion, exploring positions such as ecocentrism or biocentrism and its development and application to the legal context.

FOURTEENTH.- In this respect, the Constitutional Court has established that: "(...) *although the Constitution at various times seems to propose a decidedly anthropocentric view (starting with section 1 of the Constitution), a reading from the ecological Constitution itself allows us to understand that the environment contains many different elements that have their own particularities (for example: exploitable natural resources, biodiversity, natural areas protected as "sanctuaries") that deserve protection for various reasons, not all of them exclusively dependent on human interests or needs. Likewise, based on what is established in our Constitution, which guarantees cultural identity and plurality (cfr. articles 2, paragraph 19, 17 and 89 of the Constitution), it is not appropriate to establish in an exclusive manner a single reason or an exclusive rationale regarding the constitutional roots of nature and the importance of its protection"* ¹.

FIFTEENTH.- According to the above, it is clear the special importance that has acquired the discussion on matters related to the protection, protection and preservation of nature and the environment; being that, in other countries, by legal or jurisprudential means, hydrographic basins, rivers, lakes have been recognized as authentic legal entities. In this regard, there is the case of Colombia which, through its pronouncement, with respect to the protection of the Atrato River, *"shows how the theory of the Rights of Nature that*

¹Constitutional Court decision in case No. 03383-2021-PA/TC, grounds 41 and 42.

is being institutionalized through judicial rulings, even in countries that do not have laws that explicitly recognize them "².

SIXTEENTH.- In this regard, this Court considers that it is not unfeasible to order the declaration of rights requested by the plaintiff through this amparo proceeding, especially when the content of the complaint shows the intention to appeal and claim rights in the name of the Marañón River (even over the identity of the plaintiff), with the purpose ordering a judicial decision to make provisions in its favor, by virtue of the actions of impairment to which it has been subjected in recent years. In this sense, the recognition of the rights requested (detailed in the preceding paragraph) is a necessary alternative to achieve an adequate protection in favor of said entity.

SEVENTEENTH: Along these lines, the declaration of legal personality and rights recognized in favor of the Marañón River must have exclusive incidence only with respect to its protection, conservation, maintenance and sustainable use, and may not exceed any other field that is not proper to it or that is contrary to said values.

EIGHTEENTH.- Consequently, the decision should be confirmed in this regard, and it should be specified -by integration- that the declaration of the rights requested by the plaintiff may only refer to those aspects concerning their protection, conservation, maintenance and sustainable use.

On the constitution of the Watershed Councils, designation of "guardians", updating of the Environmental Management Instrument and on maintenance of the North Peruvian Pipeline:

NINETEENTH.- In relation to these contested points, this Court considers that they are closely linked to the declaration of rights in favor of the Marañón River. Although it is true that they do not have - strictly speaking - an accessory relationship with said request, their protection and viability is necessary for a comprehensive protection.

² KAUFFMAN, Craig M. and Pamela L. MARTIN 2018: "When Rivers Have Rights: Case Comparisons of New Zealand, Colombia, and India." Paper presented at "International Studies Association Annual Conference, San Francisco, April 4, 2018."

TWENTY - In this context, the **constitution the basin for the Marañón River and its tributaries** becomes an obligation that must be exercised by the Regional Government of Loreto, which, under the protection of water management and care regulations, is empowered to convene and institutionalize these bodies, with the participation of the National Water Authority for this purpose. Therefore, the decision in this regard should be confirmed.

TWENTY-FIRST - Regarding the **designation of guardians as defenders and representatives of the Marañón River and its tributaries**, this Court agrees to specify that the establishment of a "guardianship" could be compared to the institutions of guardianship or even guardianship, which, in good faith, are aimed at achieving adequate representation for the benefit of a subject who cannot assert his rights on his own behalf. In this regard, it should be specified that the constitution of this entity will only be oriented to the fulfillment of the purpose of protection, conservation, maintenance and sustainable use of the river.

TWENTY-SECOND.- Regarding the extreme that orders the **updating of the Environmental Management Instrument by Petroperu**, this Collegiate agrees on the special relevance and necessity of having current environmental management tools that respond to the real need of the entity that is sought to be protected, regulating the conducts of the environmental agents that intervene in its development. This being so, it is necessary that the defendant complies with updating the IGA that regulates and safeguards the transportation of hydrocarbons through the infrastructure that constitutes the North Peruvian Oil Pipeline; therefore, it is necessary to confirm this point.

IV. RULING:

For the foregoing considerations, the Civil Chamber of Loreto **RESOLVES:**

1. **CONFIRM Resolution fourteen-sentence**, dated March 8, 2024, at folios 3691 to 3723, which resolves to declare the **exceptions** formulated by the Ministry of Agrarian Development and Irrigation **unfounded**, and **declares** the claim to **be partially founded**, with the rest contained therein.
2. **INTEGRATE** the sentence to the extent that it **declares the Marañón River and its tributaries as the holder of rights (...)**; providing that the rights of the **Marañón River and its tributaries as the holder of rights (...)**; and

The only aspects that may be dealt with are those related to their protection, conservation, maintenance and sustainable use, in an exclusive manner.

S.S. CARRIÓN RAMÍREZ

MAGALLANES HERNÁNDEZ

VARGAS ASCUE

Following the report of Judge Vargas Ascue, the Clerk of the Court records that Judge Magallanes Hernandez agrees with the resolution of Judge Vargas Ascue's report, that the sentence be confirmed in all its aspects. Judge Carrión Ramírez agrees with Judge Vargas Ascue's report on the points that confirm that the exceptions of lack of legal standing to act and lack of jurisdiction due to the subject matter are unfounded, and that the claim to declare the Marañón River and its tributaries as a right holder, **to** order the recognition and appointment of the State (Ministry of the Environment, Ministry of Agrarian Development and Irrigation and the National Water Authority), the Regional Government of Loreto and the indigenous organizations as guardians, is well founded, defenders and representatives of the Marañón River and its tributaries, order Petróleos del Perú - Petroperú SA, to prepare and present the project to update its Environmental Management Instrument (IGA) to the Ministry of Energy and Mines within six months, and order the Regional Government of Loreto - GOREL, to take the necessary steps before the National Water Authority to request the guidelines for the creation of the Water Resources Basin Councils for the Marañón River and its tributaries....), of which she has a dissenting vote, however, there is also a dissenting vote of Judge Carrión Ramírez who does not agree only with respect to the end in which it is confirmed unfounded with respect to the Maintenance of the Norperuvian Oil Pipeline by Petroperú S.A., Her dissenting vote is to revoke the end that declares unfounded the claim regarding the Maintenance of the Norperuvian Oil Pipeline by Petroperu S.A., reforming it to declare the claim as to the Maintenance of the Norperuvian Oil Pipeline by Petroperu S.A., to which the dissenting judges Guillermo Felipe and Palomino Pedraza adhere to the dissenting vote, thus forming the majority vote on this issue.

THE SECRETARY OF THE CIVIL CHAMBER OF LORETO, CERTIFIES THE VOTE OF MAGISTRATE ROXANA CHABELA CARRIÓN RAMÍREZ, AS FOLLOWS:

With due respect for the criterion adopted by the judge, I express the reasons for my dissenting vote and dissenting vote in the extreme that the maintenance of the Norperuvian Oil Pipeline by PETROPERÚ S.A. is confirmed as unfounded.

Subject

FIRST.- The **CATORCE RESOLUTION - JUDGMENT**, March 8, 2024, at folios 3691/3723, is appealed, in the points that fail:

- **DECLARE** the **objections of lack of standing to act and lack of jurisdiction by reason of the subject matter**, filed by the Ministry of Agriculture and Irrigation (now the Ministry of Agrarian Development and Irrigation), **to be groundless**.

- **DECLARE IN PART THE SUIT OF AMPARO ACTION FOUNDED IN PART**

filed by Mrs. **MARILUZ CANAQUIRI MURAYARI**, member of the **KUKAMA** indigenous people, **of the NATIVE COMMUNITY OF SHAPAJILLA and PRESIDENT of the HUAYNAKANA KAMATAHUARA KANA FEDERATION**, against the **REGIONAL GOVERNMENT OF LORETO and ITS COMPETENT BODIES, PETROPERU, THE MINISTRY OF THE ENVIRONMENT, MINISTRY OF AGRICULTURAL DEVELOPMENT AND IRRIGATION AND THE NATIONAL AUTHORITY OF WATER (ANA)**; consequently: **TO DECLARE THE MARAÑÓN RIVER AND ITS AFFLUENTS**.

AS RIGHTS HOLDER; has the right to flow, to ensure a healthy ecosystem, the right to provide a healthy ecosystem, the right to flow freely from any pollution; the right to feed and be fed by its tributaries, the right to biodiversity; the right to be restored, the right to regeneration of its natural cycles; Right to the conservation of its structure and ecological functions; Right to the protection, preservation and recovery; Rights that are represented and that the State must legally protect, for being an important part of the fundamental rights of every human being and of our future generations for being life, health, and represents one of our basic needs, for our subsistence. **Therefore, it must be represented. I ORDER** that the **REGIONAL GOVERNMENT OF LORETO - GOREL**, take the necessary steps before the **NATIONAL AUTHORITY OF WATER**, in order to request the guidelines for the creation of the Watershed Councils of Water Resources for the Marañón River and its tributaries, being within its competence and promote the commitment and participation of institutions including the participation of indigenous organizations of Loreto, with decision-making capacity. **ORDER THE RECOGNITION AND APPOINTMENT** of the State (Ministry of Environment, Ministry of Agrarian Development and Irrigation and the National Water Authority), the Regional Government of Loreto and the indigenous organizations as guardians, defenders and representatives of the Marañón River and its tributaries. **ORDER** Petróleos del Perú - Petroperú S.A., six months, to prepare and submit the project to update its Environmental Management Instrument (IGA) to the Ministry of Energy and Mines, so that said instrument is

include a comprehensive assessment of the impacts identified in the hydrocarbon transportation activity through the Norperuvian Pipeline, and also assume environmental commitments to ensure the proper management and mitigation of such impacts, as well as prior consultations with indigenous institutions and organizations in order to coordinate the approval of the IGA.

- **DECLARE IT IS UNFOUNDED as to the maintenance of the Norperuvian Oil Pipeline by PETROPERÚ S.A.** With costs of the process. Once this resolution has been consented and/or executed, comply with it, under the provisions of article 52 of the Constitutional Procedural Code.

Appeals

SECOND.- they file an appeal:

- The defendant **Ministry of the Environment** appeals the decision to declare the amparo action filed by Mrs. MARILUZ CANAQUIRI MURAYARI, member of the KUKAMA indigenous people, against the GOVERNMENT OF THE REGIONAL GOVERNMENT OF LORETO LORETO, SUS SUS SUS SUS, PRESIDENT OF THE HUAYNAKANA KAMATAHUARA KANA FEDERATION, of the NATIVE COMMUNITY OF SHAPAJILLA and PRESIDENT of the HUAYNAKANA KAMATAHUARA KANA FEDERATION, against the REGIONAL GOVERNMENT OF LORETO and ITS COMPETENT BODIES, PETROPERU, THE MINISTRY OF THE ENVIRONMENT, THE MINISTRY OF AGRICULTURAL DEVELOPMENT AND IRRIGATION AND THE NATIONAL AUTHORITY OF WATER (ANA); consequently declare the Marañón River and its tributaries as a rights holder. Orders the REGIONAL GOVERNMENT OF LORETO - GOREL, to take the necessary steps before the NATIONAL WATER AUTHORITY, in order to request the guidelines for the creation of the watershed councils of water resources for the Marañón River and its tributaries. Orders the recognition and appointment of the State (Ministry of the Environment, Ministry of Agrarian Development and Irrigation and the National Water Authority), the Regional Government of Loreto and the indigenous organizations as guardians, defenders and representatives of the Marañón River and its tributaries (folios 3737/3749).
- The Public Prosecutor of the **Ministry of Agrarian Development and Irrigation**, on behalf of **the National Water Authority - ANA** files an appeal on the grounds that the exceptions of lack of standing to act of the defendant and lack of jurisdiction by reason of the subject matter are declared unfounded, and that the amparo action filed by Mrs. MARILUZ CANAQUIRI MURAYARI, member of the KUKAMA indigenous people, of the NATIVE COMMUNITY OF SHAPAJILLA and PRESIDENT of the HUAYNAKANA KAMATAHUARA KANA FEDERATION, against the GOVERNMENT, be declared partially founded.

REGIONAL AUTHORITY OF LORETO and ITS COMPETENT BODIES, PETROPERU, THE MINISTRY OF THE ENVIRONMENT, THE MINISTRY OF AGRICULTURAL DEVELOPMENT AND IRRIGATION AND THE NATIONAL AUTHORITY OF WATER (ANA); consequently

declare the Marañón River and its tributaries as a rights holder. Orders the recognition and appointment of the State (Ministry of Environment, Ministry of Agrarian Development and Irrigation and the National Water Authority), the Regional Government of Loreto and the indigenous organizations as guardians, defenders and representatives of the Marañón River and its tributaries (folios 3751/3775).

- The defendant **Petróleos del Perú-Petroperú S.A** appeals the decision to declare the amparo filed by Mrs. MARILUZ CANAQUIRI MURAYARI, member of the KUKAMA indigenous people, of the NATIVE COMMUNITY OF SHAPAJILLA and PRESIDENT of the HUAYNAKANA KAMATAHUARA KANA FEDERATION, against the REGIONAL GOVERNMENT OF LORETO and ITS COMPETENT BODIES, PETROPERU, THE MINISTRY OF THE ENVIRONMENT, THE MINISTRY OF AGRICULTURAL DEVELOPMENT AND IRRIGATION AND THE NATIONAL AUTHORITY OF WATER (ANA); consequently

declare the Marañón River and its tributaries as a rights holder. Order Petróleos del Perú - Petroperú S.A., within six months, to prepare and submit the project to update its Environmental Management Instrument (IGA) to the Ministry of Energy and Mines, in order to include the comprehensive assessment of the impacts identified in the hydrocarbon transportation activity through the Norperuvian Pipeline.

- The plaintiff **Mariluz Canaquiri Murayari, on behalf of the Kukama Huaynakana Federation**, appeals the decision to declare claim unfounded regarding the maintenance of the Norperuvian Oil Pipeline by PETROPERÚ S.A. (folios 3792/3824, 4066/4134).

Background

THIRD. By means of writ of pages 82/147, corrected on pages 300 and 364/365, filed by MARILUZ CANAQUIRI MURAYARI, member of the Kukama indigenous people, of the Native Community of Shapajilla and President of the HUAYNAKANA KAMATAHUARA KANA FEDERATION, filed an ACTION OF AMPARO, against PETROPERÚ, MINISTRY OF THE ENVIRONMENT, INSTITUTO DE INVESTIGACIONES DE LA AMAZONÍA PERUANA (IIAP), AUTORIDAD NACIONAL DEL AGUA (ANA), MINISTERIO DE ENERGÍA Y MINAS, DIRECCIÓN EJECUTIVA DE GESTIÓN AMBIENTAL DEL GOBIERNO REGIONAL DE LORETO, GERENCIA GENERAL DE ASUNTOS INDÍGENAS DEL GOBIERNO REGIONAL DE LORETO,

seeking the recognition of the Marañón River and its tributaries as subjects of rights by the court with intrinsic value, which must be protected in compliance with articles 2.19 and 89 of the Constitution and articles 5, 13 and 15 of ILO Convention 169, to require the National Water Authority, the constitution of the Interregional Basin Council of the Marañón River with the participation of the indigenous organizations of Loreto with decision-making capacity. We also request the creation of sub-basin or micro-basin committees for each tributary river of the lower Marañón in the Loreto region, in application of article 15.2 and article 15.1 of ILO Convention 169, and article 24 and 64 of the Water Resources Law (Law No. 29338), recognition and appointment of the State and indigenous organizations as guardians, defenders and representatives of the Marañón River and its tributaries. It is required to appoint a collegiate body, representative of the indigenous organizations of Loreto as "Guardians of the Marañón River", to act on behalf of the river and its interests, maintenance of the Norperuano Pipeline by Petroperu. update the environmental management instrument of the Norperuano Pipeline. Order Petróleos del Perú - Petroperú S.A. to prepare and submit a project to update its Environmental Management Instrument (IGA) to the Ministry of Energy and Mines as soon as possible.

Answer to the lawsuit and procedural procedure

FOURTH. By resolution number six dated June 1, 2023, on pages 410/413, the lawsuit was admitted and served on the defendants, the Peruvian Amazon Research Institute (IIAP), in writing on pages 440/454, answered the lawsuit and filed a plea of lack of standing of the defendant, to which by resolution number seven dated July 11, 2023, on pages 731/735, the Regional Government of Loreto, represented by Deputy Public Prosecutor Lidia Ventura Julcapoma, in writing on pages 731/735, resolved to have the lawsuit answered and the pleas filed, The Regional Government of Loreto, represented by Deputy Public Prosecutor Lidia Ventura Julcapoma, in a document dated page 460/469, answered the complaint and filed a plea of lack of exhaustion of administrative remedies, as stated therein, and by resolution number seven dated July 11, 2023, page 731/735, it was resolved to consider the complaint answered and the pleas filed. The Ministry of Agriculture and Irrigation, now Ministry of Agrarian Development and Irrigation, by writ of pages 491/520, filed a plea of lack of jurisdiction and lack of standing of the defendant, by resolution number seven dated July 11, 2023, pages 731/735, it was resolved to have the claim answered and the pleas filed, the Ministry of Environment - Represented by Juan Carlos Portocarrero Zamora by writ of pages 537/550, answered the claim, and the Ministry of Environment - Represented by Juan Carlos Portocarrero Zamora by writ of pages 537/550, answered the claim, and by

Resolution number seven dated July 11, 2023, on pages 731/735, resolved to consider the claim as answered, the Ministry of Energy and Mines - Represented by Public Attorney Brian Adrián Bocardo Calderón in writing on pages 604/616, filed a plea of lack of standing to act passively and answered the claim, and by resolution number seven dated July 11, 2023, on pages 731/735, resolved to consider the claim as answered and the pleas as having been filed. PETRÓLEOS DEL PERÚ - PETROPERU S.A. - Represented by Sonia Mercedes Sandoval Peralta by writ of pages 638/662, answered the claim, and by resolution number seven dated July 11, 2023, page 731/735, the claim was deemed answered. The Single Hearing was held in person and virtually on November 9, 2023, according to the minutes of pages 3649/3652, following the process in accordance with the nature its procedure, a resolution was issued resolving the exceptions raised by the defendants and resolving the merits of the controversy, which is appealed by the parties, the appeal was granted and is elevated to this superior civil court, which is seized of the case, and is found to resolve the case in this instance.

FIFTH. The following amicus curiae briefs were also filed in the proceedings: Dr. Cristina Blanco Vizarrata, professor of the Law Department of the Pontificia Universidad Católica del Perú and researcher of the Faculty of Law and Human Rights of ESSEX University (page 618), Mr. Javier Ruiz Cruz, representative of the non-governmental organization, EARTH LAW CENTER - ELC (page 679 /625), Mrs. Monti Aguirre, specialist and representative of the non-governmental organization INTERNATIONAL RIVERS (page 3918), Dr. Charis Kamphuis, professor of Law at the University, specialist and representative of the non-governmental organizations Environmental Law Centre based at the University of Victoria in Canada and the Justice and Corporate Responsibility Project based at Osgode Hall Law School of York University in Canada.

Fundamentals

The defenses of lack of standing to act of the defendant and lack of subject matter jurisdiction

SIXTH.- The Supreme Court has had the opportunity to define the exceptions as that "means of defense that is conferred to the defendant, by virtue of which he can demonstrate to the judge the absence or insufficiency of one of the procedural requirements (competence of the judge, procedural capacity of the parties and essential requirements of the claim), or of one of the conditions of valid exercise of the

action (legitimacy and interest to act), with the purpose of paralyzing and correcting some procedural defect or, as the case may be, extinguishing the procedural legal relationship”⁽³⁾.

SEVENTH.- The appellant **Public Prosecutor's Office of the Ministry of Agrarian Development and Irrigation-ANA** alleges as a grievance regarding **the exception of lack of standing to act of the defendant** that the National Water Authority lacks passive ownership of the material right in question, since, by law, the native and indigenous communities of the basin must organize and channel their request to the Regional Government of their jurisdiction. In its brief that formulates the aforementioned exception, it basically sustains the same arguments of its appeal brief.

EIGHTH.- It is necessary to point out that the legitimacy to act refers to the subjects to whom, either in the position of plaintiffs or defendants, the law authorizes to formulate a determined pretension or to contradict it, or to be called to the process to make possible a declaration of effective certainty or to intervene in the process because they have an interest in its result. The legitimacy to act has two aspects: active legitimacy and passive legitimacy, which correspond, one, to the party that sustains the claim, and the other, to the contradicting party, the legitimacy to act has a definite link with the legal relationship of material law or legal state whose declaration of certainty, execution, or other type of judicial decision is sought. As noted by Véscovi, standing to act refers to the position of a subject with respect to the object of litigation that allows him to obtain an effective order. Although it is a procedural concept, the legitimacy is referred to the claim and the object of the process, that is, the substantial right claimed. Thus, we find two very marked positions in the doctrine: a) For one current, the legitimacy to act consists of a condition of the favorable sentence and with it is expressed that the subjective rights can only be asserted by the holders of the material legal relationship against those who are part of it. b) For another current, for there to be active or passive legitimacy to act, it is not required that the procedural parties are holders of the material legal relationship. Therefore, the legitimacy to act should not be identified with the material right, because otherwise we would return to the already superseded thesis according to which only the holder of the disputed material right has the right of action and only the other subject holder of the material legal relationship can have the position of defendant, which is not procedurally valid. This is a matter that concerns rather the existence of the

³ CAS. N° 1736-2003-LIMA

material law, which the judge must decide on the merits of the litigation; it is not a matter of legitimacy to act⁽⁴⁾.

NINTH. In Cassation 3458-2016, Cusco, the Transitory Civil Chamber of the Supreme Court of Justice of the Republic, indicated that the exception of lack of standing to act, referred to in paragraph 6 of Article 446 of the Code of Civil Procedure, is aimed at denouncing the lack of identity between the subjects that integrate the substantive legal relationship and those who are part of the procedural legal relationship; This is to show the lack of identity between the persons involved in one and the other relationship, and not the lack of ownership of the right, because this will be resolved at the time of issuance of the judgment.

TENTH. In accordance with the claim that the National Water Authority should constitute the interregional basin council of the Marañón River with the participation of the indigenous organizations of Loreto with decision-making capacity, and the creation of sub-basin or micro-basin committees for each tributary river of the lower Marañón in the Loreto region, we should not lose sight of the fact that the National Water Authority is the governing body and highest technical and regulatory authority of the National Water Resources Management System, It is attached to the Ministry of Agriculture and Irrigation and is in charge of carrying out the necessary actions for the multisectoral and sustainable use of water resources by river basins and, being the purpose of creating ANA⁵ is to manage, conserve, protect and use the water resources of the different basins in a sustainable manner while promoting the water culture, whose functions are in the Regulation of Organization and Functions of the National Water Authority - ANA; as well as in the Water Resources Law, Law No. 29338 and its Regulations. In addition, among its guiding principles that govern the use and integrated management of ANA's water resources, we have, among others: Principle of participation of the population and water culture, Principle of respect for water uses by peasant communities and native communities, Principle of sustainability, Principle of decentralization of public water management and single authority, and Precautionary Principle, and whose mission is to exercise the technical - regulatory steering role and establish procedures for integrated, sustainable and multisectoral management of water resources for the benefit of water users and population in general, in a timely and effective manner, and its vision is to be the public institution.

⁴ Legitimacy to Act. Fausto Viale Salazar

⁵ Legislative Decree 997

recognized and legitimized as the highest authority in the integrated management water resources and their associated assets⁽⁶⁾.

Therefore, the National Water Authority (ANA) of the Ministry of Agriculture and Irrigation, in accordance with the law of its creation and the regulations in force, does have standing to act passively in this amparo proceeding, and this appeal must be upheld. **Eleventh** - The appellant, the Public Prosecutor's Office of the Ministry of Agrarian Development and Irrigation, alleges as a grievance regarding **the exception of lack of jurisdiction by reason of the subject matter**, alleges that the judge of first instance has not assessed that the constitutional remedy is not the appropriate one to discuss the right claimed, and that she does not comply with sentence 02383-2013-PA-TC, binding precedent in the Elgo Ríos case, on the examination of the suitability of the constitutional remedy. In its brief that formulates the exception, it points out that the claim should have been processed before an ordinary judge through the administrative contentious process, in accordance with Article 148 of our Constitution, numeral 4 of Article 5 of D. S. N° 0011-2019-JUS, which approves the TUO of Law N° 27584.

TWELFTH.- Referring to the mentioned exception, we must point out that jurisdiction is a procedural institution whose objective is to make the administration of justice more effective and functional, arising from the need of a State to distribute jurisdictional power among the different judges it has and due to the evident impossibility of concentrating such an important public function in only one or in a group of them.

THIRTEENTH.- As we can see, the appellant sustains his exception in that the plaintiff requests constitutional protection for an alleged violation of her constitutional rights by the Public Administration, without considering that such petition can only be elucidated within the grounds of administrative law and not through the constitutional process, intended exclusively for the protection of constitutional rights against threats or violation of certain, imminent and tangible acts.

FOURTEENTH.- It should be noted that the exception of incompetence by reason of subject matter is considered favorable when a lawsuit has been filed before a judge who does not have jurisdiction to hear the matter claimed, for example, if a claim for an obligation to pay a sum of money is filed before a family court, when the competent court is the civil court.

FIFTEENTH.- As we well know, effective judicial protection is a constitutional right of a procedural nature by virtue of which every person or subject

⁶ <https://www.gob.pe/institucion/ana/institucional>

The defendant may have access to the courts, regardless of the type of claim made and the possible legitimacy that may or may not accompany his petition.

In this line, the Constitutional Court in Case No. 00906-2009-AA/TC in ground 10 states: *"That, in the opinion of the Constitutional Court, in such circumstances, the cases in which there is an opportunity to correctly determine the constitutionally protected content of the right will require an urgent intervention by the constitutional jurisdiction in an objective sense. In other words, although it is true that it could be a case in which there is no risk of irreparable damage to the subjective sphere of the plaintiff, the constitutional jurisdiction will become competent, and the petition for amparo will be admissible, due to the urgency verified in an objective sense, because the constitutionally protected content of the right is not being duly identified in the ordinary jurisdiction"*. That is to say, the Constitutional Court has recognized that it is possible to make the examination of the procedural nature of constitutional processes for the protection of rights more flexible when we are faced with social groups in a special situation of vulnerability, such as indigenous peoples. This is so by virtue of the second report on the situation of Human Rights in Peru, dated June 2, 2000, of the Inter-American Commission on Human Rights, which states: *"It is necessary to point out that the majority of native communities live in conditions of extreme poverty and inferior quality of life. Structural poverty affects indigenous peoples (native communities, peasant communities, etc.) with greater intensity, restricting their full enjoyment of their human, economic, social and cultural rights"*. Similarly, the United Nations Declaration on the Rights of Indigenous Peoples recognizes the urgent need to respect and promote indigenous rights, affirmed in treaties, agreements and other constructive arrangements with States, and shows its concern for the historical injustices they have suffered as a result of, among other things, colonization. Thus, the Ombudsman's Office, through Ombudsman Report N° 134, stated *"that the indigenous peoples living in the Peruvian Amazon are one of the most forgotten and neglected human groups by the State. It specifies that the high mortality rates tend to aggravate their situation of fragility"*. However, in the ninth ground of the court's sentence it is stated: *"Consequently, only in cases in which such ordinary remedies are not suitable, satisfactory or effective for the protection of the right, or because of the need for urgent protection, or in special situations that must be analyzed, case by case, by the judges, it will be possible to resort to the extraordinary remedy of amparo, with the burden of proof corresponding to the plaintiff for*

In this context, said situation of vulnerability should allow them to have access to urgent constitutional protection that allows them to have their rights judicially restored, and therefore the aforementioned judgment concludes by stating: *"that the amparo proceeding, in accordance with the provisions of Article 200, paragraph 2 of the Constitution and Article 1 of the Code of Constitutional Procedure, is suitable for this purpose"*.

SIXTEENTH.- According to Article 200 paragraph 2 of the 1993 Constitution, the amparo process is a procedural institute whose purpose is to protect fundamental rights not protected by habeas corpus, habeas data or the compliance process. It is the main mechanism for the protection of constitutional rights. The amparo is characterized for being a process oriented to protect fundamental rights of direct constitutional support, that is why it has a residual or subsidiary character and integrates the so-called emergency judicial protection, whose purpose is the protection of the essential content of the fundamental rights of the constitutional block: rights of constitutional origin, as well as those of international source, of legal and jurisprudential configuration, and the implicit fundamental rights of article 3 of the Constitution. The amparo process is residual or subsidiary because it is used to protect the fundamental rights of individuals when this protection cannot be obtained in the framework of ordinary judicial proceedings.

SEVENTH.- The Constitutional Court in the judgment of Exp. 02383-2013- PA/TC Case Elgo Ríos, in its ground 15 has established the assumptions that must be evaluated to determine that an ordinary judicial remedy is an equally satisfactory remedy. These are: a) The structure of the ordinary proceeding is suitable to provide protection of the right. b) The judgment could provide adequate protection of the right invoked in the claim. c) There is no risk of irreparable damage to the right. d) There is no need for urgent protection derived from the relevance of the right or the seriousness of the consequences.

These conditions must be evaluated as a whole by the constitutional judge when determining whether the amparo action is admissible.

Well, in view of this and based on the fundamental rights that the plaintiff alleges are being affected as indigenous peoples of the Peruvian Amazon that support her claims, there are the right to enjoy a balanced environment adequate for life, the right to freedom of conscience and religion and the right to cultural identity, the right to participation, administration and conservation of natural resources, the right to resources, the right to the protection of the environment, the right to the protection of the environment, the right to the protection of the environment, the right to the protection of the environment, and the right to the protection of the rights of the indigenous peoples of the Peruvian Amazon.

The Constitution also establishes the principles of the social rule of law and the principle of promoting excluded sectors, the principles of prevention and precaution in environmental matters, the duty to promote the conservation of biological diversity and to promote the sustainable development of the Amazon, and the duty to remove legal and other obstacles that impede the enforcement of fundamental rights. We see with certainty, that these rights and principles are protected and recognized in Article 2 of the Constitution, in addition, Article 44 of the Constitutional Procedural Code enunciatively complements and specifies this list of rights protected by the amparo process, but it should be noted that this is not a closed list, because Article 3 of the Constitution establishes that the fundamental rights recognized in its Article 2 do not exclude the others that the Constitution guarantees, nor others of analogous nature or that are based on the dignity of man, or on the principles of sovereignty of the people, of the democratic rule of law and of the republican form of government. Likewise, the Constitution in its Fourth Final and Transitory Provision states that the provisions recognizing rights and freedoms "...(...)... are interpreted in accordance with the Universal Declaration of Human Rights and with the international treaties and agreements on the same matters ratified by Peru". Likewise, Article VIII of the Preliminary Title of the Constitutional Procedural Code provides in relation to the interpretation of human rights and international treaties "The content and scope of the constitutional rights protected by the processes regulated in the present code must be interpreted in accordance with the Universal Declaration of Human Rights, the treaties on human rights, as well as with the decisions adopted by the international tribunals on human rights constituted according to treaties to which Peru is a party....".

Therefore, it is concluded that the amparo protects the fundamental rights recognized by the constitutional block, which have an urgent protection since there is a risk of irreparable damage to the invoked rights, even though case involves vulnerable populations such as the indigenous peoples of the Amazon, and the amparo action is the appropriate and satisfactory way to process this case. The grievances alleged by the appellant are not amparoable, and the appealed point should be upheld.

EIGHTEENTH.- Regarding the appellant's claim that the resolution that resolves the exceptions is not duly grounded.

Regarding the motivation of judicial resolutions, it should be noted that the Constitutional Court in abundant jurisprudence, has indicated that the right to the due motivation of the judicial resolutions is respected always that exist

legal grounds, congruence between what was requested and what was resolved and, by itself, it expresses a sufficient justification of the decision adopted, even if it is brief or concise, or there is an assumption of motivation by reference. The right to motivation implies that in the recitals of the decision it must be perfectly clear the legal logical reasoning by which it reaches a certain conclusion, it must contain the factual and legal grounds that in a sufficient and reasoned manner lead to the decision. In the present case, from the reading of the resolution that resolves the exceptions, it is evident that the alleged violation has not existed, since it is duly motivated and structured, it gives the reasons and motives why the judge of first instance makes her jurisdictional decision of declaring the exceptions unfounded.

On declaring the Marañón River and its tributaries as a right holder NINETEENTH.-

Grounds of the appeals on this appealed point:

- The defendant **Ministry of the Environment** files an appeal on this point of the sentence, alleging that the analysis of the sentence generates a contradiction with the constitutional norm itself, which has been recognized as anthropocentric and, consequently, with the legal norms of general scope and the jurisprudential development that has been granted to the legal concept of subject of rights, the Peruvian constitutional framework does not contemplate declaring the environment as a subject of rights, What it establishes is its protection with the purpose of maintaining the environmental goods in adequate conditions for its enjoyment, as part of the adequate development of the person and his dignity, and in view of this, the State has duties and obligations destined to conserve the balanced environment, and the Political Constitution and other norms that constitute the constitutional block start from the premise of protection of the human person, therefore the claims that are formulated must be in accordance with the norms. Nature is not a subject of law, in order to guarantee an adequate environment, each entity has its own exclusive and excluding competences, and has legal norms, public policies and sectorial programs of application in the different levels of government, on the basis of which environmental protection is provided. He adds that in Peru, according to the constitutional framework, the anthropocentric approach is chosen, where the human person is recognized (individually or collectively), as a subject of law and therefore deserving of legal protection the State for the protection of their rights; not contemplating the recognition of the environment (mountains, rivers, lakes, species, among others) as

subjects of rights; however, they receive legal protection due to their importance and inseparable relationship with the human person. Regarding the ruling in Case 03383-2021-PA/TC, the Constitutional Court does not recognize nature as a subject of rights at any point in the ruling, which declares the existence of an unconstitutional state of affairs in the Loreto region due to lack of access to water and environmental contamination. He alleges as a grievance that there is evidence of an apparent motivation in all parts of the sentence.

- The respondent **Petróleos del Perú-Petroperú S.A** appeals this part of the judgment, alleging that the judgment has based much of its reasoning on jurisprudence and/or pronouncements that question the "anthropocentric approach", openly included in the Political Constitution of Peru, in order to consider that such approach could be reconsidered in light of the intrinsic value that should be recognized in favor of nature, it is extremely worrying that the Court did not realize that declaring and/or constituting new subjects of law is not the object of an amparo proceeding, it is not related to the essential content of any fundamental right and, therefore, it is not within the competence of a judge to propose the creation of new subjects of law. The Peruvian legal system includes, throughout its various constitutions, a humanist position centered on the human person, which is clear from Article 1 of the Constitution, the center of fundamental rights is the human being and that the architecture of all the rest of the system responds to this elementary situation. The plaintiffs even acknowledged that neither the Peruvian Constitution nor the jurisprudence of the Constitutional Tribunal reflects an "ecocentric" position, but rather an anthropocentric (i.e., humanist), or in any case a "biocentric" position (preservation of the environment and principles derived from sustainability). However, they asked the Court to make an "ecocentric" interpretation of who are subjects of rights in Peru that has no place in the Constitution or in the jurisprudence of the Constitutional Tribunal. The jurisprudence of the Constitutional Tribunal that has been cited by the First Instance Judgment (specifically Case No. 03383-3031-PA/TC), is no support for declaring that a river or other elements of nature are subjects of rights, nor for constituting them as such, nor for declaring a set of rights in their legal sphere, the only thing that is done in this sentence of the Constitutional Court is to raise a theoretical questioning regarding the interpretation of the Constitution to indicate that, from the viewpoint of cultural plurality *"it could give rise to a doctrinal debate on the conception that underlies our so-called ecological Constitution"* or even that, regarding the importance of the protection of the

There is no national or international norm subscribed by Peru that establishes that nature is a subject of rights and that rivers are subjects of rights or that they have specific rights of their ownership.

TWENTY-FIFTH.- The appellants argue that the constitutional norm itself has been recognized as anthropocentric, that the constitutional framework and the legislation of our country does not contemplate declaring the environment as a subject of law, nature is not a subject of law, neither in the Constitution of Peru nor in the jurisprudence of the Constitutional Tribunal does it reflect an ecocentric position, but rather an anthropocentric or in any a biocentric position. To understand what is sustained in the appeal, it is necessary to be clear about these concepts.

Anthropocentrism is a philosophical theory in which the human being and his interests are conceived as the center of everything, so there is a subordination of the "other" (living beings, environment, etc.) to the needs and welfare of the human being. It places the human being as the measure and center of all things, and defends that the interests of human beings are those that should receive attention above anything else. Based on anthropocentrism, we can understand that the form of protection of nature is through the "environment", alluding to the fact that nature is the "means" at the service of humanity, which provides very limited protection to nature and ignores the other forms of life with which human beings share the planet. Anthropocentric interest or anthropocentrism refers to idea that humans are the center of the universe and that the environment should be protected for its value in maintaining or improving the quality of human life.

Biocentrism proposes that all living beings have the same right to exist, to develop and to express themselves autonomously and deserve the same respect as having the same value. Biocentrism does not deny that valuations start from the human being, but insists that there is a plurality of values that includes intrinsic values, has a wider scope in terms of protecting the rights of nature, and is broader than the anthropocentric approach, since it recognizes other non-human life forms that are moral agents and deserve protection through law. However, it does not extend the advisory framework to other forms of life that do not feel pain such as plants, trees, rivers, nature's life cycles and others that develop in the environment.

Ecocentrism is a current of thought that affirms equal respect for the whole of the Earth. Nature, both in terms of living beings and other inert components, is the most precious thing we can have.

and does not belong to anyone, least of all, if possible, to human beings in particular. Ecocentrism, unlike anthropocentrism, starts from the perspective of nature towards humanity, from an ecosystemic point of view and not from an individual perspective, nature is protected from its autonomous characteristics, since it is the means of life not only for humanity, but also for all living beings. Unlike biocentrism, ecocentrism recognizes that nature has independent life cycles, so that humanity is only a small part of a whole. It is concerned with the protection of the other forms of life with which humans share the planet. Therefore, there is a tendency to approach nature no longer as an object for law, but rather as a subject to be protected and respected. Ecocentrism encompasses a set of ethics that believe in the inherent value of all of nature and consider ecosystems, the biosphere and the Earth morally and integrally.

TWENTY-FIRST.- The anthropocentric approach to environmental policy starts from the consideration of individuals, its analysis includes methods based utility and rights, it is derived from the perspective of the natural environment in its ecological whole, as a group of species or individual entities. The American naturalist John Muir argued that human beings are not above nature. He rejected the prevailing anthropocentrism and defended the intrinsic value of the natural environment. In the end, he claimed that nature should be taken as a whole and the human species as part of that whole and not as entity or presence superior to it. Anthropocentrism not only places the human being as the center of all things, but also encourages the annulment of the intrinsic value of the natural environment (Van den Eynde, 2011). This denial of the value of nature itself has allowed humanity to enjoy the natural environment without any limitation. To the point, of considering humans as the main threat to planet Earth (Frutos, 2016). ⁷

The anthropocentric conception together with the lack of awareness of the real state of the environment that surrounds us is what has generated the current and future deterioration of our Earth, that is why it is an essential task to rethink the weight that the philosophical position of anthropocentrism acquires in our legislations, it is essential to make a turn, to modify the ideological theory which will result in the construction not only of better laws but also of a more sustainable and sustainable development.

⁷ The consequences of anthropocentrism: projecting glacier shrinkage to raise environmental awareness.
link:<https://manglar.uninorte.edu.co/bitstream/handle/10584/10469/1234091913%20%281%29.pdf?sequence=1&isAllowed=y>

environmental and animal protection appropriate to our times, one that allows us to be part of the whole, preserving it, protecting it, subsisting with it.⁸

In the framework of an ecocentric version, sustainable development is not just an environmental issue, but a more inclusive question of how the human - society - nature - enterprise relationship should or could be organized, including, of course, issues of intra- and intergenerational justice (Kallio, 2007, p. 46). In this relationship, it is appreciated that the line between humanity and nature is a social construction. "Humans have constructed a moral hierarchy assuming that they are above or apart from other more humble creatures" (Purser et al. apud Kallio, 2007, p. 47). Ecocentrism invites people to respect individual beings and the ecosystem in which it unfolds and which is seen as a body (Zimmerman, 2002, p. 41) ...(...)...Ecocentric interest in the environment or ecocentrism predisposes individuals to value nature for its own sake, considering that it deserves protection given its intrinsic value without taking into account its usefulness to humans. Ecocentrism parallels the biospheric value orientation, individuals are more willing to protect the environment regardless of the inconvenience and expense involved. Ecocentrists believe that there are reasons intrinsic to nature and completely independent of any human interest in preserving nonhuman nature...(...)

Thus, anthropocentrists argue that what human beings do for nature (and for their own good) is enough, that there are no other obligations to nature. For them, nature is of no interest due to its lack of intrinsic value and the assignment of a purely instrumental value (Martinelli, 2008, p. 79). Weak anthropocentrism "considers a broader spectrum of human values in relation to nature (such as scientific, aesthetic and spiritual), it does not recognize its intrinsic value (Lecaros, 2009a, p. 70) ...(...). According to Campbell (1983), the term anthropocentrism was coined in 1860 in the midst of the controversy over Darwin's theory of evolution, to represent the idea that humans are the center of the universe. Anthropocentrism considers humans as the most important form of life, other forms will be so only to the extent that they impact or can be useful to humans...(...)... Anthropocentrism considers not only supremacy of humans, but also the conquest of nature and its manipulation for the exclusive benefit of humanity. Against this vision, Leopold proposes in the

⁸The Anthropocentric Vision. Protection and Rights. Gabriela Hernández Islas. January 2020. <https://forojuridico.mx/la-vision-antropocentrica-proteccion-y-derechos-del-medio-ambiente/>

The role of man is changed from conqueror of Earth to simple member and citizen of it. It implies then respect for the other members and for the community as such (Wenz, 2003, p. 110).⁹.

Pope Francis, in his Encyclical Letter *Laudato Si* on Care for the Common Home, points out in the chapter on the Crisis and Consequences of Modern Anthropocentrism that "115. Modern anthropocentrism, paradoxically, has ended up placing technical reason above reality, because this human being "does not feel nature as a valid norm, much less as a living refuge. He sees it without making hypotheses, practically, as the place and object of a task in which everything is enclosed, being indifferent to what happens with it". In this way, the value of the world in itself is weakened. But if man does not rediscover his true place, he misunderstands himself and ends up contradicting his own reality: "Not only has the earth been given by God to man, who must use it with respect for the original intention that it is a good, according to which it was given to him; man himself is also a gift of God and must therefore respect the natural and moral structure with which he has been endowed. In modernity there was a great anthropocentric excess which, in a different guise, continues today to damage every common reference point and every attempt to strengthen social bonds. The time has come, therefore, to return our attention to reality with the limits it imposes, which in turn are the possibility of a healthier and more fruitful human and social development. An inadequate presentation of Christian anthropology could end up supporting a mistaken conception of the relationship between human beings and the world. A Promethean dream of dominion over the world was often transmitted, giving the impression that caring for nature is a matter for the weak. Instead, the correct way to interpret the concept of the human being as "lord" of the universe is to understand him as a responsible steward.¹¹⁷ The lack of concern for measuring the damage to nature and the environmental impact of decisions is only the very visible reflection of a lack of interest in recognizing the message that nature carries inscribed in its very structures. When the value of a poor person, of a human embryo, of a person with a disability - to give just a few examples - is not recognized in reality itself, the cries of nature itself will hardly be heard. Everything is connected. If human beings declare themselves autonomous from reality and constitute themselves as absolute dominators, the very basis of their existence crumbles, because, "instead of playing their role as God's collaborators in the work of creation, the human being, as a human being, is the only one who has the power to control the world.

⁹ Toca Torres, Claudia Eugenia. Las Visiones del desarrollo sostenible. Society and Culture. Revista de Ciencias Sociales Vol 14, núm 1. January-July 2011, pp 195-204-Universidad Federal de Góes. Góania Brazil.

A deviant anthropocentrism must not necessarily give way to a "biocentrism", because that would imply incorporating a new imbalance that not only will not solve the problems, but will add others. A commitment to the world cannot be demanded of human beings if their peculiar capacities of knowledge, will, freedom and responsibility are not recognized and valued at the same time." "122. A deviant anthropocentrism gives rise to a deviant lifestyle. In the Apostolic Exhortation [*Evangelii Gaudium*](#) I referred to the practical relativism which characterizes our age, and which is "even more dangerous than doctrinal relativism". When human beings place themselves at the center, they end up giving absolute priority to their circumstantial convenience, and everything else becomes relative. That is why it should not be surprising that, together with the omnipresence of the technocratic paradigm and the worship of unlimited human power, this relativism develops in the subjects, where everything becomes irrelevant if it does not serve their own immediate interests. There is in this a logic that allows us to understand how various attitudes feed each other, causing at the same time environmental degradation and social degradation."

Recognition of the rights of nature

TWENTY-SECOND.- The 'Rights of Nature' involves the concept that nature possesses fundamental rights, just as humans do. The Rights of Nature has ancient roots, stemming from indigenous traditions that have always treated humans as part of nature, rather than distinct from it. Rights of Nature seeks to re-conceptualize the legal system to work for the environment rather than against it. A Rights of Nature approach offers a transformative change. First, it recognizes that nature is not mere human property, but possesses basic intrinsic rights. These rights can be established by defining nature as a "subject of rights," as a "legal person," as a "rights-bearing entity," or by other terminology. The Rights of Nature may include the right to exist and thrive, and the right to restoration. Second, Rights of Nature often give nature a legal status, meaning that its rights can be directly defended in a court of law. Third, a Rights of Nature approach creates a duty humans to act as guardians or stewards of the natural world. Many Rights of Nature laws and decisions create organs of stewardship: a

group of people or an entity with the legal duty to defend the rights and interests of nature.¹⁰ The first world conference on the environment, the United Nations Conference on the Human Environment, held in Stockholm, Sweden, in 1972, was the first global conference to make the environment a major issue. The participants adopted a set of principles for the sound management of the environment, containing 26 principles, which brought environmental issues to the forefront of international concerns and marked the beginning of a dialogue between industrialized and developing countries on the link between economic growth, air, water and ocean pollution and the well-being of people around the world, one of the main outcomes of the conference was the creation of the [United Nations Environment Programme \(UNEP\)](#). The Stockholm Declaration (1972) is one of the instruments with an ecocentric trait because it recognizes that the human being is the work and architect of nature, hence its importance since it grants nature the character of being the source of life on this planet. Subsequently, in the Inter-American System for the Protection of Human Rights, Advisory Opinion 23 of the Inter-American Court of Human Rights (IACHR Court) recognizes the interrelation between the environment and human rights, as well as the life cycles of nature.

As we can see, it is finally in OC- 23/17 that the IACHR Court establishes the interrelation between the environment and human rights and recognizes the rights of nature, in its paragraph 62:

This Court considers it important to emphasize that the right to a healthy environment as an autonomous right, unlike other rights, protects the components of the environment, such as forests, rivers, seas and others, as legal interests in themselves, even in the absence of certainty or evidence of risk to individual persons. It is a matter of protecting nature and the environment not only because of its connection with a utility for human beings or because of the effects that its degradation could cause on other rights of individuals, such as health, life or personal integrity, but also because of its importance for the other living organisms with which the planet is shared, also deserving of protection in themselves. In this sense, the Court notes a tendency to recognize legal personality and, therefore, rights to nature not only in court rulings but even in constitutional orders".

¹⁰ <https://www.internationalrivers.org/wp-content/uploads/sites/86/2020/10/DIGITAL-Right-of-Rivers-Report-Exec-Summary-Spanish-optimized.pdf>

From the previous paragraph, we can deduce an ecocentric tendency on the part of the IACHR Court to recognize nature as a subject of law because of its connection with people and with the other living organisms with which the planet is shared, also deserving of protection. Consequently, at the global level, the prevailing vision is ecocentrism, in which the human being is no longer the only protagonist on the planet, but also nature.

TWENTY-THIRD. Although, as indicated in our Political Constitution of the State and current regulations, they have an anthropocentric focus, however, the ecocentric focus is found in international human rights law that recognizes the rights of nature in Advisory Opinion 23/17 of the Inter-American Court of Human Rights, which is binding since the IACHR Court has established that the protection and guarantee of human rights implies the obligation to carry out a conventionality control, understood as an analysis of compatibility between domestic law and the standards derived from the ACHR, other treaties of the ISHR and pronouncements of its organs. In this exercise, in addition to the judgments of the IACHR Court on contentious cases, the provisions of its advisory opinions must also be observed. Likewise, the first contentious case in which the IACHR Court declared the violation of the right to the environment is the case of *Lhaka Honhat v. Argentina*, which analyzed the rights to a healthy environment, to adequate food, to water and to cultural identity in an autonomous manner based on Article 26 of the American Convention. The Court considered it appropriate to examine these four rights in their interdependence and in accordance with their specificities with respect to indigenous peoples.

A constitutional judge cannot fail to apply ecological justice, taking into account the need to recognize nature as a subject of rights and from its own values, which is an inevitable and necessary consequence of the recognition of the sequence that begins with the intrinsic values and continues with the rights of nature, since it seeks the protection of nature as a whole, not only an individual but a natural entity is protected.

Importance of the Marañón River and its tributaries as a right holder TWENTY-

FOURTH.- What is a river? A river is a stream of water that flows from its source to its mouth in another river, lake or the sea. A river can be more or less abundant depending on the parts of the [river](#), and can be fed in various ways: precipitation, terrestrial runoff, springs, and

seepage, and meltwater in snow-covered areas and glaciers. Rivers are highly diverse and productive ecosystems that contribute to economic growth, food security and human well-being. They are physical spaces, but also social, since they are home to and interact with diverse populations of the country. In the Peruvian territory, rivers are torrents of life. They transport oxygen, sediments and nutrients, which is why they are the daily sustenance of thousands of species and hundreds of riverside communities. In this way, they contribute to the formation of natural habitats that are key to fish productivity and biological diversity. In addition, rivers are the main artery that connects the native peoples of the Amazon region.

TWENTY-FIFTH.- What is a hydrographic basin? A watershed is the territorial management unit where the waters of streams and rivers drain into a common collector that flows into the ocean, lakes or main rivers. Watersheds play an extremely important role in the water cycle, as they are known as the large containers that collect the water resource that comes from rainfall: their soils are like a large sponge that retains the largest amount of rainwater in a short period of time, and periodically release it to keep the rivers and streams full, even in times of drought. To guarantee the availability of water in water bodies, as well as their optimum quality, it is essential to take care of them and keep them healthy, otherwise an imbalance in the ecological balance and the conservation of ecosystems would be generated, which, among other things, would cause a water deficit. In Peru, according to information from the National Water Authority (ANA), there are 159 watersheds, 62 on the Pacific slope, 84 on the Amazon slope and 13 on Lake Titicaca slope. The importance of watersheds lies in the fact that inland water resources are an essential component and an indispensable part of all terrestrial ecosystems. The water environment is characterized by the hydrological cycle, which includes extreme situations such as floods and droughts. The natural resource that generates the most sensitive impacts on human life is water, especially freshwater or inland water. It is the source of life. Without it, it is not possible to conceive of any form of development. The "United Nations Conference on Water", held in Mar del Plata in 1977, warned about the significant decrease in the volume of continental water, basically alteration of rainfall occurrence, due to climatic variations, generated, among others, by the lack of soil; warning that if measures were not taken to protect the environment, especially the natural forest cover, water would gradually decrease to the point of seriously jeopardizing the survival of the planet.

survival of man on earth. Following this announcement, the United Nations, through the Food and Agriculture Organization - FAO, reinforced the recommendation to give fundamental importance to the study, delimitation and preservation watersheds⁽¹¹⁾.

Marañón River

TWENTY SIXTH.- The Marañón River is a river that flows entirely in Peruvian territory. At its confluence with the [Ucayali River](#) it forms the [Amazon River](#). Its farthest source from its mouth in the Amazon is at 4600 [meters above sea level](#). [n. m.](#) (meters above sea level) at the foot of the Nevado Yapura (also called Cerro Caudalosa), whose summit is 5480 m high in the [Raura mountain range](#), (Lauricocha province, Huanuco Region). Further north, in Huayllay mountain range, there is a second important source of the Marañón: the headwaters of the Carhuacocha and Janca rivers, which will form the Nupe River, which will change its name to Marañón when it joins the Lauricocha River. The length of the Marañón River is 1,707 km to its confluence with the Ucayali River near Nauta (Loreto), at 89 m above sea level. This length is for reference only because in the Amazon plain, the river's meanders vary according to floods and troughs. The catchment area of the Marañón River is 363,432 km², of which 297,038 km² (or 82%) is in Peru. The remaining 18% is in Ecuador. It flows through six regions of Peru, like an artery that flows into the Amazon jungle to form the majestic Amazon River. Along its course it plays a key role in maintaining biodiversity and the well-being of the riverside communities. Thousands of species swim in its waters, including the dorado (*Brachyplatystoma rousseauxii*), which follows the longest freshwater fish migration route in the world. The Marañón River controls important processes such as the formation of beaches and plains, and even thousands of hectares used for agricultural purposes. Within this landscape lies one of Peru's most important natural treasures: the Pacaya Samiria National Reserve (located between the confluence of the Marañón and Ucayali rivers), which exceeds two million hectares, a large

¹¹ <https://www.midagri.gob.pe/portal/51-sector-agrario/hidrometeorologia/360-cuencase-hidrografia>

low alluvial and flooded rainforest plain, with its various islands, streams and oxbow lakes. It is home to more than 1,025 species of vertebrates, such as the manatee, the pink dolphin, the gray dolphin and the jaguar, as well as 449 species of birds.



Photo Marañón River

The Kukama people

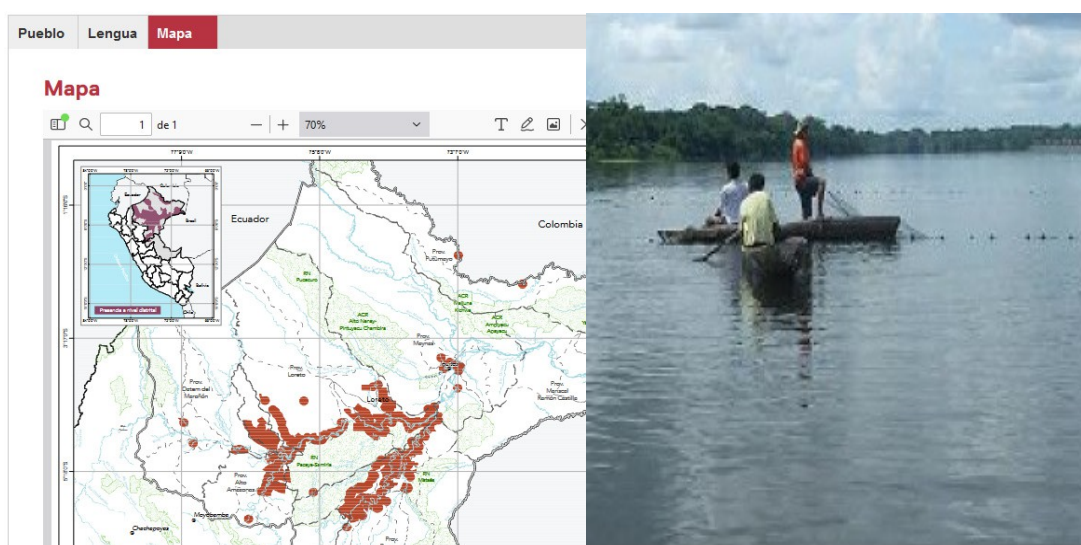
TWENTY SEVENTH.- The term kukama is composed of two words: ku is 'chakra' and kama is 'breast, teat, mamas', and literally means 'chakra-breast' or 'suckles from the chakra'. In the word kukamiria, the other two segments, miri and ia, are translated as 'thin, small, small' and 'heart, center', respectively. Thus, the Kukama word Kukamiria would mean 'small suckled chakra'. Due to their long relationship with a floodplain ecosystem and their great adaptation to it, the Kukama Kukamiria have developed different tools and techniques fishing, which today are a heritage inherited from their ancestors. Research affirms that the mestizo riverine communities and other indigenous peoples currently living in similar ecosystems recognize the Kukama Kukamiria as the "great fishermen" of the department of Loreto. The Kukama Kukamiria people live mainly in the department of Loreto. According to the results of the 2017 national census, 10,762 people have self-identified themselves as part of the Kukama Kukamiria people at the national level because of their customs and ancestors; and 1,185 people have stated that they have learned to speak the language or mother tongue with which they learned to speak in their childhood.

speak the Kukama Kukamiria language, which corresponds to 0.02% of the total number of native languages nationwide. In addition, according to data obtained by the Ministry of Culture, the population of the Kukama Kukamiria communities is estimated at 37,053 people. The great adaptation of the people to the river ecosystem, as well as the great skill and technology they developed for fishing. The basis of the traditional organization of the Kukama Kukamiria are the paternal kinship groups, called "sangres" and associated to totems or founders. Within these groups, surnames that correspond to plant and animal names are transmitted. According to this kinship organization, marriages constitute exchanges between two "bloods" (Chirif and Mora 1977). Unlike most of the indigenous peoples of the Amazon, who traditionally had dispersed settlements, the houses of the Kukama Kukamiria have historically been concentrated in a linear fashion, forming large populations along the (Jiménez de la Espada 1965). In this regard, Roxani Rivas (2004) has emphasized the particularity of the Kukama Kukamiria, in that they are one of the peoples that inhabited flood zones since ancient times and had an excellent adaptation to the fluvial ecosystem. Traditionally, the Kukama Kukamiria have dedicated themselves mainly to fishing and agriculture, with hunting and gathering being complementary activities. Historically, the Kukama Kukamiria's main activity has been fishing, which can be carried out individually or in groups. Although fishing is considered a more socially valued activity than hunting, the importance of hunting lies in the fact that it is the main source of protein for the families and that it links the villagers to the market (Rivas 2000, 2004). The centrality of fishing for the Kukama Kukamiria people is evident in their origin myths, which highlight the figure of the mythical hero Ini Yara, which literally means 'our owner'. This hero is represented as a great fisherman who travels rivers and lagoons in a canoe or raft (Rivas 2004). Ipukiari is the native term used to designate a 'great fisherman', a term that not only refers to the ability to fish, since its meaning also includes the phrases 'great hunter, one who knows how to kill'. In this sense, it is interesting to note that in Kukama Kukamiria thought, hunting is not so clearly distinguished from fishing, encompassing these concepts within a predatory activity. For hundreds of years, the Kukama Kukamiria have developed different tools and techniques for the capture of aquatic animals. These techniques have been learned and practiced not only by this people, but also by other indigenous peoples and mestizo communities currently settled in floodplain ecosystems (Rivas 2004). In the same way that the ability to fish gives social prestige to the men of

In the Kukama Kukamiria people, the tools used can also lead to the acquisition of a certain social prestige in the area of hunting. According to the ancestral Kukama Kukamiria belief, man establishes a relationship of alliance with the fishing tools and considers that, like him, they have the independence to choose whether to fish or not (Rivas 2004).¹²

From the confluence with the Huallaga River and all along the Marañon, to Nauta, including the Pacaya Samiria Nature Reserve, there are Kukama Kukamiria or Cocama Cocamilla communities, living in small villages along the middle and lower Marañon River and many are engaged in fishing, hunting, agriculture, handicrafts. Since ancient times they have lived in flood zones and are very well adapted to river ecosystems.

Kukama Kukamiria



Kukama-photo Servindi

Cosmovision of the Kukama people

TWENTY-EIGHTH: For the Kukama people, their mythology is structured around the aquatic world in the depths of the Marañon River and its animals. The life of the Kukama people revolves around water and land. For centuries, the Kukama people have maintained a strong spiritual relationship with the Marañon River, because in addition to thanking it for providing them with water and food, they consider that it keeps the memory of their ancestors, through the spirits that inhabit its depths, its waters guard the history of an entire culture and the spirits that inhabit it.

⁽¹²⁾ https://bdpi.cultura.gob.pe/sites/default/files/archivos/pueblos_indigenas/Ficha%20Kukama%20Kukamiri_a.pdf

who have cared for centuries for the Amazon. For them, under the river there is a whole city similar to ours where their children, parents, grandchildren or grandparents who were lost in its depths live, but still have a connection with the family, this shows us the importance of the rivers for a whole culture, in this case the Kukama culture.

In the project called "The Soul of the Marañón River: Submerged Stories of the Kukama People", it gathers the individual and collective stories and histories of hundreds of generations, the memory and worldview of an entire culture. It states that "for the Kukama Kukamiria people of Peru, the Marañón River is life itself, place where they live, work and play. It contains the memory of our past and the promise of our future. In the Kukama people we say that the course of the river was traced by arrows shot from the bow of a great god. But we also hold that its waters sprang from the lifeblood of the lupuna, the sacred tree. For these reasons, the river is inseparable from those of us who live along its banks. For us, as for other indigenous groups, plants, animals, fish and other beings are people. For countless generations, human and non-human people have come to an agreement on how to share the forest, rivers, streams and lakes. Ever since the boa gave birth to the first Kukama person in the river, the events of our people's history have been submerged in its waters. They remain a living memory as stories are passed down from generation to generation. Among the most painful memories are those of the rubber boom of the early 20th century, when rubber barons enslaved indigenous peoples collect latex from forest trees and punished, maimed or killed those who did not meet their quota. Just as the river is constantly changing constantly, its meanders shifting from site by site, its islands eroding and , so the memories he keeps are constantly being modified by events on land. Modern technology and better communication bring about rapid changes that alter other forms of life and the relationships between human and non-human people in the lower Amazon. Although some of these changes threaten the river itself, the past, present and future remain intermingled in its waters, deep in the soul of the Marañón."¹³ For the Kukama people, the river is the "ia", it is the center, the force and the mother of their universe. From it they eat, drink, transit it; into it they pour their tears and joys. But

¹³ <https://peru.wcs.org/es-es/WCS-Peru/Noticias/articleType/ArticleView/articleId/14789/El-mundo-bajo-el-rio-Maranon-Pueblo-Kukama-lanza-mapa-interactivo-con-historias-y-relatos-culturales.aspx>

the connection is even deeper. Below the surface of the river live the karuaras, or river people.

The Marañón River is the source of food, water and transportation for the Kukama people; it is also the center of their spiritual universe. In the cosmology of this ethnic group, "the most important institution and its image is represented in the Marañón River", which is a being inherent to the world that governs the fluvial environment in which it inhabits.



Photo CAAP

Right to enjoy a balanced and adequate environment.

TWENTY-NINTH: Why is the right to a healthy environment so important?

Environmental law is directly related to living beings and the environment in which they develop. It includes the right to clean air, a stable climate, a prosperous biodiversity and healthy ecosystems. In short, it is basis and precondition for economic development, sustainability and social justice. It is therefore essential to sustain and improve our environment in order to guarantee the rest of the rights, particularly some such as the right to food, the right to water and the **right to health**. Regarding the latter, as we have mentioned on previous occasions, air pollution causes more than 8 deaths a year and a quarter of the world's diseases are caused by risks. Ensuring this right not only implies being able to enjoy the rest of human rights, but also carries with it numerous economic opportunities, as established in the Paris Agreement. In his book "The Right to an Adequate Environment" Demetrio Loperena Rota (Civitas 1997), said:

"Adequate environment is not a consequence of a particular civilizational development, as is universalized health care, for example. No. The enjoyment of this right does not depend on social or political systems, since, as

life itself, comes from nature, not from human action. What does depend on the social system is its negation, but this statement does not alter the ontology of the man-environment relationship and its legal consequence: the right to an adequate environment".

As mentioned by Lorenzetti (2010), quality of life has a deep-rooted environmental background, since without minimum conditions in the physical environment there is no quality of life possible; therefore, the environment functions as a necessary precondition for quality of life.

The right to a healthy environment is now a reality in national and international legal systems, a necessary consequence of the evolution in the conception of the environment. This right has become an essential legal right human life which, intrinsically linked to dignity, guarantees that people can develop in an adequate and healthy environment that allows the satisfaction of basic needs, such as life, health, food or housing, among others. Its normative development has taken place mainly at the regional and national levels. Indeed, the three major human rights protection mechanisms - European, American and African - recognize the existence of a human right to the environment, even though in the European case it is not expressly included in the Convention, but it has been the Strasbourg Court that has given it content, based on its link with the right to life, the right to enjoy personal and family life and the right to private property, among others. In accordance with the doctrine of the ECtHR on the subject, we can affirm that a model of State liability for environmental damage has been configured, for whose exemption the States must carry out a series of actions that are linked to the general duty of the States to protect their citizens, a duty in which safeguarding of the environment in which human life develops must necessarily be included, due to its close connection with other human rights such as life, private and family life or private property. These state duties, known as positive obligations, may be of a substantive or procedural nature, the former being those related to the establishment of regulations on the matter, while the latter consist of guaranteeing citizens the pertinent judicial and administrative mechanisms for the defense of their rights in environmental matters.

The Stockholm Declaration, which proclaims for the first time the existence of a human right to develop in a healthy environment, and has continued to develop until today, whose first principle indicates that people have: "the fundamental right to freedom, equality and the enjoyment of adequate living conditions".

in an environment of such quality as to enable them to lead a dignified life and enjoy well-being".

THIRTEENTH: Everyone has the right to a clean, healthy and sustainable environment. Since human rights and the environment are interdependent, a clean, healthy and sustainable environment is necessary for the full enjoyment of a wide range of human rights, such as the right to life, health, food, access to safe water supply and sanitation, and development, among others. In turn, the enjoyment of all human rights, such as the right to information, participation and access to justice, is of great importance for environmental protection.

THIRTY-FIRST.- The Political Constitution of Peru establishes in article 2, paragraph 22, that every person has the right "(...) to enjoy balanced and adequate environment for the development of his life." According to the Constitutional Court, the right to enjoy a healthy and balanced environment has two dimensions. The first is the right of people to enjoy an environment in which its elements develop and interrelate in a natural and harmonious manner. The second dimension invokes the duty of the State and individuals to maintain environmental goods in adequate conditions for their enjoyment.

The international normative framework is gestated from complementary norms, such as article 12 of the International Covenant on Economic, Social and Cultural Rights and article 11 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, under the denomination of "Right to a healthy environment". The Declaration of the United Nations Conference on the Human Environment (1972), the World Charter for Nature (1982) and others, which constitute the so-called "International Environmental Law". On July 28, 2022, the General Assembly of the United Nations declared by resolution that a healthy environment is a universal human right, and although it does not have binding effects for the member states, its purpose is to promote the right to the environment in their respective constitutions and to implement it through the law. According to Inger Andersen, executive director of the United Nations Environment Program (UNEP): "This resolution sends the message that no one can take away nature, clean air and clean water, or deprive us of a stable climate. At least not without a fight" (UN Environment Programme, 2022, para. 4).

THIRTY SECOND.- Likewise, we have Pope Francis in his Encyclical Letter Laudato Si on the care of the common home, where among other things

develops pollution and climate change "20. There are forms of pollution that affect people on a daily basis. Exposure to atmospheric pollutants produces a wide range of health effects, especially for the poorest, causing millions of premature deaths. The climate is a common good, belonging to all and for all. At the global level, it is a complex system related to many conditions essential for human life.", with respect to water, "27. Other indicators of the current situation have to do with the depletion of natural resources. We are well aware of the impossibility of sustaining the current level of consumption in the most developed countries and in the richest sectors of society, where the habit of wasting and throwing away has reached unprecedented levels. Certain maximum limits of exploitation of the planet have already been exceeded, without having solved the problem of poverty. 29. A particularly serious problem is the quality of water available to the poor, which causes many deaths every day. Among the poor, water-related diseases, including those caused by microorganisms and chemical substances, are frequent." on biodiversity "38. Let us mention, for example, those lungs of the planet teeming with biodiversity that are the Amazon and the Congo river basin, or the great aquifers and glaciers. The importance of these places for the planet as a whole and for the future of humanity is not ignored. 40. The oceans contain not only most of the planet's water, but also most of the vast variety of living beings, many of them still unknown to us and threatened by various causes. On the other hand, life in rivers, lakes, seas and oceans, which feeds a large part of the world's population, is affected by the lack of control in the extraction of fishery resources, which causes drastic decreases in some species." on the light offered by faith says "63. If we take into account the complexity of the ecological crisis and its multiple causes, we should recognize that solutions cannot come from a single way of interpreting and transforming reality. It is also necessary to turn to the diverse cultural riches of peoples, to art and poetry, to the interior life and spirituality", and on the loss of biodiversity it says "32. The earth's resources are also being depredated because of immediatist ways of understanding the economy and commercial and productive activity. The loss of forests and jungles implies at the same time the loss of species that could be extremely important resources in the future, not only for food, but also for curing diseases and for multiple services. The various species contain genes that could be key resources for solving some human need or regulating some environmental problem in the future. 33. But it is not enough to think of the different

species only as eventual exploitable "resources", forgetting that they have a value in themselves. Every year thousands of plant and animal species disappear, which we will no longer be able to know, which our children will no longer be able to see, lost forever. The vast majority become extinct for reasons that have to do with some human action. ".

ILO Convention 169

THIRTY THIRD.- Article 3.1 of ILO Convention 169, the United Nations Declaration on the Rights of Indigenous Peoples, establishes that indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of this Convention shall apply without discrimination to men and women among these peoples, in Article 5 In applying the provisions of this Convention: (a) the social, cultural, religious and spiritual values and practices of these peoples shall be recognized and protected, and due regard shall be paid to the nature of the problems which face them both collectively and individually; (b) the integrity of the values, practices and institutions of these peoples shall be respected; (c) measures shall be taken, with the participation and co-operation of the peoples concerned, to alleviate the difficulties which these peoples experience in facing new conditions of life and work, Article 12 The peoples concerned shall have protection against violation of their rights, and shall be able to take legal proceedings, either individually or through their representative bodies, to secure effective respect for these rights. In applying the provisions of this Part of the Convention, governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or use, and in particular the collective aspects of this relationship. The use of the term lands in Articles 15 and 16 shall include the concept of territories, which covers the totality of the habitat of the regions which the peoples concerned occupy or otherwise use. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially protected. These rights include the right of these peoples to participate in the utilization, management and conservation of these resources, and its Article 23.1 - 1.

23.2 Handicrafts, rural and community industries, and traditional and traditional activities

The subsistence economic activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognized as important factors in the maintenance of their culture and in their economic self-sufficiency and development. With the participation of these peoples, and whenever appropriate, governments shall ensure that such activities are strengthened and encouraged.

THIRTY FOURTH.- We must not forget that rivers are a key part of the great terrestrial system called biosphere, they are the support of diverse ecosystems, have an impact on climate regulation, water supply and soil renewal. In addition, the relationship between rivers and human welfare is directly reflected in our survival, adding that in the indigenous populations with their worldview and ancestral customs are associated with the river giving it a spiritual importance. Our Constitution defines the Peruvian State as democratic and social. Democratic, in that democracy is based on the acceptance that the supreme purpose of society and the State is the defense of the human person and respect for his dignity (Article 1 of the Constitution). Social, insofar as respect for dignity refers mainly to achieving a better quality of life for people. Thus, our Constitution, in its Article 44, establishes among the main duties of the State "to guarantee the full validity of human rights; to protect the population from threats against its security; and to promote the general welfare based on justice and the integral and balanced development of the nation".

In this regard, it is determined that for the Kukama people the Marañón River is the center of the universe, they have a deep connection, an intrinsic relationship between them and the river is the source of food, water and transportation for the Kukama people; It has an intrinsic value, which has to be protected due to the imminent existence of contamination by oil exploitation throughout the area in which there are constant oil spills that affect the lives of this indigenous population who deserve protection of their fundamental rights, such as water, food security, healthy environment, culture and territory of the ethnic communities that inhabit the entire banks of the Marañón River, recognizing the right to nature under an ecocentric approach, recognizing the Marañón River and its tributaries as a holder of rights. The respect to the cosmovision of the Kukama people that the river is a living organism, is its vital nucleus, that under its waters inhabit spirits and people that can not be profaned, it can not continue to be polluting, affecting the rights of life and others to the Kukama population, so it is necessary to make radical changes to save nature from human predation, as well as respect to the

The rights of the indigenous population, which is one of the most vulnerable sectors of the Peruvian population, by recognizing the Marañón River and its tributaries as a right holder, the Kukama people now have the duty to represent and protect it.

THIRTY FIFTH.- Regarding the appellants' allegation that the Constitutional Court in Case 03383-2021-PA/TC, in no way recognizes nature as a subject of law, the Constitutional Court declares the existence of an unconstitutional state of affairs in the Loreto region due to lack of access to water and environmental contamination. The appellants' point is irrelevant, because the Constitutional Court has left the door open for a debate regarding an ecological Constitution, which protects both the environment and nature, here the judge of first instance has developed her jurisdictional decision in a broad manner in which she concludes on the right to the nature of the Marañón River and its tributaries as a holder of rights Regarding the grievance that an apparent motivation is evident in all the extremes of the sentence, from the reading of the sentence it is verified that it is duly motivated according to the standards established by the Constitutional Court.

For the reasons stated above, the appellants' grievances cannot be upheld, and the judgment should be confirmed in this respect.

Ordering the recognition and appointment of the State (Ministry of the Environment, Ministry of Agrarian Development and Irrigation and the National Water Authority), the Regional Government of Loreto and the indigenous organizations as guardians, defenders and representatives of the Marañón River and its tributaries.

THIRTY SIXTH.- Grounds of the appeals on this appealed point:

- The defendant **Ministry of the Environment** appealed this part of the sentence, alleging that this claim was declared founded and that the Ministry of the Environment was ordered to be the guardian, defender and representative of the Marañón River and its tributaries, without having assessed the regulatory framework that establishes the competencies of the defendant, and that the Ministry of the Environment should be declared guardian, defender and representative of the Marañón River and its tributaries was not postulated by the plaintiff, that is to say that an *extra petita* pronouncement was issued. We must inform your office that Article I of the Preliminary Title of Law No. 29158, Organic Law of the Executive Branch (LOPE), establishes that, by means of the principle of legality, the authorities, officials and servants of the Executive Branch are subject to the

The Ministries and Public Entities of the Executive Branch exercise their exclusive powers throughout the national territory in accordance with their attributions and as provided for in their specific regulations, and are subject to national policy. Likewise, Article 4 states that the Ministries and Public Entities of the Executive Branch exercise their exclusive powers throughout the national territory in accordance with their attributions and as provided for in their specific regulations and are subject to national and sectorial policy, as established in numeral 3.1 of Article 3 of Legislative Decree No. 1013, which approves the Law of Creation, Organization and Functions of the Ministry of the Environment, the purpose of this Ministry is the conservation of the environment, so as to promote and ensure the sustainable, responsible, rational and ethical use of natural resources and the environment that sustains them, in order to contribute to the integral social, economic and cultural development of the human person, in permanent harmony with their environment, and thus ensure present and future generations the right to enjoy a balanced and adequate environment for the development of life.² of the aforementioned article states that one of MINAM's specific objectives is to ensure compliance with the constitutional mandate on the conservation and sustainable use of natural resources, biological diversity and protected natural areas and the sustainable development of the Amazon, and to ensure the prevention of environmental and natural resource degradation and reverse the negative processes that affect them. Law No. 28245, the Framework Law of the National Environmental Management System (SNGA), establishes that the SNGA is constituted on the basis of state institutions, bodies and offices of the different ministries, decentralized public agencies and public institutions at the national, regional and local levels that exercise competences and functions over the environment and natural resources; Its purpose is to guide, integrate, coordinate, supervise, evaluate and guarantee the application of policies, plans, programs and actions for the protection of the environment and contribute to the conservation and sustainable use of natural resources. MINAM is in charge of monitoring the implementation of the 2030 National Environmental Policy approved by Supreme Decree No. 023-2021-MINAM, which incorporates "Priority Objective 3: Reduce air, water and soil pollution". There are no normative provisions that grant MINAM functions of representation of natural resources, they should indicate that MINAM through its line bodies and attached agencies, in coordination with the entities of the different levels of government, in compliance with the constitutional framework and according to the functions conferred in

The current norms promote the implementation of actions for the conservation and sustainable use of natural resources, biological diversity, and protected natural areas, with special emphasis on the sustainable development of the Amazon. As well as an apparent motivation in the sentence.

- The appellant Public Prosecutor of the **Ministry of Agrarian Development and Irrigation**, on behalf of **the National Water Authority - ANA** bases her appeal on the extreme that Orders the recognition and appointment of the State (Ministry of Environment, Ministry of Agrarian Development and Irrigation and the National Water Authority), Regional Government of Loreto and the indigenous organizations as guardians, defenders and representatives of the Marañón River and its tributaries, pointing out that according to the Technical Report No. 0011-2023-AAA-AAA.A-ALAIQ/CPC issued on June 2023 by the Local Water Administration of the Iquitos Water Authority, in the sense that the National Water Authority is not the guardian, defender and representative of the Marañón River and its tributaries.No. 0011-2023-AAA-AAA-AAA.A-ALAIQ/CPC issued on June 22, 2023 by the Iquitos Local Water Administration, in the sense that the National Water Authority is not the entity in charge the investigation or sanction on events occurring in infrastructure that is not considered a natural water resource, only when it is determined that the causality of the event affects water or its associated assets; this in observance of Article 1 of the Preliminary Title of Water Resources Law, Law No. 29338. Notwithstanding the aforementioned, it should be specified that your represented has been carrying out, on a constant basis every year, the actions of monitoring water quality, attention to complaints and environmental emergencies due to oil spills in the sector, within the framework of our functions as provided in literal I of Article 5 of the Regulation of Organizations and Functions of the National Water Authority, approved by Supreme Decree No. 018-2017-MINAGRI. Regarding the constitutional rights allegedly violated, we must point out the following activities or regulations that demonstrate that ANA has been working on the issue with which the plaintiff can exercise his right Law No. 29338, Law on Water Resources, Regulation of the Law on Water Resources, approved by D.S. No. 001-2010-AG, Technical Report No. 0011-2023-AAA-AAA.A-ALAIQ/CPC where the table of the most recent actions for the 2022-2023 period is annexed, "General Guidelines for the Creation of Basin Water Resources Basin Councils", approved by Resolution No. 575-2010-ANA, the regional government should play an active role, leading the creation process, promoting the commitment and participation of the basin institutions to form a driving group to develop its functions and competencies for the formation and creation of the Basin Water Resources Council. In this regard, the National Water Authority provides all the advice and promotes the creation of the councils; however, the government

The regional government is the leader of the process. The appellate decision is flawed in its motivation (apparent motivation).

THIRTY SEVENTH. Regarding the grievances of the appellant Ministry of the Environment that it has been appointed guardian, defender and representative of the Marañon River and its tributaries; without having assessed the normative framework that establishes the competencies of the Ministry of the Environment, as set forth in Law N° 29158, Organic Law of the Executive Branch, in Legislative Decree N° 1013, which approves the Law of Creation, Organization and Functions of the Ministry of the Environment, in Law N° 28245, Framework Law of the National Environmental Management System (SNGA), in Supreme Decree N° 023-2021-MINAM, and which was not postulated by the plaintiff, that is to say that an *extra petita* pronouncement was issued, as follows.

THIRTY-EIGHTH. Pursuant to Legislative Decree No. 1013, which the law of creation, organization and functions of the Ministry of the Environment, in its Title I General Provisions, article 2, states "2.1 The Ministry of the Environment is created as an agency of the Executive Power, whose general function is to design, establish, execute and supervise the national and sectorial environmental policy, assuming the steering role with respect to it (...)..."", in its article 3 on the specific object and objectives of the Ministry of the Environment "3.1 The purpose of the Ministry of the Environment is the conservation of the environment, in such a way as to propitiate and ensure the sustainable, responsible, rational and ethical use of natural resources and the environment that sustains them, in order to contribute to the integral social, economic and cultural development of the human person, in permanent harmony with its surroundings, and thus ensure present and future generations the right to enjoy a balanced and adequate environment for the development of life. 3.2 The specific objectives of the Ministry of the Environment are: a) To ensure compliance with the constitutional mandate on the conservation and sustainable use of natural resources, biological diversity and protected natural areas and the sustainable development of the Amazon. b) To ensure the prevention of environmental and natural resource degradation and reverse the negative processes that affect them. c) Promote citizen participation in decision-making processes for sustainable development. d) Contribute to the country's competitiveness through efficient environmental performance...(...)", in its Title II on competence and functions in Article 4 on the scope of competence of the Ministry of the Environment 4.1 "The Ministry of the Environment is the governing body of the Executive Power of environmental sector, which develops, directs, supervises and executes the national environmental policy. It also has the function of promoting the conservation and sustainable use of natural resources, biological diversity and protected natural areas. 4.2 The activity of the Ministry of the Environment includes the following actions

The National Environmental Authority is responsible for the establishment of policy, specific regulations, supervision, control and sanctioning power for non-compliance with environmental norms within the scope of its competence, which may be exercised through its corresponding public agencies", in its article 5 on the environmental sector "5.1 The environmental sector comprises the National Environmental Management System as a functional system, which integrates the National Environmental Impact Assessment System, the National Environmental Information System and the National System of Natural Areas Protected by the State; as well as the management of natural resources, within the scope of its competence, biodiversity, climate change, soil management and other thematic areas established by law. 5.2 The environmental sector is made up of the Ministry of the Environment and the entities within its organic scope...(...)". Regarding its functions, article 6 establishes in its general functions: "The general functions of the Ministry of the Environment are: 6.1 Guiding functions: a) To formulate, plan, direct, coordinate, execute, supervise and evaluate the national environmental policy applicable to all levels of government. b) To guarantee compliance with environmental regulations, carrying out oversight, supervision, evaluation and control functions, as well as exercising the sanctioning power in matters within its competence and directing the environmental oversight and control regime and the incentive regime provided for by Law No. 28611, General Environmental Law...(...)..."", in Law No. 28611..)....", in its article 7 on the specific functions the Ministry of the Environment fulfills the following functions specifically linked to the exercise of its competences: a) To formulate, approve, coordinate, supervise, execute and evaluate the National Environmental Action Plan and the National Environmental Action Agenda. b) Direct the National Environmental Management System...(...)...o) Promote citizen participation in decision-making processes for sustainable development and foster a national environmental culture. p) Prepare the report on the state of the environment and the valuation of the Nation's natural patrimony".

THIRTY-NINTH. The Ministry of the Environment is the agency responsible for the conservation and sustainable use of natural resources, the enhancement of biodiversity and environmental quality for the benefit of people and the environment in a decentralized and coordinated manner with public and private organizations and civil society, within the framework of green growth and environmental governance, formulates, plans, directs, executes, supervises and evaluates the National Environmental Policy (PNA), applicable to all levels of government, and directs the National Environmental Management System (SNGA) and the National System of Environmental Assessment (SNGA), as well as the National Environmental Management System (SNGA).

Environmental Impact Assessment (SEIA) exercising the steering role of the Environmental Sector. It has guiding, technical, normative and specific functions.

FOURTEENTH. The National Environmental Policy (PNA) to 2030 is constituted as the basis for the conservation of the environment, seeking to ensure the sustainable, responsible, rational and ethical use of natural resources and the environment that sustains it, in order to contribute to the integral, social, economic and cultural development of the citizens. It was approved by the Council of Ministers through Supreme Decree N° 023-2021-MINAM, with the participation of different publics at national, regional and local levels, including different publics from the public sector, private sector, academia, non-governmental organizations and representatives of indigenous or native peoples. The National Environmental Policy sets out the desired future situation by 2030 for Peru to reduce the fragility of its ecosystems, conserve its biodiversity and recover ecosystem services, in such a way as to contribute to improving the quality of life of the people. To achieve this, the objectives of the National Environmental Policy include the need to reduce biodiversity loss and deforestation levels, reduce air, water and soil pollution, and improve solid waste management. It also proposes to achieve by 2030 a reduction in vulnerability to climate change, a reduction in greenhouse gas emissions, and an improvement in the eco-efficiency of the production of goods and services, both public and private, to move towards a circular economy that makes the best use of resources; all of this strengthened by improving governance, research and environmental education. Priority Objective 1: Improve the conservation of species and genetic diversity This objective responds to the direct cause "Loss of Biological Diversity". Through this objective, the aim is to improve the conservation, valorization and use of the services provided by the country's species and genetic resources, reducing their vulnerability, guaranteeing their sustainable use and ensuring the provision of the multiple services they provide to Amazonian, Andean and coastal communities for this and future generations, and its priority objective 6 foresees: Strengthen environmental governance with a territorial approach in public and private entities. This objective responds to the direct cause "Weak environmental governance". Through this objective, it seeks to provide the various economic and social actors with spaces for consultation and joint work, in order to ensure citizen participation in environmental management. It integrates not only state actors, but also other groups such as academia, business, the private sector, the private sector, and the private sector.

communities and grassroots organizations. The aim is to provide the country with a basis for environmental management (planning - organization - direction - control) at the national, regional and local levels, and to support the achievement of all the objectives set forth in the National Environmental Policy (PNA). One of the most important contributions of this objective will be the prevention and adequate articulated management of socio-environmental conflicts ⁽¹⁴⁾.

FORTY-FIRST. Article 2 of the Political Constitution of Peru of 1993 establishes in numeral 22 that every person has the right to peace, tranquility, enjoyment of free time and rest, as well as to enjoy a balanced environment adequate for the development of his life, and Article 3 provides that the enumeration of the rights established in this chapter does not exclude the others guaranteed by the Constitution, nor others of analogous nature or which are based on the dignity of man, or on the principles of sovereignty of the people, of the democratic State of law and of the republican form of government, in its article 67 establishes that the State determines the national policy of the environment. It promotes the sustainable use of its natural resources, in its article 68 it establishes that the State is obliged to promote the conservation of biological diversity and protected natural areas, and in its article 69 it states that the State promotes the sustainable development of the Amazon with adequate legislation.

FORTY-SECOND. Article I of Law No. 28611, General Environmental establishes that every person has the inalienable right to live in a healthy, balanced and adequate environment for the full development of life, and the duty to contribute to an effective environmental management and to protect the environment, as well as its components, particularly ensuring the health of people individually and collectively, the conservation of biological diversity, the sustainable use of natural resources and the sustainable development of the country; Legislative Decree No. 1013, which approves the Law of Creation, Organization and Functions of the Ministry of the Environment, creates the Ministry of the Environment (MINAM) as an agency of the Executive Branch, with legal personality of public law, whose general function is to design, establish and supervise the national and sectorial environmental policy, assuming the steering role with respect thereto; that, in letters a) and b) of numeral 3.2 of Article 3 of said Legislative Decree, establishes that the specific objectives of the Ministry of the Environment are to ensure compliance with the constitutional mandate on the conservation and sustainable use of resources.

¹⁴ <https://www.gob.pe/institucion/minam/campa%C3%B1as/2041-politica-nacional-del-ambiente>

The project aims to promote the conservation of natural resources, biological diversity and protected natural areas and the sustainable development of the Amazon region, as well as to prevent the degradation of the environment and natural resources and reverse the negative processes that affect them.

FOURTH THIRD - In accordance with the regulations indicated in the preceding recitals that govern the Ministry of the Environment, it is determined that as the governing body in administering natural resources to ensure their sustainable, responsible and ethical use, it must form the collegiate of guardians, defenders and representatives of the Marañón River and its tributaries.

FOURTH FOURTH.- Regarding the grievance that this claim was not postulated by the plaintiff, that is to say that an extra petita pronouncement was issued. It should be pointed out that from the review of the brief of the lawsuit it is verified in item 5 petition section c. that one of the claims is the recognition and appointment of the State and the indigenous organizations as guardians, defenders and representatives of the Marañón River and its tributaries, and that, although the appellant is not expressly mentioned, due to the law of its creation, its functions and objectives, it is considered to be one of the guardians. Here it must be kept in mind that we are dealing with an action of amparo under the competence of a constitutional judge, not an ordinary judge. The sentences that come from the ordinary judge are limited to the effects that take place between the parties that promoted the litigation; they do not have repercussions on the rest of the community. The assessment, the motivation and the decision they make are based on an individual interest; the effects of the rulings of constitutional judges are always located beyond the alleged litigation. In other words, the ordinary case only interests and binds the subjects involved in it; on the other hand, the constitutional case interests all those who are subject to the rule of the Constitution, human rights treaties, conventions and others. Another difference between the ordinary judge and the constitutional judge is that the former is expressly prohibited from ruling extra petita, i.e., he cannot give reasons or resolve aspects that have not been directly presented by the parties; the latter, on the other hand, when the circumstances so require and it is convenient for the purposes of the process, may rule on issues additional to those originally requested, although related to the matter in dispute and necessary for the solution of the conflict and/or the reestablishment of the law or of the constitutional order.¹⁵ Additionally, Law No. 31307, Procedural Code, in its Preliminary Title establishes in its Article II. Aims of the constitutional processes, that the essential aims of the constitutional processes are to guarantee the validity of the constitutional order.

¹⁵ Juan Bautista Bardelli Lartirigoyen (Peru) The constitutional judge <https://www.corteidh.or.cr/tablas/r23482.pdf>

Article VIII on the interpretation of human rights and international treaties states that the content and scope of the constitutional rights protected by the processes regulated in this code must be interpreted in accordance with the Universal Declaration of Human Rights, human rights treaties, as well as with the decisions adopted by international human rights tribunals constituted according to treaties to which Peru is a party.

Therefore, the appellant's grievances are not amparo, and this aspect of the appealed judgment must be upheld.

FOURTH FIFTH.- As stated in the preceding recitals, the National Water Authority - ANA is the governing body and highest technical and regulatory authority of the National Water Resources Management System, attached to the Ministry of Agriculture and Irrigation, and is responsible for carrying out the necessary actions for the multisectoral and sustainable use of water resources by river basin. In addition, the National Water Authority has a local presence at the national level, through the Water Administrative Authorities - AAA and the Local Water Administrations - ALA. One of its functions is to support the formation of the Basin Water Resources Councils, which are institutional spaces for dialogue, where stakeholders related to water management in the basins discuss their problems in order to reach consensus, Through the council, the basin stakeholders participate in the planning, coordination and agreement for the sustainable use of water resources in their respective areas, by means of the Basin Water Resources Management Plan, and the purpose of the Basin Water Resources Councils is to achieve the active and permanent participation of regional governments, local governments, civil society, water users' organizations, peasant communities, native communities and other members of the National Water Resources Management System involved in the basin, in order to participate in the planning, coordination and agreement for the sustainable use of water resources in their respective areas, through the Basin Water Resources Management Plan.¹⁶

¹⁶ <https://www.ana.gob.pe/nosotros/planificacion-hidrica/plan-gestion-cuencas>

Thus, the National Water Authority has a participatory methodology for the formulation of water resources management plans of the Basin Water Resources Councils, as well as for planning the implementation of Basin Water Resources Councils. In addition, as it states and performs within its activities and functions, it promotes a new water culture in the country with the participation of the Basin Water Resources Councils, it should promote among the population, authorities at all levels of government and the media, the environmental, social and economic culture of water. Although the Basin Water Resources Councils should be created at the initiative of the Regional Governments, we should not forget that the Basin Water Resources Councils are bodies of the National Water Authority, which is the entity that promotes the creation of the Basin Water Resources Councils.

SIXTH SIXTH.- What does it mean to be a river guardian? Having declared the Marañón River and its tributaries means having guardians to represent it and protect it from attacks against the ecosystem, the contamination suffered for decades, especially from oil spills, water preservation, and others that affect living in a healthy environment. This representation has to be conformed by the state entities involved with our water resources and the indigenous populations that inhabit the riverbanks, that is why the National Water Authority has been considered among the guardians.

All the regulations pointed out by the appellant to question this end of the sentence show us that it is the governing body and highest authority in the country, which has to do with water resources, therefore it has to be a guardian of the Marañón River together with the others, since the appointment of guardians of the Marañón River is to conserve the river and defend it from any threat, therefore it is necessary for people to participate in making decisions and policies that may affect the environment.

FOURTY SEVENTH.- Regarding the appeal that the sentence is not reasoned, I repeat what has already been stated above, that the sentence is duly reasoned, is congruent and meets the constitutional standards of motivation.

Therefore, the appellant's grievances do not merit support, and the judgment must be upheld in this respect.

Order Petróleos del Perú - Petroperú S.A. to prepare and submit the project to update its Environmental Management Instrument (IGA) to the Ministry of Energy and Mines within six months,

The purpose of this instrument is to include a comprehensive evaluation of the impacts identified in the hydrocarbon transportation activity through the Norperuvian Pipeline.

EIGHTEENTH.- Grounds of the appeal on this appealed point:

The respondent **Petróleos del Perú-Petroperú S.A** files an appeal on the grounds that there is no violation or certain and imminent threat of a constitutional right, the sentence should not have resolved, without further justification, that an update of the Environmental Management Instrument of the Norperuvian Pipeline must be ready in six (06) months, ignoring the fact that said instrument must have the participation and approval of a series of entities other than PETROPERU, from a legal and also technical point of view, requiring an update of the Environmental Management Instrument for the Norperuvian Pipeline in six (06) months is completely unfeasible and erroneous. Although without expressly motivating or explaining it, the Court would have considered that, since in the year 2021 OEFA established that PETROPERU was in compliance with the corrective measure consisting of presenting a project to update the Environmental Management Instrument, but to date an update of said instrument has not yet been approved, then PETROPERU "*would be taking too long*" to carry out the corresponding update. The updating of the Environmental Adjustment Program of the Norperuvian Pipeline is a procedure that has never been carried out in the country, being technically complex to cover all the aspects required in the Terms of Reference (hereinafter, "ToRs"), and impossible to execute in a maximum period of six (06) months. Supreme Decree No. 046-93-EM5 approved the Regulation for Environmental Protection in Hydrocarbon Activities, which established the possibility that holders who have developed hydrocarbon activities before its entry into force have the possibility to submit a PAMA, therefore, the nature of such IGA is corrective and complementary, allowing the holder of the activity to regularize its situation by submitting an instrument that addresses the impacts generated by its activity. Subsequently, Law No. 27446, Law of the National System of Environmental Impact Assessment hereinafter, "SEIA Law") was approved, together with its Regulation approved by Supreme Decree No. 019-2009-MINAM, regulating other IGAs (Environmental Impact Statement, Semi-Detailed and Detailed Environmental Impact Study), which expressly establishes the possibility of updating them. So much so that, despite the fact that the Environmental Oversight Evaluation Agency hereinafter "OEFA") imposed as a Corrective Measure to

PETROPERU the update of the PAMA in 2016, it is only in 2019 that the DGAAH of the MINEM manages to establish a structure for the update of this type of IGA, moment from which PETROPERU could only adequately comply with the presentation of its tdrs. Therefore, it is necessary for the Superior Chamber to take into account that PETROPERU is executing all the necessary efforts to update its PAMA; however, this cannot leave aside that there is a lack of clarity regarding the mentioned procedure, so its implementation reveals a high degree of complexity. Approval of the PAMA update will require review not only by the DGAAH as the certifying authority, but also by various review entities such as the OEFA, ANA and SERNANP. In this case, the infrastructure of the Norperuvian Pipeline has already been deployed previously and a prior consultation mandate cannot be established for something that pre-exists even the regulation on the matter. It is not appropriate that the first instance ruling has established that an update of the IGA of the Norperuvian Pipeline must be carried out through prior consultation, without even reviewing or taking into account the regulatory framework for prior consultation that exists in Peru, as well as the particularities of the specific case of the pipeline.

FOURTY-NINTH - What company is PETROPERU?

PETROPERU is a Peruvian state-owned company under private law dedicated to the transportation, refining, distribution and marketing of fuels and other petroleum products, operating with social and environmental responsibility, including the transportation of oil in the Norperuvian Pipeline.¹⁷

What is the Environmental Management Tool?

The Environmental Evaluation and Oversight Agency (OEFA) defines the **Environmental Management Instrument** (IGA) as: *"A mechanism oriented to the execution of environmental policy, based on the principles established in the General Environmental Law and its complementary and regulatory norms. These instruments can be planning, promotion, prevention, control, correction, information, financing, participation,*

¹⁷ <https://www.gob.pe/institucion/petroperu/institucional>

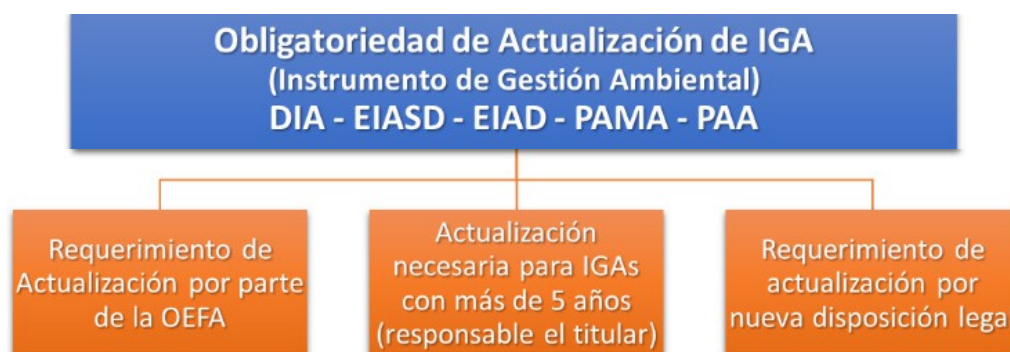
control, among others". They constitute operative means that are designed, regulated and applied with functional or complementary character, to make effective the compliance with the environmental policy and the environmental norms.

The **Environmental Management Instrument** in general terms, can be corrective or preventive, the company that is operating and needs environmental certification, must submit to the competent authority its corrective IGA (Environmental Adequacy Declaration - DAA, Environmental Declaration of Ongoing Activities - DAAC, Environmental Adequacy and Management Program - PAMA, among others), these vary depending on the sector and the significance of the environmental impacts. New companies and/or projects whose operations require **environmental certification** must submit a preventive EIA (Environmental Impact Statement - EIS, Semi-detailed **Environmental Impact** Study - EIA_{sd} and Detailed Environmental Impact Study - EIA_d) in order to be able to carry out their activities. In general terms, preventive EIAs are those instruments that comprise investment projects, i.e., that have not yet been executed and are in the planning stage. They are called preventive because their objective is to prevent environmental impacts during the conception of the project, before they materialize in reality, and to implement strategies, plans and measures to control these identified environmental impacts. On the other hand, corrective EIAs are instruments designed for ongoing activities, which are usually companies from different sectors that do not have an approved EIA but are developing their activities, i.e. they do not have an environmental impact assessment or a management plan for these impacts. These are generally old companies that began operating before their sectoral regulations came into force and must now adapt.¹⁸ According to the regulations, the **Environmental Management Instrument** must be updated five years after the start of the project and for similar consecutive periods.

FIFTEENTH - The OEFA may require the updating of the IGA, within the framework of its Supervision Regulation in the following cases: a) When it is determined that the negative environmental impacts generated

¹⁸ <https://ogreen.com.pe/gestion-ambiental/diferencia-gestion-ambiental-correcto-preventivo/>

b) The update presents an integrated version of the IGA, considering all modifications made after approval (those that had IGA approved to implement the modification, as well as those that did not). 2) The update may include supported modifications to the environmental management measures or the monitoring program. 3) The update must follow the same structure and content of the approved environmental study, including the information of its observations, all the modifications made up to that date and the aspects that are subject to update.



FIFTY-FIRST. Pursuant to its oversight functions, the OEFA ordered PETROPERU to replace the deteriorated sections of the Norperuvian Oil Pipeline, by means of Directorial Resolution No. 012-2016-OEFA-DS, Petroperú S.A. is ordered to carry out, within the framework of the provisions of its Environmental Adjustment and Management Program (PAMA), and with respect to Sections I and II and the Northern Branch of the Norperuvian Oil Pipeline, the following: 1. The effective, immediate and integral maintenance of those sections of the pipeline that have not suffered severe or significant deterioration, and 2. The replacement of the pipeline with respect to those sections that have suffered severe or significant deterioration. The company is also ordered submit to the OEFA, within a maximum period of 7 working days from the day following notification of this resolution, a schedule detailing the actions to be taken comply with the preventive measure described above, and is ordered to comply with the preparation and submission of a project to be carried out within a period not exceeding 30 working days, to prepare and submit a project to update its Environmental Management Instrument to the Ministry of Energy and Mines to include in said instrument a comprehensive evaluation of the impacts identified in the hydrocarbon transportation activity through the Norperuvian Pipeline, as well as the environmental commitments applicable to guarantee the adequate management and mitigation of said impacts. Without

However, as of the filing of the lawsuit, the Respondent has not yet updated its Environmental Adjustment and Management Program - PAMA. The PAMA is a valuable environmental management instrument created to facilitate the adaptation of an economic activity to environmental obligations, ensuring due compliance within the deadlines established in the respective environmental care and management regulations, and must be applied in a timely manner. It identifies environmental impacts of a project or activities that are currently in operation, and the environmental management instruments approved in Peru establish that for each environmental or social impact identified, a remediation commitment must be made by the companies. This is why it is so important and why they must be updated.

FIFTY-SECOND.- With which it is noted that PETROPERU

S.A. to date has not complied with the requested update despite the multiple oil spills along the entire route of the Norperuvian Pipeline that have impacted nature and the indigenous populations that live along the riverbanks, especially the Marañón River. So the grievances alleged by the appellant that the six months is little time to elaborate what was requested, since numerous entities are involved, it is a very complex activity and that the regulatory framework was not taken into account to carry out the prior consultation due to the particularities of the specific case of the pipeline, what is stated by the appellant is quite the opposite, since since 2016, it was required by the competent authority to update it, it had more than enough time to do so, without complying to date with it, Despite the fact that there is a regulation that regulates updating it, and with respect to prior consultation, let us not forget that it is the participation of the indigenous populations that live in the area through which the norperuvian pipeline passes, they must be informed and participate as established in ILO Convention 169, which is why the sentence rightly orders the company to prepare and submit the project to update its Environmental Management Instrument (IGA) to the Ministry of Energy and Mines within a period of six months. Therefore, the alleged grievances cannot be upheld and the judgment should be confirmed in this regard.

In view of the foregoing, the **CATORCE RESOLUTION - JUDGMENT**, dated March 8, 2024, at folios 3691/3723, should be **CONFIRMED**, in the points that fail:

- **DECLARE the objections of lack of standing to act and lack of jurisdiction by reason of the subject matter**, filed by the Ministry of Agriculture and Irrigation (now the Ministry of Agrarian Development and Irrigation), **to be groundless.**
- **DECLARE FOUNDED IN PART THE LAWSUIT of ACTION OF AMPARO** filed by Ms. **MARILUZ CANAQUIRI MURAYARI**, member of the **KUKAMA** indigenous people, **of the NATIVE COMMUNITY OF SHAPAJILLA and PRESIDENT of the HUAYNAKANA KAMATAHUARA KANA FEDERATION**, against the **REGIONAL GOVERNMENT OF LORETO and ITS COMPETENT BODIES, PETROPERU, THE MINISTRY OF THE ENVIRONMENT, MINISTRY OF AGRICULTURAL DEVELOPMENT AND IRRIGATION AND THE NATIONAL AUTHORITY OF WATER (ANA)**; consequently: **TO DECLARE THE MARAÑON RIVER AND ITS TRIBUTARIES AS HOLDER OF.**

RIGHTS; has the right to flow, to ensure a healthy ecosystem, the right to provide a healthy ecosystem, the right to flow freely from any contamination; the right to feed and be fed by its tributaries, the right to biodiversity; the right to be restored, the right to the regeneration of its natural cycles; the right to the conservation of its structure and ecological functions; Right to the protection, preservation and recovery; Rights that are represented and that the State must legally protect, for being an important part of the fundamental rights of every human being and of our future generations for being life, health, and represents one of our basic needs, for our subsistence. **Therefore, it must be represented. I ORDER** that the **REGIONAL GOVERNMENT OF LORETO - GOREL**, take the necessary steps before the **NATIONAL AUTHORITY OF WATER**, in order to request the guidelines for the creation of the Watershed Councils of Water Resources for the Marañon River and its tributaries, being within its competence and promote the commitment and participation of institutions including the participation of indigenous organizations of Loreto, with decision-making capacity. **ORDER THE RECOGNITION AND APPOINTMENT** of the State

(Ministry of the Environment, Ministry of Agrarian Development and Irrigation and the National Water Authority), the Regional Government of Loreto and the indigenous organizations as guardians, defenders and representatives of the Marañón River and its tributaries. **ORDER** Petróleos del Perú - Petroperú S.A. that, within six months, it must prepare and present the project to update its Environmental Management Instrument (IGA) to the Ministry of Energy and Mines, in order to include the comprehensive evaluation of the impacts identified in the hydrocarbon transportation activity through the Norperuvian Pipeline, as well as assume environmental commitments to ensure the proper management and mitigation of these impacts, and must also carry out prior consultations with indigenous institutions and organizations in order to coordinate the approval of the IGA.

S.S. CARRIÓN RAMÍREZ

ON THE MAINTENANCE OF THE NORPERUVIAN OIL PIPELINE PETROPERU S.A.

THE SECRETARY OF THE CIVIL CHAMBER OF LORETO CERTIFIES THAT THE MAJORITY VOTE OF MAGISTRATES GUILLERMO FELIPE, CARRIÓN RAMÍREZ AND PALOMINO PEDRAZA, REGARDING THE MAINTENANCE OF THE NORPERUVIAN OIL PIPELINE BY PETROPERU S.A.

FIRST.- Grounds of the appeal on this appealed point:

The plaintiff **Mariluz Canaquiri Murayari, on behalf of the Kukama Huaynakana Federation**, files an appeal stating that the A quo to declare her claim unfounded on this point is based on the thirteenth recital: ***"FOURTH CLAIM. Maintenance of the Norperuvian Oil Pipeline by Petroperu; According to the answer to the claim Petroperu refers that "the plaintiffs state that "it is necessary to seek comprehensive solutions to the issue of recurring oil spills. And in our opinion, the first step should be to comply with the maintenance of the ONP,***

which is the reason for this lawsuit". As we have stated, the maintenance, supervision and monitoring work is currently being carried out by PETROPERU, and therefore, beyond what the plaintiffs claim, there is no reason to support the claim in this regard"; Based on the evidence submitted by the defendant, Petroperu has indicated that it is complying with the maintenance of the ONP, according to the documentation attached to the case in Volume III to VIII; Based on the evidence attached to the lawsuit, the plaintiff has not submitted any evidence that the defendant is not complying with the maintenance of the Norperuvian oil pipeline, the claim sued in the maintenance and monitoring." In summary, the appellant indicates that the factual and legal reasons that the A quo has taken into account to declare the claim unfounded, can be translated in that, although it has issued a substantive pronouncement, it can be noted that basically it is that the claims have been addressed in the administrative proceedings, so it considers that the rights invoked in the lawsuit do not involve a scenario of protection or urgent attention, and the protection requested for the constitutional rights invoked would have already received such protection in the impositions issued by other administrative entities of the State, recognizing that some of those impositions are pending implementation, and that to resort to the protection in these circumstances, would be to denaturalize it since the administrative bodies have already issued a pronouncement on the same. Constitutional tutela proceedings are mechanisms for the defense and affirmation of fundamental rights and public liberties. By their very nature they are reparatory, and that is why they do not require an evidentiary station, nor do they focus on the punishment of the aggressor or compensation to the affected party, but on the restoration of the right in the face of a violation, or an effective defense a certain and imminent threat. This is expressed in article 1 of the CPConst. in clear harmony with constitutional procedural dogmatics. The harmful act can be defined as that conduct (action or omission) coming from any authority, official or person, which threatens or violates fundamental rights. The harmful act has a material and a legal content, which must be analyzed jointly. The "material" content is made up of three elements: a) the active subject (who carries out the harmful act), b) the passive subject (whose rights are harmed by the harmful act), and c) the specific action or omission. All these elements are related to essentially factual aspects. In turn, the determination of the "legal" content of the injurious act implies an assessment of the effect produced, since this must be related with the

exercise of a fundamental right. It implies, therefore, determining the existence of a personal and direct infringement of fundamental rights as a prerequisite for the admissibility of an amparo action. In conclusion, the cessation of the harmful act is understood as the situation whereby the action or omission that originates a threat or violation of a fundamental right ceases to be carried out by the person who was carrying it out (EXP. No. 02708-2021-PC/TC). The end of the sentence invoked assumes that PETROPERÚ has indeed achieved the integral maintenance of the Norperuvian Oil Pipeline taking into account the last two cases of oil spills that are not going to be corrected in 1 year or in 10, due to the large amounts of oil spilled, this would mean denaturalizing the amparo process because it would be resolved on something that is pending compliance in the administrative process, in this regard we must affirm that denaturalizing it as an immediate recourse for the protection of fundamental rights of the indigenous peoples, would imply not attending to our claim, because the administrative remedy is pending of contestation and the result of another judicial process and as has been outlined in the present lawsuit, the violated rights have constitutional relevance and protection, the only thing we are claiming is that the defendant be ordered to make integral maintenance of the ONP, an action that would avoid environmental and health disasters for the people of the plaintiff native community. The Political Constitution of 1993 includes in Chapter III of Title I (Of the Person and Society) the regulation of social and economic rights. In this regard, the Court in reiterated jurisprudence has recognized and guaranteed the condition of social rights as authentic fundamental rights. In this order of ideas, the Constitutional Court has expressed (Cfr. judgment in Case 01470- 2016-HC/TC) that there are two thresholds of protection for fundamental rights and, especially, for social rights. A "first threshold" is referred to those immediate and unconditional demands that the State must satisfy when it is faced with violations that put the survival of individuals at risk, a "second threshold", related to State obligations whose purpose is to complement and develop the "minimum essential obligations", which implies the duty to *"carry out, in a progressive manner, programmatic policies aimed at increasing the level of social welfare of individuals, as well as to justify the measures it has been carrying out in this regard"*. With respect to this last threshold, this Court has been consolidating over time the *"examination for the constitutional control of public policies"*, through which, showing deference to the competences of the public authorities, it has demanded that the authorities comply with having suitable public policies referring to the

social rights and to carry them out (Cfr. judgments in Case Nos. 02566-2014-PA/TC and 01470-2016-HC/TC). For the cessation of harmful acts in the present lawsuit, the position of the A quo is not acceptable when it affirms that the imposition of administrative measures on the defendant entity progressively ceases the harmful acts, especially if such assertion has not been supported by suitable evidence that attests to what is stated therein, a situation that also violates the right to the motivation of judicial decisions; the native communities as a whole are entitled to the right invoked, which is constitutionally protected, to postpone its exercise alleging the mentioned progressiveness of implementation of measures that would remedy the harmful act, would mean contributing to the postponable nature that historically the state has been doing with them, especially if we already have the experience of the oil spill that severely affected their health and environment that so far the state has not taken care to remedy; Therefore, the action of constitutional guarantee being the most immediate, the most suitable when it comes to the protection of constitutional rights, regardless of the decisions adopted by the administrative entities, since they only pursue the interests of the state, however, the petition has to do directly with the affectation of individual and collective rights of the communities living on the banks of the Marañon River.

In view of the appellant's grievances, we now proceed to resolve.

Pipeline

SECOND: What is a pipeline? Pipelines and related facilities used to transport oil, its derivatives and biobutanol over long distances called pipelines. The exception is natural gas, which, despite being derived from oil, its pipelines are called gas pipelines because it is in a gaseous state at room temperature. It is a steel pipe pipeline that transports and distributes petroleum products to different parts in order to guarantee their supply. In general, it consists of a set of facilities formed by pipes to transport oil. But this installation does not only contemplate the pipeline, but also the facilities necessary for its operation. That is to say, storage tanks, pumping stations, cleaning equipment, etc. These pipelines transport crude oil and sometimes connect the storage tanks of the extraction field directly with the storage tanks of the refineries. How does a pipeline work? In a pipeline, crude oil flows through a pipeline thanks to the impulse provided by a pumping station. The crude oil departs from the storage tanks, where by means of

A network of pipelines and a system of valves starts the product flow. The entire process is controlled from a central control station and there are controls located along the entire . The construction of a pipeline is a major engineering project and is therefore, in many cases, carried out jointly by several companies.¹⁹

Norperuvian Oil Pipeline

THIRD: The Revolutionary Government of the Armed Forces (1972) commissioned PETROPERÚ to carry out the studies required for the construction of the Norperuvian Oil Pipeline (ONP) and to draw up the contracts with the companies capable of carrying out such work. The contract for the definitive design was awarded -in 1973- to the US firm Bechtel; the delivery of the file for the construction bidding was concluded in June 1974. Six months later, the contract for the construction of the ONP was signed. n December 31, 1976, ONP Station 1 (San José de Saramuro) received oil from PETROPERÚ's fields, and the first crude oil front arrived at the Bayóvar Terminal on May 24, 1977. That year the drilling of wells continued in Block 8, reaching an accumulated total of 102 wells until December 1983. In the meantime, in order to take advantage of all the resources available in Block 8, it was necessary to build 130 kilometers oil pipelines between the collection points and the district of Trompeteros in Loreto. Then, a two-line pipeline from Trompeteros to San José de Saramuro (district of Urarinas, province and department of Loreto), to ship the crude on barges and take it to the Iquitos and Pucallpa refineries. In 1976, construction began on the Northern Branch Pipeline (ORN), to transport crude oil from Andoas Station to Station 5, which began operating on February 24, 1978. With a length of 252 kilometers and two pumping stations, the total storage capacity of the system is around 3'000,000 barrels. It has a length of 854 km (it crosses the coast, highlands and jungle). It is divided into two sections: Section I, with a length of 306 km, made up of 24" diameter pipes that connect stations 1 and 5, which has not been in operation since February 13, 2022; and Section II, with a length of 548 km, starting at station 5, made up of 36" diameter pipes, which has not been in operation since June 7, 2022. Additionally, it has the North Branch Pipeline, 252 km long and 16" in , which joins Andoas station with station 5.

(19)<https://www.ealde.es/tipos-transporte-oil/#:~:text=In%20a%20pipeline%2C%20the%20petr%C3%B3il,stream%20or%20flow%20of%20the%20petroleum%20petroleum%20pipeline%2C%20the%20petr%C3%B3il,stream%20or%20flow%20of%20the%20product.>

The Norperuvian oil pipeline is the longest oil pipeline in Peru. project started in 1972 and was completed in February 1978. It is used to transport oil from the oil exploitation areas of the department of Loreto across the Andes to the coast at the Bayovar terminal in the department of Piura with a total length of 1106 km to the west. The pipeline starts in San José de Saramuro (Loreto-Nauta Province), in northeastern Peru. It reaches Borja, where joins the northern branch. The northern branch runs through Moronda until it reaches Andoas. From Borja it then goes to Kuzu Grande, district of Manseriche (Datem del Marañón Province) until it reaches the coast at Bayóvar, department of Piura.²⁰ Likewise, the Nor-Peruvian Pipeline crosses the southeastern end of the Santiago-Comaina Reserved Zone. The pipelines transport crude oil from the jungle regions through the Andes to refineries in Peru's coastal department of Piura. A branch of the Nor-Peruvian Pipeline, in the Pacaya-Samiria National Reserve, follows the course of the Marañón and meets the main northern pipeline just downstream of Pongo de Manseriche. There, the pipeline crosses the Marañón River and continues its course for a short distance, then crosses the Andes.



Statement of claim

FOURTH - The defendant PETROPERU S.A. in its answer to the complaint states that it has been periodically carrying out maintenance activities that allow the environmentally safe operation of the pipeline, the claim of the plaintiffs must be rejected, since it is not related to the real and current situation of the pipeline. To date, there are no segments or sections of the North Peruvian Oil Pipeline.

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<https://oleoducto.petroperu.com.pe/historia/#:~:text=En%201976%2C%20se%20inici%C3%B3%20la,24%20de%20febrero%20de%201978.>

(ONP) nor of the North Branch Pipeline (ORN) with severe or significant deterioration, due to the fact that in said pipeline segments the respective maintenance works have been executed in accordance with the regulations in force and duly communicated and supervised by OSINERGMIN, adds that since 2014 to date 78 contingencies have been recorded in the pipeline of the Norperuvian Pipeline; however, we are emphatic in pointing out that, with respect to said contingencies, sixty-three (63), representing 80%, have been events originated by third party events, criminal acts that were timely reported by PETROPERÚ, executed by subjects still in the process of identification as part of the investigations in charge of the competent authorities. The remaining ten (10) contingencies were originated by geodynamic phenomena, one contingency originated by natural phenomena and only three (3) were due to technical failures, while one (1) is still under investigation. The remaining ten (10) contingencies were originated by geodynamic phenomena, 1 contingency originated by natural phenomena and only three (3) were due to technical failures, while one (1) is still under investigation. The lawsuit seeks to order PETROPERU to carry out actions that are already being deployed, in compliance with its administrative and environmental obligations.

In summary, PETROPERU states in its response to the lawsuit that it has complied with all the repair work on the pipeline of the Norperuvian Oil Pipeline (ONP), it is operational and in optimal conditions for the transportation of oil, and this maintenance complies with the technical standards, and everything is reported to the supervisory body Osinergmin, and that the major contingency has been caused by third parties.

Oil spills and sanctions

FIFTH. In spite of the defendant's argument, we have that in 2016, the OEFA, imposed to Petróleos del Perú S.A. - Petroperu an environmental ticket amounting to 2 935.17 (Two thousand nine hundred and thirty-five with 17/100) Tax Units, for the crude oil spill occurred on June 24, 2016 at kilometer 213+320 of Section I of the Norperuvian Pipeline, for the spill occurred in Barranca, has considered the repeated and systematic breach of its environmental obligations, which is evident in the latest spills occurred in the Peruvian jungle. Petroperu S.A. was also sanctioned for not complying with remediation of the areas impacted with oil by the spill that occurred in the town of Cuninico, district of Urarinas, province and department of Loreto. In 2018, the OEFA sanctioned Petroperu with 12 283.90 UIT (equivalent to S/. 49' 749 795.00), for the crude oil spills occurred in the Norperuvian Pipeline in the areas of.

Imaza (Amazonas) and Morona (Loreto), on January 25 and February 2, 2016, respectively, for non-compliance with the commitment established in its Environmental Adjustment and Management Program (PAMA) referred to perform maintenance actions of the Norperuvian Pipeline. In 2022, the OEFA started the supervision of the oil spill that occurred at kilometer 59, Section 1, near the native community Nueva Alianza, in the district of Urarinas, province and department of Loreto. The spill occurred on September 16, 2022, at kilometer 42+092 of Section I of the Norperuvian Oil Pipeline (ONP) in charge of Petroperu, contaminated the Cuninico stream, district of Urarinas, and extended to the Marañón river. The Environmental Evaluation and Oversight Agency (OEFA), attached to the Ministry of the Environment, within the framework of its functions, carried out a supervisory action in response to the crude oil spill that occurred on March 15, 2024, kilometer 356+344 of Section II of the Norperuvian Oil Pipeline. From 2000 to June 2022, the Environmental Evaluation and Control Agency (OEFA) and the Energy and Mining Investment Supervisory Agency (Osinergmin) imposed 66 fines to the state-owned company, amounting to 23,704.21 UIT, some sanctions were due to Petroperu's failure to carry out maintenance actions, which caused oil spills that damaged the flora and fauna of the area, as well as the health of the people living in the area. According to reports from the Organismo de Evaluación y Fiscalización Ambiental (OEFA), several oil spills in Loreto have seriously affected the Marañón River.

SIXTH: On September 16, 2022, the Ombudsman's Office alerted that the oil spill at km 55 of the Norperuvian Pipeline reached the Marañón River. During a supervision, the Ombudsman's Office of Loreto, together with the Public Prosecutor's Office and indigenous leaders of native communities, found that the oil spill occurred at km 55 of the Norperuvian Pipeline (ONP) moved towards the Marañón River. In addition, it recently learned that the containment works that were being carried out have been suspended. In this sense, it is warned that this situation aggravates the violation of the right to a clean, healthy and sustainable environment, and puts at risk the human right to health of the population of the native community Nueva Alianza and others settled along the Marañón River. "It should be recalled that, in addition to this spill, in January there was also another spill at km 59 of the ONP; both in the district of Urarinas, province and region of Loreto," said the head of the Ombudsman's Office of Loreto, Abel Chiroque.²¹

²¹ <https://www.defensoria.gob.pe/defensoria-del-pueblo-derrame-de-petroleo-en-el-km-55-del-oleoducto-norperuano-llego-al-rio-marañon/>

According to the report "The Shadow of Oil", prepared by the subgroup on oil spills of the National Human Rights Coordinator (CNDDHH) of Peru, between 2000 and 2019, more than 474 oil spills occurred in the Peruvian Amazon. Furthermore, according to the information gathered by the report, 94% of the spilled barrels could have been avoided if there had been a mechanism of environmental due diligence (a duty of precaution) in the actions of the responsible company itself. Most of the spills (65.4%) were caused by pipeline corrosion and operational failures, while only 28.8% were caused by third parties. Therefore, the responsibility for the vast majority of spills falls on the operators themselves, both for unsafe conditions or acts and for the lack of preventive and predictive measures that generated corrosive processes in oil infrastructure. The figures are highly relevant, especially if one considers that oil companies usually justify these spills by alleging vandalism by third parties, thus avoiding the discussion of their own responsibilities.²²

SEVENTH - It is to be seen that PETROPERU in its own web page in the regulatory compliance portal has published "We are a state-owned and private company subject to permanent compliance with legal obligations and contractual commitments. With respect to environmental compliance, we are subject to supervision by entities that, within the framework of their functions, are competent to verify and supervise that the development of the company's activities is carried out in accordance with the environmental regulations in force. These entities include the following: Organismo de Evaluación y Fiscalización Ambiental (OEFA), and Other administrative authorities (ANA, SERNANP, DICAPI, among others). In 2022, despite preventive actions and technical-legal support, the OEFA imposed the following fines and socio-environmental sanctions: Significant fines amounting to 3,666,492 UIT (USD 4,415,147.43) in the processing of three Administrative Sanctioning Procedures (PAS), for allegedly failing to adopt preventive measures against the generation of negative environmental impacts as a result of

⁽²²⁾<https://idehpucp.pucp.edu.pe/boletin-eventos/derechos-socavados-los-derrames-de-petroleo-en-la-amazonia-peruana-26365/>

spills occurred at ONP. Non-significant fines amounting to 1,646,895 UIT. 6 non-monetary sanctions referring to the imposition of corrective measures. The fines and non-monetary sanctions imposed by the OEFA were assigned in the framework of administrative sanctioning procedures initiated as a result of supervision of the company's facilities and operations. In addition, the OEFA, in the framework of four supervisory procedures, has imposed a total of 16 preventive measures when it warned that there is an imminent risk of environmental damage due to environmental emergencies at ONP. It should be noted that some PASSs will pay their fine during 2023²³.

EIGHTH: Although oil is a fuel that has been and is beneficial to humanity in different aspects. For example, it has allowed us to generate electricity, heat our homes and be the engine of large economic sectors (National Oceanic and Atmospheric Administration- NOAA, 2020). However, not only does its use generate atmospheric pollution, but also the production and distribution of oil poses the risk of oil spills on land and bodies of water, such as the ocean (Chang et al., 2014). In this sense, oil spills are more common than we think, and international concern about the damage they can cause to the environment, workers and affected communities is growing (Zhang et al., 2021). Oil spills have been affecting our country for years. For example, in the oil lots of our Amazon and the Norperuvian pipeline, 474 spills have been registered between 2000 and 2019 (León & Zúñiga, 2020), 600 spills in total since 1997 (Prado, 2022). Of these spills, 65.4% were the result of pipeline corrosion, operational failures and unsafe conditions; 28.8% were caused by third parties; and 5.8% were attributed to natural causes (León & Zúñiga, 2020). These spills, although minor in magnitude, are very harmful to the fauna and flora of the affected areas, and even to the fauna and flora of the affected areas (León & Zúñiga, 2020).

²³[sostenibilidad.petroperu.com.pe/gestion-ambiental/cumplimiento-normativo/#:~:text=Organismo%20de%20Evaluaci%20y%20Fiscalizaci%20Ambiental%20\(OEFA\).](https://sostenibilidad.petroperu.com.pe/gestion-ambiental/cumplimiento-normativo/#:~:text=Organismo%20de%20Evaluaci%20y%20Fiscalizaci%20Ambiental%20(OEFA).)

sometimes even contaminate homes, crops and water sources in the communities involved (Prado, 2022).²⁴



Photo spill Cuninico 2022-Julio Arirua

Affecting the human rights of the Kukama people

NINTH: The indigenous peoples of the Loreto region denounce that for years they have suffering the impact of oil companies due to the continuous spills that occur within the area that runs through the northern Peruvian pipeline, which affects their way of life in a healthy environment, because the pollution affects the river water used for their water consumption and food, as well as their economic activity, and their traditions. They affect the ecosystem, they can damage the species that can lead to risks in the consumption of fish and other foods provided by nature, and damage the flora and fauna. Oil contamination leads to a series of diseases and sometimes death, the seriousness of the impacts is not taken with the importance they have, because many of these spills can be avoided if there is a good and constant maintenance of the pipeline.

According to Webler and Lord (2010) oil spills have an impact on society, oil can affect ecological processes and these in turn can cause damage, such as negative impacts on health and quality of life, can cause direct damage that can affect intermediate processes, such as negative economic impacts on the families of indigenous communities, the most affected are the indigenous communities. Along the same , a spill can generate stress in the indigenous communities.

²⁴ [https://ciup.up.edu.pe/analisis/lo-que-nos-recuerda-reciente-derrame-petroleo-window/#~:text=The%20rames%20of%20petr%20petr%20C3%B3leo%20can%20da%C3%B1ar%20to%20the%20marine%20species%20,prompt%20\(NOAA%2C%20202020\).](https://ciup.up.edu.pe/analisis/lo-que-nos-recuerda-reciente-derrame-petroleo-window/#~:text=The%20rames%20of%20petr%20petr%20C3%B3leo%20can%20da%C3%B1ar%20to%20the%20marine%20species%20,prompt%20(NOAA%2C%20202020).)

population affected by the ecological disaster because it puts their livelihoods at risk (Chang et al., 2014).

TENTH. The Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR) recalls that, in accordance with the Inter-American standards on business and human rights, established in its 2019 report, both the States, when exercising their regulatory, oversight and judicial functions, as well as companies, within the framework of their activities and commercial relations, must take into account and respect the human right to a healthy environment and the sustainable use and conservation of ecosystems and biological diversity, paying special attention to their close relationship with indigenous peoples, Afro-descendant communities, and rural and peasant populations. In this regard, REDESCA recalls that, according to the Inter-American Court of Human Rights in its Advisory Opinion OC-23/17, States have the obligation to prevent, regulate and control environmental pollution. This obligation derives from and is part of the right to live in a healthy environment, recognized by Article 11 of the Protocol of San Salvador, in to Article 26 of the Pact of San José, Costa . In light of these provisions and in accordance with the principle of prevention, States must adopt all appropriate measures based on accurate and scientifically relevant information to prevent environmental damage and reduce its impacts. Likewise, REDESCA recalls that States must act with due diligence to prevent, investigate, punish and repair acts such as those that give rise to the present communiqué, whether they come from State agents or private actors. In line with the above, it is required the priority adoption of all relevant measures to contain the spill, mitigate its impacts and safeguard the rights of the population, as well as necessary to avoid the repetition of this type of situations. On another note, it should be recalled that chronic exposure to hazardous substances can seriously affect the right to health and dignified life of people, among other human rights that may also be violated in an interdependent manner. Additionally, REDESCA urges the State of Peru to prioritize the realization of a diagnosis on the economic and social impact of the spills, under a human rights approach, as a basis for a comprehensive and urgent response to the effects that the spills are having on the affected populations. All the aforementioned actions must be framed within the respect and guarantee of the rights of the affected populations.

access to participation, information and justice in environmental matters. These are part of the right to a healthy environment ⁽²⁵⁾.

The UN Special Rapporteur on Toxic Substances and Human Rights, Marcos Orellana on the situation of environmental liabilities, the pending work of Latin American governments and the impact on indigenous peoples from the special The Oil Debts, in July 2023, said "Nothing that a company does or fails to do can absolve the State of its responsibility to ensure human rights", alluding to the serious environmental damage that industries such as oil have left in the territories of Latin America. His view on the impact of the bad environmental practices of these operations and the lack of dissuasive sanctions has not changed since the last time he was in Peru, in February 2022. Oil companies have caused a serious planetary emergency that threatens the effective enjoyment of human rights on a global scale. This situation disproportionately affects indigenous peoples, who depend physically and spiritually on their forests and environment. In addition, exposure to hazardous pollutants generated by the oil industry has caused illness in thousands of people, many of whom have lost their lives. This is incompatible with the responsibility of companies to respect human rights and with the responsibility of States to guarantee these rights through robust and effective laws. This situation underscores the importance of the primacy of human rights over business considerations, particularly in relation to the right to live in a non-toxic environment. The primary responsibility for guaranteeing rights rests with the State. This includes the obligation to establish an effective regulatory framework that ensures respect for the rights to life, health and a healthy environment. In addition, it has the obligation to report on environmental liabilities and the companies responsible for generating them. It should be emphasized that nothing a company does or fails to do can absolve the State of its responsibility to guarantee human rights. That said, companies also have to respond: they have a responsibility to respect rights and this implies that they at least avoid practices that are prohibited in their countries of origin. The indigenous peoples living in the Amazon have suffered the serious impacts of pollution, with

⁽²⁵⁾<https://www.oas.org/es/cidh/jsForm/?File=/es/cidh/prensa/comunicados/2022/024.asp#:~:text=En%20otro%20orden%20of%20things,to%20be%20vulnerated%20in%20an%20interdependent%20way>.

adverse consequences on their bodies, their housing, their water and food sources, and also on their cultural practices and access to medicinal plants, for example. It is a systematic and large-scale denial of the rights of indigenous peoples. The human rights approach to development processes seeks to look at reality from the perspective of those who are vulnerable and suffer the denial of their rights. That is why the report on toxics and the rights of indigenous peoples addresses the sources of contamination that deny indigenous peoples the effective enjoyment of their rights, including oil activities, gold mining with mercury, spraying of highly hazardous pesticides, among other highly polluting activities."

TWELFTH: As already stated in the preceding recitals, the life of the Kukama people revolves around water and land. For centuries, the Kukama people have maintained a strong spiritual relationship with the Marañón River, because it provides them with water and food, and they consider that it keeps the memory of their ancestors, through the spirits that inhabit its depths. However, due to the continuous oil spills, they are in imminent danger of no longer being able to enjoy this source of life and access to a fundamental right, such as drinking water and sanitation services. Their transportation is also by river, it is their means of communication to go from one town to another, they navigate the river for hours and hours, they ply the Marañón River.

Between 2014 and 2018, the district of Parinari was declared in sanitary emergency, due to "imminent danger of affecting the health of the population from waterborne diseases", as a result of the finding of heavy metals, such as iron, manganese, aluminum, lead, total coliforms, fecal coliforms and total petroleum hydrocarbons (TPH), above the maximum permissible limits in the Regulation of Water Quality for Human Consumption in the waters of the Marañón River, according to reports from the Ministry of Health. Recently, another oil spill was reported in the community of Cuninico, in the district of Urarinas, in Loreto, 2,500 barrels of crude oil gushed from the Norperuvian Pipeline, the fuel reached the Marañón River, affecting the communities that inhabit it (Report issued by the National Institute of Civil Defense on November 7, 2022). High levels of lead have also been detected in the blood of Achuar, Kichwa and Kukama indigenous people living in the areas around oil blocks 8 and 192, located in the Marañón, Tigre, Corrientes and Pastaza river basins, causing permanent neurological damage and affecting the growth of children. Lead has entered the body through the diet of fish and bush meat. The

The impact of oil spills on the Kukama people and other indigenous peoples is stronger because they live along the banks of the river, directly affecting their food security, as well as the surrounding biodiversity and the ecosystem services they provide, also affecting their traditional sources of water supply, such as lakes, lagoons, rivers, wetlands, etc.

THIRTEENTH. With what is determined from the claim contained in the lawsuit, from what has been done, from the statistics of oil spills and the sanctions against the defendant company, from the sources of the State supervising entities such as OSINERGMIN and OEFA, and from what is indicated in this resolution, it is determined that the effective and integral maintenance of the Northern Peruvian oil pipeline by PETROPERU is a requirement, since the fundamental rights of the Kukama people are harmed by the continuous oil spills that occur. The decision of the A quo to prioritize the defendant company's claims, biasing the fact that we are before a constitutional process of protection where fundamental rights of an indigenous population, the Kukama people, affected for decades by oil spills from the pipeline, are being protected is unreasonable. This is a reality because this year 2024 there has been another oil spill, being an eminent threat or danger because the norperuvian pipeline continues and will continue to operate. Likewise, it must be kept in mind that the postulates of the constitutional processes is the defense of fundamental rights, and the purpose of the amparo is the effective protection of fundamental rights. We must never lose the perspective that a constitutional judge has to watch over the validity of fundamental rights, not allowing their violation, but keeping in mind that the common good is the axis of any society where human dignity is respected. In this amparo process we are protecting the natural resources, the right of nature (Marañón River and tributaries) and the fundamental rights of the Kukama people.

Therefore, it is in support of the arguments alleged by the appellant, and it is necessary to revoke this part of the judgment and declare it to be founded.

In view of the foregoing, it is **RESOLVED: REVOKING RESOLUTION CATHORCE - JUDGMENT**, dated March 8, 2024, appearing at folios 3691/3723, in the.

the claim is hereby FINALLY FOUNDED as to Maintenance of the Norperuvian Oil Pipeline: IT IS **DECLARED** UNFOUNDED as to Maintenance of the Norperuvian Oil Pipeline by PETROPERÚ S.A. **REFORMED** the claim as **to Maintenance of the Norperuvian Oil Pipeline by PETROPERÚ**, maintenance that shall be effective, immediate and integral, having to inform the supervising entities OEFA and OSINERMINING of its actions.

With costs of the process. Once the present resolution has been consented and/or executed, comply with it, under the provisions of Article 52 of the Procedural Code.

S.S. GUILLERMO FELIPE

CARRIÓN RAMÍREZ

PALOMINO PEDRAZA

THE SECRETARY OF THE CIVIL CHAMBER OF LORETO CERTIFIES THAT THE DISSENTING VOTE OF MAGISTRATES MAGALLANES HERNÁNDEZ AND VARGAS ASCUE IS AS FOLLOWS:

FIRST.- By means of a writ at folios 232 to 297, Mariluz Canaquiri Murayari, on behalf of the Huaynakana Kamatahuara Kana Federation, filed constitutional amparo action against Petroperu, the Ministry of Environment, the Peruvian Amazon Research Institute (IIAP), the National Water Authority (ANA), the Ministry of Energy and Mines and the Regional Government of Loreto. By means of this lawsuit, the following is formulated: Maintenance of the Nor Peruvian Oil Pipeline by Petroperu. Order Petroperu, within the framework of the provisions of its Environmental Adjustment and Management Program (PAMA): a) The effective, immediate and comprehensive maintenance of those sections of the pipeline that have suffered severe and significant deterioration; b) The replacement of the pipeline, of those sections that have suffered severe or significant damage, in the shortest possible time.

SECOND: In view of claim, the court resolves to declare unfounded maintenance of the Norperuvian oil pipeline by Petro Perú SA, therefore the

The plaintiff, Mariluz Canaquiri Murayari, on behalf of the Kukama Huaynakana Federation, filed an appeal, which is essentially on the following arguments: The challenged judgment assumes that Petroperu has indeed achieved the integral maintenance of the Nor Peruvian Oil Pipeline, taking into account the last two cases of oil spills that are not going to be remedied in one year or ten. In the present case, we are faced with a harmful act caused by the Respondent through its own action or omission, the cessation of which must be complied with without delay or progressiveness.

THIRD: Consequently, regarding the decision to declare unfounded the **request for maintenance of the North Peruvian Oil Pipeline**, it is noted that, from the documentation presented in the process, it has been evidenced that Petroperu has been periodically executing the maintenance activities on the infrastructure corresponding to the mentioned pipeline, reason for which, the demanded in said point is already being complied with by the obligee, therefore, the decision to declare this point unfounded is confirmed. In view of the foregoing, **our vote** is to: **CONFIRM RESOLUTION CATORCE - JUDGMENT**, dated March 8, 2024, at folios 3691 to 3723, as to the point that resolves to declare **UNFOUNDED as to the maintenance of the Norperuvian oil pipeline by Petro Perú SA.**

S.S. MAGALLANES HERNÁNDEZ

VARGAS ASCUE