



3rd Congress of the World Conference on Constitutional Justice 'Constitutional Justice and Social Integration'

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Questionnaire – reply by the Constitutional Court of Ecuador

A.- Description of the Court

Introduction

The Constitution of the Republic of Ecuador of 2008 broadened the rights of individuals, groups, nature, and the guarantees to make them effective. It also created five branches of government: Executive, Legislative, Judicial, Transparency and Social Control, and Electoral. The Constitution also established a Constitutional Court, as an additional organ that is not dependent from the aforementioned branches of government. It is independent and autonomous. The Court has the ability to interpret, protect, and safeguard the supremacy of the Constitution at a national level.

The Constitutional Court is the supreme organ in the interpretation of the Constitution and of the international human rights treaties ratified by the State. It has jurisdiction to hear claims of unconstitutionality, consultations on norms, and extraordinary actions for protection. It settles conflicts of jurisdiction, as well as actions arising from, or in violation of norms and judgments. It issues judgments that constitute jurisprudence in matters of judicial guarantees such as actions for protection, *habeas corpus*, *habeas data*, access to public information, and other constitutional processes. Indeed the system of constitutional justice in Ecuador is based on jurisprudence. The role of said jurisprudence is decisive in developing the contents of rights, as well as in solving novel cases and cases of grave importance. It also seeks to solve the contradictions contained in the rulings of trial judges. It is worth noting that constitutional precedent defines the procedure in the protection of rights in Ecuador.

Constitutionality control is concentrated and of broad *locus standi*. The Constitutional Court is the only organ that can strike down or modulate the effects of the general norms. It also has the power to declare the unconstitutionality of laws through constitutional challenges, consultations of norms, and automatic constitutionality control. Public claims of unconstitutionality contemplated under paragraph 2 of Article 436 of the Constitution, allow the Constitutional Court to monitor general norms that may contradict the Constitution. The Constitutional Court also has jurisdiction to become an active lawmaker in cases of unconstitutionality by omission or when it modulates the effects of judgments.

Under Article 428 of the Constitution, the purpose of consultation on regulations is to monitor constitutionality in specific cases where judges consider that a norm is in conflict with the Constitution.¹

The Constitutional Court exercises prior control of constitutionality. This competence seeks to perfect the acts issued by other state functions. In that sense, there is prior control in the following areas: international treaties, states of emergency, presidential veto on

¹ Constitutional Court of Ecuador, Judgment No. -001-13-SNC-CC

unconstitutionality grounds, impeachment of the President of the Republic, referendums, amendments, reforms, and calls for the installation of constituent assemblies.

The legitimacy of the Constitutional Court is based on its origin and exercise. The former comes from the way in which its members are elected, through a contest of merits subject to public scrutiny following the process specified in the Constitution. The latter is reflected in the daily work of development of constitutional jurisprudence and of protection of constitutional rights.

Basic reference texts

- Constitution of the Republic of Ecuador.
- Constitutional Jurisprudence issued by the Constitutional Court of Ecuador.
- Organic Law of Jurisdictional Guarantees and Constitutional Control.
- Rules for the Conduct of Proceedings for the Competencies of the Constitutional Court of Ecuador.

I. Composition, procedure and organization

The Constitutional Court is comprised of nine judges who perform their duties in the plenary court and in chambers. They hold office for a period of nine years without the possibility of immediate reelection and one third of the judges are replaced every three years.

To be appointed to the Constitutional Court the following is required:

1. To be an Ecuadorian citizen in full exercise of political rights.
2. To have a university degree in Law, legally recognized in Ecuador.
3. To have practiced with notable rectitude the profession of attorney-at-law, judge, or law professor for a minimum of ten years.
4. To have shown integrity and ethics.
5. To not belong or have belonged in the past ten years to the official leadership of any political party or movement.

The members of the Constitutional Court are designated by a qualifying committee which consists of two persons appointed by each of the branches of government (Legislative], Executive, and Transparency and Social Control). The selection of members is made from nominations submitted by the aforementioned branches, through a public tender process, with citizen oversight and the possibility of public contestation. Parity between men and women is sought in the conformation of the Court.

The Constitutional Court elects from among its members a President and a Vice-president, both of whom serve for three years and can not be immediately re-elected. The President is the legal representative of the Constitutional Court.

II . Powers of the Constitutional Court of Ecuador.

The competencies of the Constitutional Court are detailed mainly in Article 436 of the Constitution:

1. To be the highest instance for the interpretation of the Constitution and \ the international human rights treaties ratified by the Ecuadorian State through its opinions and judgments. Its decisions shall be binding.

2. To hear and resolve public claims of unconstitutionality, whether based on substantive or procedural grounds, against general normative acts issued by organs or authorities of the State. The declaration of unconstitutionality invalidates the challenged normative act.
3. To declare *ex-officio* the unconstitutionality of related norms, when in cases brought before it, it concludes that one or more of them are contrary to the Constitution.
4. To hear and rule, at the request of a party, on the constitutionality of general administrative acts issued by any public authority. The declaration of unconstitutionality will invalidate the challenged administrative act.
5. To hear and rule, at the request of a party, on claims of infringement that may be filed, in order to ensure the application of norms or general administrative acts, whatever their nature or hierarchy, as well as for the enforcement of judgments or reports by organizations for the protection of international human rights that are not enforceable through regular judicial channels.
6. To issue judgments that constitute binding jurisprudence regarding actions for protection, enforcement, *habeas corpus*, *habeas data*, access to public information, and other constitutional processes as well as regarding cases selected by the Court for review.
7. To settle conflicts of jurisdictions or responsibilities among branches of the government or organs established in the Constitution.
8. To control *ex-officio* and immediately the constitutionality of state of emergency declarations, when these involve the suspension of constitutional rights.
9. To hear and penalize non-compliance with constitutional judgments and opinions.
10. To declare the unconstitutionality of actions of state institutions or public authorities that, through omission, fail to observe, in whole or in part, the mandates of constitutional norms, within the timeframe specified in the Constitution or in the timeframe considered reasonable by the Constitutional Court. If the omission persists after the time limit has elapsed, the Court may provisionally issue the norm or execute the omitted act according to the law.

Furthermore, in case of an impeachment process against the President of the Republic or dissolution of the National Assembly, the Constitutional Court must determine if they have assumed roles not contemplated in the Constitution, as grounds for implementing a two-way removal by which the Assembly can remove the President from office but in turn must have all its members resign. Likewise, the Constitutional Court enforces prior control of constitutionality over bills that have been objected to by the President of the Republic when he or she deems them unconstitutional.

Also, in the case of referendums, the Court is required to issue an opinion on the constitutionality of the referendum questions. An opinion on constitutionality is also required of the Court before an impeachment process against the President or Vice-President of the Republic. Moreover, the Court must confirm if and when the President renounces his post. The Court must conduct automatic monitoring of the constitutionality of State of Emergency declarations. The Constitutional Court also reviews any statutes governing the formation of regions within the national territory. Finally, the Court oversees that proper procedure is followed when the Constitution is amended.

Nature and effects of judgments

Constitutional judgments are of a jurisdictional nature; that is precisely the difference with the 1998 Constitution and the importance of establishing a Constitutional Court. The previous Ecuadorian Constitution established the existence of a Constitutional Tribunal that issued resolutions (that did not constitute precedent) and did not have judges but tribunal members.

Constitutional judgments contain mandatory binding precedents for all Ecuadorian legislation. These mention the fact that the judgments develop objective law and constitute a reference for its application in future cases. In regards to Article 2, paragraph 3 of the Law on Jurisdictional Guarantees and Constitutional Control, the Constitutional Court states that: "A constitutional precedent is essential to reaffirm the creative role of constitutional judges and gives life to the Constitution from their rulings, in order to realize a constitutional democracy arising from the performance of the constitutional judges ..."² The fundamental feature of the precedent is the enforcement for all judges to follow the law parameters underlined by the Constitutional Court. This ensures that only the highest body of constitutional justice can, with due cause, change its precedent. Cases with similar factual patterns must be treated in a similar fashion (Art. 436.1 of the CRE). Regarding the jurisprudence established by the Court, paragraph 6 of Article 436 states that: the Constitutional Court issues judgments that constitute jurisprudence in matters of jurisdictional guarantees and other constitutional processes. To do so it shall select and review lower courts' decisions in order to develop the contents of rights and standardize the rulings when they are contradictory.³

Judgments have temporary effect, as specified in the Organic Law of Jurisdictional Guarantees and Constitutional Control. When exercising constitutional jurisdiction, judges shall regulate the effects of their rulings in time, space, and subject matter, to ensure the validity of constitutional rights and constitutional supremacy.

Furthermore, the effects of judgments are classified in: *inter partes*, *inter pares*, *inter comunis and erga omnes*. Likewise the progress of the modulation of judgments contained in the constitutional precedent develops "the principle of the conservation of law", as an ideal means to safeguard the Constitution and affirm the activism of the Constitutional Court in the protection of rights. Thus, the following judgments are worth mentioning: No.- 004-13-SAN-CC: action for breach of the norm in which partial unconstitutionality is declared regarding the procedural process to obtain economic reparation based on a jurisdictional guarantee; No. – 001-10-SIN-CC: judgment modulation that implements jurisdictional rules for the protection of collective rights regarding pre -legislative consultation; and, No.- 009-13-SIN-CC, which declares the partial unconstitutionality of the Organic Law of the Legislative Branch and modulates the participation of the Executive as a co-legislator in the development of interpretive laws issued by the National Assembly.

The judgments and opinions are effective instruments of protection and guarantee of constitutional rights. The Constitutional Court expresses itself through its rulings in a progressive manner and exercises control through the use of interpretation methods in order to achieve the integration of the legal system in relation to the Constitution. Finally, the judgments contain interpretation, development of rights, and objective creativity arising from the legal system for the protection of constitutional principles.

B. Social integration

In relation to the specific subtopics for the 3rd Congress, answer concisely the following questions in any of the languages of the conference, if possible with an English translation.

1. Challenges of social integration in a globalized world

1.1. What challenges has the Court faced in the past, for example in the field of asylum law, tax law and the right to social security?

In Ecuador, a constitutional State of rights and justice has emerged due of the historical need of the Ecuadorian society to build a new alternative for development to guarantee peoples' optimal standards of living in harmony with nature while based on the principles of human dignity, substantive equality and social justice as the guiding principles for social progress.

² Constitutional Court of Ecuador, Judgment No-001 -12- CC - PJO

³ Constitutional Court of Ecuador, Judgment No. - OO1 -10 -CC - PJO

This legal paradigm institutes the country's constitutionalization social and legal process which exceeds the reductionist social-state which was built on guidelines imposed by the law⁴ and by the liberal system which recognized the Constitution as the legal norm being directly applied. That is, in contrast to the current incorporation of new norms guaranteeing institutional, social and jurisdictional mandate of the Constitution in order to safeguard the effective exercise of rights from a progressive point of view prohibiting to refrain from claiming, and thus, encouraging equity in its enforcement and action against any mechanism that might undermine or limit them. Furthermore, it has been established to guarantee constitutional justice based on the Constitutional Court's jurisdictional tutelage which is the highest constitutional control and interpretation organ of Ecuador.

In this sense, the characterization of the new Ecuadorian State involves a transformation deed from a liberal and "social" state of law to a state of justice anchored in a rights-based Constitution, where rights should be interpreted and applied under constitutional and international human rights law's principles, for example, the principles of progressivity and pro person.

This condition was one of the major challenges taken by the Constitutional Court of Ecuador during the Transition Period, having determined in several of its judgments the transcendent nature of justice as a constitutive element of the Ecuadorian State, that becomes a parameter of the validity of legal rules and their enforcement by legal practitioners, since "(...)a tried case is lawful if the judgment or reasoning that accepts or denies rights is just and well-grounded"⁵. That is, the mere use of formalities does not guarantee an enforcement of the constitutional norm, but the intertwining with categories of justice will serve as the thermometer for legal security and certainty of the law.

In the same line, the constitutional model for rights and justice involves an extension of the source of law system, as well as enhances the impact of international instruments for the protection of human rights and the recognition of other forms for non-ordinary justice as those exerted by indigenous peoples and communities. Constitutional jurisprudence constitutes another legal source working in parity with the imperative nature of the Constitution; which, is considered as the device that legitimizes the value of the legal normative system to solve the facts and social realities which serves as well to recognize the constitutional jurisprudence as a mechanism to cover public powers omissions and regulatory gaps in order to ensure the constitutionalization of the Ecuadorian legal system.

Regarding this last assertion, the Constitutional Court in its Official Gazette Resolution No 451 of 22 October 2008, ratified what was described above by pointing out that constitutional jurisprudence constitutes a "primary source of law", a competence whose decisions can resize the form and substance of ruling, which provides the ability to create a law and thus constituting itself an essential source.

This innovation has allowed the Constitutional Court to issue modulative sentences of various types a challenge the Constitutional Court had to face during its Transition Period. An example of this process was the issuance of legal rules to ensure in case of absence of a ruling issued by the legislator, as well as the implementation of pre-legislative consultations on regulatory bodies that may potentially impact the protection of collective rights guaranteed in the Constitution. Consequently, this jurisdictional organ guaranteed in the face of legislative omission and until the relevant legislation was enacted, the respect for the rights of communities, peoples and nationalities of Ecuador and the protection of their cosmovision and social development as a means of realizing equality in its diversity⁶.

⁴ See Ramiro Ávila, *El Constitucionalismo ecuatoriano; breve caracterización de la Constitución de 2008*, Quito, 961-962.

⁵ Constitutional Court of Ecuador, Judgment No. 020-09 SEP-CC, of August 13, 2009, RO No. 35 of 28 September 2009, p. 11.

⁶ Constitutional Court of Ecuador, Judgment No. 001-10-SIN-CC, of March 18, 2010.

Another constant challenge for constitutional justice is the supreme and binding nature of the decisions issued by the Constitutional Court, establishing jurisprudence precedents based on the hearing of cases from a subjective and objective dimension. As for the subjective dimension, that is, for the protection of constitutional rights to activate jurisdictional guarantees, the Court has sought "(...)to guarantee coherence and consistency in the application of constitutional mandates by all judicial officers"⁷ to consolidate the procedural equality and legal security observed by the constitutional content.

As an example, the extraordinary protection action sentence triggered by the Internal Revenue Service against the decision issued by the National Court of Justice which partially repeals the decision of the District Tax Court in favor of the Heavy Crude Oil Pipeline of Ecuador, regarding "Interest and commissions abroad" glosses which arose from an alleged biased income tax statement. The Constitutional Court in this case resolved the violation of due process (with respect to legal security and reasons) by ordinary judges by pointing out to them that they are duly mandated to apply jurisprudence precedents while asserting that "(...) under the same circumstances in cases where no relevant circumstances have mediate for changing a criteria, it is imperative to resolve as it has been in the past. Thus, the judges when administering justice are bound to abide by the provisions of constitutional rights for equality and legal security."⁸

In the case of the objective dimension, in other words, the determination of jurisprudential lines for mandatory compliance in cases determined by the selection and review chambers in exercise of the powers described in Article 86 paragraph 5 of the Constitution of the Republic of Ecuador, the Constitutional Court has selected several judgments that potentially limit the actions of public authorities and individuals regarding social situations to be resolved under the light of the constitutional content.⁹

Finally, the Constitutional Court during the Transition Period has faced daily challenges in conflict resolution both in competence related matters as well as in the protection of the general interest in achieving the realization of good living.

To this fact, the Constitutional Court, 2009, during the Transition Period ruled a dispute over the nature of airport fees on services provided by Quiport. On this occasion, the Court decided on a case brought by a public action lawsuit of unconstitutionality against the opinion of the Attorney General of the State, through which responded to inquiries regarding the quality (public or private, preferring the latter) of airport services and the nature of the fees generated.¹⁰

On these issues, the Court upheld constitutional treatment for seaports, airports as public services to be under the exclusive jurisdiction of the central State (Art. 261 No.10), and therefore it is held responsible for the provision of nationwide airport public services, regardless if the management or administration is conducted by other public or private legal entity, pursuant to Art 314 of the Ecuadorian Constitution.

Thus, the ruling emphasizes that public services (including the airports) respond to citizens' needs and constitute a guarantee of a fundamental right and as such should be rewarded by fees whose proceeds are public.

⁷ Constitutional Court of Ecuador, Judgment No 102-13-EP-CC, December 4, 2013,

⁸ Constitutional Court of Ecuador, Decision No. 132-13 SEP-CC.

⁹ Among these we can highlight: (1) a judgment concerning the legal basis of the denial of a retirement pension because of a writ of attachment that although it was executed it did not cover the entire debt owed to the Ecuadorian Institute of Social Security. Constitutional Court of Ecuador, Case No. 0105-10-JP; (2) With respect to the review of the constitutionality of the reduction of retirement pensions provided by the Ecuadorian Institute of Social Security, Constitutional Court, Case No. 1221-12-JP. (3) On the protection of the right to health and safety of a pregnant women, who was deprived of medical care in the Ecuadorian Institute of Social Security because she had partial social insurance coverage, Constitutional Court of Ecuador, Case No. 0904-12-JP

¹⁰ Constitutional Court of Ecuador, during the Transition Period, Judgment No. 003-09-SIN-CC

The case is solved in the sense of public goods non-transferable full ownership through a concessional contract for the provision of public services. This concept does not change the quality of resources and public goods. Therefore, the public sector does not lose its control and its oversight capacity.

With this ruling, the Ecuadorian government has reiterated its position on public services ownership, on one hand, and on the other, that the regulatory regime governing the exercise of individuals or private enterprise should follow constitutional principles.

1.2. How did social conflicts or social integration issues transformed into legal issues?

Since the Constitution of the Republic of Ecuador entered into force in 2008, a paradigm has been set in terms of a rights based Constitution. Thus, assisted by the binding nature of its dogmatic character, the Constitution has been configurised as the valid source for the entire legal system. It has led as well for the whole infra constitutional regulatory framework to be seen through a constitutional lens and thus strengthening it as the directly applicable norm.

However, this new constitutional paradigm not only recognizes and protects the rights of freedom, social, economic, and cultural rights, but it also strengthens the rights for participation as determines nature as subject of rights. It links the development of rights to substantive principles such as the formal and material equality, including intercultural, plurinational, and human dignity, among others. This paradigm emerged from the visibility of various social conflicts, emerging social groups which demanded from the State and its people a new covenant for social integration that includes their participation in the state and social spheres new building on equal footing with high respect to their differences, as well as the need for reconstruction of the existing gaps among social classes which has generated large percentages of poverty and social inequality.

In this context, since 1830, the constitutions of Ecuador have played a central role in the invisibility or configuration of constitutional principles on the recognition of new rights and on the extension of protection standards to others. In recent decades and in accordance to the correlation of power between elites and non-empowered groups, the reformulation of rights demands from social organizations and subordinate groups has given rising to an emancipatory force which are based on concrete demands placed to the State, Legislation and justice system to readjust the law to concrete demands of Ecuadorian reality and to the need to build a more humane law.

Under these parameters, jurisdictional organs, including the legislative and executive powers have had an impact on social conflict resolutions on legal issues. In the first case, despite the profound limitations in the justice system due to the old-fashioned positivism still anchored to Ecuadorian roots until 2008, constitutional justice was able to transform social conflicts into constitutional- legal issues. One example of this progress was the partial acknowledgment of non-heterosexual people as rights holders whose rights were deeply violated by the criminalization of their sexual behavior, as stated in Article 516 of the Criminal Code of the time. This criminal typification implied social criminalization processes with severe connotations as well as to mass arrests of homosexuals in cities like Cuenca. In 1997, these conditions led to filing an action of unconstitutionality at the Constitutional Tribunal.¹¹

The aforementioned jurisdictional decision decriminalized homosexuality in Ecuador. This led to the inclusion of this collective group in social-coexistence. As it allowed GLBTI organizations to participate with a leading role in the drawing up of the 1998 and 2008 Constitutions where it recognizes them a significant protection to rights related to sexual health and autonomy, free development of personality, the prohibition of discrimination because of sexual orientation, the

¹¹ Judith Salgado, "Análisis de la interpretación de inconstitucionalidad de la penalización de la homosexualidad en el Ecuador", in Programa Andino de Derechos Humanos, *Aportes Andinos No. 11*, Universidad Andina Simón Bolívar, p. 1.

right to create a union, the right to form a family from a different perspective, among other rights ensuring their social development as subjects of rights.¹²

In the second case, regarding the inclusion of new social demands to the legal system by the legislative and executive powers, women¹³ won their voting rights. These rights were determined in July 9, 1924 by the State Council of Ecuador, i.e., by an interpretation of the Constitution of 1906, where it stated that women should be considered citizens and therefore can elect and be elected.¹⁴

Although its subsequent implementation generated diverse and controversial debates in Ecuador. This rights recognition made evident the discrimination against women. Therefore, it marked the beginning of a wider conflict resolution with regards to the inclusion of women in the public sphere under a societal state construction. It underlined the need to rethink the category of citizenship¹⁵ contributing to the debate of resizing democracy. This concept has been strengthened through jurisdictional interpretation and through executive and legislation actions in the development of their rights.

This advancement has allowed the current Constitution to recognize, in the case of women, numerous rights safeguards the constitutive differences of female identity as a mechanism towards equal treatment. And, secondly to implement effective guarantees to safeguard the rights under similar conditions. That is, the rights of both men and women in a societal context to improve the material conditions of life.

Furthermore, the intrinsic relationship between conflicts and social realities and their necessary resolution through readjustments of the law is a daily task of the Constitutional Court. Since the Court's creation in 2008, it has issued several rulings to revitalize the law as a living system that guarantees rights. One of these rulings emerged in the absence of a norm issued by the legislature when facing a social demand so as to ensure a participatory and deliberative process in the formulation of laws that might affect the interests of social groups, among them, communities, peoples and nationalities of Ecuador. This situation led the Constitutional Court to draft provisional norms to ensure social integration based on the realization of a constitutional democracy.¹⁶

Also, in Judgment No. 0048-13-SCN-CC concerning a consultation on the implementation of a norm for an alimony payment table, the Constitutional Court made an analysis on the principle of equality and non-discrimination comparing the rights of the obligor and the obligee, and decided that the determination of the alimony for the obligor must exclude the deductible value paid to social security.¹⁷

¹² Judith Salgado, "Análisis de la interpretación de inconstitucionalidad de la penalización de la homosexualidad en el Ecuador", en Programa Andino de Derechos Humanos, *Aportes Andinos No. 11*, Universidad Andina Simón Bolívar, p. 1.

¹³ Another group that has been strongly excluded due to the patriarchal and andocentric legacy of our societies.

¹⁴ Agustín Grijalva, *Constitucionalismo en Ecuador*, Quito, Corte Constitucional para el Periodo de Transición, 1aed., p. 137.

¹⁵ This category has been challenged as discriminatory, which manifests itself through an exclusiveness of the universalization of Law, involving the restriction of equality to the compliance of an status customized for a cultural, economic and political elite to ensure their position of power over social equality, and that in our country came with the birth of the Republic, by recognizing the protection of citizens by the State, who had to be "over 21 years of age, males, literate, with a steady income or property and were not servants or employees of others" to hold such a category, which denotes the exclusive nature of the rising Ecuadorian State. Enrique Ayala Mora, "Algunas reflexiones sobre la Asamblea Constituyente de 1997-1998", en Enrique Ayala y Rafael Quintero, *Asamblea Constituyente: retos y oportunidades*, Quito, La Tierra, 2007, first edition, p. 96.

¹⁶ Constitutional Court of Ecuador, Judgment No. 0001-010 - PJO-CC.

¹⁷ Constitutional Court of Ecuador, Judgment No. 0048-13-SCN-CC.

Finally, certain social conflicts in Ecuador arise largely due to the wide range of rights recognized in the Constitution. Furthermore, the superseding of the classical hierarchical division of rights, in turn terminates the enforceability of the first (category) and the programmatic nature of the others. The Constitution of Ecuador in its Art. 11, establishes the principles of interpretation of rights¹⁸, among which we can highlight that they are inalienable, obligatory, indivisible, interdependent, and hierarchically of equal importance.

Presumably, this openness has led social actors to bring their claims to constitutional justice on the grounds that all rights may be exercised and enforced individually or collectively, which implies that social needs whose dissatisfaction collides with constitutional rights are fully actionable.

¹⁸ **Article 11. The exercise of rights shall be governed by the following principles:**

1. Rights can be exercised, promoted and enforced individually or collectively before competent authorities; these authorities shall guarantee their enforcement.

2. All persons are equal and shall enjoy the same rights, duties and opportunities.

No one shall be discriminated against for reasons of ethnic belonging, place of birth, age, sex, gender identity, cultural identity, civil status, language, religion, ideology, political affiliation, legal record, socio-economic condition, migratory status, sexual orientation, health status, HIV carrier, disability, physical difference or any other distinguishing feature, whether personal or collective, temporary or permanent, which might be aimed at or result in the diminishment or annulment of recognition, enjoyment or exercise of rights. All forms of discrimination are punishable by law.

The State shall adopt affirmative action measures that promote real equality for the benefit of the rights-bearers who are in a situation of inequality.

3. The rights and guarantees set forth in the Constitution and in international human rights instruments shall be directly and immediately enforced by and before any civil, administrative or judicial servant, either by virtue of their office or at the request of the party.

For the exercise of rights and constitutional guarantees, no conditions or requirements shall be established other than those set forth in the Constitution or by law.

Rights shall be fully actionable. Absence of a legal regulatory framework cannot be alleged to justify their infringement or ignorance thereof, to dismiss proceedings filed as a result of these actions or to deny their recognition.

4. No legal regulation can restrict the contents of rights or constitutional guarantees.

5. In terms of rights and constitutional guarantees, public, administrative or judicial servants must abide by the most favorable interpretation of their effective force.

6. All principles and rights are inalienable, obligatory, indivisible, interdependent and of equal importance.

7. Recognition of the rights and guarantees set forth in the Constitution and in international human rights instruments shall not exclude the other rights stemming from the dignity of persons, communities, peoples and nations that might be needed for their full development.

8. The contents of rights shall be developed progressively by means of standards, case law, and public policies. The State shall generate and guarantee the conditions needed for their full recognition and exercise.

Any deed or omission of a regressive nature that diminishes, undermines or annuls without justification the exercise of rights shall be deemed unconstitutional.

9. The State's supreme duty consists of respecting and enforcing respect for the rights guaranteed in the Constitution.

The State, its delegates, concession holders and all persons exercising authority on behalf of the State, shall be obligated to redress infringements of the rights of individuals for negligence or inadequacies in the provision of public services or for the deeds or omissions of their civil servants and government employees in the performance of their duties.

The State shall immediately exercise the right to file a claim for restoration against those persons responsible for the damage produced, without detriment to civil, criminal and administrative liabilities.

The State shall be held liable for arbitrary arrest and detention, miscarriage of justice, unjustified delay or inadequate administration of justice, violation of the right to effective protection of the court, and any violations of the principles and rules of due process of law.

When a final judgment of conviction is reversed or vacated, the State shall provide redress to the person who has sustained damages as a result of this judgment; when the responsibility for such acts by public, administrative or judicial servants is identified, they shall be duly charged to obtain restitution.

1.3 Is there an upward trend in cases related to the legal aspects of social integration? If so, what have been and are the key dominating issues before your Court?

For a better understanding of the jurisdictional nature of the Constitutional Court, one should take into perspective its role as the ultimate interpreter, and therefore being the highest body for the administration of constitutional justice, i.e., in addition to being responsible for hearings and solving over 17 different processes, among which covers guarantee related processes, abstract and concrete review, and political control.

However, at present we cannot determine a trend of cases in the Constitutional Court referring to "social integration"¹⁹ Nevertheless, there is no doubt that the Constitutional Court through jurisdictional guarantees and particularly through extraordinary protection actions has sought to strengthen the linkage of the judiciary function to the Constitution, by seeking through its ruling to settle violations to due process made by the Judges. This implies that the major effort of the Constitutional Court concentrates on guaranteeing the supremacy of the constitution. Therefore, through the extraordinary protection action, the Constitutional Court seeks to rule on issues of national relevance and importance, gross human rights violations by which tries to establish the construction of precedents and mend its nonobservance.

2. International norms for social integration

2.1. What international influences weigh on the Constitution in regard to social issues or social integration issues?

The Ecuadorian Constitution promulgated in 2008, is one of the most advanced Constitutions in the region regarding the protection of rights. Not only because it extends the amount of rights, but because unlike previous constitutions, determines the non-waverability and an equal hierarchy for all rights, both civil and political rights, as well as social, economic, cultural and environmental rights²⁰. In addition, it recognizes the rights of nature, or Pachamama²¹ moving into a biocentric cosmovision, overcoming the characteristic anthropocentrism of modernity.²²

In this context, the social, economic and cultural rights recognized in the 2008 Constitution, it established a major challenge to Ecuadorian contemporary constitutionalism. The embedment of these rights into the Constitution seeks the materialization of the *good living* by safeguarding the right to education, water and food, a healthy environment, communication and information, culture and science, habitat and housing, employment and social security, health, as well as a special protection for priority groups (pregnant women, persons deprived of liberty, the elderly, people with disabilities or catastrophic illness, etc.), recognizing as well specific rights for indigenous peoples and nationalities, including Afro-Ecuadorian and Montubio peoples, and the communes of the Ecuadorian State, called collective rights.

The expansion of the substantial content of economic, social and cultural rights²³ and the recognition of other rights in the Ecuadorian Constitution, finds its adjustment to the

¹⁹ Understood as mechanisms that resolve conflicts within a society whether between individuals, between groups that share a similar legal status before the State, or by actions of state powers against individuals, in order to harmonize coexistence, where the Constitution is the first guiding instrument for achieving social integration based on resolutions issued by the jurisdictional constitutional bodies.

²⁰ Constitution of the Republic of Ecuador, Article 11, paragraph 6.

²¹ Articles 71, 72, 73 and 74 of the Ecuadorian Constitution recognize nature as a subject of rights.

²² As stated in article 283 of the Ecuadorian Constitution, the country's economic development must conceive human beings as end in itself, and foster a relationship between society, state and the market, in harmony with nature.

²³ As an example, both the standard of protection of the right to education and the right to health has been expanded since the enactment of the Ecuadorian Constitution of 2008. In the first case the right to education, different from the Constitution of 2008, is "priority area for public policymaking and state investment" and should be mandatory in the initial, basic and high school levels or equivalent, and public education should be universal and secular at all levels, and free up to the third level of higher education, to finally emphasize the state's duty to finance free public education in a timely, regular

international trend to promote within the States a social integration process that makes rethink the existing exclusion structures and inequality. Where rather, the institutionality of the state should constitute its role as guarantors for the exercise of rights in order to ensure a human dignity anchored to social development²⁴. A condition which, *prima facie*, makes these rights actionable and enforceable in a broad sense.

Furthermore, the creation of new constitutional guarantees, that is, regulatory or abstract, institutional and jurisdictional, highlighted in the Ecuadorian Constitution, Title III, represents a substantial innovation to crystallize the effective exercise of constitutional rights. Undoubtedly, the recognition of these guarantees gave birth to the reformulation of The Social rule of law State's vices so as to achieve the effectiveness of constitutional rights through the direct application of the Constitution²⁵, and through the achievement of a valid normative constitutional development, including the reparation of rights according to international standards determined by the protection of human rights system, among others.

Resizing the principle of equality constitutes a corner stone for social integration as it rethinks the liberal vision of the State which protected the rights of a few from a formal equality approach. This approach tended to consolidate a constitutional State of rights that reconfigures the nature of constitutional rights from a material equality perspective. Likewise, this principle also conditions State actions and of individuals to include "minorities" in the state social development, who have historically been excluded and subordinated. Recognizing as well affirmative action as a means to reach social equality.

The re-conceptualization of the principle of equality coupled with the recognition of special constitutional rights or collective rights for indigenous peoples and nationalities of the country²⁶, constitutes a means for protecting cultural diversity of the Ecuadorian territory. To this end, it tends to harmonize equality within diversity by reestablishing social structures towards a development alternative model and social integration.

The constitutional reconfiguration has been significantly influenced by the parameters imposed not only by the International Covenant on Civil and Political Rights, the American Convention on Human Rights, but also by the interpretations set forth by the Inter-American Court of Human Rights, and the general recommendations made by the United Nations and its special committees. And by specific agreements concerning minority or historically excluded groups, such as the Convention on Indigenous and Tribal Peoples, the Convention on the Elimination of All Forms of Discrimination against Women, among other examples.

Furthermore, the Constitution of the Republic of Ecuador grants a special status to international human rights treaties whose content guarantees a further exercise and protection of rights than what is provided by the Constitutional norm.²⁷ This condition requires that judicial officers, public servants and administrative authorities apply directly this type of international instruments

and adequate manner, so that in the eighteenth transitional provision of the Constitution requires the State to allocate "public resources from the General Budget of the State for initial basic education and secondary education leading to a high school diploma, with annual increments of at least zero point five percent (0.5%) of the gross domestic product (GDP) until the share amounts to six percent (6%) of GDP. "

In the second case, the right to health in Ecuador's current Constitution is guaranteed not only from a purely curative perspective, but from its preventive nature. This right is seen as an essential part of the intimate sphere of the human being and as a guarantee for the exercise of rights that include good living, because this right encompasses the exercise of sexual and reproductive health, the declaration of health as a public good, among others.

²⁴ In this regard, both the International Covenant on Economic, Social and Cultural Rights and the American Convention on Human Rights and the Protocol of San Salvador, have established basic guidelines to ensure the enforceability of such rights.

²⁵ Constitution of the Republic of Ecuador, Article 11, paragraph 3.

²⁶ Constitution of the Republic of Ecuador, Articles 56, 57, 58, 59 and 60

²⁷ Constitution of the Republic of Ecuador, Articles 424

when administering justice or acting on behalf of the State²⁸. Must also observe the contents of international human rights treaties when issuing resolutions even when these are not mentioned explicitly.²⁹

Consequently, the Constitutional Court of Ecuador values the effective scope for exercising constitutional rights and equates its application to international standards when necessary so as to safeguard these rights effectively, which, is done through a process of systematic analysis where international recommendations and other instruments issued by competent international bodies play a central role. This influence is evident in Judgments No. 0008-09-SAN-CC, No. 002-09-SAN-CC y No. 001-10- SIN-CC, which will be analyzed later.

2.2. Does your Court apply specific provisions on social integration that have an international background or origin?

The Ecuadorian Constitution gives an important hierarchical status to international treaties and conventions recognized by the state of Ecuador. They are part of the constitutional package. This imposition requires that both administrative and judicial officers must analyze the content and scope thereof when interpreting or applying the laws that favor in greater degree the effective exercise of constitutional rights.

A sample of such compliance for social integration is the judgment-SIN 001-10 DC- of March 18, 2010 regarding the declaration of constitutionality of the Mining Act, where several legal issues were established regarding the pre-legislative consultation and prior consultation, recognized in the Constitution and in international instruments when collective rights might be affected.

The Constitutional Court in addition to determining whether the process of pre-legislative consultation preliminary to the enactment of the Mining Act had to be implemented, clearly interpreted constitutional considerations regarding private and community property and the implications of the declaration of public interest in both cases to sustain as a mandatory ruling to conduct prior consultation to communities living in territories where mining was going to take place.

Under this same approach, that is, by applying the *pro legislatore* principle and an interpretation "in accordance with" the Constitution, the constitutionality of several articles of the Mining Act relating to prior consultation were established determining as well mandatory guidelines for interpretation. These parameters were developed by taking into account the judgments issued by the Inter-American Court of Human Rights, Case Courts and Constitutional Courts of the region, and the reports of the Special Rapporteur of the United Nations Rights of Indigenous Peoples and the 169 Convention of the International Labour Organization.

This Judgment provides a mechanism of social integration because it protects cultural diversity of indigenous peoples and nationalities and their specific rights including special protection of their territory, which in the cosmovision of indigenous communities and peoples has a special connotation, which differs as mere property. Thus, the Court ordered to condition the constitutionality of the Act provided it is interpreted according to the Constitution and that all mining activities in the territories of the aforementioned peoples shall undergo a proper consultation process with adjustment to constitutional and international standards that protect the collective rights of these social groups.

Another innovative example is the decision issued in Judgment No. 0008-09-SAN-CC, where the Constitutional Court basing its analysis on certain rules in the Convention No. 169 of the International Labour Organization, urged the National Council of Higher Education, to submit to such international regulation regarding the organizational development of the academic programs offered by the Intercultural University of Nationalities and Indigenous Peoples

²⁸ Constitution of the Republic of Ecuador, Article 11, paragraph 3.

²⁹ Constitution of the Republic of Ecuador, Articles 426

"Amawtay Wasi", in order to avoid arbitrary impositions which violates its cultural nature while ensuring access to a higher education anchored to the cosmovision of social groups that require their particular existence.³⁰

2.3. Does your Court directly apply international instruments in the field of social integration?

Indeed, the Constitutional Court has directly applied international instruments. Either to protect constitutional rights to a greater degree than what is stated in the Constitution, or in order to contribute to the spectrum of protection of the rights described in the Constitution (renvoi clause).

It is worth to point out that the Constitution of the Republic of Ecuador recognizes the pro-person principle. It grants a special hierarchy to international human rights instruments through which, its content guarantee these rights in a greater dimension than those provisions established in other legal norms. By such it establishes an imperative for public servants and judicial officers to apply the constitutional norm and interpretation that further protect the rights.

Constitutional mandate takes within international parameters that require States to protect rights from a progressive perspective as it harmonizes the content of human rights instruments and the interpretation provided by competent international bodies³¹. That, is when domestic content provisions are restrictive with respect to the former, applying the norms of international instruments proceeds for protecting or guaranteeing the effective exercise of a right and/or full reparation in the case of a violation thereof.

A clear example is Judgment 008-09-SAN-CC issued by the Constitutional Court of Ecuador for the transition period on December 9, 2009, arising from an action for non-compliance initiated by the President of the Intercultural University of Nationalities and Indigenous Peoples "Amawtay Wasi" against the President of the National Council of Higher Education.

His claim was based on a breach of Article 27, paragraphs 1 and 3 of Convention 169 of the International Labour Organization³², Article 14 paragraph 1 of the UN Declaration on the Rights of Indigenous Peoples, Article 20 of the Law on Higher Education, among other national norms, as well as a possible violation of collective rights, the right to education, and the recognized principle of interculturality in the Ecuadorian Constitution, when the National Council of Higher Education required the University in question to move from their place of indigenous settlement to the capital of Ecuador with the aim of limiting its academic offerings to Quito for a term of 5 years and, to order this institution to adapt the structure, administration and development of the center of intercultural education to the model imposed by the ordinary rules, obviating the indigenous reality and cosmovision.

Ecuador's Constitutional Court in its judgment noted that to categorize Ecuador as an plurinational and intercultural country, obliges to observe the State as a structure which must guarantee "(...) not only the existence of a legal and institutional indigenous system, according

³⁰ Constitutional Court of Ecuador, Judgment No. 0008-09-SAN-CC, Case No. 0027-09 - AN, December 9, 2009.

³¹ Ximena Medellín, *Principio Pro persona*, México, Suprema Corte de Justicia de la Nación -Oficina en México del Alto Comisionado de las Naciones Unidas para los Derechos Humanos, 2013, 1^a ed., p. 16.

³² Paragraphs 1 and 3 of Article 27 of the Convention 169 state: "1. Education programmes and services for the peoples concerned shall be developed and implemented in co-operation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations. (...)3. In addition, governments shall recognise the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose."

to the customs of the various peoples and nationalities, but also to observe cognitive diversity, that is, the diversity in the production of knowledge."³³

In this case, the Constitutional Court applied directly Articles 2, 3, 4, 5 and 27 of the Convention 169 of the International Labour Organization, with regards to respect the principles and collective rights of indigenous peoples and nationalities regarding the guarantee to quality education according to their worldview. And it declared unconstitutional certain infra-constitutional provisions that were arbitrary imposed by the government threatening the cultural development of peoples and nations.

Undoubtedly, this Judgment is a sign for resizing social integration, where the State must protect rights based on the principle of substantive equality and non-discrimination, that is, equality in diversity.

2.4. In the application of constitutional law, does your Court take into account international instruments, either implicitly or by explicit reference?

The Constitutional Court uses both mechanisms according to the value or degree of protection that reflects the international or national norm. While the Constitutional Court must harmonize the constitutional content with the regulatory and interpretative scope of human rights issued by Universal and Regional Systems for the Protection of Human Rights, in some cases it must apply the international norm over the national for the purpose of protecting the materiality of human rights.

2.5. Has your Court ever faced conflicts between the norms applicable at the national level and those at the international level? If so, in what way were these conflicts resolved?

Undoubtedly, the Constitutional Court of Ecuador has faced conflicts between the norms applicable at national and international levels. The Ecuadorian Constitution foresees various rules for interpretation and application of both national and international legislation. That is, basing its ruling on the type of the norm to be applied in a particular case and on the perspective of its guaranteeing content.

In this sense, generally the globalizing dynamics of law should ensure that States comply minimally with the standards of protection imposed by international human rights instruments and by the interpretation given by its competent bodies. In case of contradiction between national constitutional or infra-constitutional norms and international human rights law, the *pro person* principle is the decisive element for the normative in conflict, i.e., consistent with the principle of progressivity, effective protection of the court, human dignity, while prohibiting the regressiveness of rights.

On the other hand, in the case of conflicts between constitutional and sub-constitutional provisions and international agreements or treaties different from those of human rights, the Constitution is the hierarchical superior norm and therefore should be directly applied.

It is worth noting, that as determined by the Vienna Convention on the Law of Treaties, "Treaty means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;"³⁴ and, it states that any treaty, regardless of their nature, must be complied by the State Parties under the *pacta sunt servanda* principle, or in good faith, therefore, unlike international instruments (generic category that includes the *ius*

³³ 30 Constitutional Court of Ecuador, Judgment No. 0008-09-SAN-CC, Case No. 0027-09 - AN, December 9, 2009, p. 13

³⁴Vienna Convention on the Law of Treaties, Article 1.

cogen and *softlaw*) these should be applied and observed mandatorily by public authorities when issuing power acts or resolutions.³⁵

In this context, the Constitutional Court has applied this constitutional mandate in its judgments noting that the Constitution and human rights treaties prevail over other type of Conventions, i.e., if the content of the latter contains unreasonable provisions against the protection of human rights. An example of this constitutional interpretation is Judgment No. 002-09-SAN-CC- of April 2, 2009, concerning the tax exemptions for people with disabilities, which among other legal problems solved, states that human rights constitute the limits on the content of international agreements or treaties of a commercial nature. Consequently, the validity of such type of agreements is conditioned by the constitutional provisions and international law that protect human rights.

3. Constitutional instruments that improve, address or favor social integration.

3.1. What kind of constitutional law the Court applies in cases of social integration? (For example, fundamental rights, principles of the Constitution ["Social state"], "objective law", Staatszielbestimmungen, etc..)

The Constitutional Court of Ecuador is the one called to defend constitutional supremacy and, therefore, is the body in charge of protecting all the rights that make up the broad catalogue provided by the Constitution. Thus, the actions of the Court are part of highest duty of the State, to respect and enforce the rights guaranteed in the Constitution.³⁶

With this in mind, the Constitution is the supreme law that prevails over any other legal regulatory system,³⁷ and is legally enforceable directly by and before any public or administrative servant or judicial officer, ex officio or upon request, provided that the rights and guarantees are constitutional.

In short, the constitutional law applied in cases brought to be heard by the Constitutional Court is closely related to its dogmatic part, so that its role as supreme interpreter and guarantor of constitutional supremacy has to do with the duty to respect constitutional rights and principles.

Finally, the Constitutional Court applies the constitutionality of the valid law, currently into force, that is, it issues a reasonable resolution in cases brought before the Court, based on the use of regulations in accordance with the constitutional content using justice as a guideline.

3.2. In cases in which individuals can resort to the constitutional court, to what extent can these be eligible for different types of constitutional law provisions?

The Constitution of the Republic of Ecuador, provides a wide locus standi for filing actions and guarantees set forth therein so anyone can activate them before the Constitutional Court without the need for sponsorship of a defense lawyer.

Thus, since to the Constitution is the legal norm directly applicable, individuals may invoke the principles and rights set forth therein so that this entity would take it into consideration when deciding.

3.3. Does your Court have direct competence to deal with conflicting social groups (possibly with mediation by individuals as plaintiffs or petitioners)?

No, the Constitutional Court is an organ of a jurisdictional nature and the only way it can judge conflicts is through Judgments.

³⁵ Danilo Caicedo, "El bloque de constitucionalidad en el Ecuador. Derechos Humanos más allá de la Constitución", en Universidad Andina Simón Bolívar, FORO Revista de Derecho No. 12 Quito, 2009, pp. 14-16.

³⁶ Constitution of the Republic of Ecuador, Article 11, paragraph 9

³⁷ Constitution of the Republic of Ecuador, Article 424

3.4. How does the Court resolve social conflicts when cases of this nature are presented to it? (For example, by overturning legal provisions or not applying these when they contradict the principle of equality and non-discrimination).

The Constitutional Court has the power to issue Judgments and rulings on the constitutionality of cases presented to its hearing. In this sense, one of the outcomes of the analysis when solving these cases can be the declaration of unconstitutionality in cases of abstract review of constitutionality, and the ruling of rights violation in the case of jurisdictional guarantees.

However, there is primarily a widespread use of atypical judgments, by which the constitutionality review tends to the enforcement of the principle of permanence of the provisions of the law, considering that the declaration of unconstitutionality as a last resort, once it has not been feasible to interpret in accordance to the fundamental law.

3.5. Can your court act preventively to avoid social conflicts? (For example, thanks to a specific interpretation that must be implemented by all State organs).

Although the Ecuadorian Constitution does not give direct authority to the Constitutional Court to "avoid social conflict", this body can eventually through the exercise of its constitutional and legal powers may prevent such effects that could fail to recognize a violation of rights, which in turn could trigger social unrest. For example, the Constitution gives the Court the power to decide in the abstract norm review of the constitutionality of administrative ruling and general acts, as well as of legislative omissions in order to find incompatibilities with the Constitution and warn on the adverse effects of their enforcement.

Naturally these judgments have erga omnes effects and must be obeyed by all public authorities. A clear example of such judgments is reflected in the case of the constitutional claim of an article of the Organic Law of the Legislative Branch, which authorized the publication in the Official Registry of interpretative laws, excluding the President from his constitutional authority as legislator.

In this case the judgment opted to maintain the balance of powers designed in the Constitution and to determine that interpretative laws should follow the same procedure for the issuance of ordinary laws, but not a special procedure that excludes the President.³⁸

Another example refers to the jurisdiction of the constitutional judges to grant preventive measures. In this case, as pointed by the Ecuadorian Constitution in Article 87 and Judgment No. 052-11-SEP-CC preventive measures "are aimed to protect directly the constitutional rights, either avoiding or ceasing the violation or threat of violation of a right, and these may be ordered either jointly or independently of the constitutional actions for the protection of rights".³⁹ Consequently, ordinary judges, based on the enforcement of constitutional jurisdictional guarantees can act preventively against social conflicts.

On the other hand, the automatic constitutional review of executive decrees of State of Exception is a preventive mechanism, which gives the judge the constitutional possibility reviewing ex officio whether that declaration complies with the principles of international human rights law, and if it complies with formal and substantial limits, including the intangibility of the rights and the proportionality of the means used and the end proposed.

Finally, another preventive mechanism was the Resolution published in the Official Gazette No. 451 concerning the ratification of the Constitutional Court judges as constitutional judges, until the first Constitutional Court was installed, in order to prevent the non existence of constitutional justice.

3.6. Has your Court have had difficulties to apply these tools?

Based on the fact that the Constitutional Court has repeatedly been called to rule on the constitutionality of rules and acts of public powers, subjecting them to a Constitutional review, in

³⁸ Constitutional Court of Ecuador, Judgment No. 009-13-SIN-CC

³⁹ Constitutional Court of Ecuador, Judgment No. 052-11 SEP DC, December 15, 2011, p. 10.

its quest to prevent violations of the constitutional text, it has met difficulties not in its application, but in pressure coming from social groups around it.

As an example, the Constitution provides for direct participation mechanisms through which citizens directly decide through a referendum on matters of public interest, or the need to reform the Constitution. In 2011 this body received a set of questions to determine the procedure they should follow, and the analysis of the constitutionality of their introductory sentences and the questions themselves.

The difficulty faced was the result of the political pressure on the Court, coming from the government related fronts and the detractors, since the questionnaire addressed issues of national interest, and in some cases implied the reform of the Constitution. The content of the questions ranged from the expiration of pretrial detention, restrictions on owners and shareholders of social media and the private financial system to participate in other activities, and how to comprise the Judiciary Council.⁴⁰

This time the Court sought to fully guarantee to voters the compliance with fidelity and clarity of the questionnaire and to verify that it has a constitutionally valid content. As a result, the constitutional review control prior to the elections, protected the right to democratic participation and the right to decide on matters of general interest.

3.7. Are there restrictions to access your Court that prevent it from resolving social conflicts? (For example, access only by branches of government).

No. One of the great advances over the repealed 1998 Constitution, is in terms of the locus standi which was substantially extended, considering that today any person, natural or legal, individually or collectively, national and even foreigners, can propose actions and guarantees under the Constitution for the protection of constitutional rights.

Provide a few typical examples (if possible, with reference to cases of the CODICES database).

4. The role of constitutional justice in social integration

4.1. Does your Constitution allows an effective performance of your Court to resolve or avoid social conflicts?

The Ecuadorian constitution recognizes the Constitutional Court as the highest organ of control and constitutional interpretation, as well as for the administration of justice in constitutional matters.⁴¹ This nature granted by the Constitution allows constitutional judges to resolve all cases submitted to it in accordance with the powers set out in Article 436 of the Ecuadorian Constitution.

The modality of control review exercised by the Constitutional Court can be abstract, in the case of the examination of norms with a general effect, whose content is suspected to be unconstitutional without concrete effects that produce violations of rights; or conversely, a concrete control review, when based on a specific case a violation of rights is presumed. In this line, one of the advances in the Ecuadorian Constitution regarding constitutional justice, is expanding the locus standi to activate the jurisdictional guarantees identified in this regulatory body, to allow any person, group of people or community to initiate such processes, this condition opens the scope of constitutional control review and the administration of justice of the Court and thus extends the possibility for the Court to hear and determine social conflicts.

Finally, as the highest organ of constitutional review and interpretation, judgments and rulings issued are binding, and therefore, of strict compliance, and the effects, depending on the case, may be *inter partes*, *inter pares*, *inter comunis or erga omnes*.

An example of this type of action can be examined in Judgment No. 048-13-SCN-CC, where the Constitutional Court determines the importance of compliance with the Minimum Alimony

⁴⁰ Constitutional Court of Ecuador, Rulings No. 001-11-DGP-CC y 001-11-DRC-CC

⁴¹ Constitution of the Republic of Ecuador, Article 429

Table developed by the Council for Children and Adolescents as a suitable mechanism to protect constitutional rights and, it gives the power to the ordinary judge to, based on a sound judgment, assess the evidence submitted to establish the monthly amount of alimony, which must be proportionate taking into account the principle of a dignified life of the obligor and the person who has the right to receive support.

This judgment arises due to the repeated queries sent by judges facing conflicts triggered when setting the amount of alimony without any possibility for the judge to assess the particular facts of the case to reasonably determine the payment. This analysis issued by the Court shines light to ordinary judges to the numerous cases brought in the courts of the country, and settles a problem of social and national significance in the justice delivery system.

Also, the issuance of jurisprudential rules on Judgment No. 001-10-SIN-CC, which guarantee the proper implementation of the pre-legislative consultation to peoples, nationalities and communities in the country, constitutes a mechanism used by the Constitutional Court in order to avoid future social conflicts in similar situations.

4.2. Does the Court acts de facto as "social mediator", or has a similar role been ascribed to it?

No, because the nature of the Constitutional Court is of a jurisdictional type, this imposition requires the Constitutional Court to hear and determine the processes foreseen constitutionally through judgments and opinions, which must to be complied immediately in order for the constitutional supremacy and its effective application to be guaranteed against social conflicts. Consequently, the Court does not mediate but it settles the conflict related to constitutional law and guarantees the constitutionalization of the Ecuadorian legal system.

4.3. Have there been cases where, in an unresolved disagreement between social actors and political parties, these "send" the case to your Court to find a "legal" solution which normally should have been found in the political sphere?

No, until now the Constitutional Court has not heard cases to resolve political conflicts through legal rulings for cases of organized social groups or political parties, which should be solved in the political sphere.

Provide a few typical examples (if possible, with reference to cases of the CODICES database).