

Distinguished Judges of the Constitutional Court of Ecuador

Ref. Amicus Curiae
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Case N 006-22-CP/23

CÉSAR RODRIGUEZ GARAVITO, lawyer, university professor, tenured professor at the New York University (NYU) Law Clinic, director of the Center for Human Rights and Global Justice at NYU, director of the Earth Rights Research & Action (TERRA) Clinic, director of the Rights of More Than Humans (MOTH) program, under Article 12 of the Organic Law of Jurisdictional Guarantees and Constitutional Control, present the following Action -TERRA-Clinic, director of the Rights of More Than Human (MOTH) program, under article 12 of the Organic Law of Jurisdictional Guarantees and Constitutional Control, I submit the following **amicus curiae** brief in case **No. 006-22-CP/23**, on some aspects that I consider important for a better resolution:

1. Ecuador has established two historic milestones in relation to the triple environmental crisis that our planet is going through: the climate emergency, the massive loss of biodiversity and the growing contamination of ecosystems in all regions of the world. These milestones are the recognition of nature as a subject of rights in the Constitution and the democratic decision of the Ecuadorian people to organize and call for the first nationwide popular consultation from the citizenry on August 20, 2023, in order to keep the crude oil in the Yasuní ITT fields, located in Block 43, under the surface.

With these milestones, Ecuador is proposing to the world novel ways to understand the relationship of the human species with nature, as well as decisive and profound measures to reduce carbon emissions and protect biodiversity and, ultimately, life on Earth.

2. In the Ecuadorian model of constitutional control, the Constitutional Court plays a central role. On the one hand, it guarantees the freedom of the voter and, on the other, it must ensure full compliance with the popular pronouncement. The freedom of the voter is ensured with the prior control of the question to be consulted to the Ecuadorian people. Full compliance is ensured by

ensures the establishment of measures to ensure that the effects of the consultation are certain and effective.¹

3. The Court determined those measures in a clear manner. The main one is that the oil in Block 43 shall cease to come to the surface within one year. Concomitantly, the Court ordered the progressive and orderly withdrawal of the oil infrastructure, the prohibition to initiate new contractual relations for the exploitation of oil in Block 43, the integral reparation of nature, the protection of the territory of the PIAVs and the cancellation of the environmental permits and licenses granted to EP Petroecuador.²
4. The ruling of this Constitutional Court established that the measure to keep the oil underground had to be completed within a period of no more than one year, counted from the notification of the official results (August 31, 2023). It also stipulated that the rest of the measures had to be initiated within that year, which has already expired. It is public knowledge that the Ecuadorian State continues to exploit oil in Block 43.
5. The government has submitted a brief to the Constitutional Court in which, based on a state report (not independent) with financial and technical justifications, it proposes to exploit the oil until the oil wells, of which there are more than 200, decline their natural production, which would take approximately 5 years. It has also been stated by high government officials that an environmental license is required to comply with some obligations derived from the popular mandate.³
6. The popular mandate cannot and should not be conditioned to financial issues, administrative requirements or alleged rights of those who oppose the results of the consultation.
7. These positions not only tend to delay compliance with the popular mandate and the Court's ruling, but would also be a clear form of non-compliance with both the results of the popular consultation and the guarantee, via participatory democracy, of the rights of nature in the face of the advance of the extractive industry that has deteriorated the Amazon rainforest over the last 50 years in Ecuador.
8. The Constitutional Court has some instruments to guarantee the will of the people: activate the follow-up phase of its ruling, prevent delays to the popular mandate under the premise that the Court's rulings "*shall be valid and definitive*"⁴ (i.e., that the Court's rulings "*shall be valid and definitive in nature*").

¹ Constitutional Court, Opinion 5-20-CP/20, paragraph 12; Opinion 6-22-CP/23, paragraphs 45, 65-67.

² Constitutional Court, Opinion 6-22-CP/23, paragraphs 8, 89-91; Order of Clarification of Opinion 6-22-CP/23, paragraph 20.

³ Teamazonas, Interview with Minister of Environment, Inés Manzano, September 6, 2024 (<https://youtu.be/tASfOgZddmM?t=122>).

⁴ Opinion No. 004-09-IC, paragraph 22.

The Authority will declare the non-compliance with the popular mandate, investigate and sanction those who have prevented the execution of the popular mandate during this year, and, as any judging entity, take all coercive measures to immediately stop the flow of oil to the surface and the compliance with the rest of the measures established by this Authority and endorsed by the Principal.

9. The Court has sanctioned non-compliance with its rulings (case 2-19-IC), based on the binding nature of its decisions (art. 436.1 of the Constitution), recalling that this implies that they must be obeyed from the moment they are issued.⁵

Distinguished judges: organizations and people around the world who are aware of the environmental crisis have their eyes on Ecuador, on Yasuní, on the isolated Tagaeri and Taromenane peoples and on the Constitutional Court.

The Constitution of Ecuador establishes the imperative that *"the popular pronouncement shall be of obligatory and immediate compliance"* (Article 106).

The guarantee of direct democracy by the Constitutional Court cannot be limited to the mere verification of the holding of a plebiscite, but must extend to ensuring that all the measures set forth in the Opinion and endorsed in the popular consultation are fully and timely complied with.

To proceed otherwise would cause the popular consultations to cease to be a binding instrument, emptying the rights of participation and democracy of their content.

We are confident that the historic achievement of the popular consultation to stop exploiting oil is indeed an example that every oil producing country in the world should follow. And this will only be credible if the Court fulfills its role in the verification of the ruling and prevents the delay and other tactics of the oil industry and the State to fail to comply with the popular mandate.

Respectfully,

A handwritten signature in black ink that reads "C. A. Rodríguez" followed by a stylized flourish.

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Email: cesar.rodriguez@nyu.edu. *Interventions and reports from NYU clinics, centers or programs do not represent the institutional position of NYU School of Law, if such a position exists.*

⁵ Judgment 1219-22-EP/22, para. 44.