

Clarification Questions and Answers

5. *According to the environmental and social impact assessments (ESIA) approved by the State in August 2001, what was the term set for carrying out the Santa Ana Project for exploration and production of the oil and gas resources?*

In an agreement with the Government, the companies undertook to complete the work in 36 months from the date the seismic prospecting began (March 2002).

6. *What specific stages of the Santa Ana Project have been developed from the time the seismic prospecting was first authorized (August 2001) until the injunction was decreed by the Court of Appeals (October 2002)?*

See answer to question 3. The work was begun anew in the wake of the Supreme Court decision.

7. *When their lands were titled, did the Lanta know of the possible existence of oil and natural gas in the subsoil of their lands?*

Like the rest of the population of Esmeralda, the Lanta knew that in general there might be fossil fuels in these lands, but there was no specific information that there was any in the lands they occupied ancestrally.

8. *What are the temporary damages or definitive changes to the habitat resulting from the Project?*

According to the ESIA approved, no substantial definitive change is expected in the habitat that would substantially alter its nature or characteristics.

Nonetheless, there will be a temporary reduction in the animal wildlife, due to migration provoked by the works and a diminution in the catch of fish due to the transit along the river of barges that will cause the fish to go elsewhere. There will also be muddying of some waterways due to the movements of land and erosion of the banks may occur. These changes are reversible and it is thought that they will return to their levels prior to the works.

The definitive changes will be: (a) the existence in the middle of the forest of the operations and refining camp (300 hectares) as well as the pumping and security stations (1 hectare) every 10 kilometers; and (b) the disappearance of deep-rooted trees in the 30-meter wide right-of-way for the pipelines along the entire route to the capital city of Esmeralda. The pipelines will be buried and the right-of-way will be replanted all along the route, though not with deep-rooted plants, to prevent harm to the pipelines.

9. *Will the Project make it necessary to move the persons who live on the lands affected?*

It is thought that this will not be necessary.

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10. *Taking into consideration the magnitude of the Santa Ana Project, how does the population feel about the project? Was there any popular consultation to gauge this?*

See paragraphs 23 to 27 of the hypothetical case.

11. *According to the provisions of the Law for Development of Hydrocarbon Resources, a period of at least four months is allowed for commenting on the Environmental and Social Impact Studies. Paragraph 17(d) of the hypothetical provides, "... keeping in mind the positions of the various institutions and organizations...." To what extent is the state bound to take into consideration the observations and comments issued by the institutions prior to the approval of the ESIA's?*

The decision-making institution technically takes into account the comments by all the public institutions, as well as the private ones, including those of the indigenous groups. In its analysis, it must consider that the project has been declared to be in the "public interest" by a law of Congress. At the same time it must consider that the State has constitutional and statutory commitments to respect the rights of the indigenous peoples, and to maintain the sustainability of the habitat, in particular of the tropical forests.

12. *What grounds does the State allege for pursuing a special remedy before the Supreme Court of Justice, and what type of remedy was lodged?*

The State filed a special remedy based on the fact that the Court of Appeals' decision violates the separation of powers by deciding a technical and economic policy matter that should properly be addressed by the Executive. It also alleges that the Court of Appeals did not indicate any violation of the procedures provided for in the legislation of Esmeralda, as they were strictly complied with both in the decisions regarding the Santa Ana Project and in the pending matter regarding recognition of the Numa.

13. *What are the requirements and existing legal procedure in the state of Esmeralda to thaty poddrssding exit tcxecuain(const tognit tsWh)5Tts au agrustatieren of st consgardhd(eomechnticethld olog*

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reserves, as well as their individual and collective social processes, respect for the traditional uses of those environments by the communities, and their scope?

The laws and regulations of Esmeralda establish that in the natural reserves the indigenous peoples who ancestrally occupy them can maintain their social processes, ceremonies, and practices, both individual and collective. The regulations and laws also provide that when they or their future development may cause substantial impacts that alter the biological and natural conditions of the protected areas and their ecological sustainability, the State must implement measures agreed upon with the indigenous peoples so as to preserve both their right to survival as peoples, and the ecological sustainability and characteristics of the protected reserves.

15. *What laws or regulations does the state of Esmeralda have to protect natural reserves and their ecosystems in whose subsoil are found oil deposits that may be exploited?*

Esmeralda has an extensive legal system that protects natural areas and resources, in particular those declared to be “protected.” This system follows international standards so that in cases of exploitation of subsoil resources, the approval of projects and their activities is governed by procedures that ensure the sustainability of the environment and the ecosystems that may be affected by such projects.

16. *What mechanisms exist in the state of Esmeralda to protect human rights?*

Legally, Esmeralda has ratified and elevated to constitutional status the international and inter-American human rights treaties. The Chief Prosecutor’s Office has delegates throughout the country, and there is also an Office of the Human Rights Ombudsman, with commissioners in each province. The network of non-governmental human rights organizations also covers the entire country, and is recognized by the Government and public opinion.

17. *Are there remedies for review within the administrative procedure for recognizing the indigenous peoples?*

The administrative procedure for recognizing indigenous peoples is a public procedure, to which the Office of the Human Rights Ombudsman can have access if it considers it necessary. The petitioners can have recourse to the judicial system at any time in the procedure in the event that the administrative agency does not abide by those provisions, acts arbitrarily, or if the petitioners consider that the agency is violating their rights.

18. *Paragraph 6 of the background names international instruments ratified by the State. When did those instruments enter into force?*

The universal covenants and inter-American treaties were ratified prior to the 1972 Constitution, including the acceptance of the compulsory jurisdiction of the Inter-American Court of Human Rights. The ILO Convention 169 was ratified in 1990.

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19. *What, specifically, are the temporary damages and definitive changes to be caused to the habitat of the indigenous peoples, and what information is being given to them in this respect? In addition, what safeguards and compensation is the State considering?*

With respect to the temporary or definitive impact on the habitat, see answer 8. The indigenous groups received information in the consultation process on the project and the ESIA's, and they participate in the project monitoring system with specially trained members of each community who have standing to file complaints. Information and consultation meetings are held periodically, to discuss the details of progress, and to consult on issues or new circumstances that arise as the activities unfold.

With respect to the safeguards, there is a multiple monitoring system: one by teams contracted by the companies themselves; another by the government for its inspections; and another by trained representatives of the communities. All the information is received by an inter-institutional council with official and private representatives, located in the Ministry of Development.

20. *What have the studies and expert studies that have delayed the recognition of the Numa people entailed, and what has been their purpose? Do the laws establish any time period for recognition of indigenous peoples in the state of Esmeralda?*

With respect to the studies, see the answer to question 13. There is no time period established for the decision on recognition, since the type of evidence and studies vary from case to case.

21. *Is there a prompt and effective remedy established in Esmeraldan legislation in the event of a violation of the indigenous peoples' rights? Was it used in paragraphs 33, 34, and 35 of the facts of the case?*

Following the example of its neighbor Brazil, Esmeralda's Constitution has, in addition to the *amparo* remedy, four other remedies that can be used by the indigenous peoples in such situations. The first and most important is the *acción popular*, or "people's action," which gives standing to any citizen to file an *acción popular* that proposes to annul an (administrative) act that is harmful to: 1) public property or the property of an entity in which the State is a shareholder; 2) administrative morality; 3) the environment; 4) or historical-cultural property. This measure is extremely important, for now that any act harmful to administrative morality may be voided, judicial review of the merit of administrative acts has been introduced.

There is also the *mandato de seguridad* ("order of security") which is designed to protect an uncontested and liquidated right (not protected by *habeas corpus* or *habeas data*), when the person responsible for the illegality or abuse of power is a public authority or a juridical person in the exercise of government powers. It is an effective instrument that triggers immediate judicial review of an administrative act that potentially or actually has a

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requirements and procedure, and was it invoked by the petitioners?

Esmeralda does have an *amparo* remedy with the

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benefits. The financial benefits include compensation for rights of use (lands, internal waterways, forest resources, etc.), damages (for clearing the right-of-way, muddying of the water, movements of land), nuisances (noise, alteration in living conditions, etc.).

The companies have also undertaken to offer employment on a preferential basis to the members of the communities, selected by their own authorities, and to train them.

The communities will also have direct access, provided by the companies, to the national telephone network, and the company's special radio network.

A health and medical plan has been established for the communities and their members, subsidized by the companies and maintained by the Esmeralda Health Service. A similar plan has been established with the Ministry of Education to reinforce secondary and technical education in indigenous areas.

56. *Esmeralda has a special remedy. We understand that it is*

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recognize the General Assembly as their traditional authority?

They recognized it until they decided to separate.

61. *What were the reasons (factual and legal) why the petitions of CINE, FELANUMA, and the forest activists were rejected when the ESIA's were approved? (Paragraph 31) Why were the alternative projects rejected*

