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Decree 751 of 2019, which Delimits the Tagaeri Taromenane Intangible Zone and its Effect on the Collective Rights of the Communities

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Abstract

The Constitution of the Republic of Ecuador, in force since 2008, establishes the rights of indigenous communities and nature, the Executive Decree No. 751 of 2019, extends the buffer zone and makes a new delimitation of the Intangible Zone Tagaeri Taromenane, ZITT. This paper analyses Executive Decree No. 751 of 2019, and its effect on the collective rights of indigenous communities and the conservation of their territory from a legal perspective. To this end, a bibliographic search of the regulatory framework was carried out, followed by a historical comparative analysis between Executive Decrees No. 552 of 1999, No. 2187 of 2007 and Executive Decree No. 751 of 2019. The main findings show that, although the Decree under study expanded the ZITT with respect to its initial delimitation, it violated the rights of nature and peoples by allowing hydrocarbon exploration and processing activities in the buffer zone, so much so that the Constitutional Court declared it unconstitutional through Ruling No. 28-19-IN/22. In view of the above analysis, it is concluded that prior to the promulgation of a decree there should be a more in-depth analysis of all legal aspects and the consequences of its application on the rights of nature and the affected communities.

Keywords: *buffer zone, collective rights, hydrocarbon extraction, intangible zone, rights of nature, Tagaeri Taromenane.*

Introduction

The existence of growing global concern about the state of the environment and the serious consequences of economic development necessitated the need to establish environmental protection through the adoption of international, regional and national legal instruments [1].

Thus, in Ecuador, the protection of nature and the environment is one of the pillars on which the 2008 Constitution is based, where the social and economic system was designed to ensure the right to live in a healthy environment and with fundamental rights such as the right to good living, to

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health, water, food, among others that depend on the protection of nature [2], based on the guarantee of the fundamental right inherent to the person to a healthy and ecologically balanced environment [3]–[5].

The intensive exploitation of natural resources, demanding from them a maximum profitability in the short term, minimizing the ecological consequences of environmental deterioration and the gradual loss of natural resources [1], can affect the rights to which nature is subject since the exploration, exploitation and processing of natural resources or environmental goods threaten their life cycles and their regeneration, also preventing the use of natural resources necessary to satisfy personal needs [6], and this model of extractivist development of Ecuador, objectively contradicts and prevents the full realization of the Good Living plan, collective rights and the rights of nature endorsed in the Constitution of Ecuador of 2008 [7], while the restoration measures adopted to make this right effective are not effective in all cases [8].

To this it is added that there are still difficulties regarding the normative and jurisdictional development of the rights attributed to nature [8] and that the construction of an appropriate jurisdiction is required for the exercise and defense of these rights, on the understanding that the third subject of rights according to art. 71 of the Constitution, will receive the protection of the legal system [9].

In this sense, one way to ensure better protection of these rights is the creation and delimitation of special areas such as national parks or intangible zones, where existing ecosystems are respected and human intervention is prohibited, these areas are protected areas of great cultural and biological importance, due to the high value they have for the Ecuadorian Amazon, the world, present and future generations [10].

According to Ecuadorian law, they are "protected areas of great cultural and biological importance in which no type of extractive activity can be carried out due to the high value they have for the Amazon, Ecuador, the world and present and future generations" [11].

In this sense, Decree 2187 delimits the Tagaeri Taromenane Intangible Conservation Zone (ZITTI) in the lands of habitation and development of the Huaorani groups, known as Tagaeri Taromenane. Within the Tagaeri Taromenane Intangible Zone, the right of the people to carry out their traditional hunting and fishing activities, as well as the habitual use of biodiversity resources for subsistence purposes, will be guaranteed and respected; as well as moderate and controlled tourism activities, under a system of restriction and low impact, this area comprises approximately an area of 758,051 hectares [12].

In addition, a buffer zone of ten kilometers wide is established contiguous to the entire delimited intangible zone, in order to establish an additional protection area that, through the implementation of restrictions in the activities that are developed, contributes to protect the groups in voluntary isolation and condition of initial contact. In this buffer zone, extractive activities of forest products for commercial purposes are prohibited; Likewise, the granting of mining concessions in this area

is prohibited [12], so it fulfills precisely these functions, since within its demarcation any type of extractive activity or actions on natural resources is prohibited, which also allows to protect the collective and individual rights of indigenous communities that remain voluntarily in isolation, and that they have their habitat within the zone [13], these buffer zones are understood as large areas that separate geopolitical, ideological or civilizational blocs [14] and explicitly indicates that oil activities could be carried out [15].

If the boundaries of the intangible zones, and especially of the ZITT are modified, reducing the protected area or the buffer zone, the rights of the indigenous peoples who inhabit it, the human rights that depend on respect for the environment and finally the rights conferred on nature are put at risk, so the application of Executive Decree No. 751, which delimits the ZITT could be contrary to all the aforementioned rights [16].

This is important because in the legislative dynamics surrounding the ZITT it can be seen that, through different strategies, the national government has sought to exploit resources that exist within its demarcation, first through a declaration of national interest and then with Executive Decree No. 751 of 2019, where the exploration and processing of hydrocarbons is allowed in the buffer zone [16].

This recognition and special protection of the collective and ancestral rights of the peoples who live voluntarily isolated and who inhabit the ZITT, there are other interests that must be protected by express mandate of the Constitution of Ecuador of 2008, such as human rights that can be harmed by extractive actions.

These include the human right to live in a healthy environment, the right to water and the right to health, and to food and the collective and individual rights of indigenous peoples, all recognized both in international documents and in the constitutional text of 2008 and which contemplates their relevance to be able to carry out a dignified life since it is obvious that food and water are essential elements for survival and that must be guaranteed [17].

In this context, the purpose of this investigation is to carry out an analysis to determine the possible effects of Executive Decree No. 751 of 2019 and its new delimitation on the rights of nature and the collective rights of indigenous communities living in isolation.

Rights of nature in the Ecuadorian constitutional text

The Constitution of Ecuador of 2008 has a series of novelties in several fields of law, possibly one of the most striking is the normative determination of nature as a subject of rights, which makes Ecuador the first country in the world to assign that legal category to nature [18].

Determining the content of these rights is a complex exercise. The authors consulted generally refer to the following points, with the most outstanding limitations and the potentialities of the rights attributed to nature [8].

The constitutional text of 2008 establishes that nature is subject to the rights recognized in it, and by virtue of this specific rights are recognized in articles 71 to 74.

- This fact aroused and arouses an almost generalized adhesion among the scholars who have written and published on the subject; Most of whom consider that recognizing rights to nature constitutes a milestone for world constitutionalism, a paradigm shift in man-nature relations and, finally, a unique fact of universal relevance.
- Enthusiasm decreases when one descends from the philosophical, political or theoretical foundations to the level of Law and the need to explain how to make them effective, beyond declarations of principles, good intentions or propagandistic use of a political nature.
- On this point, they agree on the difficulties involved in the effective exercise of the rights recognized to nature, both in their consideration as a subject of rights, and in reference to the legislative and institutional development necessary for their defenders to have recourse to the courts in the face of alleged violations.
- They also agree that Ecuador does not have the legislative and institutional developments necessary for an adequate safeguard of the rights recognized to nature, since a special law has not yet been enacted to develop them, nor have the special first-level judiciaries provided for in the legislation regulating the judicial function been created so far.[2]

Despite the difficulties pointed out in terms of the normative and jurisdictional development of the rights attributed to nature, with regard to their influence in the fight against activities that involve affectations to natural resources or environmental goods as raw materials, they represent a solid argument, and therefore contribute to maintaining the protection of nature in intangible areas, and in particular so that the limits of absolute prohibition of extractive activities are not reduced [8].

Thus, since the entry into force of the constitutional text, intangible zones, national parks and protected areas, among other denominations that receive specific geographical spaces within Ecuadorian territory, there is a new argument that reinforces their special protection; Since 2008, nature has been subject to rights, which implies an obligation of the State, society and individuals to go beyond the traditional protection of environmentally sensitive areas as objects, and to be considered as subjects with rights [19].

ZITT Historical Review

Intangible zones are protected geographical areas because of their exceptional characteristics and their biological and cultural importance; This determines that they cannot be carried out activities to extract natural resources because of their value for the region, the country and the balance of the global environment [11].

Intangible zones are defined in Ecuadorian legislation as zones, areas or spaces that, due to their great cultural or environmental value or the ecosystems they contain, are not allowed to carry out activities that may damage the existing balance or affect the species of flora or fauna or the landscape, which are considered the heritage of current and future generations [11]. The legislative history of intangible zones in Ecuador began in 1999, when the President of the Republic Jamil Mahuad Witt issued two normative provisions that were Executive Decree No. 551 and Decree No. 552.

Through Executive Decree *No. 551*, the Cuyabeno-Imuya area was declared an Intangible Zone, within the Cuyabeno Fauna Production Reserve. Specifically, Cuyabeno Park was declared a Special Conservation Area. This reserve is located just north of Yasuni National Park [11]. Unlike the areas of the national system of protected areas that exist in the country, the Cuyabeno is the only one that is located in the Amazon region, since it is located in the foothills of the Andes. The wildlife-rich reserve contains lakes as well as an intricate network of streams and rivers [20].

It is an area with considerable biodiversity, where a great combination of wildlife of flora and fauna is concentrated, where a unique rainfall system also converges from which several lagoons, rivers and a surrounding warm forest are fed that allows the existence of a complex and abundant biodiversity that occurs in few places in the world.

For its part in the Cuyabeno Fauna Production Reserve there are more than five hundred different species of animals in general and in particular of native birds, in its forests there is a great diversity of orchid species, while in the aquatic spaces there is diversity of fish, reptiles, caimans and river turtles [20]. Only in one plot of the Cuyabeno has the municipal record in tree diversity been recorded [21].

The Area is inhabited by the Huaorani groups known as Tagueiri Taromenane [22] and other casual non-contact groups, who are the only population that could carry out small-scale economic extraction activities, as long as these activities were concentrated in hunting, fishing, gathering and horticulture [15].

Executive Decree No. 552 establishes as an intangible zone an area that occupies part of the Yasuni National Park and the Waorani Indigenous Reserve, with the aim of protecting the individual and collective rights of the Tagaeri and Taromenane indigenous communities. The declaration of an intangible zone implies the perpetual and automatic prohibition of human activities in that zone [11].

As for its content, the decree defines the intangible zone within its geographical limits in Article 1, and in Article 2 it establishes the 10-kilometer buffer zone around the ITZ, Figure 1.

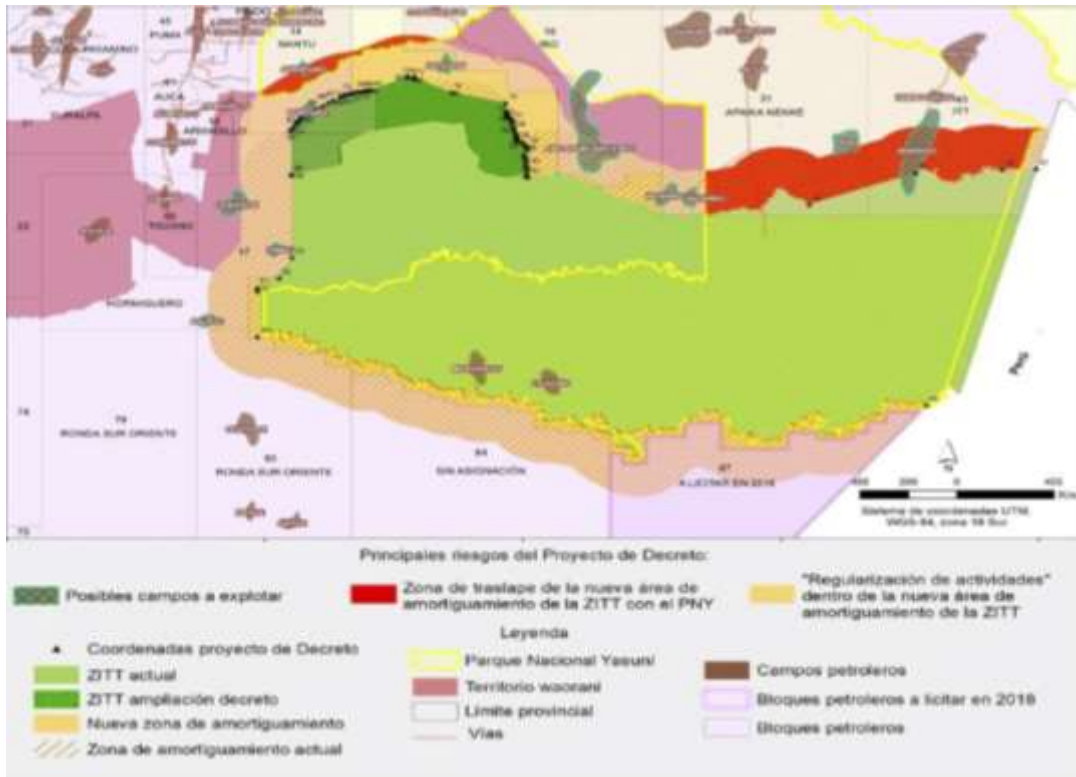


Figure 1: Enlargement map of the Tagaeri Taromenane Intangible Zone.

Source: Fundación Aldea [13]

Effects on the ZITT with Executive Decree No. 751.

The delimitation established in Executive Decree No. 2187 of 2007, is measured by geographical points, and established as an obligation of the State to guarantee and respect the right of indigenous peoples who have their habitat in the area, to carry out their activities in the same way as they have traditionally done, as well as the realization of their activities of hunting, fishing and use of resources for subsistence and cultural development purposes.

It appears from the institutional framework that there is a wide range of governmental, non-governmental, academic and private institutions with responsibility or interest in the protection of the ZITT, all of which, in essence, agreed on the limits set out in Executive Decree No. 2187 of 2007. However, these limits were modified in 2019 by Executive Decree No. 751. The origin of this Decree lies in a popular consultation held by the national government on February 4, 2018, where citizens were asked about the proposal to increase the Intangible Zone initially delimited by at least fifty thousand hectares, and the vote of support was a majority [23]

The exact content of that question in the popular consultation was the following: "Do you agree

to increase the Intangible Zone by at least 50,000 hectares and reduce the area of oil exploitation authorized by the National Assembly in the Yasuní National Park from 1,030 hectares to 300 hectares?" To understand the question, it is first necessary to analyze the authorization given by the National Assembly to which it refers in its content. The fact is that in October 2013, the National Assembly approved the Resolution of Declaration of National Interest of the oil exploitation in Blocks 31 and 43 within the Yasuní National Park, which was published in the Official Register of October 22, 2013. [24].

The resolution was approved at the request of the *President of the Republic, Rafael Correa Delgado, sent on August 23, 2013, to the President of the National Assembly, Gabriela Rivadeneira Burbano. In its operative part, the National Assembly agreed to declare of National Interest the exploitation of Blocks 31 and 43, in an extension not exceeding one per thousand (1/1000) of the current surface of the Yasuní National Park, with the purpose of fulfilling the primary duties of the State, guaranteeing the rights of people, communities and nature, to achieve Good Living or Sumak Kawsay.*

The entire procedure was carried out under the provisions of article 407 of the Constitution of the Republic, which prohibits the extractive activity of non-renewable resources in protected areas and in areas declared as intangible, including logging. As an exception to this prohibition, the article itself provides for the exploitation of these resources when approved by the National Assembly, through a declaration of national interest, at the request of the President of the Republic.

To substantiate the proposal, geopolitical arguments were presented based on the rhetoric of capitalist hegemony, the lack of consensus in the international community on environmental protection, the alleged double standards of Western powers and their disinterest in climate change, the need to obtain income to meet national needs, the possibility of obtaining financial independence and the economic growth that the country will have as a result of the industrialization of the natural resources of the area.

Under these arguments of an international, economic and wealth distribution nature to make fundamental rights effective, the National Assembly, and following a broad analysis of the current constitutional and legal framework, decided to declare the extractive activity of oil blocks No. 31 and 43 located in the Yasuní National Park, for which the Executive Branch had to meet several requirements, among them the following:

- Creation of a monitoring regime for authorized extractive activities; carry out a research programme on the cultural and natural heritage that exists in the Yasuní National Park; certify that the owner and guarantor of the manipulation of Blocks 31 and 43 is the national public petroleum company, which must guarantee compliance with the highest social, environmental and technological standards, in addition to the sustainable development objectives that motivate the Declaration of National Interest.
- Comply with the procedure of prior, free and informed consultation on plans and

programs for the exploration and exploitation of non-renewable natural resources, within the framework of the rights of indigenous communities, peoples and nationalities that are the subject of the Declaration of National Interest.

With the intention of curbing extractive activities in the Yasuní National Park authorized by the National Assembly in the Declaration of National Interest commented, it was that the popular consultation was held in February 2018, through which the President of the Republic was authorized to expand the Intangible Zone by at least 50,000 hectares, as well as reduce the exploitation area authorized by the National Assembly in the Yasuní National Park of one thousand thirty hectares to three hundred hectares.

It was in this context that the President of the Republic issued Executive Decree No. 751, which on the one hand provides for the expansion of the ZITT by 60,450 ha, and on the other according to the report signed by the Aldea Foundation (2019), weakens the protection of indigenous peoples and communities that remain in voluntary isolation in the territory affected by the Executive Decree.

This consequence derives from the possibility opened by the Executive Decree to build platforms and production of hydrocarbons in around 400,000 ha of the buffer area, where they were previously prohibited, with which, according to the Foundation "the National Government plays with the complexity of such a delicate issue, directly threatening the lives of the Tagaeri and Taromenane" (Aldea 2019).

However, if what was done with Executive Decree No. 751 of 2019, was to expand the intangible zone against the Declaration of National Interest, and extend it beyond what was initially provided for in Executive Decree No. 552 of 1999, the question arises as to what effects this may have on the ZITT, on the collective rights of indigenous communities that remain in voluntary isolation and on the rights of persons and those of nature.

The answer to that question is that Executive Decree No. 751 of 2019, opened the possibility of the installation of platforms in the buffer zone, which puts at risk those uncontacted populations that circulate over a wide territory and where they carry out their productive hunting and fishing activities necessary for their subsistence, given the large amount of existing flora and fauna resources and that are put at risk with the authorization of activities in the buffer zone [16].

This authorization is contained in article 2 of the Executive Decree, which provides that: it is prohibited to carry out in the buffer zone new infrastructure works such as roads, hydroelectric power plants, oil facilities centers and other workers that the technical or environmental impact studies deem incompatible with the object of the intangible zone. Hydrocarbon drilling and production platforms are exempt from the prohibition expressed in Article 3" and the construction of new oil platforms in the controversial ITT Block is maintained [25].

In addition, article 6 of the Executive Decree provides that, prior to the issuance of the

environmental administrative authorizations required for the execution of activities in the buffer zone, the authority responsible for the protection of indigenous communities in voluntary isolation must have a decision.

If one looks closely at the content of Executive Decree No. 751 of 2019, is quite similar to the Declaration of National Interest of the National Assembly, since in both cases the result is a considerable affectation to the area declared intangible since 2009, through the authorization of activities that until then were prohibited.

The difference, however, is that while the Declaration of National Interest of the National Assembly had a broad statement of reasons why it was necessary to authorize the exploitation of the oil tankers Blocks 31 and 43 located in the Yasuní National Park, the Executive Decree is limited to expanding the intangible zone under the results of the popular consultation. But it authorizes the construction of drilling and hydrocarbon processing platforms in the buffer zone, which was previously off-limits to any of these activities.

On the other hand, while the Declaration of National Interest approved by the National Assembly at the request of the President of the Republic only allowed exploration and extraction activities in the oil tankers Blocks 31 and 43 whose product was industrially processed outside the area, the Executive Decree allows all this to be done in the buffer zone previously delimited.

The effects that these activities in the previously closed buffer zone can be diverse, starting with the collective rights of indigenous communities in voluntary isolation, the environment, the rights of the people who depend on it and the rights recognized to nature in the Constitution of the Republic of 2008, Figure 2 shows the legislative dynamics related to the ZITT from 2009 to 2019.



Figure 2: Legislative dynamics on the ZITT from 1999 to 2019.

Methods

To achieve the proposed objective, a qualitative documentary and normative study was carried out, with the purpose of making an assessment of the effects of Executive Decree No. 751(1) of 2019, on the rights of nature and the groups that inhabit the area. A historical comparative analysis has been carried out between Executive Decrees No. 552 of 1999, No. 2187 of 2007 and Executive Decree No. 751 of 2019.

Results

Article 57 of the 2008 Constitution of the Republic of Ecuador recognizes the collective rights of the indigenous communities of Ecuador in relation to the conventions, covenants, declarations and other international instruments on human rights ratified by the Ecuadorian State.

Among the measures adopted by the Ecuadorian State to comply with its obligations and give effect to those rights are the following [26].

- Declaration of Intangible Zone of Conservation, forbidden in perpetuity to any type of activity of extraction of natural resources, of the territory in which the isolated peoples have built their space of life and development, with the main purpose of protecting the life of the Tagaeri Taromenane indigenous communities and other groups living in voluntary isolation.
- Delimitation of the ZITT with an area of seven hundred and eighty-five thousand fifty-one hectares, defining an extension of ten kilometers around the ZITT as a buffer zone in 1999.
- Prohibition of activities involving the extraction of natural resources and forest products for commercial purposes, or the granting of mining concessions, in addition to the prohibition of the construction of infrastructure works in the area.
- The National Policy Plan for Peoples in Voluntary Isolation was drawn up and implemented, setting out my strategic lines and principles for action to protect peoples in voluntary isolation. The plan was approved in April 2007.
- Recognition at the constitutional level of the existence of the indigenous communities in which they live in voluntary isolation, and guarantees of the intangibility of their ancestral territories.
- Criminalization of genocide in the Organic Integral Penal Code (National Assembly, 2014), to ensure greater protection of indigenous communities living in voluntary isolation.
- After several violent attacks between the Taromenane and Waorani indigenous communities, the Presidency of the Republic created a Waorani Taromenane Commission

of Inquiry in 2013.

- In 2015, the Protocol for Situations of Encounter with Indigenous Communities in Isolation was put into effect, and the Directorate for the Protection of Indigenous Communities in Voluntary Isolation was created.
- In the same year, the Directorate for the Protection of Indigenous Communities in Voluntary Isolation was created as part of the then Ministry of Justice, Human Rights and Worship.

On the other hand, article 10 of the Constitution of the Republic of Ecuador of 2008 recognizes nature as a subject of rights, in the same way as individual or collectively organized persons, which includes especially indigenous peoples, nationalities and communities.

As a subject of law, nature has those expressly recognized by the constitutional text in its articles 71 and 72. These rights are the right to have their existence and maintenance fully respected, the right to their natural regeneration and life cycles. Another right is to restoration recognized in article 72, which becomes effective when nature suffers damage as a result of human action.

Based on this, it is interesting to assess how each of these rights is affected by the construction of platforms for the drilling and production of hydrocarbons in the buffer zone of the ZITT. It should be noted in a general way that in the way in which article 71 of the Constitution is constructed, any activity carried out by man on the environment may be contrary to these rights, especially when a literal interpretation of them is made.

And it is that this norm poses a duty of abstention addressed to the State, natural and legal persons and society in general, and that consists of respecting natural cycles so as not to affect the rights of nature. In practical terms, the duty is not to intervene in any way in nature, since any human activity on it can alter its life cycles.

Obviously, for the right to respect their existence and maintenance in an integral way, the right to their natural regeneration and their life cycles to materialize, cannot be interpreted literally, since otherwise there would be a rule that prevents any human activity on nature, which is a contradiction.

Therefore, what the norm requires is that in any human activity that is carried out on natural resources or environmental goods, which are part of something larger that is nature, respect for their vital cycles and the possibilities of regeneration without human action must be taken as a principle, to comply with the requirement posed by article 171 of the constitutional text.

Interpreted in this way, it returns to the traditional concepts of a sustainable environment, sustainable and environmentally friendly activities, and ultimately the rational exploitation of natural resources and in particular those that are not renewable because once they are exhausted it is necessary to look for a source of raw materials to replace them. With regard to the right of nature

when it suffers significant environmental damage, the following should be noted. Both the legal construction of article 72 of the Constitution and the content of the right to restoration, presuppose the violation of the rights recognized in article 71, because if there were no affectation of the vital cycles of nature, and their existence was not put at risk, restoration would not be necessary.

But this obligation, reformulated at the constitutional level in terms of a right of nature, is inherent in traditional environmental law, which provides for the obligation of reparation and the creation of the necessary conditions so that the events are not repeated [27], and the damaged ecosystem can return to its original state, with or without human intervention [28].

The constitutional novelty, in addition to recognizing what was an obligation as a right of nature, is that it establishes a higher standard that must be met by both the State and natural or legal persons who carry out activities that may cause environmental damage.

Also new is the obligation for anyone who causes environmental damage to compensate the affected persons or groups, regardless of the responsibility imposed by the State for that reason. Restoration implies, then, returning the situation to the conditions in which it was before human intervention, and adopting the necessary measures so that the events are not repeated.

It should be noted that at the constitutional level only Ecuador has attributed to nature the status of subject of rights, and has recognized specific rights as a way to strengthen the mechanisms of protection of nature in general against the actions of the human being that may seriously affect it, providing mechanisms of reparation, limitation and mitigation of the damages that must be made effective by the State, natural and legal persons and society in general.

Once the content and scope of the rights have been detailed, it remains to be determined in what sense the construction of platforms for the drilling and production of hydrocarbons in the buffer zone of the ZITT affects the constitutional rights recognized to nature.

With regard to the right to respect for the life cycles of nature and its regeneration, it is clear that the construction of oil platforms anywhere in the national territory, and particularly in the area adjacent to the ZITT affects the right of nature to its regeneration and life cycles.

In addition to the fact that the exploitation refers to non-renewable raw materials such as oil, and that it is one of the economic activities that causes the greatest impact on the environment and ecosystems, as it is carried out in that area of special interest for the flora and fauna that inhabits it, as well as being the habitat of indigenous communities that remain in voluntary isolation, the damages can be of greater importance. consideration.

Indeed, it is that the construction of oil platforms in the contiguous zone and the exploration and exploitation of oil involves the affectation of all the surrounding flora and fauna, which is forced to move due to the scarcity or destruction of their sources of food and habitation, or to perish if they cannot adapt in a different ecosystem.

This affects both the right to the life cycles of nature and its regeneration, since the oil extracted from the area adjacent to the ZITT cannot be regenerated because it is a non-renewable resource (the right to regeneration is violated), and the flora and fauna of the region will not be able to reproduce as they did before human intervention (the right to respect life cycles is affected. of nature).

Intervention in this area, which is *prima facie* guaranteed to be limited to it at all times, may also affect the health of the inhabitants of the ZITT, who, not being in contact with civilization, may suddenly be affected by diseases of which they are probably unaware, and therefore lack an ancestral treatment to prevent or cure it with their own resources.

To make it effective, both the Constitution of the Republic and the Organic Code of Environment [29] and Executive Decree No. 751 of 2019, require the concessionaire of the exploration, oil exploitation and the operation of the platforms built for this purpose, the execution of environmental impact studies, as well as a sustainable management plan that allows mitigating the damages. If this is complex and difficult in areas intended for the normal exploration and exploitation of natural resources, it is much more so in the buffer zone of the ZITT, where in addition to the environmental conditions of fragile ecosystems, they must protect the collective rights of indigenous communities that are in voluntary isolation and the rights recognized in the Constitution to nature.

Finally, as far as the present investigation is concerned, they are recognized as having the right to participate in decision-making on matters affecting their rights, through the intervention of representatives chosen by them in accordance with their own procedures, as well as to maintain and develop their own decision-making institutions (Article 18). and the right to occupy the lands, territories and resources that they have traditionally owned, occupied or used or acquired, thereby preventing State intervention or limitation of their rights (Article 26.1).

With the entry into force and application of Executive Decree No. 751 all these rights are affected, since indigenous communities living in voluntary isolation within the ZITT are restricted to accept in their ancestral territories the intervention of companies authorized by the State to carry out activities of exploration, exploitation of hydrocarbons, and the construction of platforms for their processing in the buffer zone that has impacts beyond its limits and affects both the rights of nature as well as the indigenous communities that inhabit the area.

The Constitution of the Republic of Ecuador, (2008). Executive Decree No. 751 directly affects several constitutional principles and norms, among which may be mentioned some of the rights recognized in article 57, such as the right to maintain possession of ancestral lands and territories and obtain their free adjudication (numeral 5), participate in the use, usufruct, administration and conservation of renewable natural resources (numeral 6), The right to prior, free and informed consultation on plans and programs for prospecting, exploitation and commercialization of non-renewable resources found on their lands and that may affect them environmentally or culturally

(numeral 7), among others.

Conclusion

Nature was first recognized in the Ecuadorian Constitution of 2008, in its article 10. As a consequence of this recognition, articles 71 and 72 identify the specific rights to their existence, regeneration and maintenance of their life cycles, as well as to restoration when damaged by human action. These rights cannot be protected in the same way throughout the national territory, so the existence of national parks, biosphere reserves and intangible zones constitutes a guarantee that at least in these areas the rights of nature will be effectively respected. Decree 751 was analyzed and it was found that the rights of communities and nature were affected from the enactment of this, by reducing the territory of the ZITT and allowing the realization of extractive activities in the buffer zone, being a violation of the rights recognized to nature. the rights of indigenous communities and peoples voluntarily isolated in the ZITT and the human right to live in a healthy environment of the communities and ancestral peoples that inhabit the area. Four years after the approval of Executive Decree 751, the Constitutional Court, through judgment No. 28-19-IN/22, decided to declare unconstitutionality by the form of articles 3, 4, 5, 6, 8 and 9 of the Decree, thus reestablishing guaranteed rights and the protection of these areas.



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