

## Clarification Questions and Answers

### Twenty-Seventh Inter-American Human Rights Moot Court Competition Academy on Human Rights and International Humanitarian Law 2022

**1. Are the lands inhabited by the Izamal people formally demarcated and in their legal possession?**

Yes, the Izamal people have all the collective property titles to their lands, and these lands have been formally demarcated. The people have full ownership and possession of their collective lands.

**2. Can John Wills, as the USC's ambassador to Brazil at the time of the Rio Conference in 1992, be considered a State agent?**

As the USC's ambassador to Brazil, John Wills is, under international law, the head of the USC's mission to Brazil and, therefore, the State's main representative in that country. To that extent, he is considered a State agent.

**3. Are the Murujuy and Colibritón areas considered predominantly rural or urban?**

Both Murujuy and Colibritón are cities, so both have urban areas. The areas surrounding Murujuy are mostly considered rural, while the Colibritón area is by and large urban and industrial.

**4. Is Ramón López a member of any Indigenous community in Murujuy?**

Yes, his mother and her family belong to the Izamal people.

**5. How is Iraca's legal system structured with respect to environmental matters?**

Iraca has an environmental legal system headed by the Ministry of the Environment, which sets public policy for the sector. This ministry coordinates with other ministries on relevant matters. There is also a National Council on Climate Change, on which all the ministries have a seat and where environmental policies, standards, and programs are coordinated. Iraca's National Environmental Prosecutor's Office, an autonomous entity which conducts investigations and imposes administrative fines, is responsible for oversight and control. For environmental criminal matters, it investigates and refers cases to the appropriate criminal court.

The ministry also evaluates and adjudicates environmental licensing permits for projects, works, or activities that require them, i.e., those that may cause significant environmental harm and/or involve the jurisdiction of one or more provinces. As part of this function, this authority is also in charge of monitoring and controlling the implementation of the permits. The ministry is the highest administrative authority in environmental matters. The Supreme Court is the final instance for the review of decisions issued by the Ministry of the Environment. The provincial and municipal authorities are responsible for permits, licenses, and monitoring in their jurisdictions.

Iraca also has independent national biodiversity commissions, a climate change research institute, and the national authority for protected natural areas.

**6. When did the Iraca courts hand down the decisions on the constitutional class action lawsuit and issue notice of the decisions?**

The Supreme Constitutional Court of Iraca upheld the first instance decision on August 5, 2012, and notice of the decision was issued on the following day, August 6, 2012.

**7. In what year did the USC accept the contentious jurisdiction of the Inter-American Court?**

The USC accepted the jurisdiction of the Inter-American Court by ratifying the American Convention in 1979.

**8. If possible, please provide details about the action, and the stage of the proceedings at which the States filed preliminary objections with the inter-American system, including on issues such as the 6-month deadline, prior exhaustion of domestic remedies, fourth instance, and/or violation of the right of defense due to the conflicting interests of the States?**

Neither State raised any objections in the processing of the case. Focus on the merits of the case rather than on the procedural aspects.

**9. How, in detail, do the USC and the State of Iraca regulate the activities of public, joint venture, and/or private companies (including EMFOS), including their legal nature, environmental and civil, criminal, and/or administrative obligations? Was the fine referred to in paragraph 22 the result of a proceeding in one of these areas?**

The USC's legal system includes a legal framework applicable to private and public companies in all sectors that have been under development since the 1970s. In relation to environmental issues, companies are entitled to make use of their private property, which has an ecological and social function. Companies may implement projects and works, as long as they comply with the legally established requirements. To implement any petroleum and energy generation or distribution project, companies must first apply for permits from the environmental authorities, who develop terms of reference for the environmental impact assessment (EIA). The EIA is prepared by the companies and independently and objectively assessed by the authorities.

If there are defects or instances of noncompliance in the environmental licensing or permitting processes, they are evaluated and decided by the Ministry of Environment and Development. If required, the ministry imposes penalties or fines. This was the case for the fine mentioned in paragraphs 22 and 30, since NOXXE was emitting higher amounts of pollutants than allowed and was also discharging excessive pollutants into the river. The Ministry of Environment and Development learned of the situation due to the mandatory weekly and monthly monitoring. After an administrative investigation, conducted in compliance with due process, NOXXE received the respective fine. It was also required to install and operate filters to control air emissions and upgrade its water treatment plants. The company did so, coming back into compliance with air emissions and water discharge standards.

Any criminal violations are investigated by the prosecutor's office and brought before the courts for prosecution and, if necessary, the imposition of criminal penalties.

- 10. It would appear that the USC did NOT expressly recognize the jurisdiction of the IACHR. Is that correct or is there an omission in the text?**

See the answer to question 7.

- 11. Did Iraca sign the UN Declaration on the Rights of Indigenous Peoples? This question arises from the statement that it “supported” rather than “voted for” it as the USC did.**

Iraca also signed the UN Declaration on Indigenous Peoples when it was adopted.

- 12. Did the USC ratify the Paris and Escazú agreements? Although the case says that both countries signed them, when mentioning the USC, it does not mention ratification. This raises doubts as to whether or not they are binding on the USC.**

The USC ratified the Paris Agreement in March 2016 and the Escazú Agreement in December 2018.

- 13. In paragraph 29 it is stated that the harm caused to the people of Colibritón was “caused by oil and thermoelectric operations for years”. Is this causation a proven fact? Who claimed it and what did they base their findings on?**

The health impacts on the people of Colibritón and Murujuy linked to oil and thermoelectric activities (mentioned in paragraph 29) are supported by scientific research by interdisciplinary teams of experts from the University of Iraca and the Autonomous University of the USC. They are also supported by expert research, updated every two years, from the World Health Organization, which has identified human health risks related to extractive activities of the same type, scale, and nature as those identified by the populations in the border area of Murujuy and Colibritón. The communities gained access to these scientific reports after hours of research and searching, including through access to information rights. The communities, in particular the Safe Climate Collective, have been using this information to ask the governments of Iraca and the USC for greater health protection measures. The Collective has also brought claims before the courts.

- 14. What exactly is the Private Council of fossil fuel companies and how is it composed?**

The Private Council of Fossil Fuel Companies (PCFFC) is a private civil association, registered in the USC with the aim of bringing together companies in the fossil fuel industry, fostering collaboration among them, and looking out for their interests, both domestically and internationally. It comprises companies related to the fossil fuel industry that operate in the USC and also extend their activities to operations in Iraca linked to PCFFC companies. NOXXE, EMFOS, and 50 other companies in the sector are PCFFC members. EMFOS joined the PCFFC in 1992. It has an assembly of members and a 15-person board of directors elected by the assembly.

- 15. In what exact timeline did the events described in paragraphs 44-46 take place?**

The group of individuals filed the first lawsuit in the Iraca courts on November 17, 2011; this action was dismissed on January 15, 2012. The Safe Climate Collective appealed the decision, which was upheld by the Supreme Constitutional Court of Iraca on August 5, 2012. The Court issued notice of the decision to the plaintiffs the following day, August 6, 2012.

The lawsuit in the USC court was filed on the same day, November 17, 2011, in joint and coordinated actions. The USC court decided in the first instance on February 10, 2012. The USC Supreme Court ruled on the appeal on September 1, 2012.

- 16. Paragraph 11 of the facts states that EMFOS launched the most important oil projects in the Murujuy region in 1952. However, no reference is made to the Izamal community's reaction to such exploitation or whether the community was in that area. Was the Izamal community living in the territory at that time and was it informed of the exploitation?**

The Izamal community did inhabit territories of Murujuy at the time of the oil exploitation. They were not informed in advance, and these operations were carried out in areas outside their recognized lands, which are titled and demarcated. The community has been consistently opposed to oil operations in the area because these operations pollute the water and air, and pose serious risks to their health and lives. They are also linked to the climate crisis, further aggravating the impacts on the area and the planet.

- 17. Paragraph 22 of the facts refers to a fine against NOXXE for water and air pollution. What kind of authority and which government imposed the fine? What is the nature of the fine? It seems to be the same fine mentioned in paragraph 30, but it is unclear.**

The fine referred to in paragraphs 22 and 30 is the same one, and it was imposed by the Ministry of the Environment. It is a fine resulting from an environmental administrative proceeding. See question 9 for more information.

- 18. Paragraph 38 of the facts states that there was severe flooding in 2010. This confirms the warnings of the scientific community, which had stated that floods and droughts in Iraca would worsen every year. However, paragraph 37 says that the scientific community voiced its opinion in 2010. So, in which years did the situation worsen if the scientific community spoke out in the same year as the alleged event that confirms the warnings? Either way, what happened first—the statement of the scientific community described in paragraph 37, or the floods described in paragraph 38?**

The scientific community has identified and warned about the impacts of climate change since the 1990s. The Intergovernmental Panel on Climate Change (IPCC) has been conducting research and publishing reports since 1990. In 2007, it published the Fourth Assessment Report (AR4). The scientific community published a report specifically analyzing the level of impact and vulnerability of Iraca and the USC in March 2010, warning about the most vulnerable areas, including the border region. The tropical storms mentioned in paragraph 38 occurred in July 2010.

- 19. Will the States be represented jointly, or will the agencies be assigned/be able to choose to be represented by one of the two States for their defense?**

The States will be represented jointly. Accordingly, the teams representing the State will be representing both States.

- 20. Considering that oil exploitation began in 1972, were environmental impact studies or any similar studies carried out before, during, or after the start of oil exploitation?**

Some studies were carried out in 1972, in keeping with the requirements of the time. After the Earth Summit, when environmental regulations were better developed, operating companies were asked to come up with Environmental Management Plans and a process was undertaken

to monitor and enforce compliance with environmental standards. No environmental impact study was performed since it was not required when oil operations began.

**21. What did the ten-year program to improve air and water monitoring implemented by the USC government (mentioned in paragraph 32) include, besides the installation of air quality meters?**

The ten-year program established by the USC for the border area included improved monthly, weekly, 24-hour, and hourly air quality measurements to identify potentially severe pollution peaks. This information was used to establish a color-coded plan for declaring states of alert. This information was published online and on the monitors that were installed at key sites.

It was also decided that special filters would be put in place to prevent excessive emissions, starting in year eight of the plan.

Regular monitoring of water emissions has also been improved.

**22. According to paragraph 19, does EMFOS belong to the PCFFC?**

Yes, EMFOS is part of the PCFFC; it applied for membership and was admitted to the 1992 PCFFC Assembly.

**23. According to paragraph 10, did EMFOS retain its status as a State enterprise to carry out works in the Murujuy region after 1972?**

Yes, EMFOS continues to be an Iracan State-owned company to this day.

**24. According to paragraph 7, has the USC accepted the jurisdiction of the Court?**

See the answer to question 7.

**25. Did Izamal native community lands have legal recognition? Were the lands demarcated?**

See the answer to question 1.

**26. In which positions do the USC and State of Iraca stand in the global rank for highest emissions per country? How about the rank for highest emissions per person? And what percentage of the global and regional emissions are the State of Iraca and the USC responsible for?**

The USC ranks first in global historical emissions, responsible for approximately 20% of the total. Iraca ranks 20th, at less than 1% of global historical emissions. Per capita emissions are determined proportionally, with the USC being the country with the highest rate in the world.

**27. In relation to the regional hospital located 100km away, referred to in paragraph 38 of the Facts, was there any public transportation offered by the State of Iraca to arrive there?**

There is some public transportation to the other hospital, although it is unreliable and inadequate. For example, the bus that connects Murujuy with the hospital does not have a set schedule and depends on whether Mr. Garcia can make the weekly route. This bus also takes four hours to get there. Those who want to make the trip have to wait for public transportation or go privately and with their own means.

**28. Did the States raise any objections in the processing of the petition before the Inter-American Commission on Human Rights and, if so, what specific facts prompted such objections?**

See the answer to question 8.

**29. Does NOXXE or the State Fossil Fuel Company (EMFOS) have a legitimate, accessible, predictable, equitable, transparent, and human rights-compatible grievance mechanism?**

Both companies have grievance mechanisms for addressing possible human rights violations in line with the UN Guiding Principles on Business and Human Rights.

**30. On what date was the Commission's Report 34/21 transmitted to the States?**

The Inter-American Commission on Human Rights sent Report 34/21 to both States on October 2, 2021.

**31. Paragraph 10 states that there is a partnership between EMFOS and NOXXE. What type of partnership do they have?**

It is a business partnership, whereby the companies collaborate through contracts to implement various types of activities related to oil extraction and the operation of coal-fired power plants.

**32. Paragraph 19 mentions that NOXXE, the PCFFC, and partner companies reportedly conducted investigations into environmental impacts, producing confidential twice-yearly reports. Was EMFOS aware of these investigations and the reports?**

EMFOS learned of these investigations in 1992, when it became a member of the PCFFC.

**33. Did the USC expressly recognize the court's jurisdiction?**

See the answer to question 7.

**34. According to paragraph 6, Iraca ratified the American Convention on Human Rights in 1977 and accepted the jurisdiction of the Inter-American Court in 1990; paragraph 7 says that the USC ratified the American Convention in 1979. Has the USC accepted the contentious jurisdiction of the Inter-American Court? If so, in what year?**

See the answer to question 7.

**35. What citizen engagement mechanisms and administrative and judicial procedures have both States adopted to ensure that the communities affected by the environmental impacts of the projects can be involved or oppose those projects?**

In view of the establishment of the environmental legal framework and given their close relationship and shared border interests, Iraca and the USC in 1993 passed identical framework laws for environmental protection, creating the Ministry of the Environment and other environmental institutions in each country. Under this law, any person may have access to environmental information in the possession of the Ministry of the Environment, including the contents of files on the processing of environmental permits and authorizations. The law extended this right to information from any other environmental authority, including municipal and provincial authorities. The law also establishes the right of any person or group of persons to participate in environmental authorization and permitting procedures. The

authorities must first notify the persons or communities directly affected by possible projects, works, or activities, with timely published notices. The authorities are also required to hold public information hearings as part of environmental impact assessment procedures; at such hearings any person or group of persons who may be interested can participate and submit comments. The authorities must consider the comments in their final decisions, stating the reasons for those decisions.

If individuals or communities disagree with the decisions, they have adequate access to justice mechanisms in each of the States to challenge them.

The processes for setting environmental public policy and national climate change policies are established through debate in each State's congress, and coordinated directly with the executive branch.

**36. Regarding the public policies that the States have in place to promote environmental awareness and prevent environmental degradation, what actions did both States carry out to supervise and oversee the companies mentioned in the case?**

Both the USC and Iraca have environmental legal frameworks that require environmental impact studies for new projects. In addition, for projects already being implemented in the 1990s, when the current environmental framework was created, the governments developed the requirement for environmental management plans. In both cases, the States have established air and water quality standards. They have also set maximum allowable limits for air and water pollutants. In Iraca, monitoring and follow-up is sometimes delayed, as the environmental and oversight authorities have faced budget cuts since the economic crisis of 2008. Regarding the operation of the domestic legal frameworks, see the answers to questions 9 and 35.

**37. How did the victims or the States learn of the existence of confidential information that implicates the companies? Paragraphs 18, 19, and 20 refer to the discovery of revealing information—is this information known to the Inter-American Commission and, therefore, to the Inter-American Court?**

The victims and the Coalition became aware—thanks to research conducted jointly by university research centers, civil society organizations, and independent journalists since 2013—of confidential information related to the companies' knowledge that fossil fuels cause climate change. In this process, the research groups obtained the information through access to information requests and other measures. In 2015, the findings of the confidential information were published, proving that the companies knew about the effects of burning oil, gas, and coal since the 1970s, although they failed to share this information with the States. The States learned of this information when it was made public, although some people who had worked with the companies had had access to such scientific information long before and used it in the performance of their duties. The IACHR and the Court learned of this information thanks to public reporting in the media, and through the evidence obtained in processing the case.

**38. Can you provide information on the ownership stakes of all other companies involved in the oil, gas, and coal sector in Iraca and the USC, as well as on the percentage of State holdings in these companies, including EMFOS?**

In Iraca, oil, gas, and coal companies account for 25% of the Gross Domestic Product, of which EMFOS has a 75% share of the market, while private companies control the remaining 25% of the sector. EMFOS is wholly publicly owned and is the largest State-owned company in the country. In the USC, the fossil fuel sector represents 17% of the market; the sector is operated by several companies, of which NOXXE, completely privately owned, controls 35% of the national market.

**39. Can you specify which preliminary objections were raised by the State (regardless of whether they were called preliminary objections) and the stage of the proceedings at which they were raised?**

See the answer to question 8.