

Quito, Ecuador
26 November 2010

**The Honourable
SECRETARY GENERAL
Constitutional Court of Ecuador**

In reference to: **Lawsuit on behalf of the rights of nature under the principle of universal jurisdiction**

Under the principle of universal jurisdiction, we, **Vandana Shiva**, an Indian national, holder of passport number Z2009264, member of the Research Foundation for Science, Technology and Ecology (RFSTE); **Ana Luz Valadez**, a Mexican national, holder of passport number G01913571, member of Desarrollo Alternativo; **Diana Murcia**, a Colombian national, holder of passport number 52198871, member of the Instituto de Estudios Ecologistas del Tercer Mundo; **Blanca Chancoso**, a Kichwa Ecuadorian national, holder of national identity document number 170410079-9, member of ECUARUNARI; **Cecilia Cherréz**, holder of national identity document number 1701597930, member and president of Acción Ecológica; **Nnimmo Bassey**, a Nigerian national, holder of passport number A01707016, member of the OILWATCH network; **Delfín Tenesaca**, a Kichwa Ecuadorian national, holder of national identity document number 060192169-5, member and president of ECUARUNARI; **Alberto Acosta**, an Ecuadorian national, holder of national identity document number 1702088822; and **Líder Gongora**, an Ecuadorian national, holder of national identity document number 080092916, member and president of C-CONDEM, hereby submit, in defence of the rights of the sea – understood as an integral part of nature which the Ecuadorian Constitution of 2008 recognizes as a subject of rights and which we recognize as a giver of life of which we form part – the present lawsuit filed under the principle of **universal jurisdiction** against the transnational corporation British Petroleum PLC, headquartered in the United Kingdom, as the responsible party for the environmental disaster that struck the Gulf of Mexico on 20 April 2010.

ADMISSIBILITY

We, the plaintiffs, are filing this lawsuit because it is an ethical imperative in these times when even the most optimistic voices warn that humankind is losing its future, because the model of growth, overexploitation and plunder based on fossil fuel is robbing us of that future; because the oil decline is pushing the industry beyond the limits of reason and operations are moving into extraordinarily fragile areas, where there is no turning back

Because we recognize ourselves as men and women who depend on the air to breathe; on the water to revitalize us, refresh us, and give us life; on the species that surround us to maintain the balance of life and the planet, to astonish us with their beauty and amaze us with the immense capacity for collaboration and solidarity among the species found in nature; on the sea, which holds the secrets of existence in its vastness, and is the birthplace of life as we know it.

Because it is the only way that we can honour our original ancestors, who safeguarded and protected nature in order to offer us the legacy of a place where we could make our dreams a reality; and because, in turn, it is the only way we can pass down to the men

and women that our children will become a place where they can make their dreams a reality.

Because the international system of rights does not recognize the rights of nature, and as a result, the precautionary principle and compensation for impacts on nature are limited to uses and abuses as they relate to people, and do not extend to nature or *Pachamama* in her own right, nor to the different species with whom we coexist.

We are filing this lawsuit because the international system of rights is clearly biased towards protecting the interests of transnational corporations that make excessive, irresponsible and predatory use of their rights to property and free enterprise, based on a development philosophy that is antagonistic to nature.

We are filing this lawsuit to break with the longstanding colonial logic of positive rights, which closes the doors to us for demanding fulfilment of the rights of *Pachamama* in formal spaces and limits us to alternative spaces such as Courts of Opinion, where, although we honourably exercise our right to have and to demand our rights, decisions are not binding on the transnational corporations or on the governments who back them, and thus they do not serve as an effective means to guarantee that the crimes denounced will not be repeated.

We submit as grounds for the admissibility of this suit both factual and legal grounds. With regard to the former, as we will presently demonstrate, the oil spill has global impacts: it impacts the ecosystems of every one of the countries of which the plaintiffs are nationals. With regard to the latter, we base our claim on the Ecuadorian Constitution of 2008, which obliges all public officials, including constitutional court judges, to protect subjects of rights, establishing as duties of the Ecuadorian state, among others:

- To guarantee the rights of nature (Art. 277).
- To protect nature from the negative effects of anthropogenic disasters (Art. 389).
- To establish effective mechanisms for the prevention and control of environmental pollution, for the recovery of degraded natural areas, and for the sustainable management of natural resources (Art. 397-2).

We the plaintiffs invoke the principle of universal jurisdiction to request that this collegiate body authorize Magistrate Nina Pacari to carry out this act of recognition of one of the subjects most overlooked in history and whose rights have been most violated: nature or *Pachamama*.

We consider it a landmark challenge to the colonial model of legal positivism to submit this case to the justice system in Ecuador, the only country in the world that recognizes the rights of nature, and for it to be overseen by Magistrate Pacari, an indigenous woman who has inherited the wisdom of the original peoples who, despite the genocide and violence that has been and continues to be perpetrated against them, have protected nature and risen up as the most committed collective environmental conscience of our planet.

We believe that Magistrate Pacari's examination of this matter could fulfil the spirit of the Ecuadorian Constitution of 2008 with regard to the protection of *Pachamama*, through an

interpretation that would most effectively promote the enforcement of rights, as stipulated by Article 11-5 of the Constitution.

In the past, Dr. Pacari has exercised her duties as Magistrate in accordance with the Constitution by recognizing that *“in the traditional imagination the state has been conceived and rights have been recognized exclusively from a Western perspective, in which the only legally protected rights tended to be so-called individual rights, and particularly those of a White-Mestizo majority, as citizens of organizations constituted under the protection of the freedom of association as a notion constructed by the hegemonic culture, invisibilizing Indigenous, Afro-Ecuadorian, Montubio and other peoples and nationalities (...). As such, she has generated jurisprudence in which she recognizes the interpretive value of cultural and intercultural diversity and therefore, the rights of nature.”*¹

Having demonstrated the admissibility of this suit under the principle of universal jurisdiction for the defence and protection of the rights of the sea, the vital blue segment of nature, we submit as grounds for this suit the following:

I. Facts

1. Mississippi Canyon Block 252, where the Macondo field is located, was granted in concession to the oil company BP, headquartered in the UK. BP installed the *Deepwater Horizon* drilling rig, built by Hyundai Heavy Industries in South Korea, owned by Transocean, and under lease to BP until September 2013.² The rig could operate in waters up to 2,400 m deep and drill down to 9,100 m, according to Transocean.³
2. This is an ultra-deepwater oil deposit estimated to contain as much as one billion barrels of crude.⁴ Drilling here is a high-risk operation, both as a result of the high pressure at these depths⁵ and the fact that this is an area with a high frequency of hurricanes and tropical storms.
3. The high risk of drilling was known to the company, given that two oil spills had already occurred in operating conditions similar to those in the Macondo field. In 2001, 130 km off the coast of the state of Rio de Janeiro, Brazil, the P-36 platform sank following an explosion. At the time it was the largest semisubmersible oil-drilling platform in the world, operating at a depth of 1,200 m.⁶ In 2009, there was an oil spill and numerous warning signs on the West Atlas drilling rig in the Timor Sea.
4. On 20 April 2010 an explosion on the *Deepwater Horizon* drilling rig led to an oil spill estimated at five million barrels and the death of 11 workers. The BP oil spill is the largest oil spill in marine waters ever, according to the flow estimates

¹ Dissenting Opinion of Magistrate Nina Pacari Vega in Case No. 0008-09 IN and 0011-09 IN.

² "Transocean rig loss's financial impact mulled". Reuters. <http://www.reuters.com/article/idUSN2211325420100422>.

³ "Transocean Deepwater Horizon specifications". Transocean. <http://www.deepwater.com/fw/main/Deepwater-Horizon-56C15.html>.

⁴ Julia Whitty. "BP's Deep Secrets". Mother Jones, September/October 2010.

⁵ John Saxe-Fernández. "El Macondo del Golfo". La Jornada, 1 July 2010.

⁶ Offshore Technology.com. "Roncador, Campos Basin, Brazil" <http://www.offshore-technology.com/projects/roncador/>

announced on 2 August by a federal panel of scientists known as the Flow Rate Technical Group.⁷ The panel stated that around 4.9 million barrels of oil had come out of the well. Of this amount, barely 800,000 barrels, or 17%, had been captured through BP's containment efforts. Of the remaining 4.1 million barrels of oil that were released into the waters of the Gulf, more than half had been burned or skimmed, or had already evaporated or dispersed by the beginning of August. This means that around 1.3 million barrels of oil was still onshore as tar balls, buried under sand and sediment, or floating on the ocean surface.⁸

5. In its Initial Exploration Plan for Mississippi Canyon Block 252,⁹ BP ignored the risks of this operation, repeatedly stating that no measures to avoid the impacts of a potential spill were required: "A scenario for a potential blowout of the well from which BP would expect to have the highest volume of liquid hydrocarbons is not required for the operations proposed" (2.7); "The proposed activities are in the central planning area of the GOM [Gulf of Mexico]. Therefore a site-specific Oil-Spill Response Plan (OSRP) is not required for this plan" (7.1). The same section goes on to state that a discussion of response to an oil spill resulting from the activities proposed in this plan was not required, nor was a model of a potential oil or hazardous substance spill. Further on the report states repeatedly that "it is unlikely that an accidental surface or subsurface oil spill would occur from the proposed activities" (14.2.1.6); "In the event of an unanticipated blowout resulting in an oil spill, it is unlikely to have an impact based on the industry wide standards for using proven equipment and technology for such responses" (14.2.2); "[D]ue to the distance to shore (48 miles) and the response capabilities that would be implemented, no significant adverse impacts are expected" (14.2.3); "[I]t is unlikely that an accidental oil spill would occur from the proposed activities" (14.2.2.1).
6. BP acted recklessly in minimizing the true risks posed by ultra-deepwater oil drilling, seriously endangering marine species despite the fact that the oceans and especially the deep seas are the areas of the greatest and richest biodiversity on the planet. In its exploration plan, BP specifically states in Section 10: "A description of the measures that would be taken to avoid, minimize, and mitigate impacts to the marine and coastal environments and habitats, biota, and threatened and endangered species is not required." In Section 14, it states: "No adverse impacts to endangered or threatened marine mammals are anticipated"; "No adverse impacts to endangered or threatened sea turtles are anticipated"; and "No adverse impacts to marine or pelagic birds are anticipated".¹⁰
7. The BP Gulf of Mexico Regional Oil Spill Response Plan not only failed to place sufficient emphasis on the direct impacts that could be caused to nature or *Pachamama*, but also revealed ignorance about the characteristics and local species of the Gulf, making reference to marine mammals such as walruses, sea lions and seals which do not actually live there (Figure 11.3).¹¹
8. The contingency measures foreseen in the Gulf of Mexico Regional Oil Spill Response plan include containment and collection measures, the use of

⁷ www.doi.gov/deepwaterhorizon/loader.cfm?csModule=security/getfile&PageID=34639

⁸ "Tracking the Oil Spill in the Gulf". The New York Times. 2 August 2010.

<http://www.nytimes.com/interactive/2010/05/01/us/20100501-oil-spill-tracker.html>

⁹ BP-Initial-Exploration-Plan-Mississippi-Canyon-Block-252-OCS-G-32306, BP Exploration & Production Inc, February 2009.

¹⁰ Ibid.

¹¹ info.publicintelligence.net/BPGoMspillresponseplan.pdf

dispersants in the event that the coastline is affected (Section 18) and in situ burning when transportation routes or other infrastructure are affected (Section 19).¹² However, the clean-up efforts have been chaotic and risky, using containment and absorption strategies, on the one hand, while simultaneously using dispersants that dissolve the oil that could have been skimmed off the ocean's surface.¹³

9. The Regional Response Plan reveals that BP did not have sufficient capacity to deal with the spill. According to the plan, the worst case discharge was estimated at 28,033 barrels (Appendix H),¹⁴ of which 25% would be evaporated or naturally dispersed. As a result, temporary storage capacity of only 28,000 barrels was expected to suffice. However, according to Rikki Ott,¹⁵ in July scientists estimated a worst-case scenario flow rate of up to 100,000 barrels daily, which was revised to 53,000 barrels daily in August.
10. The BP spill has led to the largest use of chemical dispersants in the history of the United States. Some 1.8 million gallons of dispersants have been sprayed both on the ocean surface and directly into the well, a procedure never before used. The two chemical dispersants used on the Gulf spill are Corexit 9500 and Corexit 9527, which are both capable of killing or depressing the growth of a wide range of aquatic species, from phytoplankton to fish.¹⁶ The United States Environmental Protection Agency has recognized that their long-term effects on aquatic life are unknown,¹⁷ but those effects could be even more destructive than the oil itself in some habitats. Up to 30% of Corexit 9500 is composed of petroleum-distillate solvents, which are known animal carcinogens and can be deadly to wildlife.¹⁸ This constitutes a grave violation of the precautionary principle with regard to the environment.
11. According to BP's Regional Response Plan an oil spill is calculated based on the size and consistency of the oil slick. However, the use of dispersants hinders these calculations. The billions of gallons of dispersants sprayed on the ocean have made it impossible to establish precise figures of the dimension of the spill, because much of the oil sinks to the ocean floor, so that it is "hidden", cannot be cleaned up, and creates a long-term source of pollution.
12. BP has hindered the possibility of independent observations. It has rented all of the hotel rooms in the area, chartered all of the boats and hired practically all of the fishers left unemployed, in its attempt to keep the press at bay, while paying lucrative sums to scientists for conducting studies with confidentiality clauses.¹⁹ Different forms of censorship have been enforced by BP's private security team.²⁰ This obstruction of access to information about what is really happening

¹² Ibid.

¹³ Julia Whitty. "BP's Deep Secrets". Mother Jones, September/October 2010.

¹⁴ info.publicintelligence.net/BPGoMspillresponseplan.pdf

¹⁵ Rikki Ott. "Hide and Leak". Earth Island Journal, Autumn 2010.

¹⁶ David Biello. "Is Using Dispersants on the BP Gulf Oil Spill Fighting Pollution with Pollution?". Scientific American, 18 June 2010.

¹⁷ EPA. "EPA Response to BP Spill in the Gulf of Mexico". <http://www.epa.gov/bpspill/dispersants-qanda.html#effects>

¹⁸ David Biello, op. cit.

¹⁹ Julia Whitty, op. cit.

²⁰ Rikki Ott, op. cit.

with this environmental disaster directly impacts on the ability of the world's citizens to know about its impacts on nature and thus to undertake action in its defence.

13. Given the amount of oil spilled and the location of the drilling rig (in an area shared by the United States, Cuba and Mexico), the damage to marine and coastal flora, fauna and microorganisms is imminent and likely to spread over an extremely large area for a very long time. A report released on 17 August by the University of Georgia in Athens and Georgia Sea Grant estimates that between 70% and 79% of the oil spilled by BP was still in the water.²¹ Another team of scientists at the University of California, Santa Barbara detected the presence of a continuous plume of oil more than 35 km in length, at a depth of approximately 1100 m, which persisted for months without substantial biodegradation.²²
14. The impacts will show up in different marine ecosystems. They will affect different species depending on their degree of exposure, relations of interdependence and their capacity for mobility. This gives the disaster a global dimension.
 - The mortality of sessile plants and invertebrates increases in places where oil accumulates. Fleshy microalgae and crustacean coralline algae regenerate in a year, but other sessile organisms such as stony corals and sea urchins can take more than four years to regenerate completely. Because the contamination is expected to be present for many years, the impacts will be long term.²³
 - The risks of ingesting oil could reduce animals' ability to ingest food because of damage to intestinal tract cells. Some studies have reported long-term reproductive problems in animals exposed to oil. If oil is toxic, oil mixed with dispersants is even more toxic. Animals that are not killed outright suffer lesions in their organs, including the brain. They absorb oil through all of their orifices. Death by oil is horrible, and can result from hypothermia, malnutrition, anaemia and poisoning.²⁴
 - There are impacts expected for cetacean species (dolphins, whales and sperm whales) that use complicated communication systems for orientation and finding food. Whales, feeling asphyxiated, move up to the surface, which is covered by a layer of oil. They come into contact with the oil slick in the attempt to breathe. In the past, failures in their auditory physiology and altered responses have been detected when they are in stressful conditions, along with increased hypertension and endocrinal imbalances in areas of oil exploration. A decrease in food sources has also been observed, which is especially significant during the stages of lactation or breeding.²⁵

²¹ Janet Raloff. "Most BP oil still pollutes the Gulf, scientists conclude. Breakdown is proving slower than expected". ScienceNews.

http://www.sciencenews.org/view/generic/id/62415/title/Most_BP_oil_still_pollutes_the_Gulf_scientists_conclude.

²² Richard Camilli et al. "Tracking Hydrocarbon Plume Transport and Biodegradation at Deepwater Horizon". Science. 19 August 2010.

²³ Elizabeth Bravo. "Oil troubles Waters". Our Planet 9.5: Oceans, June 1998.

<http://www.unep.org/ourplanet/imgversn/95/bravo.html>

²⁴ Julia Whitty, op. cit.

²⁵ See for example Gordon, J., Gillespie, D., Potter, J., Frantzis, A., Simmonds, M., Swift, R. and Thompson, D. "The Effects of Seismic Surveys on Marine Mammals". Proceedings of the Seismic and Marine Mammals Workshop, 23-25 June 1998, London, England.

- Five of the world's seven species of sea turtles are threatened or endangered by the Gulf oil spill, including the most abundant sea turtle species and the only vegetarian sea turtle species.²⁶ If the nesting areas of sea turtles are affected, the impact on reproduction could be catastrophic. Turtle embryos exposed to oil at later stages are highly sensitive to its toxic effects.
 - The bluefin tuna is another marine species devastated by the oil spill. The Gulf of Mexico is one of the world's two spawning grounds for the bluefin tuna.²⁷ They spawn between the months of April and June, and it will take two years to precisely measure the full impact of the BP oil spill on bluefin tuna populations. And this is not the only species in danger.
 - Scientists must wait to see how many bluefin tuna migrate along their normal routes, but even if adult tuna were able to successfully spawn this year, the young fish may have to contend with oil settlement in the water around them. Bluefin populations were already at 15% of their historical numbers,²⁸ which is why they are on the IUCN (International Union for Conservation of Nature) Red List of threatened species.
 - One impact already observed is the discovery of hundreds of thousands of dead fish in Plaquemines Parish, Louisiana. In addition, the Greenpeace research vessel, Arctic Sunrise, has detected significant genetic alterations in sea plankton in the Gulf of Mexico following the BP oil spill.²⁹
 - An initial report from the United States Fish and Wildlife Service showed that as of 14 September 2010, a total of 3,634 dead birds and 1,042 live birds had been found in areas affected by the BP oil spill. Of the dead birds, the largest numbers were laughing gulls, followed by brown pelicans and northern gannets.³⁰
15. Coral reefs are the natural habitat of more than 300 species of fish. Oil causes alterations in the composition of the species and their habitat. Branching corals can suffer much more serious impacts than other species. These absorb oil into their tissues, which leads to a correlation between body mass and mortality. In the plant components of a reef, there is a temporary reduction in the rate of photosynthesis, which can become chronic in reefs exposed to high levels of contamination. There is also a reduction in reproductive success due to poor development of reproductive tissue and atrophy of reproductive cells. These effects can last for years after direct contact with oil, lowering reproduction rates and therefore population density. It takes decades for a reef to return to the same condition as before an oil spill.³¹ Given the magnitude of this spill, the impacts could be much longer lasting, and even irreversible.

²⁶ "5 of the World's 7 Sea Turtles are Threatened by the BP Gulf Oil Spill". The Daily Green. <http://www.thedailygreen.com/environmental-news/latest/bp-gulf-oil-spill-sea-turtles-0611>

²⁷ Michael Graham Richard. "How Will the BP Oil Spill Affect Critically Endangered Bluefin Tuna?" Science & Technology. Ottawa, Canada.

²⁸ June Kellum. "Oil Spill and Overfishing Hit Bluefin Hard, Redsnapper Now Under Conservation". The Epoch Times. 29 June 2010.

²⁹ SEMARNAT. "Aparecen miles de peces muertos en Luisiana y lo achacan al derrame de BP". http://www.derrame.semarnat.gob.mx/index.php?option=com_content&view=article&id=2051:aparecen-miles-de-peces-muertos-en-luisiana-y-lo-achacan-al-derrame-de-bp-&catid=105:seguimiento-prensa-internacional&Itemid=178

³⁰ U.S. Fish and Wildlife Service. "U.S. Fish and Wildlife Service Will Issue More Detailed Reports of Birds Captured and Collected During Deepwater Horizon Response". 15 September 2010.

³¹ Keller, B.D. y Jackson, J.B.C., eds. 1993. Long term assessment of the oil spill at Bahia Las Minas, Panama. Synthesis report. OCS Study MMS 93-0048. US Department of Interior, Minerals Management Services.

16. Oil contamination in mangroves interrupts the flow of freshwater and saltwater into and within them, affecting drainage patterns, plant life and the soil, and causing a general lack of stability. Results include large-scale erosion, death of plant life, stunting of seedlings for up to six years after a spill, suffocation and poisoning of anchoring roots, and a reduction in absorptive roots. The top canopy of the mature trees that do survive deteriorates, producing fewer leaves and buds. Mangroves can take several decades to regenerate, if no new spills occur. There is no way known of cleaning polluted sediment from the forest floor without destroying the forest itself.³²
17. Seagrass beds in shallow water stabilize the seabed, trap sediments and improve water quality. They directly nourish more than 340 species of marine fauna and are the substrata for various epiphytic algae. Damage or loss of seagrasses can cause environmental impacts that extend beyond their immediate area. Even if mortality does not occur at the undersea level, the loss of fauna in the seagrass beds interrupts the food chain. The large-scale loss of habitat leads to long-term impacts on associated fauna. The fauna living in intertidal zones die from direct contact with oil, while underwater organisms suffer a lesser impact.³³.
18. The Gulf of Mexico is the most highly travelled migration corridor in the world. The Gulf itself and especially the Gulf Coast areas of Mexico and the United States are a critical habitat for numerous wildlife species, including fish, marine mammals and birds. The food found in the shallow waters and coastal habitats are unique in the world. Given that seabirds have very special requirements during the reproductive stage (specific breeding grounds and food needs), the destruction or alteration of their habitat at this time of year (due to oil contamination) can mean the loss of an entire breeding season, which will impact on population sizes.
 - At least 16 bird species are threatened by the Gulf oil spill. From the humble plover to the majestic snowy egret, the Gulf Coast provides the habitat for countless birds and is significant for the preservation of many species, including a number of rare and endangered birds. Birds are among the creatures most vulnerable to the effects of the BP oil spill. Oil on their feathers destroys their natural waterproofing, and since they can no longer regulate their body temperature, they can die of hypothermia. Birds can also ingest oil directly or as part of a contaminated diet, and their nesting, wintering and migrating habitats could be contaminated with oil.³⁴
19. Methane, a component of natural gas and one of the greenhouse gases that causes climate change, makes up 40% of the spillage coming out of the sea. According to a report recently published in *Science* magazine, a research team from the University of California, Santa Barbara that collected water samples from around the *Deepwater Horizon* in June found that propane and ethane released through the spill remained trapped on the sea floor, triggering a proliferation of bacteria that metabolize hydrocarbons.³⁵ As these micro-organisms feed on the hydrocarbons in the sea, they can deplete oxygen levels

³² Elizabeth Bravo, op. cit.

³³ Ibid.

³⁴ "16 Birds Threatened by the BP Gulf Oil Spill". The Daily Green. 26 September 2010.

<http://www.thedailygreen.com/environmental-news/latest/birds-gulf-oil-spill-0519>

³⁵ Richard Camilli et al., op. cit.

because they extract oxygen from the water around them.

20. Scientists foresee the possibility an unpredictable chain of events that will seriously affect global climate thermoregulation processes. The impacts could be felt in places far away from where the spill took place. Real-time satellite data collected from the Gulf of Mexico in May-June 2010 and compared with previous years' data by Frascati Laboratories showed, for the first time ever, direct evidence of rapid breaking of the Loop Current, a warm ocean current that is a crucial part of the Gulf Stream. The Frascati Laboratories researchers concluded that since this phenomenon had never been detected before May 2010, it would be plausible to correlate the breaking of the Loop Current with the biochemical and physical action of the BP oil spill on the Gulf Stream. This could in turn generate a chain reaction of unpredictable and critical phenomena which may have serious consequences on the dynamics of the Gulf Stream thermoregulatory activity in the global climate.³⁶
21. BP's exploration plans for the Gulf of Mexico, the approval granted for its activities and the company's responses to U.S. environmental authorities have revealed numerous irregularities and failures to comply with environmental regulations in the United States, the country that granted approval and is now being legally petitioned by the Center for Biological Diversity.³⁷ Nevertheless, the impacts of these activities are not limited to the United States, but rather reach beyond its borders.
22. An underdetermined number of lawsuits have been filed in U.S. courts for property damages, losses, negligence and other types of damages, but not a single suit has been filed on behalf of the rights of nature.

II- Legal arguments:

We the plaintiffs take this action in defence of the rights of the sea that bathes *Pachamama*, that regenerates her, that provides a home for many of her ecosystems and that makes her the blue planet when viewed from outer space, basing our demands on the Ecuadorian Constitution of 2008, which:

- In its preamble, celebrated *Pachamama*, of which we form part, as vital to our existence, and established itself as a pact for building a new kind of civic coexistence, of diversity and harmony with nature, in order to achieve *Sumak Kawsay*, or Good Living.
- Established as a guiding philosophy the principle of *Sumak Kawsay*, which, in order to be possible, requires "all persons, communities, peoples and nationalities to effectively enjoy their rights and exercise their responsibilities in a framework of interculturalism, respect for diversity, and harmonious coexistence with nature" (Art. 275).
- Established as the rights of nature the right to "integral respect of its existence";

³⁶ Gianluigi Zangari. Risk of Global Climate Change by BP Oil Spill. Frascati National Laboratories (LNF) - National Institute of Nuclear Physics (INFN), Italy.

³⁷ Petition for Rulemaking under the National Environmental Policy Act for Environmental Review of Offshore Oil and Gas Activities, before the Minerals Management Service and the Council on Environmental Quality, 15 June 2010.

the right to “maintenance and regeneration of its life cycles, structure, functions and evolutionary processes”; the right to “restoration”, independent of the state’s obligations to persons or collectives who depend on affected natural systems; and the ability of all persons, communities, peoples or nationalities to have the authority to demand the fulfilment of these rights (Art. 71).

- Recognized water as “a vital element for nature” (Art. 318).
- Stipulated that international human rights treaties ratified by the state which recognize rights more favourable to the contents of the Constitution shall prevail over any other legal norm or act of public power (Art. 424), and these instruments include the Universal Declaration of Human Rights, which recognizes that disregard and contempt for rights have resulted in barbarous acts which have outraged the conscience of humanity.
- Established that the rights enshrined in the Constitution and international human rights instruments are to be immediately fulfilled and implemented (Art. 426), which means that there is no need for a law that recognizes universal jurisdiction in domestic law, since this principle is the basis for the repudiation of crimes that outrage the conscience of humanity.

We take this action because the philosophy of universal jurisdiction is grounded in the prosecution of crimes that outrage the conscience of humanity, and the environmental disaster in the Gulf of Mexico outrages this conscience and compels us to denounce it before judicial bodies where judicial guarantees can be enforced both for us, the plaintiffs, and for the offenders.

Finally, we base this legal action on the deep conviction that “another world is possible,” and that in that world, justice is on the side of nature.

IV. Actions requested

Whereas no financial sum could compensate for the damage caused to the natural cycles of the sea and of nature and therefore renouncing any financial transaction that could result from this suit, and

Whereas petitions put forward in other courts in other jurisdictions refer to the rights of persons and groups of persons in terms of their relationship with the environment, but this action is aimed exclusively at the defence of the rights of *Pachamama*, we demand:

Vis-à-vis British Petroleum PLC:

With regard to information:

1. That British Petroleum be ordered to make public all of the information in its possession on the *Deepwater Horizon* disaster.
2. That British Petroleum be ordered to make public all of the information in its possession on the composition, amount and means of application of all dispersants and other products and techniques used during the emergency.
3. That British Petroleum be ordered to make public all of the events prior to the disaster that provided the reasonable doubt necessary to abstain from

exploration in the *Deepwater Horizon* site.

4. That British Petroleum be ordered to make public all of the information in its possession on the environmental impacts caused to marine and coastal ecosystems and marine species.
5. That British Petroleum be ordered to make public a list of scientific institutions and individual scientists who have been commissioned by the company to undertake studies, research or technical reports related to the disaster.
6. That British Petroleum be ordered to make public whether or not it possesses, and if it does, to publish the disaster management plan or strategy that is being implemented specifically to contain or mitigate the *Deepwater Horizon* disaster.
7. That British Petroleum be ordered to make public the lobbying strategy used in order to obtain an operating licence for the *Deepwater Horizon*.
8. That British Petroleum be ordered to make public, if they exist, the plans for long-term monitoring of the evolution of the impacts caused by the oil spill.

With regard to restoration:

1. That British Petroleum be ordered to abstain from continuing with deepwater oil exploration, particularly in the Macondo field.
2. That British Petroleum be ordered to incorporate in its contingency and reparation plans effective measures to guarantee the rights of nature, which, it should be recalled, comprise the right to integral respect for its existence; the right to maintenance and regeneration of its life cycles, structure, functions and evolutionary processes; and the right to restoration, independent of the state's obligations to persons or collectives who depend on affected natural systems.
3. That British Petroleum be ordered to suspend all use of chemical substances to disperse the spill and to use only strategies for the mechanical or manual containment and collection of oil in order to prevent further negative impacts on the sea.

With regard to compensation:

4. That British Petroleum be ordered to commit to leaving untapped an equivalent amount of oil to the oil spilled in the Gulf.
5. That British Petroleum be ordered to redirect investment earmarked for further exploration towards strategies aimed at leaving oil underground as a more effective mechanism for compensating nature for the current impact on its climate cycles due to oil production.

With regard to guaranteeing non-recurrence:

1. That British Petroleum be ordered to incorporate in its corporate social responsibility agenda a global process involving civil society, governments and other oil companies to apply a moratorium on deepwater oil exploration and initiate a process of closing down and making reparations for maritime oil operations in general.
2. That British Petroleum be ordered to abstain from lobbying legislative bodies in the countries where it operates with the aim of modifying existing controls in administrative, environmental and other laws which serve as safeguards for environmental protection.
3. That British Petroleum be ordered to abstain from formulating management plans, contingency plans and environmental studies in general that disregard,

diminish or minimize the risks posed by oil operations to nature or *Pachamama*.

From governments:

1. That the Government of the United States be urged to immediately resume the moratorium on oil exploration in the Gulf of Mexico.
2. That all governments and the United Nations be urged to incorporate in all discussions on climate change, biodiversity and development the recognition of the rights of the sea and of nature and the gradual closure of operations which, like oil operations, affect these subjects and their rights; and to promote initiatives to leave oil in the ground, just as the Ecuadorian government has promoted the initiative to refrain from oil exploration in the Yasuní-ITT reserve.

From humankind:

1. That a call be made to all humankind to strengthen its ties with Mother Earth and to recognize and respect her rights.

V. Designation of a common legal representative and notifications

In compliance with the mandates of the Ecuadorian Constitution which establishes as a jurisdictional guarantee that a sponsoring attorney is not required for exercising the mechanisms of the protection of rights (Art. 86-2c), and whereas any regulatory provision that obliges citizens to use an attorney to gain access to justice – in this case, universal – is legally void – given that legal norms and acts of public power must conform with constitutional provisions or are otherwise void (Art. 424) and procedural norms and practices that tend to delay the swift delivery of justice are not applicable (Art. 86-2e) – we have chosen not to designate a sponsoring attorney and have instead opted to designate a common legal representative, as required by the national regulations in cases of class action suits.

We the plaintiffs designate as common legal representative **Esperanza Martínez**, an Ecuadorian citizen, holder of national identity document number 1706067996, and member of Oilwatch and Acción Ecológica, who will receive notifications in Box 1110 and at the address of Acción Ecológica, Alejandro de Valdez N 24 -33 y la Gasca.

The legal representative of the company being sued will receive notifications at the address of BP PLC, 20 Canada Square, Canary Wharf, London, E14 5NJ. Tel: 020 7496 4000 Fax: 002 7496 4630.

Carl-Henric Svanberg, Chairman; Robert Dudley, Group Chief Executive Officer (CEO); John Gilbert (Solicitor)

Signed,

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