

# Observations on the State of Indigenous Human Rights in Ecuador

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## CULTURAL SURVIVAL

Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC since 2005. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous Peoples' rights in countries throughout the world and publishes its findings in its magazine, the *Cultural Survival Quarterly*; and on its website: [www.cs.org](http://www.cs.org) Cultural Survival also produces and distributes quality radio programs that strengthen and sustain Indigenous languages, cultures, and civil participation.

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### I. Background

Ecuador's population as of January 1, 2016 was 16,272,968 people; an increase of 1.56 % since the prior year.<sup>i</sup> According to the Confederation of the Indigenous Nations of Ecuador (CONAIE), 25-30% of Ecuador's population is Indigenous,<sup>ii</sup> with a vast majority being Kichwa (Quichua). Seven additional groups are highly vulnerable due to their decreasing numbers, including Epera (546) and Manta (311) of the coastal regions and A'i Cofan (1485), Shiwiar (1198), Siekopai (689), Siona (611), and Sapara (559) who inhabit the Amazon.

In 1998, Ecuador ratified ILO Convention 169 and in 2007 voted in favor of adopting the UN Declaration on Rights of Indigenous Peoples (UNDRIP).<sup>iii</sup>

### II. Analysis of Situation

By the end of 2015, Ecuador reportedly achieved seven of eight of the Millennium Development Goals. However, the mechanisms of "social capitalism"<sup>iv</sup> and the policy for wealth redistribution recently adopted does not guarantee the collective rights of Indigenous Peoples in Ecuador, including territorial, civil, and political rights.<sup>v</sup> Corruption and political influence in Ecuador continue to plague its political and judicial system. In 2011, the Correa administration addressed the issue and mandated reform, removing hundreds of judges and all of the magistrates from the National Court of Justice through questionable procedures and mechanisms and replaced them with new appointees.<sup>vi</sup> In 2014, it was reported by three international NGO's (Due Process of Law Foundation, Dejusticia, and Institute for Legal Defense) that individuals are targeted for questioning the government's policies with disproportionate criminal charges against protesters and human rights defenders.<sup>vii</sup>

Due to Ecuador's abundance of natural resources including oil and gold, private foreign extractive industries including multinational oil and mining companies overlook and disregard policies adopted to respect the rights of Indigenous Peoples and the exploitation of their lands. The struggle for justice continues as the political platform is influenced by private agreements and deals made with companies that disregard the Indigenous Peoples' collective and individual rights.

### III. Indigenous Rights Violations

#### A. Freedom of Expression and Freedom of Association (UNDRIP Articles 16 and 19)

On June 14, 2013, Ecuador passed the new Organic Law on Communications that limits free speech and gives the government broad powers of censorship, including that of public broadcasts, unfavorable news reports and criticisms of the current administration. The government also requires online service providers to block such information, including coverage of any occurrences of protests and human rights violations. In addition, the government orders media outlets to publish information that makes the government appear favorable<sup>viii</sup> and consistently denies any human rights violations.

On June 20, 2013, Correa passed Executive Decree No. 16, creating and granting the National Secretary of Politics Management- the authority now responsible for regulating objectives and activities of social and civic organizations,<sup>ix</sup> with the right to access and intervene in NGO operations and even dissolve them. This was the case with the dissolution of the NGO, Pachamama Foundation (2013), with the Andean Foundation for the Social Observation and Study of Media as well as Fundamedios, a civil society organization and independent news source that promotes freedom of expression, (2015) and with the Accion Ecologica (2016) for its demonstrations against oil drilling companies in the Amazon.<sup>x</sup> As of 2014, the United States Agency for International Development (USAID) removed their position in Ecuador due to the government's prohibition against new USAID programs.<sup>xi</sup> UN and Inter-American Commission on Human Rights Rapporteurs emphasized the necessity of freedom of association as a tool required by human rights defenders to achieve their goals through their influence. "The forced dissolution

of an association is a truly extreme measure, which can only be justified in the most exceptional cases, under strict compliance with the principles of legality, necessity and proportionality, and aimed at achieving a pressing need in a democratic society,”<sup>xii</sup> explained the Rapporteurs. With these new government policies passed by Correa, freedom of expression and free speech is limited and even criminalized. These laws and policies, which were put in effect without consultation with Indigenous Peoples, include Executive order No. 16 and the 2013 Organic Law of Communications. These laws have a direct and indirect impact on Indigenous communities by limiting the documentation and awareness raised around violations to their rights. NGOs, civil societies, and independent journalists that support Indigenous Peoples rights are also threatened to be absolved under these laws.

#### B. Hazardous Waste and Pollution (UNDRIP Articles 28 and 29)

Big oil companies such as Texaco continue their two-decade long drilling operation,<sup>xiii</sup> which has involved oil spills, the dumping of toxic waste, and contamination of groundwater and forests integral to the wellbeing of Indigenous Peoples who live there and arguably the world at large. The company’s actions and the state’s inaction has been dismissive of Indigenous Peoples right to self-determination and Free, Prior and Informed Consent (FPIC) principles that are recognized under UNDRIP. In over four decades, Texaco is responsible for dumping nineteen billion gallons of toxic wastewater, contaminating the Amazon’s Indigenous communities’ drinking water.<sup>xiv</sup> Land and resources were wrongfully taken without FPIC and no compensation has been ordered to this day.

As of February 2016, the majority of 1.5 tons of dynamite placed by oil companies has not been removed from various locations in the Amazon both above land and below.<sup>xv</sup> In June 2012, courts in Ecuador found the state responsible for violating rights of the community, their ancestral lands and cultural identity, for having placed their life and personal integrity in danger in the presence of seismic explosives within their territory. The state was forced to pay the Sarayaku tribe \$1.4 million and was asked to remove the explosives buried in the Sarayaku territory. In line with Article 29 of UNDRIP, the measures to complete this task ‘shall be chosen after a process of prior, free and informed consultations with the Sarayaku Community’ and should be carried out without further delay.

#### C. Extractive Industries and Violations of FPIC (UNDRIP Article 3, 8, 10, 18, 19, 26, 27, 28)

In 2012, the Sarayaku community won a petition against Ecuador at The Inter-American Court of Human Rights, (*Sarayaku v. Ecuador*) which confirmed that the State had not consulted the Sarayaku Indigenous community in Pastaza province regarding an oil project to be carried out in their territory,<sup>xvi</sup> a violation of Articles 26 and 29. The decision ordered the state to acknowledge that Indigenous Peoples of Pastaza have a right to consultation from that moment on,<sup>xvii</sup> including “consultation in an active and informed manner, in accordance with the customs and conditions of the affected community; consultations in good faith, using culturally-appropriate procedures; aimed at reaching an agreement; during the early stages of the development or investment plan; information must include information on possible risks (such as environmental or health risks); and respect for the traditional methods of decision-making of the affected community.”<sup>xviii</sup> The Court clarified that it is the State’s direct responsibility to operate with FPIC and its interests cannot be delegated to private parties. While the Court emphasized full participation through FPIC, its implementation has been met with challenges, as Ecuador has been slow to pass legislation to detail steps for implementing a process of consultation and consent for large-scale development and resource exploitation projects with the Indigenous Peoples it may affect. While Ecuador has paid compensation and made an official apology<sup>xix</sup> for the degradation of Indigenous lands and destruction of sites of spiritual significance, preventing further violations requires implementation of FPIC through political action. Meanwhile, orders by the IACHR remain unresolved.<sup>xx</sup>

President Correa has made attempts to address the issue of consultations with Executive Decree No. 1247, issued just days before the *Sarayaku v. Ecuador* decision was released. The law requires the government to carry out consultations but reject the goal of gaining consent; rather, the decree aims only at participation, retaining decision-making power for the state to authorize such projects even if the communities have rejected the project.<sup>xxi</sup> This undermines the legitimacy of the process. Furthermore,

assertions have been made that consultations that have taken place have been fraudulent: In one case, the gathering of people not legitimately authorized as community representatives allowed for the clearing of two blocks for a Chinese oil company, Andes Petroleum.<sup>xxii</sup> <sup>xxiii</sup> Consultations held by the state are often not held in Indigenous languages. Despite these issues, the Ecuadorian government has also announced plans to open up 16 more oil blocks in its South-Central Amazon region to bids later this year.<sup>xxiv</sup> In 2013, oil development rights were placed at auction for the region where blocks 79 and 83 are home to the Achuar and Kichwa Indigenous Peoples, including the communities of Sarayaku, Sapara in 79, and Tagaeri and Taromenane in block 83.<sup>xxv</sup> Ecuador's Constitution prohibits the use of Indigenous lands for private development without FPIC (Constitution Articles 57, 171). These auctions by the State are in clear rejection and violations of UNDRIP Articles 3, 8.2(b), 10, 19, 26, 27, 28. In addition, the government has not adhered to orders to conduct culturally appropriate processes to achieve consent from Indigenous communities. Rather, the government has created a system to divide Indigenous Peoples into groups which have stirred conflict.<sup>xxvi</sup> These actions are in clear violation of rights upheld by the Inter-American Court of Human Rights ruling in the *Kichwa Indigenous People of Sarayaku v. Ecuador case*.

#### B. Threats to Physical Safety

Indigenous community leaders and human rights defenders continue to be harassed, threatened, and detained for demonstrations against extractive companies. Victims including Joel Vicente Zhunio, Eltevína de Jesús Misacango Chunir, Virginia Chunir, and Yolanda Gutama have experienced violent assaults for their work protecting the rights and lands of Indigenous people in Ecuador.<sup>xxvii</sup> The assassination of Shuar community's leader, José Isidrio Tendetza Antún occurred in 2014, just days before he was scheduled to appear at the Lima Climate talks to speak out against the Mirador mine on Indigenous lands in Zamora. His body was found in the Zamora River; the autopsy showed signs of physical abuse and possible torture.<sup>xxviii</sup>

In August of 2015, the State used excessive violence for force against Indigenous Peoples demonstrating in protest of mining, oil concessions, trade deals, and attacks on freedom of expression, among other demands. The excessive use of force was denounced by the Special Rapporteur on the Rights of Indigenous Peoples on August 24th 2015.<sup>xxix</sup> Patricia Gualinga, a Kichwa leader from the Amazon, told the Guardian that police used "Total brutality. They were using motor-bikes, horses and tear-gas bombs."<sup>xxx</sup> In Saraguro in Loja province approximately 1,500 policemen and military raided houses, arresting and beating people in response to a peaceful blockade of the Pan-American Highway. Locals of Saraguro reported that women, children and the elderly were beaten, that windows were smashed and doors broken down. The Fundación Regional de Asesoría en Derechos Humanos stated, "The army and police entered the communal territories of Lagunas, Ilincho and Gunudel where they went into houses and rooms, mercilessly mistreating the people they found there who weren't even part of the protests and many of whom were arrested." According to CONAIE, 31 people were arrested and numerous injured in Saraguro. Nationwide, scores of people are reported to have been beaten and injured. Roughly 200 were arbitrarily arrested. Eye-witnesses said the military particularly targeted women<sup>xxxi</sup>, including political cartoonist [Vilma Vargas](#); the president of CONAIE's daughter, Liliana Herrera, [who lost a tooth](#) after being beaten by police; and renowned feminist and Indigenous and environmental rights activist, Margoth Escobar, and Manuela Picq, a French-Brazilian scholar living and teaching in Ecuador who the Ministry of Interior attempted to deport by cancelling her visa.

#### IV. **Recommendations relevant to Indigenous Peoples from Previous Cycle of UPR**

Ecuador was not reviewed during the mid-term through the Follow-Up Program, but instead reported its implementation updates narratively. Ecuador, however, did not provide an update on their own voluntary pledges. Following are the recommendations from the second UPR of Ecuador.<sup>xxxii</sup>

Finland: 135.33. *Take targeted measures to address the situation of girls and the challenge of ensuring the accessibility to registration for Indigenous Peoples and people of African descent as well as for migrant families. The right of every child to a name and nationality should be guaranteed*, Accepted.

Canada: 135.37. *Ensure that community activists and Indigenous leaders can exercise their right to peaceful assembly and protest and that anti-terrorist legislation is not misused to inappropriately censure such activities*. Accepted.

Slovenia: 135.55. *Develop a mechanism to gather statistics on education of Indigenous groups*. Accepted.

Hungary: *Adopt special measures for the realisation of collective rights of Indigenous Peoples and the adoption of mechanisms to ensure their right to be consulted*. Accepted.

Malaysia: 135.57. *Undertake effective measures to further strengthen the existing mechanisms for consultation with the indigenous population on issues which have an impact on the economic and social aspects of the Indigenous Population*. Accepted.

Morocco: 135.57. *Continue to improve the promotion and protection of the rights of Indigenous Peoples, in particular the respect of their cultural and linguistic diversity, and further think about programmes and policies for Indigenous Peoples, particularly focusing on women and children*. Accepted.

Norway: 135.57. *Institutionalize the right to consultation of the Indigenous population and involve civil society and Indigenous groups in the elaboration of a functioning consultation mechanism in line with Ecuador's commitments under ILO-Convention 169*. Accepted.

Paraguay: 135.58. *Adopt legislation to guarantee the fulfilment of the collective rights of the Indigenous population and Afro-Ecuadoreans, so as to increase affirmative actions in favours of racial and gender equality*. Accepted.

Germany: 136.3. *Establish clear consultation procedures in order to implement the right to Free, Prior and Informed Consent of Indigenous Peoples as contained in the Constitution*. Not Accepted.

In disagreement, Ecuador responded, “The Constitution of the Ecuadorian State establishes consultation as a right of all Ecuadorians, but particularly for communities, peoples and nationalities, a previous, free and informed consultation, but not their consent. Additionally, it is necessary to indicate that Ecuador recognizes the existence of Indigenous Peoples living in voluntary isolation, with the consequent obligation of guaranteeing their lives, of respecting and making others respect their self-determination and will to remain in isolation, and defend the validity of their rights, which turns unviable obtaining their consent.”<sup>xxxiii</sup>

Despite the challenges that Ecuador’s government and private companies face when seeking to acquire land, the land is nonetheless ancestral and integral to Indigenous communities, their self-determination and their right to control their lands and institutions. Land acquired without Indigenous Peoples’ full consent, is a breach of the ILO Convention No. 169, which has been ratified in Ecuador. Thus, Germany’s recommendation to provide clear consultation procedures must be appropriately implemented and enforced in order to guarantee FPIC and protect the rights of Indigenous Peoples.

Although Ecuador agrees to continue to protect human rights in the country, further voluntary actions have not been implemented. These include<sup>xxxiv</sup>:

- To continue its efforts to implement a human rights information system with support from OHCHR.
- To share with the public sector and with civil society the recommendations and voluntary commitments from the second universal periodic review.
- To share the Ecuadorian experience and provide interested countries with assistance relating to its programs in the field of inclusion of persons with disabilities.
- To develop monitoring mechanisms for following up the implementation of recommendations from the universal periodic review.
- To ratify communication procedures relating to human rights treaties.

## V. Questions

1. What steps has Ecuador taken to implement the IACHR decision?

2. The Constitution of Ecuador forbids taking land away from Indigenous Peoples. What monitoring systems are in place to protect and ensure land is not taken from Indigenous Peoples and placed at auction?
3. What communications measures and policies are in place that ensure FPIC occurs with the rightful representative of Indigenous communities?
4. What measures have been taken to defend human rights activists, independent journalists, and civil societies, in particular with Indigenous rights?

## VI. Recommendations

Cultural Survival recommends that the State of Ecuador to:

1. Rescind Executive Order 16
2. Rescind Executive Decree No. 1247
3. Reform the Organic Communications Law to ensure freedom of speech
4. Invite UN Special Rapporteur on the Rights of Indigenous Peoples to visit Ecuador
5. Create a National Action plan on implementing the rights of Indigenous Peoples based on the World Conference on Indigenous Peoples' Outcome Document.
6. Take immediate steps to begin consultations with Indigenous communities in the Amazon on how to safely and effectively remove existing dynamite from their lands.
7. Ensure the continuation of bilingual education in state-run schools to prevent the extinction of Indigenous languages.
8. Ensure that Indigenous Peoples are consulted regarding any proposed legislation that may affect them.
9. Cancel all mining concessions on Indigenous land that have not gone through the FPIC process.
10. Ensure Indigenous Peoples right to safety and security by refraining from using force against peaceful protesters and human rights defenders.

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