

Observations on the State of Indigenous Human Rights in Light of the United Nations Declaration on the Rights of Indigenous Peoples

Ecuador

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CULTURAL SURVIVAL

Cultural Survival is an international non-governmental organization that focuses on indigenous rights. It has a global indigenous leadership and consultative status with ECOSOC. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) nonprofit 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*; in a newspaper, *Voices*, that educates indigenous peoples about their rights; and on its website: www.cs.org. In preparation for this report, Cultural Survival collaborated with researchers from Harvard College Student Advocates for Human Rights (HCS Advocates). Researchers consulted with a broad range of indigenous and human rights organizations, advocates, and other sources of verifiable information on Ecuador.

Executive Summary

Ecuador's 1998 Constitution recognizes many of the rights included in the 2007 Declaration on the Rights of Indigenous Peoples and in the International Labor Organization's Convention 169,¹ including rights to lands, natural resources, development, the environment, health and education, participation, and consultation. As Ecuador now rewrites its constitution, it must ensure that these guarantees remain intact. Over the past year, Ecuador's government has responded positively to informal requests and formal petitions by Ecuador's indigenous peoples to the State and to international human rights institutions regarding the above-mentioned rights. The government has promised to comply with the precautionary measures ordered by the Inter-American Court of Human Rights regarding the Sarayaku community; has entered into an agreement with Sarayaku community leaders to create a joint team to direct the withdrawal of explosives left behind by the oil company CGC; and has established "*zonas intangibles*" (intangible cultural asset zones) to protect voluntarily isolated indigenous communities. These potentially impressive advances should be monitored for compliance. In addition, Ecuador should be encouraged to prevent illegal logging and otherwise secure the areas occupied by the Taromenane and Tagarei "*zonas intangibles*"; provide greater financial benefits to indigenous Amazonians for oil drawn from their lands; advance, with indigenous organizations and communities, formal procedures to insure indigenous participation and consultation in national development and governance; and reduce the negative social, economic, and health impacts of Plan Colombia on indigenous communities located along the Ecuador-Colombia border.

Background

Ecuador's indigenous population is calculated at between 25 and 37 percent of a total population of approximately 13 million. Ecuadorian indigenous peoples, who are among the most well organized and politically active in Latin America, divide themselves into "nationalities." There are 12 in the Andean Region (pop.ca. 3 million),² 7 in the Amazon (pop. ca.110,000), and 3 in the Pacific lowlands (pop.ca. 10,000). The State ratified ILO Convention No. 169 in 1998, the same year that the country created a new constitution, with significant inclusion of indigenous rights. Oil development, which accounts for about 50 percent of the national budget, is the most significant source of dispute between the government and

indigenous peoples. Ecuador's new government has pledged significant advances in the protection of indigenous peoples' human rights, but must follow through with implementation of its commitments.

Development and Natural Resources

Ecuadorian and international law recognize indigenous rights to lands of traditional use and occupancy.³ They also recognize indigenous peoples' rights in relation to national development and other uses of their land and its resources. Over the past four years, numerous allegations of resource-based rights violations have been taken up by regional and international human rights systems. Each case reflects the unique circumstances and organizational makeup of Ecuador's indigenous peoples, which range from well-organized and officially recognized ethnic federations to small, voluntarily isolated Amazonian populations. Remedies must respond to the varied political organizations and specific situations of each group, as well as the specific land and resource rights claims.

Oil Development

Most indigenous groups in Ecuador remain concerned with and often negatively affected by oil development on or near their land. Since the 1970s, oil development has *often* been undertaken without indigenous communities' agreement and *never* with their prior informed consent. Likewise, there has never been adequate remuneration for the harms caused by oil development. Oil development has produced environmental damage, health hazards, remnant explosives, and violent conflict. The problems are illustrated by, but not limited to, the cases reviewed below. In general, oil development remains a source of discontent, often as a result of inadequate or unclear statutes subsequent to general human rights legislation. In other cases, dissatisfaction is the result of State failure to respond satisfactorily to complaints. In 2007, the new government turned its attention to these cases. Its response has the potential to provide remedies for those directly affected, as well as to set precedents for all indigenous peoples.

The Sarayaku Case (Block 23) --2007 Advances: The Kichwa indigenous people of Sarayaku, whose ancestral lands were officially recognized in 1992, have been challenging the actions of the oil companies since 1996, when Ecuador, without prior and informed consent of the community, signed a contract with ARCO oil company sanctioning exploration of 65 percent of Sarayaku's ancestral territory. Since then the block has been operated by ARCO

(US), Burlington Resources (US), and now Compañía General de Combustibles (CGC-Argentina). Complaints about water pollution and negative effects on health, including an increase in cancer cases, have been ongoing. Persistent protests over consultation have recently been punctuated by violence and civil strife. Community members have cited harassment by military and police forces as well as company employees, and have protested the personal risk created by remnant explosives from the oil companies' seismic exploration.

In May 2003, following a petition by the community, the Inter-American Commission of Human Rights called upon Ecuador to assure the safety of the community members of Sarayaku who have protested about remnant explosives. With no notable improvement in safety and a governmental threat to militarize the region, the Inter-American Court of Human Rights, in July 2004, issued "provisional measures" that ordered Ecuador to guarantee the life and personal integrity of the members of the Sarayaku community and their defenders.⁴ On June 17, 2005, the Inter-American Court of Human Rights upheld its provisional measures and ordered "an immediate removal" of any debris, particularly explosives, left by oil extractors.⁵

In September of 2007, the Minister of Mines and Oil "promised that the government will comply with the measures dictated by the Inter-American Court of Human Rights and signed an agreement with the community leaders to create a joint team to direct the withdrawal of the explosives left behind in the Sarayaku territory by the oil company CGC." ⁶ Sarayaku community leaders subsequently proposed that the national government declare the CGC contract "expired." They argued that CGC had violated human rights; had violated an explicit contractual obligation to obtain permission from the community before entering its territory; and that the contract had expired on August 26, 2001. The Ministry has not yet responded.⁷

The Shuar and Achuar Case (Block 24): The Shuar and Achuar indigenous peoples of the Pastaza River region have a similarly long, acrimonious, and unresolved dispute, in this case with regard to Ecuador's contracts in Block 24, likewise operated sequentially by ARCO and Burlington Resources, which is now part of ConocoPhillips. Due to indigenous protests, the exploration of block No 24, as with Block 23, is suspended through 2007. ConocoPhillips has said it will not reinitiate operations without the support of the communities. The suspension permits Ecuador to undertake its responsibility for proper consultation.

Illegal Logging in the Amazon

Illegal logging in the Amazon region is a problem for environmentalists and for indigenous peoples. In January 2007, areas occupied by the Taromenane and Tagarei were designated by the government as *zonas intangibles*⁸. There is, however, little information about illicit logging, because the activities are undertaken by small mobile operators, which are difficult to monitor. Moreover, the Tagaeri and Taromenane peoples remain voluntarily isolated, and thus do not plead their own case to the government. Nevertheless, illegal loggers are known to trespass on their territory, and pressure from logging is alleged to cause violent clashes with and between the Tagaeri and Taromenane peoples. State intervention, enabled by the new *zonas intangibles*, is essential to controlling illicit logging and resultant violence.

Participation and Consultation

Obtaining prior informed consent by affected indigenous communities regarding national development projects on their land is a government responsibility. Nonetheless, a 2002 Ecuadorian government decree required oil companies to carry out the environmental impact studies on lands they proposed to develop prior to gaining a contract. Environmental impact studies are a government responsibility. Similarly, the Ecuadorian government decreed the Consultation and Participation Act in 2002 as a supplement to the constitutional articles that require prior and informed consent. Because the preparation of formal decrees on indigenous participation requires the informed participation of indigenous peoples, and Ecuador's indigenous peoples were not consulted as part of the decree process, they have called for its repeal. Going forward, Ecuador needs to respond to these indigenous concerns, and ensure that indigenous peoples fully participate in law-making on issues that affect them.

REPARATIONS:

Indigenous communities have long demanded that economic benefits from profits obtained through development on indigenous territories be returned to those indigenous communities, as required by ILO Convention No. 169.⁹ A new Ecuadorian Hydrocarbons Law (April 2006) requires foreign oil companies to pay a significantly increased tax on crude oil profits.¹⁰ Ecuador should now pass on the benefits from these windfall profits to the affected indigenous communities.

Effects of *Plan Colombia*

Ecuadorian and international law supports the right to a clean environment.¹¹ However, since 2000, the government of neighboring Colombia has maintained a US-backed strategy to combat drug trafficking, called Plan Colombia, which includes blanket crop spraying of coca plants with glyphosate, a powerful herbicide. Glyphosate is said to cause skin and other diseases as well as water pollution, illness in children, nausea and headaches three months after spraying, and possible genetic damage. Numerous indigenous groups along the northern border of Ecuador have been affected, including the A'wa, the Quechua in the highlands, and the Cofan, the Siona, the Secoya and the Quechua in Amazonia.

The herbicide now travels from Colombia into Ecuador via the water, affecting both people and crops. The spraying has also caused southward migrations of people—including drug traffickers, guerillas, and paramilitaries—from Colombia into Ecuador, causing displacement and unrest. This movement, in turn, has led Ecuador to increase its military presence along the Ecuador-Colombia border. Incidents of armed conflict and violence in the area have increased. The violence, along with unsanitary schools, has led to a 50 percent decrease in school attendance. The presence of soldiers, guerrillas, and drug traffickers has also led to violence and harassment against women, as well sexual exploitation and trafficking. Yet, there has been no decrease in small-scale coca production. Meanwhile, the previously amicable relations between Ecuador and Colombia continue to deteriorate, as does the quality of life for indigenous peoples' living along the border. The government of Ecuador should do all it can to ensure that harm caused by Plan Colombia is alleviated.

REFERENCES

¹ Working definition of the term "Indigenous Peoples" by the United Nations Special Rapporteur for the Study of discrimination against Indigenous Peoples - Mr. Martínez Cobo (applies primarily to the Indigenous Peoples of the Americas, Australasia and the Pacific):

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from the other sectors of societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems. In short, Indigenous Peoples are the descendants of a territory overcome by conquest or settlement by aliens.

The definition of Indigenous Peoples as used in the International Labour Organisation Convention No. 169 concerning the working rights of Indigenous and Tribal Peoples is a bit broader: *applies to both tribal peoples whose social, cultural and economic conditions distinguish them from other sections of the national community and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations and to peoples who are regarded as indigenous on account of their descent from the populations which inhabit the country at the time of conquest or colonization.*

² Confederación de Nacionalidades Indígenas del Ecuador (CONAIE), *Las nacionalidades indígenas en el Ecuador: Nuestro proceso organizativo*, 2d ed. (Quito: Ediciones Abya-Yala, 1989), 284. see <http://conaie.nativeweb.org/map.html>

³ **Ecuadorian Constitution Art 84.2.** *Conservar la propiedad imprescriptible de las tierras comunitarias, que serán inalienables, inembargables e indivisibles, salvo la facultad del Estado para declarar su utilidad pública.*

Declaration on the Rights of Indigenous Peoples, Article 26

1. *Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.*
2. *Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.*
3. *States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs*

⁴ See <http://www.sarayacu.com/oil/news040707.html#eng>

⁵ See <http://www.sarayacu.com/oil/news050624.html#eng>

⁶ See <http://www.sarayacu.com/oil/news070904.html#eng>

⁷ Ibid

⁸ See *Convention for the Safeguarding of the Intangible Cultural Heritage* Paris, 17 October 2003

Article 2 – Definitions For the purposes of this Convention,

1. The “intangible cultural heritage” means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development.

3. “Safeguarding” means measures aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage.

⁹ ILO Convention 169 *Article 15 .2* In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

¹⁰ The Economist 14 Dec. 2006 http://www.economist.com/displayStory.cfm?story_id=8434219

¹¹ Art. 86.- *El Estado protegerá el derecho de la población a vivir en un medio ambiente sano y ecológicamente equilibrado, que garantice un desarrollo sustentable. Velará para que este derecho no sea afectado y garantizará la preservación de la naturaleza. Se declaran de interés público y se regularán conforme a la ley.*

Art. 90.- *Se prohíben la fabricación, importación, tenencia y uso de armas químicas, biológicas y nucleares, así como la introducción al territorio nacional de residuos nucleares y desechos tóxicos. El Estado normará la producción, importación, distribución y uso de aquellas sustancias que, no obstante su utilidad, sean tóxicas y peligrosas para las personas y el medio ambiente.*

