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ECUADOR: CONSTITUTIONAL COURT RULING TO PROTECT INDIGENOUS PEOPLES FROM MINING PROJECTS AFFECTING THEIR HUMAN RIGHTS

Amnesty International welcomes the 27 January 2022 decision of the Constitutional Court, Ecuador's highest court, confirming violation "of the rights to prior consultation, to nature, water, a healthy environment, culture and territory, as well as comprehensive reparation measures", regarding the A'i Cofán Indigenous people of the Sinangoe community in relation to mining concessions that affected their ancestral territory without their free, prior and informed consent. On 3 December 2021, Amnesty International had submitted [an amicus curiae brief](#) to the Court on the case.

In its ruling, the Constitutional Court stated that in all prior consultations on any plan or programme that may affect the rights and interests of Indigenous peoples, the state has an obligation to (i) adjust the plan or project consulted, (ii) adopt reasoned decisions based on the results of the consultation and (iii) refrain from demanding disproportionate sacrifices from Indigenous communities that are not proportionate in a democratic society, as well as complying with international standards on free, prior and informed consent.

The Court also recognized that "the obligation for prior consultation does not refer solely to those plans or projects that are located within the lands of Indigenous communities or peoples (understanding lands in a broad sense... **but also to those that, even though they are not on their land, could directly affect them environmentally or culturally because they are within their sphere of influence**".

Finally, the Court affirmed that "in exceptional cases where it is decided to implement a project even without the consent of the community, the state must explicitly substantiate the reasons why it has not been possible to adjust the project or modify it in line with the concerns, demands and proposals put forward by the communities that will be affected, thus responding to their rejection. Further, it must explicitly establish the objective, reasonable and proportionate reasons that justify continuing with the project despite the opposition of the majority of the respective community or communities, recalling that **under no circumstances can a project be carried out that results in excessive sacrifices to the collective rights of communities and nature.**"

Indigenous communities and organizations from the Ecuadorian Amazon and the Ecuadorian Human Rights Alliance have led the international campaign [Who Should Decide](#). On 18 January 2022, they delivered more than 365,000 signatures to the Constitutional Court asking the Court to protect the right of Indigenous peoples to decide on the future of their ancestral territories. This year, the Constitutional Court is expected to rule on the case of the Waorani people of Pastaza in relation to oil concessions on their territory.

In light of the plans of President Lasso's government to increase [oil](#) and [mining](#) production in the country, and oil spills such as those that occurred on [7 April 2020](#) and [28 January 2022](#) in the Ecuadorian Amazon, Amnesty International reaffirms its commitment to continue accompanying Indigenous peoples in the region in defending their human rights and combatting the climate crisis.

The granting of mining, oil and other megaproject concessions without the consent of the affected Indigenous peoples is a continuing human rights violation in the Americas that impacts the whole population.

ADDITIONAL INFORMATION

The Constitutional Court's finding of human rights violations confirmed previous decisions by courts of the first and second instance after the A'i Cofán people of Sinangoe initiated judicial proceedings in 2018 against the Ecuadorian state for granting 20 mining concessions and considering another 32, in violation of their right to free, prior and informed consent and other human and environmental rights.

The first instance ruling, issued in August 2018, recognized "that there was contamination of the water of the rivers that are part of the territory of the Sinangoe community". Additionally, in November 2018, a second instance ruling ordered that the concessions granted be rendered null and void and that those that were pending and in process be definitively suspended. In 2019, the Constitutional Court decided to consider the case to establish jurisprudence on the matter.