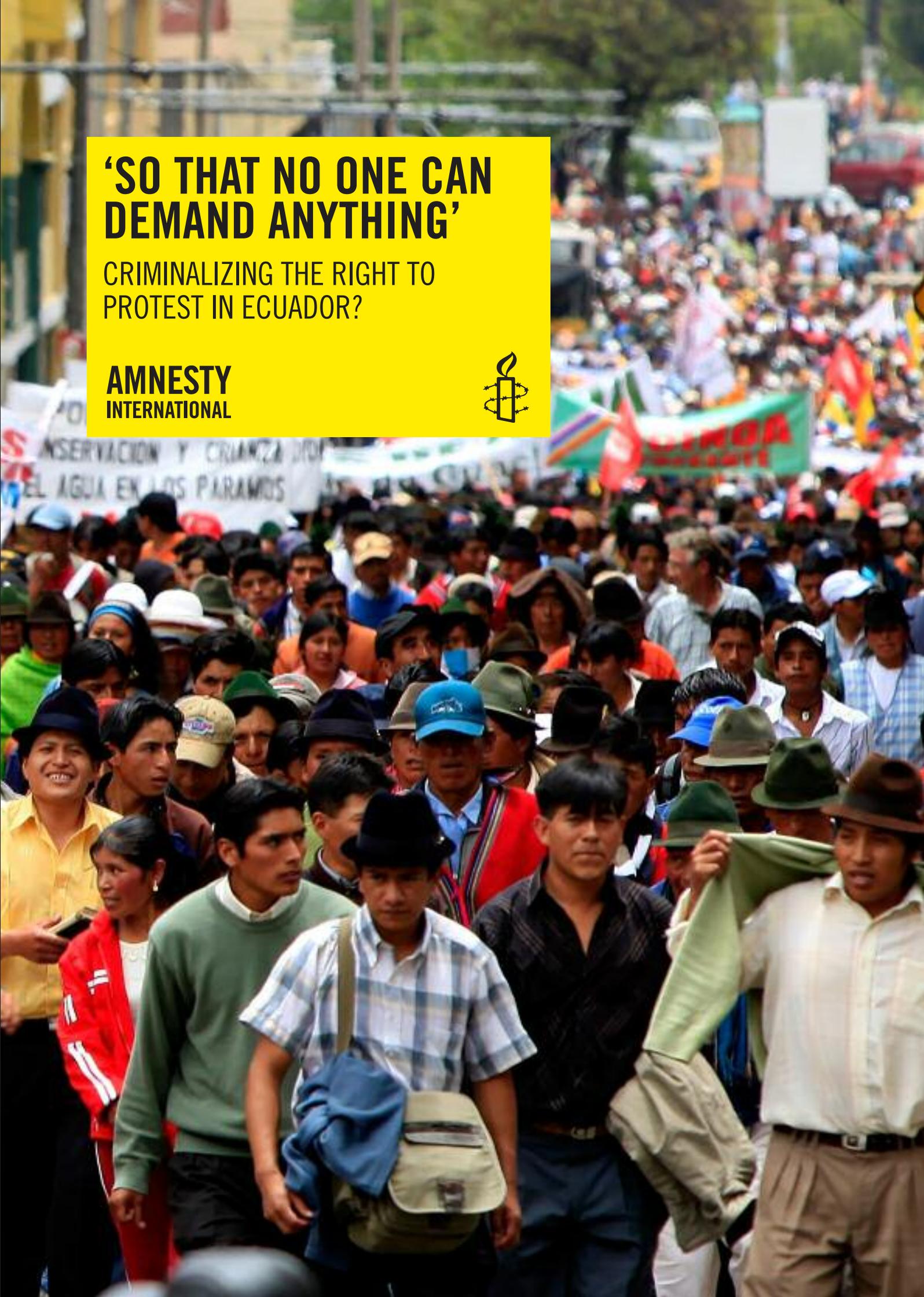


'SO THAT NO ONE CAN DEMAND ANYTHING'

CRIMINALIZING THE RIGHT TO PROTEST IN ECUADOR?

AMNESTY
INTERNATIONAL



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Cover photo: Protest against the proposed Water Law, Quito, Ecuador, 8 April 2010.

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"It [criminalization] is just to scare us, to silence us, to curb our freedom of expression. They don't want to hear our demands, which are above all that our rights be respected: our right to water, our right to territories, and our right to claim and demand respect for biodiversity. The Constitution [of Ecuador] and international conventions require that we be consulted and we have never been consulted".

Delfin Tenesaca, President of the Confederation of Peoples of Kichwa Nationality of Ecuador (Confederación de Pueblos de la Nacionalidad Kichwa del Ecuador, ECUARUNARI), August 2011

"Instead of spending time on our own communities' issues, discussing peoples' needs and their proposals, we have had to deal with this [criminalization]".

Marco Guatemal, former President of the Campesino and Indigenous Federation of Imbabura (Federación Indígena y Campesina de Imbabura, FICI), August 2011

METHODOLOGY

This report is the result of research carried out by Amnesty International between 2009 and 2011 into the use of arrest, detention and unfounded charges against Indigenous and *campesino* protesters in Ecuador. It is informed by reviews of legal case files, correspondence with government officials and research conducted during a visit to the country in August 2011. Amnesty International delegates visited Quito and Cuenca to interview local NGOs, lawyers, and members and leaders of Indigenous and *campesino* organizations. Amnesty International would like to thank the many Indigenous and *campesino* leaders whose experiences and words are at the heart of this report, and the NGOs and lawyers who generously shared their time, expertise and information. Amnesty International delegates also met government officials in the Ministry of Justice, Human Rights and Religions, and the Ministry of the Interior. The organization also sought information from the state via written requests.

1. INTRODUCTION

“This is what they want – to shut our mouths, to frighten and criminalize all social movements, to silence us – essentially so that no one can demand anything”.

Delfin Tenesaca, President of the Confederation of Peoples of Kichwa Nationality of Ecuador (Confederación de Pueblos de la Nacionalidad Kichwa del Ecuador, ECUARUNARI), August 2011

The expansion of the extractive industries – such as mining and oil exploration – in Ecuador, as elsewhere in Latin America, has brought increased conflict over control of land and natural resources. Many states have invested in the extractive sector, seeing it as a source of economic progress. However, those communities most directly affected, far from seeing their situation improve, have faced displacement, environmental damage and social fragmentation. Tensions have at times erupted into public protests by Indigenous Peoples and *campesinos* (peasant farmers).¹

Historically, Indigenous and *campesino* communities have been marginalized, with little or no access to formal mechanisms through which to participate and to express their concerns. Street protests have been a central focus for their campaigns, a way to make their voices heard in the corridors of power and to express solidarity with others facing similar challenges. The actions of the Ecuadorian authorities in clamping down on protests and using unfounded criminal proceedings against the leaders of Indigenous and *campesino* organizations have, therefore, had a particularly acute impact on the ability of these communities to ensure that their rights are respected.

Amnesty International neither supports nor opposes extractive activities themselves.² However, the organization has received numerous reports that the Ecuadorian criminal justice system is being used to try to stifle protests against the government's proposed policies and laws around natural resources. Unfounded charges, protracted investigations, repeated appeals by prosecutors to extend the length of time that people have charges hanging over them, restrictive bail conditions, and the use of terrorism-related or road blocking charges are among the methods used in what appears to be a deliberate attempt to curb the rights to freedom of expression, association and assembly.

The extent to which the authorities have used the legal system in this way has come to the forefront of national debate. For example, in 2008, the National Constituent Assembly³ granted several amnesties covering the cases of over 350 people “to rectify judicial errors and unjust sanctions faced by innocent and politically persecuted people” who had protested against projects and state policies that affect natural resources.⁴

However, these amnesties did not mark a change in government policy. Criminalization of protest persists. In 2009 and 2010, the failure of the authorities to properly consult Indigenous Peoples and *campesinos* before passing legislation on mining and water rights sparked a series of nationwide protests. Many of those who actively took part – and some who did not – subsequently faced charges and legal processes that appeared designed to prevent and punish legitimate protest and to silence those campaigning for the human rights of Indigenous and *campesino* communities. Leaders, in particular, have been targeted.

Opposing the activities of the extractive industries is a divisive and controversial issue that often polarizes communities. Within this context, Indigenous and *campesino* leaders who participate in protests over natural resources are at serious risk of threats and attacks, creating a situation that is conducive to human rights violations. Moreover, the fact that these leaders are targeted for arrest and criminal charges increases their vulnerability by calling into question the legitimacy of their actions and their arguments.

This report focuses on the demonstrations that took place between January 2009 and June 2010, and in particular seven key cases involving 24 leaders of communities and organizations involved in opposing state laws and policies on the use of natural resources, as well as promoting Indigenous rights. Those targeted have faced what appear to be politically motivated criminal charges.

Information on the legal procedures pursued in these cases often was difficult to obtain because many cases have lingered in the initial phase of investigation due to lack of evidence and, therefore, the files remain confidential. Also, leaders often do not have access to private legal counsel and therefore do not have comprehensive information regarding legal proceedings surrounding their cases. However, working closely with defence lawyers and reviewing the information available, Amnesty International was able to establish that the 24 leaders have faced a total of 20 charges of terrorism, 10 charges of sabotage, four charges of blocking roads, and one charge of homicide. Eight of the 24 still were under investigation, involved in court proceedings or under bail restrictions at the time of writing. It is also important to note that Amnesty International documented additional cases of leaders facing questionable charges. However these have not been included in this report due to fears of reprisal against the leaders themselves.

“I personally was not at the protest, much less directing it. But because we are leaders we had already been singled out. They wanted to arrest me, no matter where I was”.

Vicente Zhunio, community leader accused of sabotage and held for 30 days in detention, August 2011

8 'So that no one can demand anything'
Criminalizing the right to protest in Ecuador?

Names	Date	Charges	Status
Vicente Zhunio	5 January 2009	Sabotage	Dismissed in December 2010
Rosa Justina Chuñir Quizhpi Georgina Beatriz Gutama Rosa Gutama Chuñir Priscila Gutama Gutama José Salustino Gutama Gonzalo Gutama Urgilés Manuel Pacheco Miguel de la Cruz	5 January 2009	Terrorism	Dismissed in August 2009
Ángel Geovanny Uyaguari Carlos Rumipuglla Uyaguari German Naikiai Shiki * Another man (name withheld)	5 January 2009	Terrorism	Dismissed in July 2009
José Acacho Fidel Kaniras Pedro Mashiant	30 September 2010	Terrorism, sabotage and homicide	Ongoing proceedings and bail conditions
Carlos Pérez Federico Guzmán Efraín Arpi	4 May 2010	Sabotage, which was replaced with blocking roads	Convicted, appealed pending
Marco Guatemal César Cuascota José Miguel Tocagón	4 May 2010	Sabotage and terrorism, which was replaced with blocking roads for Marco Guatemal	Verdict not guilty delivered in November 2011
Delfín Tenesaca Marlon Santi	24 June 2010	Terrorism	Ongoing investigation

2. CONTEXT: EXTRACTIVES, POLITICS AND PROTEST

“After they extract all that gold there only will be rock left and then where will I plant my crops and where will my children live? Where will my grandchildren live? What water will they drink if there is no water left, if they [the mining companies] are where the natural water springs are? For this, yes, I do protest”.

Community member of Molleturo, August 2011⁵

EXTRACTIVES IN ECUADOR

The oil industry took off in Ecuador's Amazonian region in the 1970s and 1980s and has since become the fifth largest producer of crude in Latin America, making this a major source of income for the country. Today, oil revenues make up a quarter of Ecuador's total gross national product,⁶ and account for 40 per cent of the state budget.⁷ However, many projects have caused environmental damage and resulted in conflict with local communities.

For example, in 1996, the government gave permission for an oil company to drill on the lands of the Sarayaku Indigenous People. The Sarayaku were not consulted and therefore did not give their free, prior and informed consent for such activities. According to the Inter-American Commission on Human Rights, between October 2002 and February 2003, oil drilling activities covered 29 per cent of Sarayaku territory. Although oil company activities stopped due to pressure from the Sarayaku, over a ton of unused explosives remain on their lands.⁸ After national courts failed to deliver justice in Ecuador, the Sarayaku took the case to the Inter-American Court of Human Rights, which is the highest human rights body in the Americas. They are seeking to hold the Ecuadorian state to account, as well as to ensure that no decisions affecting their lives are made without their free, prior and informed consent. A final decision is expected in 2012.

Large-scale mining, on the other hand, is a relatively recent development in Ecuador. The

first Mining Law was introduced in 1991 and enabling regulations to implement the law were issued six years later. Reforms, such as the introduction of lower taxes, were incorporated in 2000, making Ecuador more attractive to foreign extractive companies⁹ and by April 2007, mining concessions extended over an area of 2.8 million hectares, around half of which (45.6 per cent) involved mining for metals.¹⁰

THE 2005-2006 PROTESTS

As in many countries in Latin America, this spike in mining projects and the lack of consultation with potentially affected communities led to an increase in public protests. Some have been peaceful, while others have not. In the last few years, this social unrest has prompted Ecuador to declare numerous states of emergency. For instance, in May and August 2005, it declared a state of emergency in response to protests in the Sucumbios and Orellana provinces. Communities there had organized to demand that their rights vis-à-vis extractive activities be respected and that a greater part of the oil revenues be invested locally. Dozens of people were reportedly detained.¹¹

In March 2006, a state of emergency was declared in the provinces of Sucumbios, Orellana and Napo and a presidential decree designated them national security zones. Moreover, Decree 1214¹² invoked the National Security Law, allowing civilians to be tried by military courts¹³. Civilians should never be tried in military courts, which do not provide safeguards prescribed by international law, including fair and public trials by independent and impartial tribunals. As the UN Human Rights Committee has noted, 'the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned'.¹⁴

The experience of Wilman Jiménez Salazar, a member of the Orellana Human Rights Committee, is a case in point. He took part in a protest on 19 June 2006 by *campesinos* against the alleged environmental impact of an oil company operating in Payamino, Orellana province.¹⁵ One of the demands made by the community was that the company bury a pipe carrying crude oil because they claimed that people had been burned. In response to this demonstration, the National Police and the military reportedly used tear gas and rubber bullets to disperse the crowd.

Wilman Jiménez Salazar was shot six times with rubber bullets as he took photographs of the protest, and then detained. He was held by the military in Orellana who accused him of terrorism and sabotage under the National Security Law and refused to allow him to attend a habeas corpus hearing. He was eventually released on 6 July after spending 17 days in military detention. However, he remained under investigation by the military authorities until September 2006, when his case was transferred to civilian jurisdiction. Wilman Jiménez Salazar was cleared of all charges on 23 April 2008 under the amnesties granted by the Constituent Assembly in March 2008 (see "The 2008 amnesties" below).¹⁶

THE "CITIZEN'S REVOLUTION"

In January 2007, Rafael Correa became Ecuador's seventh President in 10 years; three elected presidents had been forced out of office following mass protests. Rafael Correa's election was seen as a new chapter in Ecuador's political history. He pledged to implement a "citizen's revolution" by improving health and education, reducing corruption, protecting the environment and reforming the Constitution.

President Correa enjoyed strong popular support. He was elected with over 56 per cent of the vote and also had the backing of the largest Indigenous collective in Ecuador, the Confederation of Indigenous Nationalities of Ecuador (Confederación de Nacionalidades Indígenas del Ecuador, CONAIE).¹⁷ Founded in 1986, CONAIE is made up of some 3,200 organization representing some 5 million Indigenous people.¹⁸

THE 2007 PROTESTS

During 2007, conflicts over natural resources continued, leading to more arbitrary arrests and unfounded charges. For example, in January and March 2007, *campesino* communities in Canton Chillanes, Bolívar province, were reportedly threatened and harassed by members of the armed forces and held on charges of sabotage before being released several days later due to lack of evidence. The arrests were apparently linked to their campaign for the rights of those affected by a planned hydroelectric dam in the area.¹⁹

In November 2007, residents of Dayuma in Orellana province demanded that companies hire more local residents, and make income tax and royalty payments directly to local government so that they could be invested in the province's basic services and infrastructure. As part of the protest, the community blocked the highway Vía Auca, which reportedly cut oil production by 20 per cent. A state of emergency was declared which "authorized public forces to intervene with the purpose of clearing roads that had been blocked and guarantee the production and transport of oil".²⁰ According to the Office of the Ombudsman, 11 protesters were detained and at least 26 faced charges of terrorism and sabotage; they were among those amnestied by the Constituent Assembly in 2008 (see "The 2008 amnesties" below).²¹

One of the detainees in Dayuma was Guadalupe Llori, Governor of Orellana province and a member of the opposition Plurinational Pachakutik Unity Movement. She was arrested in her home by the army on 7 December 2007 and accused of sabotage and terrorism. A third charge of fraud was brought against her after she was detained in what appeared to be an attempt to keep her in prison long enough to remove her from office. After 10 months in prison, Guadalupe Llori was acquitted and re-elected governor in 2009.

THE 2008 AMNESTIES

In March and July 2008, the Constituent Assembly granted amnesties to more than 350 people it considered had been wrongfully targeted for protesting against government policies and practices on natural resources, such as those involved in the Dayuma protests in 2007. The Assembly based the amnesty on a report drafted by some of its members, which recognized that "many social leaders in Ecuador face a critical situation because, in each sphere where they demand their rights, they have become the object of threats, intimidation, persecution, indictments, and other actions aimed at discrediting and discouraging their work".²²

In addition, in April 2008, the Constituent Assembly approved a "mining mandate" that cancelled mining concessions that had not undergone an environmental impact assessment or had not been the subject of proper consultation. It also imposed a moratorium on new concessions, giving the authorities six months to rewrite the country's mining legislation.²³

THE NEW CONSTITUTION

In April 2007, voters approved the creation of a Constituent Assembly to draft a new Constitution, which was adopted in September 2008 by a national referendum. The Constitution, which was widely supported by Indigenous and *campesino* groups, was presented by President Correa as the centrepiece of his administration.

The new Constitution formally recognizes the rights of Indigenous Peoples, Afro-descendants and Montubio²⁴ communities. Under Article 57.7, these groups have the right to consultation on “plans and programmes of exploration, exploitation and commercialization of non-renewable resources located within their lands that could affect them environmentally or culturally”. Likewise, Article 57.17 recognizes their right to consultation “before the adoption of a legislative measure that can affect any of their collective rights”.²⁵

Moreover, the Constitution includes the “rights of nature”²⁶ and establishes that non-renewable resources belong to the state, giving the government more control over extractive industries.

“I was not at the protest itself. I was in the area and when TV cameras arrived, I spoke against the police and the President... My hands never touched a rock... What I saw was that people were bleeding and injured and that’s exactly what I told the TV channel”.

Community member of Molleturo, August 2011²⁷

3. A CHILLING EFFECT

“Preventive detention should be an exceptional measure, not one used as a *modus operandi* in all or nearly all cases under investigation. It should be used in special cases so that it does not become a form of repression or punishment during criminal proceedings”.

Ruling revoking preventive detention in the case of four protesters accused of terrorism at a demonstration against the Mining Law in Chuchumbletza, Morona Santiago province, 11 February 2009

Indigenous and *campesino* leaders in Ecuador have faced an array of measures affecting their rights to freedom of expression, association and assembly. Unfounded charges, criminal prosecutions, arbitrary arrests and stringent bail conditions have been used in an attempt to discourage them from voicing their opposition to government laws and policies.

Criminalizing protest has an effect beyond the immediate individuals targeted. Their families and communities also live under the shadow of possible prosecution or detention and often fear exercising their rights in case they too are targeted.

The cumulative chilling effect on entire communities can deter others from engaging in public actions to defend human rights. Marco Guatemal, an Indigenous leader accused of sabotage and later of blocking roads, told Amnesty International that these cases of criminalization “discourage and limit us, creating fear among young people who would be emerging now as leaders” and that his parents now live in constant fear for his safety: “Knowing that when I go out I might not come back brings complete uncertainty in my family”.

“I haven’t been to other protests since then. I’ve been to meetings, but I don’t take a prominent role”.

Pedro Kaniras, an Indigenous leader involved in the protests against the government’s Water Law and accused of terrorism, sabotage and homicide, August 2011

ARREST, DETENTION AND BAIL

"The bail conditions tie me down. As a representative [of a community] I receive invitations to go to conferences in Spain, Israel, Germany, Europe... but I can't go because I am forbidden from leaving the country. What upsets me is that I cannot work freely and enjoy my freedom. This is the most difficult".

Pedro Kaniras, an Indigenous leader involved in the protests against the government's Water Law and accused of terrorism, sabotage and homicide, August 2011

Many leaders have been arrested during police attempts to disperse protesters. Others have lived for years with the threat of arrest hanging over them because warrants were issued but not acted on. One leader accused of terrorism told Amnesty International: "we cannot go out much to protests because the case against us is still pending. We have already been singled out so if we take part in a protest they will re-open the case".

Prosecutors have often requested community leaders be held in preventive detention. Although these requests are often turned down by judges, prosecutors have also lodged repeated appeals and leaders often live with the threat of detention hanging over them. In many cases, judges' final rulings have clearly stated that the prosecution did not have sufficient grounds to request detention and emphasized that deprivation of liberty should be the exception, not the rule.

In some cases bail conditions have been imposed requiring leaders to present themselves to officials, usually every seven or 15 days, and forbidding them from leaving the country. These restrictions affect community leaders' ability to travel any significant distance within the country and to engage in activities to defend human rights, including obtaining international support.

In the seven cases highlighted in this report, many charges were eventually dismissed by judges as baseless. Indeed, in their rulings judges often highlighted the lack of evidence for the charges brought by the Public Prosecutor's Office. For example, in the case of Vicente Zhunio, the judge ruled that he could not have committed the acts for which he was accused and that the prosecutor had initiated proceedings on charges of sabotage without ensuring that there was sufficient evidence to charge him.²⁸ In another case, charges against nine people accused of terrorism were thrown out because the Public Prosecutor's Office was unable to describe the acts in which each of the accused participated or how they might have committed these acts.²⁹

The judicial system in Ecuador has a considerable backlog and, consequently, Indigenous and *campesino* leaders under investigation or accused of a crime can face years of judicial proceedings. As a result, lengthy and costly legal battles can seriously reduce the ability of community leaders to focus on defending human rights by compelling them to turn their attention to their own defence. Even when Indigenous and *campesino* leaders are finally cleared of charges, they do not receive any redress from the state for the harm they and their communities have suffered. In addition, they also often face additional expenses, even after a case is closed, in getting the case removed from their police record.³⁰

"We begged the lawyer and he still charged us a lot. We had to pay him 1000 dollars, which I have yet to finish paying". Community member of Molleturo, Azuay province, August 2011³¹

A CLIMATE OF HOSTILITY

"A police officer told me 'you already went to jail and you still don't behave?' In other words, they don't want us to protest. They don't want us to do anything. They want us to keep quiet".

Vicente Zhunio, community leader, accused of sabotage and held in detention for 30 days, August 2011

In numerous cases, leaders in Ecuador who are vocal about their opposition to extractive activities in their communities have been threatened and subjected to verbal and physical attacks. Although these leaders have lodged complaints with the relevant authorities, those responsible have not been held to account, leaving Indigenous and *campesino* leaders at risk of further attacks.

VICENTE ZHUNIO AND FERNANDO MEJIA

Vicente Zhunio³² and Fernando Mejia³³ took part in a demonstration in the town of San Miguel de Conchay, Morona Santiago province, on 9 May 2009. Protesters were voicing their opposition to a meeting between the local authority, local farmers, and representatives of the mining industry that allegedly operated in the area. Vicente Zhunio told Amnesty International that when demonstrators arrived outside the meeting, the provincial representative started shouting at them: "You get out of here, clear off to Gualaquiza [a nearby town], you have no business in my parish, you are not from here. I am running my meeting". Then he pointed at Vicente Zhunio and said: "You are a dead man". Vicente Zhunio reported the threat to the Ombudsman in Morona Santiago province on 12 May 2009. Amnesty International understands that the case was passed to the Ministry of the Interior for investigation, but is not aware of any further action taken since.

ETELVINA MISACANGO CHUÑIR

Etelvina de Jesus Misacango Chuñir is a community member who has spoken against mining in the community of Molleturo in Azuay province. On 22 April 2009, she was attacked by four of her neighbours as she neared her home. The men shouted at her: "You're making trouble because you're lazy... you are against the mines because you are lazy" and knocked her to the ground, hitting and kicking her. She managed to get home, but the men followed her inside and attacked her again. They also attacked her son, who tried to defend her. Neighbours intervened when they saw her being dragged out of her house by her hair. Etelvina Misacango Chuñir filed a complaint with the Prosecutor's Office on 23 April 2009 and the Ombudsman Office of Azuay province. Amnesty International understands that the case was closed a month later because the injuries she suffered were considered minor.

In a December 2011 report, the UN Special Rapporteur on the situation of human rights defenders noted that "states should not tolerate the stigmatization of the work of these defenders by public officials or the media, particularly in context of social polarization, as this can foster a climate of intimidation and harassment that might encourage rejection and even violence against defenders".³⁴ However, in Ecuador far from seeking to counter "stigmatization" of these leaders, officials, including senior members of the government, have contributed to the atmosphere of hostility. They have used confrontational language when referring to Indigenous and *campesino* leaders, characterizing them as "enemies" of the state in an effort to undermine the credibility of their claims.

In its 2011 report, the Inter-American Commission on Human Rights stated that criminalization “takes away credibility and legitimacy from the work of defenders, making them more vulnerable to attacks”.³⁵ In 2006, the Commission had noted that “statements by state representatives, expressed in the context of political violence, sharp polarization, or high levels of social conflict, put out the message that acts of violence aimed at suppressing human rights defenders and their organizations enjoy the acquiescence of the government”.³⁶

The following chapters illustrate how the Ecuadorian authorities have ignored the statements of these and other human rights bodies, particularly in relation to protests surrounding the Mining Law and the Water Law.

“It’s not just that they accuse us of terrorism. They accuse us of being corrupt, immoral, terrorists, ignorant, childish... that we are the ‘old guard’. They accuse us of all this with the objective of minimizing [our claims] and to pit society against the Indigenous movement and our leaders”.

Delfin Tenesaca, President of ECUARUNARI, August 2011

4. THE MINING LAW

“Maybe we won’t suffer the consequences, but future generations will... let’s think of them because they will be facing pollution and left without water. I don’t know where these poor future generations will live”.

Community member of Molleturo, Azuay province, August 2011³⁷

On 14 November 2008, the government introduced a draft Mining Law to the National Assembly. Despite constitutional guarantees that affected communities had a right to consultation, communities claimed that the Law had not been properly consulted before it was presented for approval.

The new Law opened the way for the development of a large-scale mining industry. It set out the requirements companies would need to fulfil in order to be eligible for concessions, the permits needed to function in protected areas, and the regulations to be followed for hiring local workers.³⁸

The draft Law triggered a nationwide and deeply polarized debate about whether large-scale mining was beneficial to the country. President Correa promoted the Law as facilitating the development of “responsible mining” by giving the state more control over the sector. However, this was opposed by groups, including Indigenous and *campesino* communities, who argued that large-scale mining posed an inherent risk to the environment and to communities.

As regards to the law itself, communities also were concerned that while it acknowledges the need for “consultation” with affected communities around mining activities³⁹ this provision refers to Article 398 of the Constitution, which only relates to consultation for the purpose of environmental concerns, not communities’ human rights.⁴⁰

Ecuador now faced growing conflict between a state seeking to develop a large-scale mining sector and Indigenous and *campesino* movements who claimed that this model of economic development would result in violations of their human rights. Tensions escalated in late 2008

as the government continued its dialogue with mining companies about concessions and some communities expressed their disapproval by issuing public statements declaring that their regions would be “free of mining”. Moreover, in early January, President Correa made a plea for the National Assembly’s Legislative Committee to “approve the law as soon as possible... I insist that if they give in to pressure from these groups that are used to doing whatever they want and don’t represent anyone, and are often corrupt and financed by trans-national mining companies, I will veto the law and submit it to a public referendum”.⁴¹

These tensions erupted into protests which spread across the country from December 2008 to January 2009, especially across the southern provinces of Ecuador.

VICENTE ZHUNIO

“A police officer, who I’m sure had seen me at a meeting, said: ‘They will kill you with no remorse’. Then they took me to Macas... I was handcuffed for five or six hours. They took me away as if I were a criminal, and I couldn’t communicate with anyone”.

Vicente Zhunio Samaniego, a community leader and President of the Farmworkers’ Association of Limón Indanza in Morona Santiago province, was detained on 5 January 2009. The police officers who detained him accused him of taking part in a protest and charged him with sabotage. As Vicente Zhunio was being pushed into the police car, he was shot in the head by an unidentified gunman. Despite the seriousness of his injury, the police refused Vicente Zhunio medical treatment for six hours. He was held incommunicado for 18 hours, during which time he was beaten and threatened with death, to try to get him to sign a blank sheet of paper. His family discovered the following day that he was being held in Macas, 180km from Limón Indanza. He was subsequently transferred to Cuenca, a town nearer to his home, where he remained imprisoned for a month.

On 29 January 2009 a judge ordered Vicente Zhunio’s release from preventive detention, noting procedural irregularities by the prosecution, namely that they had not ensured that there was sufficient evidence on which to base the accusation. However, the charges remained pending following Vicente Zhunio’s release. Although he has consistently maintained that he did not participate in the protest, prosecutors based the accusation on a police report which stated that he had been arrested because “he was supplying people who were blocking the road with food... and when we asked him for his documents he reacted aggressively by being disrespectful”.⁴² Prosecutors also referred several times to the fact that he had a book entitled *Community Rights vis-à-vis Extractive Activities*. They also sought to support their case by drawing on unrelated incidents, such as Vicente Zhunio’s work galvanizing communities around the issue of natural resources in 2008.

In December 2009, a judge dismissed the case due to lack of evidence.

EIGHT COMMUNITY LEADERS

Eight community leaders – **Rosa Justina Chuñir Quizhpi, Georgina Beatriz Gutama Muevecela, Rosa Laudalina Gutama Chuñir, Tania Priscila Gutama Gutama, José Salustino Gutama, Gonzalo Gutama Urgilés, Manuel Pacheco, and Miguel de la Cruz** – were charged in April 2009 with terrorism. The charges were brought in connection with their participation in protests in Molleturo, Azuay province, on 5 January 2009.

In May 2009, José Gutama was arrested, but was not told the reason for his arrest. He was released after several hours. The other seven people were not detained.

In June 2009, a judge dismissed the case for lack of evidence. The Public Prosecutor's Office lodged an appeal, but the decision was upheld in August 2009. The judge hearing the appeal stated that the prosecution had been unable to "describe the actions of each of the accused, as required by Article 224 of the Code of Penal Procedure, and did not identify individually each of the accused or how they participated in the crime".

On 20 January 2009, some 12,000 people from Indigenous, environmentalist, *campesino* and water movements in eight provinces took part in what became known as the "Day of Mobilization for Life". One day earlier, President Correa had delivered a speech from the balcony of the Presidential Palace in which he disparagingly referred to those who were opposed to the law as "childish leftists" and that only "small groups" planned to demonstrate the following day.⁴³

The Minister of Governance was also quoted in the press saying that the government had received information that "some Indigenous leaders, one specific group within the CONAIE, could be viewing these demonstrations as part of a strategy to destabilize the country politically".⁴⁴ The CONAIE stated that the protests were against the Mining Law and had no broader purpose to undermine the state. Despite this, the cumulative effect of statements from authorities was to link Indigenous and *campesino* leaders in the public mind with illegal activities that endangered the state. This helped foster a climate of hostility in which community leaders were at increased risk of being charged with grave criminal offences such as terrorism and sabotage.

Despite a massive wave of protests across the country, the Mining Law came into force on 29 January 2009.⁴⁵ Many groups, including the CONAIE, filed a petition before the Constitutional Court, claiming that the Mining Law was unconstitutional. In April 2010, the Court declared the Mining Law constitutional and issued a ruling laying out the minimum procedures for the National Assembly to carry out a proper consultation before passing any legislative measures. Local organizations raised concerns around this decision, which declared the Law constitutional despite its approval process not having followed these guidelines.

FOUR PEOPLE ACCUSED OF TERRORISM

Some protests held on 20 January 2009 resulted in violence. According to reports, protests in the town of Chuchumbletza, Morona Santiago province, resulted in a fire, gunshots and the use of tear gas after police attempted to remove a roadblock. Four police officers were injured, and four people were arrested and charged with terrorism. They remained detained for 23 days.

According to **Ángel Geovanny Uyaguari Zuñiga**, he was on his way to work when he came across the blocked road. While he was helping the police unblock it so he could pass by, a fire began. Gunshots were then heard and the crowds of protesters and bystanders ran to find cover, including Ángel. He then was detained and accused of terrorism, along with his nephew, **Carlos Gustavo Rumipuglla Uyaguari**, and his employee, **German Vicente Naiki Shiki**. According to the case files, one other man⁴⁶ was also detained and charged along with them.

The four men were released from jail after 23 days, when the local Ombudsman Office filed a complaint that their arrest had been illegal. On 1 February 2009, a judge revoked the preventive detention and noted that this practice “should be an exceptional measure and not one used as a ‘modus operandi’ for all, or nearly all, cases under investigation. It should be used in special cases so that it does not become a form of repression or punishment during criminal procedures”.

On 18 May 2009, the Public Prosecutor’s Office decided to no longer take the case forward, recognizing that it was not possible to establish evidence of responsibility that linked the accused to the crime. In July 2009, a judge confirmed the dismissal of the case.

5. THE WATER LAW

“We want a board with many ethnicities, where everyone is included –Indigenous, white, mestizos, Afro-descendent communities – so that everyone is represented for the purpose of managing water at the national level”.

Marco Guatemal, former President of the Campesino and Indigenous Federation of Imbabura (Federacion Indigena y Campesina de Imbabura, FICI), August 2011

In August 2009, amid escalating tension over the Mining Law, the government introduced into the National Assembly a draft Water Law that would set norms around water management and usage. According to reports, the Water Law had not been subject to adequate consultation with communities beforehand and the involvement of Indigenous groups was limited to information sharing.⁴⁷

In addition to the lack of consultation, Indigenous and *campesino* leaders expressed concern about loopholes in the new Law that according to them allowed for the privatization of water. Moreover, they did not support the creation of an agency for water management composed solely of government representatives and demanded a seat in this agency so that they could participate in decisions about water resources that could affect their livelihoods.

Protests against the proposed Water Law occurred at two points. In September 2009 Indigenous groups protested at the fact that the proposed Law had been presented to the National Assembly without adequate consultation. A new wave of protests began in May 2010, when the Water Law was scheduled to be voted on in the National Assembly.

THE SEPTEMBER 2009 PROTESTS

After nationwide protests against the proposed Water Law in the last week of September 2009, the CONAIE began negotiations with the government and suspended the demonstrations, with the exception of a bridge blocked by Shuar communities in Macas, Morona Santiago province. According to reports, a Quito government delegation travelled to the area to speak with the protesters. After some initial dialogue, both parties agreed to take a two-hour break to consult colleagues and then reconvene to sign a final agreement. However, in this two-hour period before the final agreement was to be signed, the police used

tear gas and helicopters to disperse the crowd which was on the bridge, resulting in clashes that injured over 40 people, police officers as well as protesters. One Indigenous teacher, Bosco Wisuma, was shot in the head by an unidentified gunman and died instantly.

Before a full and impartial investigation could take place, President Correa publicly congratulated the police for their actions and said: "The violence did not come from the state; it did not come from the police".⁴⁸ He also blamed local media outlets for inciting violence. There was concern that these comments could jeopardize the objectivity and impartiality of investigations, as well as the presumption of innocence of those who participated in the protest.

Two days after President Correa's public comments, the National Committee for Telecommunications (Consejo Nacional de Telecomunicaciones, CONATEL) initiated an administrative procedure against the Inter-provincial Federation of Shuar Centers (Federación Interprovincial de Centros Shuar, FCSH) to revoke the licence for its radio station which had broadcast calls by community leaders for people to join the protest. CONATEL argued that the Radio La Voz Arutam had breached Article 58 of the Law on Radio and Television⁴⁹ by allegedly "promoting physical and psychological violence using children, women, youth and the elderly to motivate racism" and of "promoting social chaos in the city of Macas, Morona Santiago province, inciting violence and an armed uprising".⁵⁰ On 15 December 2009, CONATEL suspended the licence and the station appealed this decision, claiming that the Shuar transcripts had been poorly translated.

Meanwhile, President Correa and Indigenous Peoples' organizations met and agreed to work towards a consensus around the proposed Water Law and to discuss Indigenous proposals around the Mining Law. They also established a joint Truth Commission⁵¹ to investigate Bosco Wisuma's death and determine whether leaders and radio stations had participated in disseminating false information or inciting violence on 30 September 2009.

In January 2010, the Truth Commission issued a statement calling attention to the discrepancy in translations and concluded that "with the information available it is not possible to determine whether an editorial line promoted violence".⁵² It also urged CONATEL to send the information to the judiciary so that this body could "investigate and judge the actions of those who appear to be responsible for the alleged infractions, guaranteeing due process".⁵³ The administrative procedure initiated by CONATEL did not lead to the closing of the Radio La Voz Arutam.

Although a dialogue was established between the government and Indigenous organizations, on 5 November 2009 President Correa approved a regulatory framework for the Mining Law, which had led to the previous wave of mass protests. Seen as a breach of trust by Indigenous groups, the approval of these regulations allowed the Mining Law to be implemented in its existing form, even though talks aiming at a consensus on the Law had just begun. This marked a watershed in relations between the government and Indigenous groups. The Confederation of Peoples of Kichwa Nationality of Ecuador (Confederación de Pueblos de la Nacionalidad Kichwa del Ecuador, ECUARUNARI), was the first to withdraw from the dialogue, followed by the CONAIE as a whole, which officially ending talks with the government by March 2010.

"We asked where they were taking us and they said 'to an uncertain place'. We had no destination... we had no contact with family for eight days".

Fidel Kaniras, an Indigenous leader involved in the protests against the government's Water Law and accused of terrorism, sabotage and homicide, August 2011

PEPE ACACHO, PEDRO MASHIANT AND FIDEL KANIRAS

Bosco Wisuma was shot dead by an unidentified gunman during the protest on the bridge of the Rio Upán on 30 September 2009 and three men were accused of his killing, as well as the crimes of terrorism and sabotage: Pepe Acacho, then President of the FCSH and current Vice-President of the CONAIE; Pedro Mashiant, President of Sevilla Don Bosco Parish Council and President of the Association of Parish Councils of Morona Santiago; and Fidel Kaniras, a member of the Shuar Center of Sevilla Don Bosco.

Almost a year later, in September 2010, a request that Pepe Acacho, Pedro Mashiant and Fidel Kaniras be placed in preventive detention was denied. Instead, the judge ordered that the three men report to the authorities every eight days. They also could not leave the country and their assets were frozen.

On 28 January 2011, a judge ordered preventive detention for Pepe Acacho, Pedro Mashiant and Fidel Kaniras and ordered them to appear for trial as authors of the crimes of sabotage, terrorism and homicide. Another four men were also called for trial as accomplices of these crimes.

Based on this order, on 1 February 2011, Pepe Acacho, Pedro Mashiant and Fidel Kaniras were arrested in a joint police-military operation. The operation, carried out by officers wearing balaclavas to hide their identity, was broadcast to the public on television. The three men were detained for a week in Quito, until a judge accepted a habeas corpus request on 8 February 2011.

In response to the habeas corpus, the Minister of Justice, Human Rights and Religions announced in the press that he believed the habeas corpus petition was "unreasonable" and that the Ministry would lodge a complaint against the judge.⁵⁴ The habeas corpus was appealed, which triggered a legal battle that lasted for over a month; the habeas corpus was upheld.

In April and May 2010, two forensic reports were produced around Bosco Wisuma's killing. These established that the gunman was in front of Bosco Wisuma, but the distance could not be determined. Although these investigations have not yielded conclusive evidence against the three men accused, the charges remain pending.

At the time of writing, Pepe Acacho, Pedro Mashiant and Fidel Kaniras continued to report to authorities every eight days. Pepe Acacho, now Vice-President of the CONAIE and therefore is based in Quito, requested that he be allowed to present himself to the authorities in Quito. This request was denied and he must travel to Macas (an eight-hour journey each way) every eight days to present himself before local authorities.

THE MAY 2010 PROTESTS

In April 2010, the Constitutional Court declared the Mining Law constitutional. Meanwhile, the National Assembly's decision to hold a final debate around the proposed Water Law sparked another series of marches across the country. These took place throughout April 2010 and culminated in Quito on 5 May 2010. A proposal to suspend the debate for five months to allow for consultation with Indigenous communities was defeated in the National Assembly on 14 May 2010.⁵⁵

Throughout the stalemate around the proposed Water Law, President Correa continued to call into question the legitimacy of Indigenous and *campesino* leaders. For example, on 6 May 2010, he appeared in the press asking for investigations into how Indigenous groups could afford to bring hundreds of protesters from rural areas to Quito and saying that "the little capacity they have – look into it – is financed by foreign foundations", in an attempt to delegitimize their claims and mobilization efforts.⁵⁶

In an address to the nation after the wave of protests, President Correa also stated: "What legitimacy does the CONAIE have? ... It will be the majority of Ecuadorians who decide how we organize and how we want to live and not a few troublemakers who will impose this... Let's stand up, 13 million of Ecuadorians, against these primitive positions that seek to keep the country in the past. Because what the leaders of the CONAIE do is not resistance, it is aggression".⁵⁷ The Vice-Minister of the Department of Peoples and Social Movements also characterized these groups as threats to the state, saying in the press that "the true objective of Indigenous leaders is not to oppose the Water Law being debated in Congress, but to bring down the government".⁵⁸

In this context, many protesters were accused of terrorism and sabotage, similar to the leaders charged in connection with protests against the Mining Law in 2009. Many of these charges were eventually dropped for lack of evidence. However, public prosecutors responded by bringing new and different charges – largely for blocking roads - against protesters.

CARLOS PÉREZ, FEDERICO GUZMÁN AND EFRAÍN ARPI

In Azuay province, users of the community water systems and their leaders partially blocked a highway on 4 May 2010 in protest against the final round of debates around the Water Law, scheduled to take place in the National Assembly the following day. Clashes between the police and protesters broke out when the police arrested Carlos Pérez, leader of the Communal Water Systems of Azuay. Federico Guzmán, President of the Victoria del Portete Parish Council, and Efraín Arpi, leader of the San Joaquín community, were also arrested. All three men were charged with sabotage and held in preventive detention for three days. On 27 May 2010 the court requested that the men present themselves to authorities every eight days and prohibited them from leaving the country.

The charges of sabotage were dropped, but then replaced with the criminal offence of blocking a road. Federico Guzmán and Efraín Arpi stated they did not directly participate in the protest, while Carlos Pérez and other witnesses maintained that they allowed traffic to flow through every 30 minutes and that vehicles would be allowed to pass immediately in case of an emergency. The judge ordered their detention and the men paid US\$3,000 bail to remain in liberty.

In August 2010, a judge declared Federico Guzmán, Efraín Arpi and Carlos Pérez innocent of the crime of blocking roads. The prosecution appealed this decision and in August 2011 the three men were convicted. Although they were condemned to one year in jail, the judge handed down a lesser sentence of eight days imprisonment, given that the three men "are not a threat to society and the motivations of their misconduct were altruistic and in support of the people of Tarqui and Victoria del Portete, in defence of water resources, which they fear may be polluted due to mining activities".⁵⁹ The leaders filed a request before the National Court for the case to be annulled, which was pending at the time of writing.

MARCO GUATEMAL

Following the protests against the proposed Water Law in May 2010, the then Governor of Imbabura province filed a motion with the Public Ministry to investigate Indigenous community leaders who participated in protests against the Water Law and blocked parts of the Pan-American road. On 26 October 2010, a judge initiated proceedings against several leaders on charges of terrorism and sabotage. The case was archived due to lack of evidence. However, one of the leaders, Marco Guatemal, was then charged with the criminal offence of blocking roads. He was then the President of the Campesino and Indigenous Federation of Imbabura (Federación Indígena y Campesino de Imbabura, FICI).

The first hearing in the case was held in May 2011 and Marco Guatemal was ordered to present himself to the authorities every 15 days. Two months later, a hearing was called, but neither Marco Guatemal nor his lawyer attended; they have stated that they never received notice of the hearing. The judge then issued an arrest warrant for Marco Guatemal and imposed a fine of some US\$1,200 on his lawyer.

Marco Guatemal was arrested on 25 October 2011 and detained for 21 days, until the judge ordered his release and dropped the charge due to lack of evidence of a crime.

6. NATIONAL LAW AND INTERNATIONAL STANDARDS

“Some States tend to systematically invoke national security and public safety to restrict the scope of activities of defenders. In many countries, trade unionists, members of NGOs and social movements face repeated arrests and criminal proceedings for charges of ‘forming criminal gangs’, ‘obstructing public roads’, ‘inciting crime’, ‘creating civil disobedience’ or ‘threatening the State security, public safety or the protection of health or morals’.”

United Nations Special Rapporteur on the situation of human rights defenders⁶⁰

THE RIGHT TO PROTEST

Under international human rights law, prosecutions or detentions that impose restrictions on the exercise of human rights such as freedom of expression, assembly and association must have a legitimate aim, for example protecting the rights of others, national security, public order or public health or morals.⁶¹ Clarity is also a crucial requirement of any law: “a norm, to be characterized as a ‘law’, must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly”.⁶² States must also demonstrate that restrictions are proportionate to the aim they seek to achieve. In other words “restrictions must not be overbroad... The principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law”.⁶³ In addition, a restriction on a human right must not put in jeopardy the right itself.⁶⁴

Those working in the judicial system and other related branches, such as prosecutors, police officers and judges, should be adequately trained to handle public protest. The Inter-American Commission on Human Rights has recently noted that many cases of criminalization in the Americas region occur because the "authorities in charge of investigating the crime – perhaps due to a lack of precision in the penal codes themselves, or due to a lack of diligence in the investigation – do not verify, when gathering evidence before a criminal indictment is issued, that unlawful conduct has definitely occurred".⁶⁵ The number of cases in Ecuador where charges have been quashed by judges on the grounds of lack of evidence indicate that this concern is well founded.

The authorities in Ecuador were able to arrest and criminalize Indigenous and *campesino* leaders because aspects of national law fall short of international standards.⁶⁶ Among the articles of the current Penal Code most often used against Indigenous and *campesino* leaders are Article 158 (sabotage), Article 160 (terrorism), and Article 129 (blocking a road).

TERRORISM AND SABOTAGE

"Some laws, either per se or in their application, by using an extremely vague and broad definition of terrorism, bring within their fold the innocent and the suspect alike and thereby increase the risk of arbitrary detention, disproportionately reducing the level of guarantees enjoyed by ordinary persons in normal circumstances. Legitimate democratic opposition, as distinct from violent opposition, becomes a victim in the application of such laws".⁶⁷

UN Working Group on Arbitrary Detention

Article 158 of Ecuador's Penal Code dealing with sabotage allows for prison sentences of between eight and twelve years for someone who "destroys, damages, disables, disrupts or paralyzes public services, industrial or manufacturing facilities, shopping centres, ports, canals, dams, mines, gun powder warehouses, vehicles or any other elements of transport, public or private electricity installations, water, gas or other similar facilities, or those concerning radio, telephones, telegraphs, televisions or any other transmission systems; deposits of merchandise of explosives, lubricants, fuels, raw materials destined for production or national consumption, or any other such supply, with the purpose of producing a collective group alarm".⁶⁸ However, it is not clear what tests would be applied to assess the intent to cause alarm.

Article 160.1, which deals with terrorism, provides for prison sentences of between four and eight years. This Article states terrorists are those "who either individually or in partnerships formed associations, such as guerrillas, organizations, gangs, commands, terrorist groups, peasant guerrilla groups or other similar group – whether armed or not – claiming that their aims are patriotic, social, economic, political, religious, revolutionary, protesting, proselytizing, racial, parochial, regional, etc., committed crimes against the common security or property of individuals or groups of people of any kind".⁶⁹ The article goes on to give examples by which one could be accused of terrorism, including "by erecting barricades, parapets, trenches, obstacles, etc. with the purpose of confronting the security forces in support of their aims, plans, theories or proclamations, or in order to threaten the community, their property and services in any way".⁷⁰

The list of activities that could be considered acts of terrorism is so extensive and lacking in parameters that the authorities have been able to use it to prosecute Indigenous and

campesino leaders' for their work in defence of human rights. As the UN Special Rapporteur on the situation of human rights defenders has repeatedly noted: "states must ensure that anti-terrorism legislation and measures are not applied against human rights defenders to hamper their human rights work. Doing so may lead to cases of arbitrary detention and violate international human rights law protecting freedom of expression, assembly and association, among others".⁷¹

"Our penal code refers in the broadest of terms to any kind of association that carries out a protest – these can be from completely peaceful protests to violent ones".

David Cordero Heredia, Centre for Human Rights at the Catholic University of Ecuador

DELFIN TENESACA AND MARLON SANTI

"It is worrying that they could condemn us to four, five, or six years in jail. It is not fair that just because we are leaders of ECUARUNARI or the CONAIE we could be imprisoned for several years. The fact that the state smears our name with terrorism and sabotage already is an insult".

Delfin Tenesaca, President of ECUARUNARI, August 2011

In June 2010, the Summit of the Bolivarian Alliance for the Peoples of Our America (Alianza Bolivariana para los Pueblos de Nuestra América, ALBA),⁷² involving eight Latin American heads of state, took place in the Indigenous town of Otavalo in Ecuador. The ALBA Summit coincided with *Inti Raymi* (the Festival of the Sun), a millenarian tradition of Indigenous communities with Inca roots in the Andean region. With its large Indigenous population, Otavalo was one of the centres of the celebrations and thousands of people gathered to take part, carrying traditional Indigenous symbols such as spears and animals. With the ALBA Summit taking place at the same time, *Inti Raymi* became a space to reaffirm Indigenous Peoples' demands to participate in decisions that affect them. As a result, Indigenous organizations drafted a letter expressing concerns around the lack of Indigenous participation in the ALBA Summit and asked to be allowed to deliver it to President Evo Morales of Bolivia, the first Indigenous president in the Americas.

They were denied access to the meeting and mounted police prevented people approaching the building where the ALBA Summit was being held. According to reports, one of the horses became agitated and police then used tear gas to try to disperse the crowd. In the ensuing chaos, two horses were injured and one of the police lines was broken. In the midst of this, a pair of police handcuffs was lost.

Marlon Santi, then President of the Confederation of CONAIE, and Delfin Tenesaca, President of the ECUARUNARI, were accused of terrorism and an investigation was opened. The police report claimed that a group of Indigenous people had broken through the police cordon and a pair of police handcuffs had disappeared. They also claimed that the group had interrupted the Summit, shouting slogans and posing a threat to public order. According to reports, the gathering was peaceful and it would seem that the only evidence against Delfin Tenesaca and Marlon Santi was the stolen handcuffs. However, the report of the police officer who lost the handcuffs does not state that they were stolen, but merely that at a certain point he noted that they were missing. At the time of writing, the case had been under investigation for almost two years, during this time no charge had been brought against Delfin Tenesaca or Marlon Santi.

"We believe that keeping the case open is one way of intimidating us".

Bolivar Beltran, lawyer for CONAIE, August 2011

ROADBLOCKS

"This is an issue of legitimacy versus legality and the extent to which an act that is a criminal offence is a legitimate act".

Mario Ruiz, lawyer for FICI, August 2011

Article 129 of the Penal Code provides for between one and three years' imprisonment for anyone "illegally impedes the free transit of cars, people or merchandise"⁷³ on public roads. This provision makes no exceptions for minimal interference or for any obstruction that may result from the exercise of human rights, especially freedom of expression, assembly and association. Public protest, by its very nature, often entails disruption to traffic. Therefore, Article 129, which allows for the criminal prosecution of people who block traffic even if this is done in the context of the legitimate exercise of human rights, puts these rights in jeopardy.

Amnesty International recognizes that states have an obligation to maintain public order. However, for many groups, public protest may be the only way in which they can make their views heard. The Inter-American Commission on Human Rights has consistently noted that "the most impoverished sectors of our hemisphere face discriminatory policies and actions... and the traditional channels of participation and public complaint are often cut off. As such... protest and social mobilization has become a tool with which to petition government authorities and also a channel for publicly denouncing abuses or violations of human rights".⁷⁴ In Ecuador, the state has consistently failed to respect the rights of Indigenous and *campesino* communities to consultation over the Mining and Water Laws, leaving these communities little option but to express their demands through mass mobilization.

"Naturally, strikes, road blockages, the occupation of public space, and even the disturbances that might occur during social protests can cause annoyances or even harm that it is necessary to prevent and repair. Nevertheless, disproportionate restrictions to protest, in particular in cases of groups that have no other way to express themselves publicly, seriously jeopardize the right to freedom of expression. The Office of the Special Rapporteur is therefore concerned about the existence of criminal provisions that make criminal offences out of the mere participation in a protest, road blockages (at any time and of any kind) or acts of disorder that in reality, in and of themselves, do not adversely affect legally protected interests such as the life or liberty of individuals".

Inter-American Commission on Human Rights, Report of the Office of the Special Rapporteur for Freedom of Expression (2008), Chapter IV, paragraph 70

Although blocking a road may be a criminal offence under domestic law, the UN Special Rapporteur on the situation of human rights defenders has established that this does not necessarily justify an infringement of freedom of assembly and therefore, it is not legitimate to disperse a protest for this sole reason. In addition, if protesters do not engage in acts of violence, "it is important that the state show a certain degree of tolerance towards peaceful gatherings".⁷⁵

THE RIGHT TO CONSULTATION

"We are working to make this country truly worthy of dignified respect for all beings, men and women, the elderly, children. We all deserve the same respect".

Delfin Tenesaca, ECUARUNARI, August 2011

The authorities in Ecuador have repeatedly sought to undermine communities' claims for greater participation by arguing that expanding the extractive industry is not only necessary for national development, but also beneficial. For instance, President Correa has recently stated that: "Good mining will help us decontaminate the water because we will have the resources for these works and sanitary infrastructure".⁷⁶ Moreover, at the ALBA Summit in June 2010, President Correa stated: "there may be nice rhetoric that... Indigenous leaders repeat... We cannot hold [those] extremist positions. We cannot be beggars sitting on a bag of gold. Those fundamentalisms, those dogmatisms just immobilize us".⁷⁷ However, human rights are universal and belong to everyone: the human rights of members of local communities cannot be sacrificed in the name of economic growth.

While many may argue that particular projects or legislation may be beneficial to these local communities, it is vital that any decisions that have an impact on their human rights are made in a manner that is consistent with international human rights standards. This requires that people's rights to participation and information, and right to consultation be respected.

INFORMATION, PARTICIPATION AND CONSULTATION

Major laws such as the Mining Law and Water Law in Ecuador can affect people's rights – including their rights to housing, food, health, and water. Therefore, it is vital that all people – especially those most directly affected - are consulted and can participate in decisions that affect their human rights.

Ecuador is bound to the International Covenant on Civil and Political Rights and Article 25 guarantees the right of every citizen to take part in the conduct of public affairs, which includes the passing of legislation, such as the proposed Mining Law and Water Law in Ecuador.⁷⁸ Participation can help prevent human rights violations and ensure that adequate mitigation measures are adopted. Moreover, the UN Committee on Economic, Social and Cultural rights has emphasized that "the right of individuals and groups to participate in decision-making processes, which may affect their development, must be an integral component of any policy, programme or strategy developed to discharge governmental obligations".⁷⁹

To be meaningful, consultations must be carried out in good faith and with the aim of reaching an agreement. The narrative in this report demonstrates that Ecuador did not fulfil its obligation to adequately consult local Indigenous and *campesino* communities on the government's proposed laws on mining and water. In the case of the Mining Law, it was passed without consultation, while the Water Law remains at a standstill.

FREE, PRIOR AND INFORMED CONSENT

As well as the right to consultation, Indigenous Peoples have an additional safeguard. Under international human rights standards, states must ensure the right to free, prior and informed consent regarding decisions that affect Indigenous Peoples, irrespective of domestic law. The right to consultation and the right to free, prior and informed consent for Indigenous Peoples are enshrined in the UN Declaration on the Rights of Indigenous Peoples (the Declaration) and International Labour Organization Convention No 169 on Indigenous and Tribal Peoples (Convention No. 169).

Ecuador has acknowledged its obligation to consult and obtain free, prior and informed consent from Indigenous Peoples before undertaking any measure that may affect them by endorsing the Declaration in 2007 and ratifying Convention No. 169 in 1998.

It is important to note that the UN Special Rapporteur on the Rights of Indigenous Peoples has explained how the Declaration “suggests a heightened emphasis on the need for consultations that are in the nature of negotiations towards mutually acceptable arrangements, prior to the decisions on proposed measures, rather than consultations that are more in the nature of mechanisms for providing Indigenous Peoples with information about decisions already made or in the making, without allowing them genuinely to influence the decision-making process”.⁸⁰

Therefore, in cases such as national legislation on extractives or natural resources in Ecuador, international norms dictate that the state has a duty not only to consult but also to obtain Indigenous Peoples' free, prior and informed consent, respecting the following principles:

- Free: all dialogue and decision-making structures must be fair and without coercion, manipulation threat, fear of reprisal, corruption or unequal bargaining power.
- Prior: all dialogue and agreements must take place before any potentially detrimental measures are taken and the communities must be given sufficient time to give their consent in accordance with their values and traditions.
- Informed: communities must be provided with full and objective information in a clear manner that is disclosed in a culturally appropriate way; they also must have the possibility of obtaining independent advice.

7. CONCLUSION AND RECOMMENDATIONS

“If the government held dialogues, entered talks and accepted that proposals in Ecuador should be built in a democratic and participatory way... I believe that there would be a greater sense of tranquillity in the country”.

Marco Guatemal, former President of FICl, August 2011

Indigenous people and *campesinos* in Ecuador have repeatedly taken to the streets to demand their rights to consultation and to free, prior and informed consent over laws, policies and practices that affect them. As this report shows, far from taking active measures to promote these rights, the authorities have responded by using unfounded criminal proceedings against Indigenous and *campesino* leaders. In its actions and statements, the government has sought to cast doubt on the legitimacy of the protests and indeed to curtail the rights to freedom of expression and assembly of some of the most marginalized sectors of society.

The potential impact of the Water and Mining Laws on local Indigenous and *campesino* communities is hard to overstate. Their livelihoods and sense of cultural identity are inextricably linked to the lands on which they live and the natural resources on which they depend. The state has an obligation under international law to consult with affected communities before adopting such legislation to ensure that it incorporates adequate safeguards to protect communities' human rights. In the case of any developments significantly affecting Indigenous Peoples, the legislation should also comply with and include requirements to seek their free, prior and informed consent.

ECUADOR TODAY

March 2012 saw another wave of nationwide protests around the right to water and other Indigenous demands. To Amnesty International's knowledge, none of those who participated in the three weeks of protests leading up to the final rally in Quito on 22 March have been subjected to unfounded criminal proceedings. However, hostile rhetoric by the members of the government, including President Correa himself, against Indigenous Peoples continues to cause concern. Making comments such as "they are indigenous - they can have spears and use them to attack"⁸¹ and referring to the protesters as people who are "plotting a coup" (*golpistas*),⁸² characterizes them as violent people who aspire to overthrow the government, rather than people who are marching to demand their rights.

In response to the complaints about the criminalization of the right to protest, the President has also said "they are criminals protesting and they must face the law",⁸³ while often also using the phrase "criminal social protest" to characterize demonstrations that oppose state policies as criminal activities. While Amnesty International recognizes the state's right and obligation to apply laws and investigate any possible crimes that take place in the context of a protest, this report demonstrates that all too often Indigenous and *campesino* leaders have been subjected to unfounded investigations based on little or no evidence, raising the question whether these are politically motivated acts. Moreover, it is important to consider the root causes of these protests, which often demand the right to consultation.

THE FUTURE

At the time of writing the draft Water Law remained at a standstill. The government also has highlighted specific projects to initiate Ecuador's expansion into large scale mining and plans are under way to demarcate land for a new round of oil concessions in the south-east region of the country. To date, there is no specific information available as to how communities will be affected, or if and how consultations may be carried out in accordance with international human rights norms.

The government's policy of continuing to push through changes without adequate consultation with affected communities risks setting Ecuador on a course of continuing social conflict. In addition to resolving the source of these divergences, namely by holding proper consultations, it is crucial for Ecuador to address the misuse of the judicial system as a way to silence those who demonstrate opposition to the government's proposed laws and policies. The fact that 24 leaders faced questionable charges for allegedly participating in protests in an 18-month period from 2009 to 2010 demonstrates a worrisome pattern.

Amnesty International calls on the authorities to live up to the obligations they have entered into and ensure the human rights of affected communities are respected. In particular it calls on the authorities to promote the rights to freedom of expression and assembly, as well as to ensure that those seeking to defend and exercise their human rights are able to do so free from fear, intimidation or harassment.

RECOMMENDATIONS

Amnesty International calls on the government to:

The right to protest

1. Promote, protect and respect the right to freedom of expression, peaceful assembly and association as recognized in international and regional instruments, including acts of protest against government policies, laws or actions, and refrain from delegitimizing these claims.
2. Drop unsubstantiated charges, or charges based on the exercise of human rights, and stop using the judicial system to curb the ability of communities to exercise their right to freedom of assembly and association, especially with respect to expressing disapproval of and protesting against the government's proposed laws and policies.
3. Review cases of possible arbitrary detention or politically motivated charges and ensure that, where appropriate, administrative or other sanctions are taken against those found to be responsible.
4. Ensure that no criminal provisions – such as those regarding terrorism, sabotage and blocking roads – are used to punish the legitimate exercise of human rights.
5. Ensure that security forces involved in policing demonstrations and members of the judiciary are aware of the use of protests as a way to legitimately exercise human rights.

The right to consultation and free, prior and informed consent

6. Ensure that any potential laws, policies and measures that affect communities undergo a process of consultation with those communities affected before any decision has been made.
7. Establish clear and fair mechanisms and procedures for carrying out consultations with affected communities in good faith, including a mechanism for monitoring enforcement and reporting grievances. Communities should be involved in the decision-making process at an early stage, and must be provided with full and objective information. This should be communicated and shared with affected communities in a transparent and accessible manner.
8. Establish clear and robust mechanisms and procedures, in consultation with Indigenous Peoples and in line with international human rights standards, to guarantee their right to free, prior and informed consent. Mechanisms and procedures should be consistent with Indigenous decision-making processes, in accordance with their values and traditions.
9. Allocate sufficient resources to effectively carry out consultations and to ensure that members of the community are not precluded from taking part in the process due to distance, literacy in a language, or any other circumstance.

ENDNOTES

¹ *Campesino* is a commonly used term in Spanish meaning someone who works the land and lives in a rural area, but does not own a large amount of land. *Campesino* can be translated as farmer, peasant or rural worker, although it has no true equivalent in English.

² Amnesty International does not take a position on extractive activities, per se, but it calls on governments and companies to ensure that human rights standards are fully complied with while making assessments and decisions that may affect local communities. Similarly, any decisions around the provision of water must comply with human rights standards including requirements for participation of people in the decision-making process and for the government to put in place an adequate regulatory framework which can ensure equal, affordable, and physical access to sufficient, safe and acceptable water for all persons.

³ The National Constituent Assembly was set up in 2007 to draft a new Constitution. On 11 March 2008 the Constituent Assembly issued an amnesty based on the report *Pobladores y Activistas de Derechos Humanos y de Defensa del Medio Ambiente*. On 11 July 2008 the Constituent Assembly issued another amnesty based on the report *Amnistías a personas involucradas en hechos ocurridos en el Cantón Chillanes, Provincia de Bolívar; en el paro nacional minero y casos de criminalización por defender la territorialidad, derechos colectivos y de los pueblos*.

⁴ Tribunal Constitucional, Registro Oficial, Año II, N° 393, 31 July 2008, page 13. Available at: <http://www.agroecuador.com/html/RegOficiales/RegistroOficial/R.%20.%20%28SP%29%20julio%201%20No.%20393%20MANDATO%2016%20-%20SOBERANIA%20ALIMENTARIA.pdf> (accessed 8 May 2012).

⁵ Name withheld by Amnesty International.

⁶ BBC Mundo.com, *Hidrocarburos en América Latina*. Available at: http://news.bbc.co.uk/hi/spanish/specials/newsid_4562000/4562409.stm#xq6 (accessed 8 May 2012).

⁷ Secretaria de Hidrocarburos, *Décima Ronda Petrolera Ecuador 2011*. Available at: <http://www.shc.gob.ec/portal/es/web/ronda-petrolera/inicio> [accessed 8 May 2012].

⁸ Inter-American Commission on Human Rights, *Application to the Inter-American Court of Human Rights in the case of Kichwa People of Sarayaku and its members (Case 12.465) against Ecuador*, para. 77.

⁹ Wilton Guaranda Mendoza, Diagnóstico Legal de la Minería en el Ecuador. Available at: http://www.inredh.org/index.php?option=com_content&view=article&id=242%3Adiagnostico-legal-de-la-mineria-en-el-ecuador&Itemid=126 (accessed 25 May 2012).

¹⁰ Comisión Ecuémica de Derechos Humanos, FIDH and Rights and Democracy, *Large-scale Mining in Ecuador and Human Rights Abuses*, page 6. Available at: http://www.dd-rd.ca/site/_PDF/publications/Equateur_UK-LD.pdf (accessed 25 May 2012).

¹¹ Amnesty International, Annual Report of 2006, page 106. <http://www.amnesty.org/en/library/info/POL10/001/2006> (accessed 25 May 2012).

¹² Decreto 1204, 7 March 2006. Article 6: Las infracciones que se cometieren en la zona de seguridad determinada por este decreto, serán sancionadas de acuerdo con el artículo 145 de la Ley de Seguridad Nacional. (*Amnesty International English translation: The infractions committed within a security zone established by this decree will be sanctioned according to Article 145 of the National Security Law*).

¹³ Ley de Seguridad Nacional, N°275, Art. 145: "En tiempo de guerra o decretada la movilización las

infracciones puntualizadas en el Capítulo anterior, serán juzgadas con sujeción a lo dispuesto en Código Penal Militar, y no se reconocerá fuero alguno”.

¹⁴ UN Human Rights Committee, General Comment 32, para. 22.

¹⁵ Amnesty International, *Urgent Action: Incommunicado detention/Fear for safety/Possible Prisoner of Conscience: Wilman Adolfo Jiménez Salazar*. (Index: AMR 28/006/2006)
<http://www.amnesty.org/en/library/info/AMR28/006/2006/en> (accessed 25 May 2012).

¹⁶ Universidad de Palermo, *Es legítima la criminalización de la protesta social?: derecho penal y libertad de expresión en América Latina*, pages 114 – 116. Available at:
<http://www.palermo.edu/cele/pdf/Protesta-social.pdf> (accessed 25 May 2012).

¹⁷ The CONAIE is an umbrella organization composed of three regional Indigenous federations: the Confederation of Indigenous Nationalities of the Ecuadorian Amazon (Confederación de Nacionalidades Indígenas de la Amazonía Ecuatoriana, CONFENIAE); the Confederation of Peoples of Kichwa Nationality (Confederación de Pueblos de la Nacionalidad Kichwas del Ecuador, ECUARUNARI), and the Coordinating Committee of Indigenous and Black Organizations of the Ecuadorian Coast (Coordinadora de Organizaciones Indígenas y Negras de la Costa Ecuatoriana, CONAICE).

¹⁸ Amnesty International interview with Marlon Santi, August 2011.

¹⁹ *Amnesty International Report 2008*. Available at: <http://www.amnesty.org/en/region/ecuador/report-2008> (accessed 25 May 2012).

²⁰ Asamblea Constituyente, *Resolución de amnistía de Dayuma*, 14 March 2008, para. 3.

²¹ Defensoría del Pueblo de Ecuador, *Los escenarios de la Criminalización a los defensores y defensoras de los derechos humanos y de la naturaleza en Ecuador: Desafíos para un estado constitucional de derechos*, Annex 1. Available at:
http://www.inredh.org/archivos/pdf/escenarios_criminalizacion_defensoresydefensoras.pdf
(accessed 25 May 2012).

²² Marisol Peñafiel, “Capítulo 4.1 La justicia como instrumento de persecución a líderes sociales”, *Pobladores y Activistas de Derechos Humanos y de Defensa del Medio Ambiente*.

²³ Facultad Latinoamericana de Ciencias Sociales (FLACSO), *Actuar en mundos plurales*, N°3, page 16.

²⁴ Largely an agricultural labour force of mixed origins, the Montubios are a distinct ethnic community of the coastal region and largely rural. After a hunger strike in 2001, the Montubio people were officially acknowledged as an Ecuadorian ethnic identity and the ‘Council for the Development of the Montubio People of the Ecuadorian Coast and Subtropical Zones of the Coastal Region’ (Consejo de Desarrollo del Pueblo Montubio de la Costa Ecuatoriana y Zonas Subtropicales del Litoral, CODEPMOC) was granted official recognition and government funding.

²⁵ Asamblea Constituyente, “Capítulo 4: Derechos de las Comunidades, pueblos y nacionalidades”, *Constitución de la República del Ecuador*, Articles 57.7 and 57.17.

²⁶ Asamblea Constituyente, “Capítulo 7: Derechos de la Naturaleza”, *Constitución de la República del Ecuador*.

²⁷ Name withheld by Amnesty International.

²⁸ Corte Provincial de Justicia de Morona Santiago, Juicio Penal N° 002-09, 29 January 2009. “Además es necesario dejar constancia en el presente caso se ha resuelto dictar el inicio de la instrucción fiscal, así como solicitar se dicte medidas cautelares, de carácter personal, sin que el representante del Ministerio Público haya cumplido su obligación procesal previsto en el Art.217 del Código Procesal Penal, que determina que solo cuando considere que existan fundamentos suficientes para imputar a

una persona participación de un hecho delictivo, se resolverá el inicio de la instrucción fiscal". *Amnesty International translation: Moreover, it is important to establish that – in this case – it was decided to initiate investigation proceedings and request cautionary measures for an individual without the Public Prosecutor's Office fulfilling its obligation according to Article 217 of the Code of Criminal Procedure, which states that only when there is sufficient basis to charge someone for a crime should investigation proceedings begin*".

²⁹ Primera sala especializada de lo penal y transito de la corte provincial de justicia del Azuay, 3 August 2009. "El agente Fiscal al alegar en la audiencia no describe los actos en los cuales participa cada uno de los procesados, como efectivamente lo ordena el Art 224 del Código de Procedimiento Penal, sin que haya identificado en forma individualizada a los procesados ni del modo o manera en que estos hayan participado en la comisión del delito". *Amnesty International translation: "The Public Prosecutor's allegations during the hearing do not describe the acts in which each of the accused participate - according to Article 224 of the Code of Criminal Procedure – nor do they identify the accused individually nor the way in which they participated in the crime"*.

³⁰ The accused must present a "habeas data" signed by a lawyer to clear his or her police record.

³¹ Name withheld by Amnesty International.

³² See page 17 for Vicente Zhunio's full case; he was accused of sabotage in the context of protests against the government's proposed Mining Law.

³³ Fernando Mejia, along with another 16 people, faces charges in the context of a protest that occurred in 2006.

³⁴ UN Human Rights Council, *Report of the Special Rapporteur on the situation of human rights defenders*, 21 December 2011, A/HRC/19/55, para. 125. Available at: <http://www.unhcr.org/refworld/docid/4f39338f2.html> (accessed 25 May 2012).

³⁵ Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, 2012, para. 78. Available at: <http://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf> (accessed 25 May 2012).

³⁶ Inter-American Commission on Human Rights, *Report on the Situation of Human Rights Defenders in the Americas*, 2006, para. 177. Available at: <http://www.cidh.org/countryrep/Defenders/defenderstoc.htm> (accessed 25 May 2012).

³⁷ Name withheld by Amnesty International.

³⁸ Wilton Guaranda Mendoza, *Diagnóstico Legal de la Minería en el Ecuador*. Available at: http://www.inredh.org/index.php?option=com_content&view=article&id=242%3Adiagnostico-legal-de-la-mineria-en-el-ecuador&Itemid=126 (accessed 25 May 2012).

³⁹ Registro Oficial del Tribunal Constitucional de la Republica de Ecuador, Año II, *Ley de Minería*, 29 January 2009, Article 90: Procedimiento Especial de Consulta a los Pueblos. Available at: http://www.mrnrr.gob.ec/upload/doc_mineria/ley-minera-publicada-en-registro-oficial.pdf (accessed 25 May 2012).

⁴⁰ Wilton Guaranda Mendoza, *Diagnóstico Legal de la Minería en el Ecuador*. Available at: http://www.inredh.org/index.php?option=com_content&view=article&id=242%3Adiagnostico-legal-de-la-mineria-en-el-ecuador&Itemid=126 (accessed 25 May 2012).

⁴¹ President Correa, Speech on ECTV, January 2009. Available at: <http://www.youtube.com/watch?v=R7O4hI1xtG4> (accessed 25 May 2012).

⁴² Comando Policial de la Policía Morona Santiago 17, Parte Informativo al Señor Juez Cuarto de lo Penal y Transito de Morona Santiago, 5 January 2009.

⁴³ Hoy, *Correa firma Ley Minera y critica 'izquierdismo infantil' de detractores*, 19 January 2009. Available at: <http://www.hoy.com.ec/noticias-ecuador/correa-firma-ley-minera-y-critica-izquierdismo-infantil-de-detractores-329544.html> (accessed 30 May 2012).

⁴⁴ Lavoz.com, *Ley minera causa rechazo de indígenas ecuatorianos*, 20 January 2009. Available at: <http://www.rlp.com.ni/noticias/45756/ley-minera-causa-rechazo-de-indigenas-ecuatorianos> (accessed 25 May 2012).

⁴⁵ Registro Oficial del Tribunal Constitucional de la Republica de Ecuador, Año III, *Ley de Minería*, 29 January 2009, N°. 517, Article 90: Procedimiento Especial de Consulta a los Pueblos. Available at: http://www.mrnrr.gob.ec/upload/doc_mineria/ley-minera-publicada-en-registro-oficial.pdf (accessed 25 May 2012).

⁴⁶ Name withheld by Amnesty International.

⁴⁷ International Work Group for Indigenous Affairs, *The Indigenous World*, 2010, page 176. Available at: http://www.iwgia.org/iwgia_files_publications_files/0001_I__2010_EB.pdf (accessed 25 May 2012)

⁴⁸ Enlace Ciudadano 140, 3 October 2009. Available at: <http://www.youtube.com/watch?v=WRPn6zVHUF0&NR=1> (accessed 25 May 2012).

⁴⁹ Ley de Radiodifusión y Televisión, Decreto Supremo No. 256-A. Available at: <http://signis.ec/wp-content/uploads/2012/03/Ley-de-Radio-y-TV-de-Ecuador-hasta-2007.pdf> (accessed 25 May 2012).

⁵⁰ Consejo Nacional de Telecomunicaciones (CONATEL), *Resolución 440-16 CONATEL 2009*, 17 December 2009.

⁵¹ Decreto Ejecutivo N° 96, 14 October 2009.

⁵² Comisión de la Verdad, Oficio No. BW-SE-014.18.12.10, 18 January 2010. Available at: http://www.inredh.org/archivos/pdf/radio_arutam1.pdf (accessed 25 May 2012).

⁵³ Comisión de la Verdad, Resolución 22, January 2010.

⁵⁴ El Diario, 10 February 2011, page 13A. Available at: http://issuu.com/el diarioec/docs/el_diario_10_de_febrero_del_2011 (accessed 25 May 2012).

⁵⁵ Ecuador Inmediato, *Parlamento de Ecuador rechaza consulta previa a Indígenas sobre la Ley de Aguas*, 13 May 2010. Available at: http://www.ecuadorinmediato.com/Noticias/news_user_view/parlamento_de_ecuador_rechaza_consulta_previa_a_indigenas_sobre_ley_de_aguas--126525 (accessed 25 May 2012).

⁵⁶ Agencia Pública de Noticias de Ecuador y Sudamérica (ANDES), *Correa denuncia que movilizaciones indígenas estarían financiadas por fundaciones extranjeras*, 6 May 2010. Available at: <http://andes.info.ec/2009-2011.php?p=13932> (accessed 25 May 2012).

⁵⁷ RTU Noticias, *Presidente cuestiona duramente el sector indígena por el tema ley de aguas en su enlace ciudadano*, May 2010. Available at: <http://www.youtube.com/watch?v=RfY4lv1rqwk> (accessed 11 May 2012).

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⁵⁸ Agencia Pública de Noticias de Ecuador y Sudamérica (ANDES), *El verdadero propósito de los indígenas es tumbar a Correa: Subsecretario de Pueblos*, 10 May 2010 <http://andes.info.ec/2009-2011.php?p=14248> (accessed 13 May 2012).

⁵⁹ Primera Sala Especializada de lo Penal y Tránsito de la Corte Provincial e Justicia del Azuay, Proceso 128-11, 10 August 2011.

⁶⁰ UN Office of the High Commissioner for Human Rights, *Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, July 2011. Available at: <http://www.unhcr.org/refworld/docid/4e2fc3f02.html> (accessed 29 May 2012).

⁶¹ International Covenant on Civil and Political Rights, Articles, 19, 21, 22.

⁶² UN Human Rights Committee (HRC), *General comment no. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, CCPR/C/GC/34, para. 25. Available at: <http://www.unhcr.org/refworld/docid/4ed34b562.html> (accessed 29 May 2012).

⁶³ UN Human Rights Committee (HRC), *General comment no. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, CCPR/C/GC/34, para. 34. Available at: <http://www.unhcr.org/refworld/docid/4ed34b562.html> (accessed 29 May 2012).

⁶⁴ UN Human Rights Committee (HRC), *General comment no. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, CCPR/C/GC/34, para. 21. Available at: <http://www.unhcr.org/refworld/docid/4ed34b562.html> (accessed 29 May 2012).

⁶⁵ Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, 2012, para. 94. Available at: <http://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf> (accessed 25 May 2012).

⁶⁶ The UN Working Group on Arbitrary Detentions has noted that arrests deemed lawful under domestic law, may be considered arbitrary under international human rights law if the law under which the person is detained is vague, over-broad, or in violation of other fundamental standards, such as the right to freedom of expression.

UN Economic and Social Council, Commission on Human Rights/UN Working Group on Arbitrary Detentions, *Question of the Human rights of all Persons subjected to any form of Detention or Imprisonment*, E/CN.4/1992/20.

⁶⁷ UN Human Rights Council, *Joint study on global practices in relation to secret detention in the context of countering terrorism of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, 19 February 2010, A/HRC/13/42. Available at: <http://www.unhcr.org/refworld/docid/4d8720092.html> (accessed 29 May 2012).

⁶⁸ Código Penal de Ecuador, Capítulo IV, De los delitos de sabotaje y terrorismo Art. 158, 22 January 1971.

⁶⁹ Código Penal de Ecuador, Capítulo IV, De los delitos de sabotaje y terrorismo Art. 160.1, 22 January 1971.

⁷⁰ Código Penal de Ecuador, Capítulo IV, De los delitos de sabotaje y terrorismo Art. 160.1, 22 January 1971.

⁷¹ UN Office of the High Commissioner for Human Rights, *Report of the Special Rapporteur on the situation of human rights defenders*, July 2011, A/66/203. Available at: <http://www.un.org/en/ga/third/66/documentslist.shtml> (accessed 29 May 2012).

⁷² A regional Latin American and Caribbean alliance created in 2004 and today composed of eight full

fledged members: Antigua and Barbuda, Bolivia, Cuba, Dominica, Ecuador, Nicaragua, St. Vincent and the Grenadines, and Venezuela.

⁷³ Código Penal de Ecuador, Capítulo II, De los delitos que comprometen la paz y dignidad del estado, Art. 129, 22 January 1971.

⁷⁴ Inter-American Commission on Human Rights, *2005 Annual Report*, Report from the Office of the Special Rapporteur for Freedom of Expression, Vol. II, Chapter V, para. 1.

⁷⁵ UN Office of the High Commissioner for Human Rights, Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, July 2011, page 73. Available at: <http://www.unhcr.org/refworld/docid/4e2fc3f02.html> (accessed 29 May 2012).

⁷⁶ *Presidente Correa estuvo con sus simpatizantes*. Available at: <http://www.youtube.com/watch?v=TfKN9ITHb-0> (accessed May 2012)

⁷⁷ President Rafael Correa, Discurso en la Cumbre Presidencial y de Autoridades Indígenas y Afrodescendientes de la ALBA, Otavalo, 25 June 2010. Available at: http://www.presidencia.gob.ec/pdf/2010-06-25_alba.pdf (accessed May 2012).

⁷⁸ The Human Rights Committee has clarified that the “conduct of public affairs... is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels.”

UN Human Rights Committee (HRC), *CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service*, 12 July 1996, CCPR/C/21/Rev.1/Add.7, para. 5. Available at: <http://www.unhcr.org/refworld/docid/453883fc22.html> (accessed 29 May 2012).

⁷⁹ UN Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the ICESCR), 11 August 2000, E/C.12/2000/4, para. 54. Available at: <http://www.unhcr.org/refworld/docid/4538838d0.html> (accessed 29 May 2012).

⁸⁰ UN Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples*, 15 July 2009, A/HRC/12/34, para. 46. Available at: <http://www.unhcr.org/refworld/docid/4ae5b9f02.html> (accessed 29 May 2012).

⁸¹ Rafael Correa, *Enlace Ciudadano 264*. Available at: <http://www.youtube.com/watch?v=qvz9fOKq9OM&feature=related> (accessed 8 May 2012).

⁸² *Protesta social criminal será sancionada con todo el rigor de la ley, advierte Correa*. Available at: <http://www.youtube.com/watch?v=9Ylb14aDUPk&feature=related> (accessed 8 May 2012).

⁸³ *Protesta social criminal será sancionada con todo el rigor de la ley, advierte Correa*. Available at: <http://www.youtube.com/watch?v=9Ylb14aDUPk&feature=related> (accessed 8 May 2012).



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‘SO THAT NO ONE CAN DEMAND ANYTHING’ CRIMINALIZING THE RIGHT TO PROTEST IN ECUADOR?

Indigenous and *campesino* (small-scale farmer) communities have taken to the streets in Ecuador to protest at the lack of consultation around government proposed laws and policies on issues that directly affect them.

This report examines the response of Ecuadorian authorities to protests that took place between January 2009 and June 2010, mainly around laws on mining and water. Through individual cases, it demonstrates that all too often Indigenous and *campesino* leaders have been subjected to unfounded investigations and judicial proceedings. This has raised questions about whether there is a deliberate attempt by the state to discourage legitimate protest and silence claims by communities to the rights to consultation and to free, prior and informed consent.

Amnesty International concludes the report with a series of recommendations, calling upon Ecuadorian authorities to take urgent steps to ensure that the human rights of Indigenous and *campesino* communities are upheld, and that those seeking to claim these rights are able to do so free from fear, intimidation or harassment.

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