

ECUADOR

Indigenous Peoples' rights and harassment of protesters

*Amnesty International
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Periodic Review, May-June 2012*

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INTRODUCTION

In this submission, prepared for the UN Universal Periodic Review of Ecuador taking place in May-June 2012, Amnesty International expresses disappointment that there were no recommendations related to Indigenous Peoples' rights, human rights defenders, or the harassment of protesters during the previous UPR of Ecuador in 2008.

Although Ecuador's new Constitution explicitly recognizes Ecuador's multi-national and multi-cultural society and the right of Indigenous Peoples to be consulted about projects involving natural resources which may affect their territory and livelihood, as of November 2011 no mechanism had been adopted to ensure the right of Indigenous Peoples to be consulted and give their free, prior and informed consent in these circumstances. Amnesty International is also concerned that Presidential Decree No. 982 – an executive order regulating the work of non-governmental organizations - may be applied in a way that poses obstacles to the work of human rights defenders, unless safeguards are put in place to prevent this from happening.

In the past three years, the absence of a consultation mechanism before passing legislation affecting Indigenous Peoples' rights has sparked a series of nationwide protests. Many of these demonstrations have led to clashes between police and protesters. Amnesty International is concerned that in recent years spurious criminal charges have been brought against human rights defenders, including Indigenous leaders, in what appears to be a deliberate attempt to curb their rights to freedom of expression, assembly and association.

FOLLOW UP TO THE PREVIOUS REVIEW

At the time of the adoption by the UN Human Rights Council in June 2008 of the outcome of the UPR, Ecuador stated that it supported all the recommendations and that it would make all efforts to implement them in practice.¹ Amongst these were recommendations on human rights training of police forces;² child labour;³ prison conditions;⁴ discrimination;⁵ gender-based violence, including domestic violence and trafficking;⁶ and reform of the judicial system.⁷

Amnesty International is not able to comment on the state of implementation of the recommendations made to Ecuador during its first review, since the organization hasn't researched the issues addressed in the recommendations; however, it is disappointed to note that there were no recommendations related to Indigenous Peoples' rights, human rights defenders, or the harassment of protesters. Research carried out by Amnesty International since the last review suggests that there are serious human rights concerns in Ecuador as regards these issues. Further information about these issues is included below.

NORMATIVE AND INSTITUTIONAL FRAMEWORK OF THE STATE

LEGAL AND INSTITUTIONAL SHORTCOMINGS AFFECTING THE RIGHTS OF INDIGENOUS PEOPLES

Ecuador's new Constitution, approved by Parliament in July 2008, explicitly recognizes Ecuador's multi-national and multi-cultural society and the right of Indigenous Peoples to be consulted about projects involving non-renewable natural resources which may affect their territory and livelihood, as well as about legislation which could affect their collective rights.

However, as of November 2011 no mechanism had been adopted to ensure the right of Indigenous Peoples to be consulted in the circumstances stated in the 2008 Constitution. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples noted in September 2010 that significant efforts were needed to enable Indigenous Peoples to fully access their constitutional rights, and urged the government to ensure that clear procedures are in place for consulting with Indigenous Peoples prior to the passing of legislation and before starting projects that may affect Indigenous Peoples.⁸

Amnesty International is concerned that the lack of such consultation procedures erodes the right to consultation in good faith. Consultation should not be a mere formality but should be conducted with a view to reaching an agreement with the Indigenous Peoples affected, as clearly expressed in the jurisprudence of the Inter-American Court of Human Rights, as well as in ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples.⁹

In July 2011 the Inter-American Court of Human Rights heard the case of the Kichwa Indigenous People of Sarayaku vs Ecuador. The Inter-American Commission on Human Rights and the defendants argued that Ecuador had violated their right to free, prior and informed consent, as well as other human rights, when it granted permission to an oil company to carry out oil exploration on Sarayaku territory in 1996. There had been no prior consultation with the community, nor had their free, prior and informed consent been sought. The Inter-American Court's ruling is expected in early 2012.

Despite the lack of clear procedures to consult with Indigenous Peoples on projects that could affect their way of life, in October 2011 the Ministry of Non-Renewable Resources announced an upcoming series of oil concessions.¹⁰ The Ministry made no mention of what the procedure for consultation would be.

REGULATIONS AFFECTING THE WORK OF HUMAN RIGHTS DEFENDERS

Amnesty International is concerned that Presidential Decree No. 982, issued in 2008, may be applied by the authorities in a way that poses obstacles to civil society organizations, unless safeguards are put in place to prevent this from happening.

Article 13 of the Decree states that a non-governmental organization can be dissolved if it “compromises the security or interests of the state, such as contravening dispositions ordered repeatedly by the Ministries or control and regulation bodies”. Amnesty International is concerned that this Article could be used to close non-governmental organizations simply because they oppose laws and policies proposed by the state. Under Article 27 of the Decree, non-governmental organizations are obliged to present the authorities with financial reports, audit reports and approved meeting minutes, as well as any other information that refers to their activities. Amnesty International is concerned that the phrase “any other information” could oblige an organization to release confidential and/or sensitive information that could jeopardize the safety of victims, their relatives, or those representing them, as well as the safety of human rights defenders.

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

MASS DEMONSTRATIONS

In recent years the country has seen mass demonstrations against government policies and legislation on issues such as natural resources, land, education and public services. In the past

three years, the absence of a consultation mechanism before passing legislation affecting Indigenous Peoples' rights has sparked a series of nationwide protests. Many of these demonstrations have led to clashes between police and protesters, as well as to a wave of questionable charges being brought against the leaders of such protests.

In September 2009, a demonstration in the town of Macas, Morona Santiago Province - one of many demonstrations organized by the Confederation of Indigenous Nationalities of Ecuador (CONAIE) around the country at that time to protest against a proposed state law on mining - led to violent clashes between demonstrators and the police and security forces, during which 40 people were injured and one Indigenous leader was killed.

In response to these events, a decree was issued to establish forums for the government and Indigenous Peoples' organizations to discuss proposed legislation that would affect their rights. In February 2010, Indigenous Peoples' organizations withdrew from the process, claiming that the government was failing to engage meaningfully in the discussions. The mining law that had sparked the protests was declared constitutional by the Constitutional Court in March 2010, even though the Court recognized in its ruling that consultations with Indigenous Peoples, as required by the Constitution, had been inadequate.¹¹

HARASSMENT OF PROTESTERS

Amnesty International is concerned that in recent years spurious criminal charges have been brought against Indigenous and peasant farmer (*campesino*) leaders, in what appears to be a deliberate attempt to curb their rights to freedom of expression, assembly and association. The organization has documented cases of leaders who have been charged with criminal offences such as terrorism, sabotage, illicit association, kidnapping, murder, causing injury, robbery, trespassing and illegal obstruction of public roads in the context of protests against laws and policies, particularly those that relate to natural resources.

In 2008, the National Constitutional Assembly appeared to recognize that there had been a "catch all policy" to arrest and charge protesters and granted an amnesty to over 350 people facing criminal charges for participating in protests. However, since then scores of others have been charged with a range of criminal offences in the context of recent protests. In the most serious cases, Indigenous and *campesino* leaders have been charged with terrorism and sabotage. Both of these crimes are defined only vaguely in the Penal Code, thereby allowing the authorities to label legitimate Indigenous and *campesino* movements as 'terrorist' organizations.¹²

One such case concerns José Acacho, leader of the Inter Provincial Federation of Shuar and Vice-President of CONAIE, and Indigenous leaders Pedro Mashiant and Fidel Kaniras. All three men were arrested for murder, sabotage and terrorism in February 2011, following their involvement in the protests in the town of Macas, Morona Santiago province, in September 2009 (as mentioned above). A judge deemed their arrest arbitrary and ordered their release one week later, but the charges have not been dropped, despite the lack of substantiated evidence against them. The three men must report to the authorities once a week, they cannot leave the country and their financial assets remain frozen until the case has been resolved.

There are also several cases of protesters who were accused of terrorism or sabotage; charges that later were dropped when prosecutors realized that there was not sufficient evidence to carry on with the investigation. However, the prosecutors then instead charged the protesters with "obstruction of public roads". The Inter-American Commission on Human Rights has repeatedly expressed its concern at "criminal provisions that make criminal offenses out of the mere participation in a protest, road blockages... 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".¹³ The Inter-American Commission also noted that protests maybe the only form that groups who have been traditionally marginalized have to express their legitimate claims, as

in the case of Indigenous and *campesino* communities.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Ecuador to:

Legal and institutional shortcomings affecting Indigenous Peoples:

- Establish mechanisms and procedures, in consultation with Indigenous Peoples and in line with international human rights standards, to guarantee the rights of Indigenous Peoples to consultation with the objective of achieving free, prior and informed consent before projects are initiated that may affect their rights, as well as before new legislation is passed;
- Implement all the recommendations made by the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous Peoples.

Regulations affecting the work of human rights defenders:

- Ensure that the regulations for Presidential Decree No. 982 contain safeguards to ensure that it is not applied as a way to impede the legitimate work of human rights defenders.

Mass demonstrations:

- Promote, protect and respect the right to freedom of expression, assembly and association as recognized in international and regional instruments, including in situations where protesters are demonstrating against government policies, laws or actions.

Harassment of protesters:

- Stop using the judicial system to curb the ability of Indigenous, *campesino* and other community leaders to exercise their right to freedom of assembly and association, including with respect to expressing disapproval for and protesting against laws and policies proposed by the state authorities.

ENDNOTES

- ¹ Report of the Human Rights Council on its Eight Session, A/HRC/8/52, 1 September 2008, paragraphs 215-233.
- ² Report of the Working Group on the Universal Periodic Review on Ecuador, A/HRC/8/20, 13 May 2008, paragraph 60.2 (United Kingdom).
- ³ A/HRC/8/20, paragraph 60.3 (Italy).
- ⁴ A/HRC/8/20, 13 May 2008, paragraph 60.1, 60.4 and 60.5 (the Netherlands, Italy and Sweden).
- ⁵ A/HRC/8/20, 13 May 2008, paragraph 60.1, 60.6 and 60.7 (the Netherlands and Slovenia).
- ⁶ A/HRC/8/20, 13 May 2008, paragraph 60.8 and 60.10 (Italy, Mexico and Canada).
- ⁷ A/HRC/8/20, 13 May 2008, paragraph 60.9 (Canada and United Kingdom).
- ⁸ Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Addendum - Report on the implementation of constitutional guarantees for indigenous peoples in Ecuador, 13 September 2010, A/HRC/15/37/Add.7, page 2.
- ⁹ Inter-American Court of Human Rights, "Case of the Saramaka People v. Suriname (Preliminary Objections, Merits, Reparations and Costs)", Serie C No. 172, judgment of 28 November 2007.
- ¹⁰ See for example Andes/LP, 13 October 2011, "Decimoprimerá ronda petrolera licitará 21 bloques sudorientales", available at: <http://andes.info.ec/economia/decimoprimerá-ronda-petrolera-licitará-21-bloques-sudorientales-101237.html> (accessed 6 December 2011).
- ¹¹ See Ecuadorian Constitutional Court ruling 001-10-SIN-CC, March 2010.
- ¹² Ecuador Penal Code, 22 January 1971, available at: <http://www.miliarium.com/Paginas/Leyes/Internacional/Ecuador/General/cp.pdf> (accessed 6 December 2011).
- ¹³ A Hemispheric Agenda for the Defence of Freedom of Expression, Office of the Special Rapporteur for Freedom of Expression, Inter American Commission of Human Rights, OEA/Ser.L/V/II, CIDH/RELE/INF. 4/09, 25 February 2009 available at: <http://www.oas.org/en/iachr/expression/docs/publications/Hemispheric%20%20Agenda%20Eng%20FINAL%20portada.pdf> (accessed 6 December 2011).

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE¹

The criminal justice system must not be used to curb protests, 28 October 2011, Index: AMR 28/008/2011.

Sacrificing rights in the name of development: Indigenous Peoples under threat in the Americas, 5 August 2011, Index: AMR 01/001/2011.

Amnesty International submits amicus curiae on the right to consultation and consent of Indigenous Peoples to the Inter-American Court of Human Rights, 22 July 2011, Index: AMR 28/002/2011.

¹ All of these documents are available on Amnesty International's website: <http://www.amnesty.org/en/region/ecuador>.