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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## Visit to Ecuador

### Report of the Special Rapporteur on the rights of indigenous peoples\*

#### *Summary*

The report reviews the situation of the indigenous peoples of Ecuador on the basis of information received by the Special Rapporteur during her visit to the country between 19 and 29 November 2018.

The Special Rapporteur takes note of the current openness to dialogue between the Government and the indigenous peoples. The 2008 Constitution provides a good basis for moving towards a new plurinational and intercultural State model. It is imperative that the Government give priority to addressing structural problems, in particular by guaranteeing the indigenous peoples' rights to their lands, territories and natural resources, to respect for their authorities and justice systems, to proper operationalization of consultations, and to intercultural implementation of their economic, social and cultural rights.

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\* The summary of the report is being circulated in all official languages. The report itself, which is annexed to the summary, is being circulated in the language of submission and in English only.



## Annex

### Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Ecuador

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## I. Introduction

1. The present report reviews the situation of indigenous peoples in Ecuador drawing on information received by the Special Rapporteur during her visit to the country from 19 to 29 November 2018 and on independent research, taking into account the observations made by her predecessors in 2006, 2008 and 2009,<sup>1</sup> the communications issued by the mandate and the recommendations of other international and regional human rights mechanisms.
2. During her visit, the Special Rapporteur met with the President of Ecuador, the Minister for Foreign Affairs and other ministers and high-level representatives from various ministries and State institutions, including the National Assembly, the Council of the Judiciary, the National Court of Justice, the Attorney General's Office, the Counsel General's Office and the National Electoral Council. She also held discussions with the Ombudsman's Office and representatives of civil society, academia, the private sector and the United Nations system.
3. The Special Rapporteur met with representatives of indigenous peoples from the highlands, the coast and the Amazon region in national and regional assemblies and on visits to communities in several provinces. She held separate meetings with indigenous women and visited the Turi Detention Centre in the city of Cuenca.
4. The Special Rapporteur would like to thank the Government of Ecuador for its cooperation and for allowing her to conduct her visit in a free and independent manner. She would also like to acknowledge the support of the offices of the Resident Coordinator and of the United Nations High Commissioner for Human Rights. In particular, she thanks the indigenous peoples of Ecuador for their hospitality in their territories and the Confederation of Indigenous Nations of Ecuador for their work in organizing meetings.
5. The visit coincided with the tenth anniversary of the adoption of the Constitution of 2008, a timely occasion for assessing the progress made in implementing the commitments set forth in the Constitution concerning the construction of a plurinational State, including through the effective application of the collective rights of indigenous communes, communities, peoples and nations,<sup>2</sup> in keeping with the international human rights obligations of Ecuador.

## II. General considerations

6. According to the latest census, in 2010, Ecuador had a population of almost 14.5 million people. Based on linguistic criteria, 6.1 per cent of the population was recognized as indigenous in the census, but different sources estimate that the indigenous population accounts for between 35 per cent and 45 per cent of the population.
7. There are 14 nations and 18 officially recognized indigenous peoples in Ecuador.<sup>3</sup> Some of the indigenous peoples in the Amazon region live in voluntary isolation and initial contact. Some indigenous nations, including the Sápara, Siona, Shiwiar and Cofán, in the Amazon region, and the Épera and Manta on the coast, have very few members, so their survival as peoples is especially threatened.
8. During the final decades of the twentieth century, a strong indigenous movement took shape which resulted in significant progress being made towards recognition of their collective rights. The National Directorate for Bilingual Intercultural Education was created in 1988. In 1998, the indigenous movement succeeded in obtaining recognition in the Constitution of some of their collective rights and of the country's multi-ethnic and multicultural nature, as well as ratification of the Convention concerning Indigenous and

<sup>1</sup> A/HRC/4/32/Add.2; A/HRC/9/9/Add.1 (annex 1); A/HRC/15/37/Add.7.

<sup>2</sup> To save space, the term "indigenous peoples" will be used.

<sup>3</sup> National Development Plan, 2017–2021.

Tribal Peoples, 1989 (No. 169) of the International Labour Organization (ILO). New autonomous institutions were created which were controlled by indigenous organizations such as the Council for the Advancement of the Nations and Peoples of Ecuador, the Development Fund for the Indigenous Nations and Peoples of Ecuador and the National Directorate for Intercultural Health. Through participation in elections, indigenous representatives have held positions in local governments, developing innovative management models. Progress has also been made in the recognition and titling of indigenous lands and territories.

9. In the decade between 2006 and 2017, there was a regression in terms of respect for and protection and enforcement of indigenous rights in a context of repression and criminalization of indigenous persons involved in social protest, despite the fact that their collective rights are recognized in the Constitution of 2008. In many cases, this repression and criminalization arose from the imposition of an economic model based on the extraction and export of raw materials, which had a serious impact on indigenous lands, territories and natural resources.

10. In theory, equality and interculturality were mainstreamed, as autonomous indigenous institutions were eliminated. National development plans were designed without any meaningful input from the indigenous peoples, in keeping with a monocultural interpretation of *sumak kawsay* (the indigenous philosophy of “the good way of living”). In the Special Rapporteur’s view, the principle of equality has been implemented without taking into account the pre-existing situation of discrimination experienced by indigenous peoples. The imposition of this concept of equality completely disregards the collective rights of indigenous peoples, leads to discrimination in practice and hinders progress towards plurinationality and interculturality.

11. Following the change of government in 2017, the new Administration is in a process of transition and assessment of State institutions. The President has said that confrontation will be replaced by dialogue and participation. In this regard, the authorities have held and announced consultations with the people and organized discussions with the indigenous movement.

12. The Special Rapporteur was informed about the progress of these discussions. The Secretariat for Bilingual Intercultural Education was created, and pardons were granted to some persons who had been convicted for their involvement in social protest activities. In addition, some indigenous persons have been nominated or appointed to high-level positions in State institutions such as the National Electoral Council and the Council for Citizen Participation and Social Control. The Government also provided information on its commitment to indigenous rights at the international level.

13. Despite these positive steps, indigenous peoples told the Special Rapporteur about the main concerns they have in the current context. They noted the lack of results from discussions on substantive issues, such as their rights to their lands, territories and natural resources; respect for their authorities and justice systems; proper operationalization of consultations and free, prior and informed consent; and intercultural implementation of their economic, social and cultural rights.

14. They also reiterated their concern about the activation of previous mining and oil concessions and the tendering of new ones. Of particular concern is the fact that these measures, which will have a serious impact on the fundamental rights of indigenous peoples, were taken without proper consultation and without obtaining the consent of the indigenous peoples concerned.

### **III. Indigenous rights and the legal and institutional framework since 2008**

15. Ecuador has ratified the main international and regional human rights treaties, as well as ILO Convention No. 169, and it voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples in 2007. The Constitution (art. 417) stipulates that international human rights instruments are directly applicable.

16. The Constitution of 2008 establishes Ecuador as a plurinational and intercultural State that is made up of different nations and peoples who work together to build a common State through intercultural dialogue. The construction of the plurinational State is based on the individual and collective rights of its nations and peoples being effectively guaranteed. The Constitution (art. 57) recognizes 21 collective rights of indigenous peoples, in addition to the indigenous justice system. It further recognizes the rights of nature and establishes *sumak kawsay* as an overall goal for all public actions. Despite the limitations noted at the time by indigenous organizations, the new Constitution seemed to provide a good basis for the construction of a new State model.

17. During the past decade, however, the requirement that legislation and public policies should be aligned with the Constitution and international law has not been respected. The existing legal framework is not consistent with these rights, and several of the laws that were adopted have been challenged by indigenous organizations as unconstitutional.

18. The Constitution establishes equality councils to mainstream the rights enshrined therein. The Act on Equality Councils, abrogating the Organic Act on Public Institutions of Indigenous Peoples (2007), was adopted in 2014. The National Council for Equality of Peoples and Nations, set up in 2016, is considered by the Government as the representative of indigenous peoples in decision-making processes; however, it does not have a mechanism for direct representation of indigenous peoples. This restructuring did away with the institutional autonomy of the indigenous peoples. Moreover, the government agencies whose activities have a significant impact on the fundamental rights of indigenous peoples do not have procedures for joint decision-making that are needed under the plurinational and intercultural approach. The establishment of forums for dialogue such as those set up in 2017 by the Ministry of the Environment represent a preliminary step that could lead to the positive changes necessary for full participation.

19. In meetings with government bodies, the Special Rapporteur was informed about initiatives aimed at mainstreaming gender equality and interculturality, such as the Policy Agenda on Defence of the Ministry of Defence. This and other ministries, including those responsible for the Interior, Health and Justice, have training modules on interculturality and human rights. The Special Rapporteur considers these developments to be positive but insufficient.

20. At the time of the Special Rapporteur's visit, a process of assessment and restructuring of State institutions was underway, so most of the initiatives described were still in development. Although it is too early to judge the outcome of this restructuring, the Special Rapporteur is concerned that, on the whole, the legislative, institutional and policy measures do not appear to have been duly consulted with the indigenous peoples.

## **IV. Key challenges pending**

### **A. Rights of indigenous peoples over their lands, territories and natural resources**

21. The Constitution recognizes the right of indigenous peoples to maintain permanent ownership of their communal lands, which are to be inalienable, non-seizable and indivisible and exempt from fees and taxes; to maintain possession of their ancestral lands and territories and to have ownership awarded free of charge; and to participate in the use, enjoyment, administration and conservation of the renewable natural resources to be found on their lands. They have the right not to be displaced from their ancestral lands and to limit military activities in their territories, in accordance with the law, in addition to collective ownership of the communes as an ancestral form of territorial organization.

22. Following his mission in 2006, the Special Rapporteur, Mr. Stavenhagen, concluded that indigenous land ownership was not suitably covered by legislation, which had implications for the recognition and application of the rights of indigenous peoples to their ancestral lands and territories. This situation persists today. The Organic Act on Rural Lands and Ancestral Territories and the regulations thereto were adopted in 2016. The Act,

which was not adequately consulted with indigenous peoples, establishes procedures for requesting legalization of rural properties and ancestral territories. Many of the requirements for recognition of indigenous land rights lack an intercultural approach and are not consistent with international standards.

23. The Constitution provides that indigenous peoples may create indigenous territorial districts, which must be incorporated into the political and administrative structure of the decentralized State. Regulations governing the establishment of these districts were subsequently laid down in the Organic Code on Territorial Organization, Autonomy and Decentralization (2010). The complex process for establishing indigenous territorial districts, the lack of State action and subordination to the administrative division and procedures of the State, are factors that explain the limited progress in establishing such districts.

24. There are also other limitations that hinder the ability of indigenous peoples to exercise effective control over their lands and territories even when they have titles to them, given that the State has exclusive ownership of natural resources and controls the lands and territories included in reserves and protected areas. The conceptualization of land from a utilitarian and production-oriented perspective makes it difficult to harmonize the State's and the indigenous peoples' views of indigenous land rights and the need to respect and protect them.

## **B. Exploitation of natural resources and other activities in indigenous territories**

25. The situation created by the failure to properly recognize indigenous land rights is compounded by the impact of large-scale extraction of natural resources in their lands and territories. In his 2010 report, the Special Rapporteur, Mr. Anaya, stressed the challenge presented by the exploitation of natural resources vis-à-vis the obligations arising from the rights of indigenous peoples over their land and resources.<sup>4</sup> Since then, the necessary measures to address this challenge have still not been taken, and concessions have continued to be granted without proper consultation with or the consent of indigenous peoples, leading to conflicts and serious human rights violations in many regions of the country. Concessions for extraction projects have been granted in almost all of the traditional territories of some villages and communities, jeopardizing their survival as a people. Of particular concern is the cumulative effect of activities, both for extraction and for conservation, as well as construction of infrastructure and agro-industry, among others.

26. Mining concessions have multiplied throughout the country. At an assembly of indigenous peoples from the highlands that was held in Victoria del Portete, the Special Rapporteur met with representatives of communities in Molleturo parish who were affected by the Río Blanco project, which is currently under concession to Ecuagoldmining South America S.A. The concession is located within the Molleturo-Mollepungo protective forest and the Cajas World Biosphere Reserve. The lack of a proper consultation process has generated division in the communities and has led to violence, confrontations and the criminalization of more than 30 opponents of the project. There were also environmental impacts, as Cruz Loma Lake dried up, and rivers were polluted. The Provincial Court of Azuay received the application for constitutional review relating to the violation of the right of the Molleturo community to be consulted about the project and ordered that the project be suspended.<sup>5</sup> The Ministry of Energy and Non-Renewable Resources requested disciplinary measures against the judge in the case. There were also reports of serious impacts, confrontations and criminalization of the communities affected by the Quimsacocha (Azuay) mining project. Many communities in the Sierra, including the Saraguos of the Fierro Urco mountain range, were especially concerned about the impact on water sources in the Andean páramos and the difficulty of access and control over this critical resource.

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<sup>4</sup> A/HRC/15/37/Add.7, para. 37.

<sup>5</sup> No. 01333-2018-03145.

27. On the Cóndor mountain range, the ancestral land of the Shuar people, concessions were granted without prior consultation for three mining megaprojects declared to be of strategic importance, namely, Fruta del Norte and Mirador (Zamora Chinchipe) and San Carlos Panantza (Morona Santiago). This concentration of mining operations, including two open-pit mines, will have an enormous cumulative impact in terms of the takeover of lands and effect on water sources and sites that are sacred to the Shuar people, such as the waterfalls. The Comptroller General's Office has referred, among other serious problems, to the inadequate environmental impact studies on the Mirador and San Carlos Panantza projects.<sup>6</sup> The Kupiamai community, representatives of the Shuar Interprovincial Federation and the Association of Shuar Centres of the Community of Bomboiza reported on the criminalization of leaders, violence, fraudulent land purchases, imposition of mining easements, forced evictions and environmental pollution, including the impact on water and agricultural production, under both projects. In Tundayme, the Special Rapporteur visited the alleged site of the torture and death of Shuar leader José Tendentza in 2014. The facts of this crime, allegedly related to his opposition to mining activity, have not been elucidated. There were also reports of a failure to conduct a proper investigation, to punish the perpetrators and to provide redress in the cases of murdered Shuar leaders Bosco Wisum (2009) and Freddy Taish (2013).

28. The forced displacement of indigenous communities in the context of extraction projects is a matter of special concern. The Special Rapporteur met with families who had been displaced from the Cascomi Tundayme community, where the Mirador project is being carried out. She was briefed on the destruction of the school and the church (2014) and three forced evictions, two in 2015 and one in 2016, which were carried out by the Mining Regulation and Oversight Agency at the request of the concessionaire, Ecuacorrientes SA. The unannounced evictions were violent, and involved the demolition of homes, property grabbing and inadequate alternative housing arrangements, as well as the presence of the company's private security. According to the Ombudsman's Office, the international standards on eviction were violated.<sup>7</sup> The Cascomi community was granted interim measures in July 2018; its request for protection was denied in January 2019. The Court did not recognize the indigenous identity of the community.

29. The Shuar Arutam community of Nankints was violently evicted in 2016 in the context of the San Carlos Panantza mining project of ExplorCobres S.A. The ensuing conflict resulted in the declaration of a state of emergency, criminalization, violence and the militarization of the area, which in turn generated displacements in San Pedro de Punyus, Kutukus and Tsuntsuimi. There were reports of abuse by the armed forces. Displaced families from Nankints, who now live in Tiink, are facing a humanitarian crisis. The provincial government of Zamora Chinchipe expressed concern about these incidents and about their impact and the lack of consultation on the part of the many mining projects in the province.

30. During the regional assembly of Amazonian indigenous peoples in Lago Agrio, the Special Rapporteur noted the absence of environmental rehabilitation, reparations and adequate compensation for communities that have suffered for decades the impact of oil exploitation on their lands and territories, as in the case of the area affected by the operations of Chevron-Texaco. The rivers, groundwater and soil are being polluted, with the resulting negative impact on health and food production. The community has not received a fair share of the benefits. In the absence of State services, the companies provided basic social services which involved cronyism and paternalistic practices, as noted in 2006 by Special Rapporteur. Stavenhagen. Several communities reported that when projects are closed down, they leave behind a bleak scene of environmental destruction and lack of services and economic opportunities. In August 2018, in the case of *Chevron-Texaco v. Ecuador*, the Permanent Court of Arbitration at The Hague accepted the company's argument that it had complied with a 1995 agreement with Ecuador, including

<sup>6</sup> *Amicus curiae*, protection action No. 17371-2018-00394.

<sup>7</sup> Office for the Coordination of Humanitarian Affairs (OCHA), Guiding Principles on Internal Displacement (<https://www.unhcr.org/en-us/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html>).

environmental remediation. In this regard, the State should give priority to protecting the rights of indigenous peoples and their access to justice, redress and remediation when signing agreements with private companies.

31. The lack of remediation for the impact of past operations increases concern about the new concessions announced by the Government. There are plans to activate concessions under the eleventh round (2012), and a twelfth round has been announced. Blocks 79 and 83, which were granted in concession to the Chinese company Andes Petroleum in 2016, cover 70 per cent of the territory of the Sápara nation. During their visit to the community of Jandiyaku, the Sápara authorities pointed out that their people were at risk of disappearing, given its small population. They reported serious acts of violence arising from the people's opposition to oil operations, which had increased as a result of the inadequate process of consultation in the blocks, including attacks against their leaders and the murders of a young boy, Emerson Ushigua (2013), and of Anacleta Dahua (2016), which remain unpunished. This violence and the potential environmental and social impact of oil activities pose a serious threat to the survival of the Sápara nation. Representatives of the Huaorani people expressed their concern over the tendering without adequate prior consultation of block 22, which would affect almost 17 per cent of the Huaorani territory in Pastaza.

32. With regard to implementation of the 2012 judgment of the Inter-American Court of Human Rights in the case of the *Kichwa Indigenous Peoples of Sarayaku v. Ecuador*, the Special Rapporteur noted that some of the measures ordered by the Court had been adopted, but no progress had been made in regard to three decisions, namely, neutralization, deactivation and removal of surface and buried pentolite;<sup>8</sup> prior consultation before any impact on their territory; and development of an adequate legal framework to guarantee the right to consultation. In this context, it is concerning that there has been no consultation regarding the tendering of the eleventh and twelfth rounds of three blocks that would affect more than 91 per cent of the territory of the Sarayaku, which would represent a repetition of the violations found by the Court.

33. There were also reports of violations of the rights of indigenous peoples in the context of infrastructure projects, such as the Soldados Minas-Yanuncay project operated by Elecaastro, which would affect the indigenous communities of the parishes of San Joaquín and Baños de Cuenca, and the Piatúa hydroelectric project in the canton of Santa Clara, Pastaza. The Kichwa communities affected by the project, which is operated by Genefran S.A., reported the unauthorized entry of company staff, divisions created in their communities and criminalization of their leaders. There had been no consultations in either case. There were also reports of violations of the communities' human right to water by the management of Hidrotambo S.A. in the Dulcepamba River.

34. The expansion of single-crop plantations such as African palm has for decades had a negative impact on indigenous territories, particularly on the coast. Representatives of the Épera, Awá and Chachi peoples reported land-grabbing, evictions, pollution of the environment and water, declining crop production and health impacts associated with those activities. In Pichincha, the Kayambi people complained about pollution caused by industrial flower farms.

### C. Protected areas

35. Protected areas and other environmental protection measures in indigenous lands and territories are implemented based on single-crop environmental criteria without consulting the peoples concerned. Once these lands are integrated into the national system of protected areas, they fall under the jurisdiction of the competent State authorities, without regard for pre-existing indigenous rights. Thus, most of the environmental protection measures taken limit the exercise of indigenous autonomy and undermine their territorial rights and self-determination. In the case of protected areas and intangible zones,

<sup>8</sup> Available at [http://corteidh.or.cr/docs/casos/articulos/seriec\\_245\\_ing.pdf](http://corteidh.or.cr/docs/casos/articulos/seriec_245_ing.pdf).



mining activities are prohibited, based on the results of the national referendum of 2018. But other measures, such as designation of protected forests, high-biodiversity areas and water catchments, limit indigenous oversight without ensuring protection, given that many of them are affected by licences for extraction activities.

36. Indigenous peoples living in protected areas or in high-biodiversity territories or lands that generate environmental services are only allowed to participate in their management through environmental management plans developed by the Ministry of the Environment. They may benefit from programmes such as the Forest Partner or Páramo Partner programmes, but there are reports that in some cases, these programmes pay conservation incentives while at the same time issuing tenders for oil operations in the same area, such as in blocks 79 and 83 in Sápara territory.

#### **D. Right to consultation and consent**

37. Despite the 2010 decisions of the Constitutional Court, the judgment of the Inter-American Court of Human Rights in the case of the Sarayaku people and the observations and recommendations of United Nations human rights bodies, the necessary steps have not been taken to ensure the collective right of the indigenous peoples to free, prior and informed consent that is enshrined in the Constitution.<sup>9</sup> The Constitution guarantees the collective right to free, prior and informed consultation in the context of non-renewable resource projects (art 57.7) and pre-legislative consultation prior to the adoption of bills that might affect their collective rights (art 57.17).

38. The Constitutional Court drew attention to the obligation of the National Assembly to enact an organic law on consultation and provided some minimum guidelines on the matter. The Court emphasized the difference between the public consultations mentioned in article 398 of the Constitution and the right of indigenous peoples to be consulted on mining projects that affect them, stipulating that specific consultations must be held with them, pursuant to article 57.7 and relevant international standards. In the case of the Sarayaku people, the Inter-American Court on Human Rights established the obligation of Ecuador to pass adequate legislation on the right to prior consultation.

39. In 2012, in the context of the eleventh round of bidding, Decree No. 1247<sup>10</sup> was issued to regulate the process of prior consultation for the exploitation of oil resources. This decree was drafted without consultation with or the participation of indigenous peoples, in violation of provisions regarding pre-legislative consultation; it does not comply with international standards on the issue, as it views consultation as merely a matter of information dissemination and awareness-raising. It also goes against the rule of law by regulating and restricting a fundamental right by means of a rule of lower rank.

40. In connection with the so-called consultations held in the framework of the eleventh round over a six-month period with seven indigenous nations, the Special Rapporteur received reports of pressure and blackmail against members of the communities, including the signing of social investment agreements, before the consultations, with some of the leaders. There had been assaults, a lack of respect for the legitimate authorities, the generation of divisions within communities, culturally inappropriate procedures in terms of time and content, a lack of clarity regarding the process and its outcome, and a low level of participation of the indigenous population, among other problems.

41. As their right to consultation has been violated, the indigenous peoples have brought actions for protection, sued for access to information and submitted their complaints to the courts. In exercising their territorial oversight activities, the A'i Cofán community of Sinagoe discovered that 20 mining concessions had been granted in their territory and 32

<sup>9</sup> Decision No. 001-10-SIN-CC of 10 March 2010, available at: [http://portal.corteconstitucional.gob.ec/Raiz/2010/001-10-SIN-CC/REL\\_SENTENCIA\\_001-10-SIN-CC.pdf](http://portal.corteconstitucional.gob.ec/Raiz/2010/001-10-SIN-CC/REL_SENTENCIA_001-10-SIN-CC.pdf).

<sup>10</sup> Executive Decree No. 1247, regulations for the implementation of free, prior and informed consultation in bidding processes and allocation of oil-bearing areas and blocks.

more were being processed. The community brought an action for protection against the State institutions responsible. The judgment handed down by the Provincial Court of Sucumbíos in October 2018 reverted the mining concessions because they violated the rights of the people of the A'i Cofán community of Sinangoe to nature, water, a healthy environment, prior consultation, culture and territory.<sup>11</sup> It also called for redress of the damage caused. The Provincial Court of Azuay ordered suspension of the Río Blanco project owing to the lack of consultation.

42. With regard to pre-legislative consultation, in 2012 the National Assembly adopted a directive on pre-legislative consultation which must be implemented by the Assembly through the appropriate committee before the adoption of any laws that might affect the indigenous peoples. According to information provided by the Government, several pre-legislative consultations have been carried out. These consultations have followed the model for public consultations without taking into account the standards applicable in the case of indigenous peoples.

43. The Special Rapporteur received information about the options being discussed to enforce the right to prior, free and informed consultation and consent, including regulations issued in the form of a law, institutions to be in charge of the procedures and indicators of implementation. In this regard, she wishes to stress that any initiative should be the result of an inclusive dialogue conducted in good faith between the indigenous peoples and the State (“consultation on consultation”) to ensure the implementation of these rights, which are important safeguards for the fundamental right of indigenous peoples to self-determination.

## **E. Recognition of indigenous forms of governance**

44. The Constitution recognizes the right of indigenous peoples to preserve and develop their modes of social organization and their authorities. Communities must register their government councils in order to ensure that they are recognized as legitimate authorities vis-à-vis the public agencies. Until 2015, the Council for the Advancement of the Nations and Peoples of Ecuador was responsible for legalizing and registering the statutes, boards and governing councils of indigenous peoples and nations. These duties were transferred to the National Secretariat for Policy Management in the Office of the President, which manages the Single Register of Civil Society Organizations.

45. Registering indigenous authorities and organizations under the same requirements as any other non-governmental organization is contrary to their constitutional status. The requirements placed on indigenous authorities and the inadequate status under which they are recognized limit their right to autonomy and self-government. Furthermore, there were reports of undue interference with the registration of elected authorities, which is tantamount to censorship and control. For example, the Sápara nation and the Ombudsman’s Office reported the non-recognition of the President-elect of the Sápara nation. Information was received about several cases involving the registration of parallel authorities that were close to the Government.

## **F. Coordination and cooperation between justice systems**

46. The Constitution (art. 171) recognizes the right of indigenous authorities to perform judicial duties and to apply judicial rules and procedures that are not contrary to the Constitution and internationally recognized human rights; it also provides that adequate coordination and cooperation must be established between indigenous and ordinary justice systems. It also establishes the State’s obligation to guarantee respect for the rulings of indigenous courts, which are subject to review for constitutionality. The Organic Code on the Judiciary (2009) outlines the competencies and functions related to the promotion of intercultural justice that would be within the purview of the Council of the Judiciary.

<sup>11</sup> Case No. 21333201800266.

47. The Special Rapporteur paid special attention to this issue and in this regard, she met with the authorities in charge of indigenous justice in Cañar, Otavalo, Chimborazo and Cotopaxi in Latacunga. She also received information on the matter at her meetings with the Council of the Judiciary, the General Assembly, the Attorney General's Office and the National Court of Justice.

48. The Special Rapporteur wishes to express her concern about the lack of progress in the implementation of the detailed observations made by the previous Special Rapporteur, Mr. Anaya,<sup>12</sup> and the treaty bodies,<sup>13</sup> and about the setback in achieving proper recognition of legal pluralism during the past decade. In 2014, the Constitutional Court ruled in the La Cocha 2 case<sup>14</sup> that the indigenous authorities may not consider cases of crimes against life, which remain under the exclusive jurisdiction of the ordinary courts. However, neither the international standards nor the Constitution refer to this type of limitation.

49. According to the indigenous authorities, the attitude of the Government and the ordinary justice system is still racist and discriminatory. Indigenous justice systems are considered suitable only for dealing with domestic and minor issues, while only the ordinary courts are considered competent in serious criminal matters. The Special Rapporteur observed this prejudice in some of her meetings with members of the justice system, who seemed to confuse indigenous justice with vigilante justice and lynching.

50. Very little progress has been made in regard to coordination and cooperation between systems. In many instances, judges of the ordinary jurisdiction have not deferred to indigenous jurisdiction even when they were asked to do so and the cases in question were already being tried and even decided. The Special Rapporteur is concerned that this has led to double prosecutions. The ordinary system does not adequately take into account the investigations conducted by the indigenous justice authorities, and in many cases unconstitutional appeals have been filed against the rights of indigenous courts, even in cases involving civil and family matters, property, fraud and parental authority. In 2008, indigenous prosecutors' offices were set up to allow access to ordinary justice for indigenous peoples. However, it was alleged that these prosecutors interfere unduly in the indigenous justice system and have generated conflicts with their own authorities and criminal proceedings.

51. The necessary human, financial and other resources envisaged in the Organic Code on the Judiciary have not been provided, and this has worked to the detriment of the indigenous justice system, which must operate free of charge. The Special Rapporteur was informed about initiatives undertaken by the indigenous peoples themselves to strengthen their ability to guarantee due process, the inclusion of indigenous women and harmonization with international human rights standards; such initiatives have not been supported by the State. In general, indigenous women prefer to take their issues to the indigenous justice system, which can resolve conflicts in a culturally sensitive manner. Nevertheless, they noted the lack of resources and the need for further training of the justice authorities so as to ensure that violations of the rights of women and children will be addressed.

52. An especially troubling issue is the criminalization of indigenous justice authorities for performing their duties. In many cases, indigenous authorities have been convicted of offences that are included in the Organic Comprehensive Criminal Code. In order to justify the complaints and convictions, they are charged with kidnapping, aggravated kidnapping, extortion, damage to third party property, abduction, unlawful appropriation of public functions or land trafficking. This reflects a lack of understanding, on the part of the ordinary justice system, of the legitimate practices and processes of the indigenous justice system. Reports were received of proceedings being brought against indigenous justice authorities in the provinces of Cañar, Cotopaxi, Azuay and Pichincha. Eleven indigenous authorities of the Justice Council of San Pedro Cañar are in prison. The Special Rapporteur visited José Sarmiento, Sergio Paucar and María Sarmiento Chuqui, who had been

<sup>12</sup> A/HRC/15/37/Add.7.

<sup>13</sup> CERD/C/EQU/CO/23-24, paras. 12 and 13, and CCPR/C/EQU/CO/6, paras. 37 and 38.

<sup>14</sup> Case 0731-10-EP.

convicted of kidnapping for ransom and complicity in kidnapping, in the social rehabilitation centre of Turi. There are numerous criminal charges against indigenous authorities of the Movimiento Indígena y Campesino de Cotopaxi for carrying out their judicial duties in cases such as the Chinaló case, which has resulted in the criminalization of some 30 people.

53. The lack of progress in the implementation of legal pluralism, coupled with criminalization, is generating concern about repression, conflict and even extortion, as reported in San Pedro del Cañar. The Council of the Judiciary reported on several measures being considered to address this situation, including the setting up of truth commissions to investigate cases of criminalization and the signing of a cooperation and coordination agreement with the Confederation of Indigenous Nations of Ecuador.

## G. Criminalization, impunity and violence

54. Criminalization, harassment and violence against members and leaders of indigenous peoples have increased over the past ten years. This situation was documented and reported to regional and international human rights agencies, and several cases came to the attention of the Special Rapporteur.<sup>15</sup>

55. In the context of discussions with the new Government in 2017, the Confederation of Indigenous Nations of Ecuador submitted a request for amnesty for 225 persons who had been criminalized which was rejected by the National Assembly. To date, the President has granted eight pardons, including a pardon for Shuar leader José Acacho. The Ombudsman's Office, the Confederation of Indigenous Nations of Ecuador and the Public Defender's Office have called for the adoption of guidelines on amnesty, currently under discussion in the Legislative Administration Council, which would expedite consideration of pending cases.

56. Criminalization has declined since the start of the new Government, but the abusive use of criminal law has not yet been properly addressed. Violence, defamation, allegations and threats have continued against indigenous leaders who oppose extraction projects that are undertaken without consultation in their territories. There are still problems with the definition of offences, even after the 2014 revision of the Organic Comprehensive Criminal Code. Concerns remain about criminalization arising from the exercise of indigenous justice and there are complaints about the criminalization of indigenous institutions, such as the indigenous guards, as well as ceremonial practices or traditional subsistence practices considered to be crimes against the environment.

## H. Self-development

57. The three national development plans adopted after the recognition of *sumak kawsay* in the Constitution were developed and adopted without effective participation of indigenous peoples. In general, these plans promote an approach to development in which priority is given to productivity, extraction of natural resources and economic growth.

58. Owing to the lack of disaggregated and culturally appropriate indicators of the socioeconomic situation of indigenous peoples, the multidimensional impoverishment of many indigenous communities has been ignored. As a result, many indigenous people have been forced to migrate to urban centres or to other countries, a situation that is aggravated by the unavailability or loss of land. Those who emigrate face serious risks, including trafficking, violence and exploitation in the formal and informal economic sectors. In the province of Esmeraldas, the emigration of indigenous youth is a cause for concern. Indigenous adolescents from Cañar and Azuay are migrating on clandestine routes where they face serious danger.

<sup>15</sup> ECU 4/2018, ECU 3/2018, ECU 2/2017, ECU 8/2016, ECU 1/2015, ECU 2/2014, ECU4/2013 and others are available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

59. In response to the disconnection between the “good way of living” promoted by the State and their visions, several peoples and nations have developed their own concepts of development, such as the work done by the Governing Council of the Shuar Arutam autonomous people, the *Selva Viviente* (Living Jungle) of the Sarayaku Kichwa, the *Cuencas Sagradas* (Sacred Basins) proposal, the *Deje Vivir* (Let Us Live) approach of the Baihuaeri Huaorani of Bameno and decision 001 of the Second Congress of the Greater Awá Family. It appears that the State has not supported these self-development models.

## I. Bilingual intercultural education

60. Article 57.14 of the Constitution guarantees the collective right of indigenous peoples to bilingual intercultural education. The Organic Act on Intercultural Education (2011) stipulates that a bilingual intercultural education system is essential to national education and should guarantee the collective rights of the communes, communities, peoples and nations (arts. 77 and 78). In the course of the past decade, however, the National Directorate for Bilingual Intercultural Education was dismantled, and the educational system was centralized around schools known as “Millennium schools”. These schools, which were set up with the stated aim of ensuring educational excellence, entailed closing down the community schools, causing major displacements for indigenous children, risks to their security and increased expenses for their families. According to a study conducted by the Kichwa Confederation of Ecuador (Ecuadorunari) and the United Nations Children’s Fund (UNICEF) in 26 Kichwa communities, the new schools led to migration, erosion of community unity and deterioration of health and nutrition standards, and they had a negative impact on the preservation of languages, cultures and community values.

61. In Cangahua, representatives of the Kayambi people shared with the Special Rapporteur their vision of intercultural bilingual education, which is tied to their autonomy and culture, their philosophy of education being based on the ancestral knowledge and worldviews of peoples and nations and bound to their land and territories at all levels. In 2017, the Confederation of Indigenous Nations of Ecuador stated its position on intercultural bilingual education, calling for comprehensive and continuous education that is connected to the community from the beginning level and on through higher education, stressing that the diversity and worldviews of indigenous peoples should be incorporated into the national educational system and curricula.

62. The new Government has pledged to rebuild the intercultural bilingual education system. The Secretariat for Bilingual Intercultural Education was set up within the Ministry of Education, and it has administrative, technical, educational, operational and financial independence. The Organic Act on Higher Education provides for the reopening of Amawtay Wasi University and the inclusion of interculturality in higher education. Measures will be taken to restructure the five bilingual intercultural education schools, promote traditional knowledge, create an intercultural institute of technology and increase access to higher education for indigenous youth. The Special Rapporteur was informed about Government initiatives to reopen the schools that had been closed in indigenous communities, and she trusts that this will be done soon. In addition, the National Assembly will discuss the draft organic act on the linguistic rights of peoples and nations, designed to restore ancestral languages, which must be adopted through pre-legislative consultation.

## J. Intercultural health

63. The few disaggregated indicators that are available suggest that there is persistent inequality in the enjoyment of the right to health for indigenous peoples. Pollution caused by extraction projects and agro-industrial activities involving high pesticide use has led to an increase in certain diseases. Similarly, the lack of culturally appropriate health services of quality in many indigenous communities, in addition to the persistence of racism and discrimination, hinder access to public services.

64. The National Directorate for Intercultural Health of the Ministry of Public Health has programmes in the area of ancestral medicine and provides training in intercultural

health and childbirth with indigenous midwives. However, the participation of indigenous peoples is inadequate, so that traditional indigenous systems of medicine are not sufficiently recognized. There is a lack of coordination and integration between those systems and the national health system. The indigenous institutional structure in this sector has not been rebuilt.

## **K. Indigenous peoples in voluntary isolation or initial contact**

65. The Constitution refers to peoples in voluntary isolation, stating that their territories are ancestral possessions and prohibiting extraction activities on these lands. It stipulates that the State must take measures to ensure respect for their lives, self-determination and wish to live in isolation. Violation of these rights is considered an offence of ethnocide. The Tagaeri Taromenane Protected Zone was created in 1999 within the Yasuní Biosphere Reserve for the protection of these peoples, although it does not include all of their traditional territory. Decree No. 2187/2007 set the boundaries of the inviolable area covering 758,051 ha and established an additional buffer zone of 10 km, where it is prohibited to build new infrastructure and other works that technical and environmental impact studies have determined to be incompatible with the purpose of the protected zone.

66. The Special Rapporteur met with representatives of the Huaorani Baihuaeri community of Bamenó. The ancestral territory of the Baihuaeri, a people in recent contact, is now included in the Yasuní and the Tagaeri Taromenane Protected Zone. One of the problems facing the Baihuaeri and other Huaorani groups in the area is the increasing conflict caused by the incursion of Tagaeri Taromenane groups, who are displaced by extraction and logging activities. According to the Baihuaeri, the entire territory of the isolated peoples must be adequately protected, and oil drilling must be suspended in blocks 16, 14–17, 31, 43, 55 and 56. In 2007, the Government issued a plan for implementation of the interim measures ordered by the Inter-American Commission on Human Rights (MC 91/06) and, in 2015, it established a Directorate for the Protection of Indigenous Peoples in Voluntary Isolation. It is alleged, however, that the unilateral manner in which the Government has implemented the plan has not helped resolve the complex problems in the area. A peace plan aimed at resolving the underlying causes of the conflicts is still pending.

67. Information was also provided on the status of the Huaorani who were prosecuted for the 2013 massacre of Taromenane. Contrary to the recommendation of the Special Rapporteur,<sup>16</sup> the underlying causes of the conflict have not been considered in the investigation of the facts, nor has account been taken of the authority and traditional justice systems of the Huaorani. Five years later, the trial is still ongoing, without regard for due process or the principles of interculturality and celerity.

68. In this context, the information received on re-delimitation of the Tagaeri Taromenane Protected Zone raises concerns. The area of the intangible zone would be increased, while at the same time, extraction and infrastructure activities would be allowed in the buffer zone, which fulfils an essential role in providing protection while allowing for the expansion and operation of the Ishpingo oil-drilling block. It should be noted that a ring of oil activities is being created around the territory that is recognized as belonging to the indigenous peoples in voluntary isolation, hindering their freedom of movement and pushing them towards areas that belong to other Huaorani groups, which will aggravate the conflicts. In addition, information was received regarding the tendering of block 87, where, according to the Ministry of Justice, Human Rights and Religious Affairs, the Curaray Nashiña live in isolation.

69. The Ministry of Justice informed the Special Rapporteur about the steps that have been taken to implement the interim measures ordered by the Inter-American Commission on Human Rights. In August 2018, an agreement on public policy implementation was signed by the Ministry and the Huaorani nation of Ecuador, with advice being provided by the Equality Council. These measures will only work if they are aimed at resolving

<sup>16</sup> A/HRC/15/37/Add.7, press release of 16 May 2013; ECU 7/2016.

structural threats to the rights of indigenous peoples in voluntary isolation and initial contact, including the Huaorani communities.

## **L. The situation on the northern border**

70. Indigenous peoples on the northern border (Awá, Chachi, Épera, Kichwa, Siona-Secoya and A'i Cofán) have for many decades been in a situation of special risk and insecurity as a result of the internal conflict in Colombia, which did not improve after the signing of the Peace Agreements. Special Rapporteur Stavenhagen recommended the adoption of an emergency plan to address the situation in the area.<sup>17</sup> In Ibarra, representatives of the Awá, Épera and Chachi peoples of Esmeraldas reported invasions into their territories, enforced displacement, restrictions on freedom of movement, the presence of mines and explosives on both sides of the border, pressure from illegal armed groups and the presence of drug traffickers. Similar concerns were also raised at the regional meeting in Lago Agrio. There were reports of forced recruitment of children and adolescents and serious problems of trafficking, especially of women and girls. The presence of military personnel without coordination or consultation with indigenous authorities, despite the guarantee in the Constitution, has also caused problems. The Awá community of Guadalito was forced to leave its territories when 180 military personnel stayed in the community for two months in 2018.

71. The dire security situation is compounded by structural problems, such as a lack of titles for indigenous lands, State abandonment, a lack of basic social services and the serious impact of extraction activities, both legal and illegal. Illegal logging and mining, coupled with the award, without consultation, of oil and mining concessions, and the environmental and social damage caused by African palm plantations have led to environmental and water pollution that affect peoples' livelihood and health.

72. The Ombudsman's Office reported that an early warning system had been established to prevent and monitor human rights violations in the area. Executive Decree No. 437, on Defence, Security and Development Policies for the Northern Border (2018), addresses the development of policies and plans for comprehensive development and increased international cooperation. The Ministry of Defence reported that it provides training in the collective rights of peoples and nations for the military personnel involved in operations in the area.

## **M. Indigenous women**

73. The Special Rapporteur held separate meetings with indigenous women of several nations and peoples at which they informed her about their problems and proposals. She was given a copy of the Mandate of Amazonian Women, a document which describes assaults against indigenous women in the context of the imposition of extraction policies, including cases of murder, attacks and criminalization. The Government plans to take steps to address violence against women in response, but it has not dealt with requests regarding the consultations held under Decree No. 1247 or the cancellation of extraction licences.

74. At these meetings with indigenous women, discussions also centred on cultural and health-related problems arising from the rejection of traditional foods or the lack of access to markets for their products. Reference was also made to the lack of adequate health services in communities, the poor quality of the existing ones and discrimination in health care. Attention was drawn to the need to develop intercultural health services and recognize traditional midwives. The environmental and social damage associated with extraction projects, including the pollution of land and water, and the increase in prostitution and violence against women and girls were also stressed.

<sup>17</sup> A/HRC/4/32/Add.2.

## V. Conclusions and recommendations

75. The Constitution of 2008 provides a good basis for moving towards a new plurinational and intercultural State model. During the past decade, however, the necessary adjustments were not made to laws and policies to bring them into line with the collective rights recognized in the Constitution and enshrined internationally. Moreover, the direct participation of indigenous peoples in decisions on the common future declined, an economic model based on extraction of natural resources without adequate consultation was pursued, and violence and criminalization against the indigenous peoples of Ecuador increased.

76. The new Government assured the Special Rapporteur of its willingness to replace confrontation with dialogue. Such dialogue should primarily address structural problems that affect the fundamental rights of indigenous peoples, especially their rights to their lands, territories and natural resources. The commitments laid down in the Constitution cannot be fulfilled in the absence of full recognition and implementation of the rights of indigenous peoples that are enshrined in international human rights law.

### *General considerations*

77. The Special Rapporteur recalls the right of indigenous peoples to self-identification. For the 2020 census, the National Statistics and Census Institute should, in conjunction with the indigenous peoples, take steps to ensure that the criterion of self-identification is properly included.

78. The Special Rapporteur commends the Ombudsman's Office for its work in connection with the rights of indigenous peoples and recommends that it should be respected and its independence promoted.

79. The Special Rapporteur encourages the Government to promote and strengthen the direct participation of indigenous peoples and nations in all areas of decision making and stresses that all the recommendations contained in this report should be implemented in collaboration and cooperation with them.

80. The Government of Ecuador is urged to ratify at an early date the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement).

### *Rights of indigenous peoples over their lands, territories and natural resources*

81. The State should ensure that indigenous peoples have legal certainty with respect to their lands, territories and natural resources. To that end, as a matter of urgency, it should adopt an accessible and effective system for awarding land that allows for the full enjoyment of their territorial rights in accordance with international human rights standards. Requirements for the establishment of indigenous territorial districts should be harmonized with those standards to ensure that indigenous peoples who wish to do so can use this option for exercising their right of self-determination.

82. The establishment and management of protected areas and other systems for protecting indigenous peoples' lands and territories should be the subject of proper consultations and to free, prior and informed consent.

### *Exploitation of natural resources and other activities in indigenous territories*

83. Bearing in mind the violations of indigenous peoples' rights arising from the imposition without consultation of many extraction projects, the Special Rapporteur recommends that no new concessions be granted without the free, prior and informed consent of the indigenous peoples. Any concessions that are not in line with the Constitution and with international standards on the rights of indigenous peoples should be reviewed and, if necessary, cancelled.



84. Environmental and social impact studies should be carried out with the full participation of indigenous peoples and taking into account their cumulative overall impact at the territorial level. Studies should be conducted of their impact on human rights, including the rights enshrined in the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169.

85. The Special Rapporteur reminds the State that indigenous peoples should not be relocated from their lands or territories without their free, prior and informed consent. The enforced evictions carried out in the communities of Cascomi, Tundayme, Nankints and other similar cases should be investigated; sanctions should be imposed for any offence that may have been committed, and redress for victims and non-repetition should be assured.

86. The State should recognize and respect community water management systems and guarantee access to the resource. All necessary measures should be taken to prevent or reverse the serious impact of water pollution on the well-being and rights of indigenous peoples to food, health and a healthy environment.

87. The Special Rapporteur recommends that the outstanding actions ordered by the Inter-American Court of Human Rights in its 2012 judgment in the Sarayaku case should be fully implemented and expresses her concern about potential tendering of oil concessions that could lead to a repetition of the violations that are the subject of the judgment.

88. The Special Rapporteur recommends the enforcement, without delay, of the judgments issued by the national courts in keeping with the internationally recognized rights of indigenous peoples and underlines the importance of respect for independence.

*Right to consultation and consent*

89. Decree No. 1247 should be repealed, and procedures should be set up for dialogue with the indigenous peoples (“consultation on consultation”) on the adoption of any legal, administrative and policy measures considered by the parties to be necessary to the enjoyment of the right to consultation and to free, prior and informed consent.

90. Any legislative and policy instruments that were adopted without adequate consultation with the indigenous peoples and affect their human rights should be discussed and, if necessary, amended or abolished. No new legislation should be adopted without adequate pre-legislative consultations.

*Recognition of indigenous forms of governance and political participation*

91. The right of indigenous peoples to keep their own government institutions should be respected and properly recognized by the State. A body that is independent from the Government should be established to allow for recognition of indigenous authorities with culturally appropriate procedures in keeping with their rights to autonomy and self-determination. All irregularities in the registration of elected indigenous authorities should be investigated and punished.

92. Bearing in mind the plurinational nature of the State and to ensure the adequate participation of indigenous peoples in political life, consideration should be given to establishing a quota system, if they agree, in the institutions of the five branches of government.

*Coordination and cooperation among justice systems*

93. The necessary legislative, administrative and political measures should be taken to ensure adequate cooperation and coordination between the ordinary and indigenous justice systems, and the indigenous justice system should be provided with the material means necessary for the effective exercise of their jurisdiction.

94. The initiatives of indigenous peoples on the inclusion of indigenous women in the indigenous justice system should be supported, and improvements should be made in the training of their authorities on the ordinary justice system, investigation procedures and respect for human rights. At the same time, the study of indigenous justice should be included in the curricula of law schools, training should be provided to officials at all levels in the ordinary justice system, and an active effort should be made to combat prejudice and the lack of information on indigenous justice.

95. The Special Rapporteur welcomes the announcement by the Council of the Judiciary concerning plans to improve coordination between the ordinary and the indigenous justice systems and recommends that the initiative be put under way immediately with the full participation of indigenous authorities.

96. The criminalization of indigenous authorities for performing their judicial duties should be ended, the cases that have been reported should be investigated, those responsible should be punished, and redress should be provided for victims.

#### *Criminalization, impunity and violence*

97. It is essential that decisive action be taken to put an end to the abusive use of the criminal system against indigenous persons and leaders for defending their rights in the context of extraction projects on their lands, territories and natural resources, for exercising indigenous jurisdiction, or for carrying out their traditional practices. Cases of criminalization of indigenous persons and leaders should be investigated, perpetrators should be prosecuted, and reparations and non-repetition should be assured. Likewise, all acts of defamation, harassment and violence should be investigated and punished, and reparations should be made.

98. Collective and culturally appropriate measures to protect indigenous human rights defenders should be developed in conjunction with the indigenous peoples, bearing in mind the underlying risk factors.

#### *Self-development*

99. The Special Rapporteur stresses the right of indigenous peoples to implement their own development models and urges the Government to support their autonomous proposals for development with their own culture and identity as part of national development plans so as to achieve *sumak kawsay*.

100. Intercultural development indicators should be developed to assess the socioeconomic situation of indigenous peoples, including indicators of security of tenure over their lands and resources, food sovereignty and others.

#### *Bilingual intercultural education*

101. The Special Rapporteur welcomes the steps taken recently in the area of bilingual intercultural education and intercultural higher education. The State should guarantee full autonomy for the Secretariat for Intercultural Bilingual Education and allocate the resources it needs to fulfil its mission.

102. The budget should be increased to ensure that the bilingual intercultural education system works properly from the elementary level through higher education and make it possible to reopen the community schools, update the intercultural curriculum, provide training for bilingual and intercultural teachers and reopen Amawtay Wasi University, the higher education institutes that offer bilingual intercultural education and an intercultural institute of technology.

#### *Intercultural health*

103. An intercultural health system should be re-established to ensure respect for indigenous health systems and provide proper coordination with the overall public health system. In this regard, an autonomous intercultural health agency should be set up under indigenous control.

104. The indigenous peoples' right to health should be guaranteed, health care personnel should be trained so as to eliminate all racist or discriminatory practices in the health system, and communities should be provided with adequate quality services.

*Indigenous peoples in voluntary isolation or initial contact*

105. The Special Rapporteur reiterates the recommendations previously made by Special Rapporteurs concerning the Tagaeri Taromenane peoples living in isolation. In order to ensure full respect for their constitutional rights, the integrity of their territory should be recognized and protected, and the underlying causes of violence in the area, including pressure on their traditional lands as a result of legal and illegal extraction activities, should be resolved.

106. The Special Rapporteur recommends that the interim measures ordered by the Inter-American Commission on Human Rights (2016) should be brought up to date and fully implemented in conjunction with the Huaorani communities. The public policy on protection that has been announced should be developed in an inclusive manner with these communities.

107. It is essential that a truly intercultural and inclusive dialogue with the Huaorani be initiated with a view to drawing up a peace plan that would make it possible to prevent and resolve conflicts while guaranteeing the rights of indigenous peoples.

108. In this regard, the Special Rapporteur considers that it would be helpful to consider setting aside the case against the Huaorani persons involved in the events of 2013, bearing in mind the lack of due process and the excessive duration of the trial, among other problems.

*Northern border*

109. The Special Rapporteur recalls that there are standards in international law that deal specifically with the rights of indigenous peoples across borders. The State should intensify its joint efforts with Colombia to develop binational plans to guarantee contacts and the rights of cross-border peoples, as recommended by the Ombudsman's Office.

110. There is an urgent need to implement a comprehensive early warning system to address all issues of human rights violations in the area and deal specifically with the situation of indigenous peoples; steps should be taken to ensure that national funds are provided for future implementation of the system.

111. The structural problems of indigenous peoples in the area cannot be resolved solely with security measures. The territorial rights of indigenous peoples should be protected, health services and intercultural education should be guaranteed, and economic initiatives proposed by indigenous peoples should be supported.

112. The presence of military personnel should be contingent upon the consent of the indigenous communities. Measures should be taken to protect the population that do not entail an added risk to the peoples' safety. The watch and control systems of the indigenous peoples should be supported, and their complaints should be dealt with promptly.

*Indigenous women*

113. Intercultural policies to prevent and address the specific challenges of violence against indigenous women and girls and promote their rights in all areas should be developed, adopted and applied.

114. Access to justice should be ensured for indigenous women, in both the ordinary and the indigenous systems.

115. Priority attention should be given to implementing the Mandate of Amazonian Women.

*Other issues*

116. The Special Rapporteur wishes to draw attention to the special risk to their survival faced by indigenous peoples and nations with few members. She recommends that a proper dialogue be initiated with those peoples and their legitimate representatives on issues related to concessions that affect their lands and the titling of their traditional territories, among other matters.

117. It is essential to work with the indigenous peoples on specific policies for indigenous youth, taking into account the troubling reports of migration and youth suicide.

118. The Special Rapporteur wishes to remind the private sector of its responsibility to respect the rights of indigenous peoples and recommends that it develop human-rights impact studies in accordance with international standards and the Guiding Principles on Business and Human Rights, in cooperation with indigenous peoples.

119. Legislation should be strengthened to ensure that radio frequencies are reserved for indigenous media and to provide training and funding in support of these initiatives.

*To the United Nations System*

120. The Special Rapporteur recommends that the rights of indigenous peoples be included in the plans and annual budgets of the United Nations Development Assistance Framework (UNDAF) 2019–2022 and encourages the United Nations system in Ecuador to work with the Government and the indigenous peoples on the development of indicators and collection of disaggregated data on the situation of indigenous peoples.

121. The Special Rapporteur recommends that the United Nations, in particular UN Women, should work jointly with indigenous women to defend their rights, taking into account their own priorities.

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